



AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing

SUMMARY: This document contains proposed Income Tax Regulations relating to the allocation of loss recognized on the disposition of stock and other personal property. The loss allocation regulations primarily will affect taxpayers that claim the foreign tax credit and that incur losses with respect to personal property and are necessary to modify existing guidance. Prior proposed regulations are withdrawn. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by May 5, 1999. Outlines of oral comments to be discussed at the public hearing scheduled for May 26, 1999, must be received by May 5, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG-106905-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-106905-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. FOR FURTHER INFORMATION CONTACT: Concerning the regulations in general, Seth B. Goldstein of the Office of Associate Chief Counsel (International), (202) 622-3810; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

Notice of Proposed Rulemaking and Notice of Public Hearing

Allocation of Loss With Respect to the Distributions of Stock and Other Personal Property

REG-106905-98

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in T.D. 8805, 1999-5 I.R.B. 14, provide guidance concerning the allocation of loss with respect to personal property. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations. Proposed §1.865-1, published on July 8, 1996 (REG-209750-95 [formerly INTL-4-95, 1996-2 C.B. 484], 61 F.R. 35696), is withdrawn.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory impact analysis is not required.

An initial regulatory flexibility analysis has been prepared for this notice of proposed rulemaking under 5 U.S.C. § 603. A summary of the analysis is set forth below under the heading 'Summary of Initial Regulatory Flexibility Analysis.' Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Summary of Initial Regulatory Flexibility Analysis

These proposed regulations under sections 861 and 865 of the Internal Revenue Code address the allocation of loss with respect to personal property and are necessary for the proper computation of the foreign tax credit limitation under section 904 of the Internal Revenue Code. These regulations are promulgated under sections 861, 865(j)(1) and 7805 of the Internal Revenue Code. If adopted, these proposed regulations will affect small entities such as small businesses but not other small entities such as government or tax exempt organizations, which do not pay taxes. The IRS and Treasury Department are not aware of any federal rules that duplicate, overlap or conflict with these regulations. None of the significant alternatives considered in drafting these regulations would have significantly al-

tered the economic impact of these regulations on small entities. There are no alternative rules that are less burdensome to small entities but that accomplish the purpose of the statute. The IRS and Treasury Department request comments from small entities concerning this analysis.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely to the IRS (a signed original and eight (8) copies). In particular, the IRS requests comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 26, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 5, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Seth B. Goldstein, of the Office of the Associate Chief Counsel (International), IRS. However, other personnel

from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.865-1 also issued under 26 U.S.C. 865. * * *

Par. 2. Section 1.861-8 is amended by revising paragraph (e)(8) to read as follows:

§1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

(8) [The text of this proposed paragraph (e)(8) is the same as the text of §1.861-8T(e)(8) published in T.D. 8805.]

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Par. 3. Section 1.865-1 is added immediately following §1.864-8T, to read as follows:

§1.865-1 Loss with respect to personal property other than stock [The text of this proposed §1.865-1 is the same as the text of §1.865-1T published in T.D. 8805.]

Par. 4. Section 1.865-2 is amended by adding paragraphs (b)(4)(iii) and (b)(4)(iv) Example 3 through Example 6 to read as follows:

§1.865-2 Loss with respect to stock.

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(b) * * *

(4) * * *

(iii) [The text of this proposed paragraph (b)(4)(iii) is the same as the text of §1.865-2T(b)(4)(iii) published in T.D. 8805.]

(iv) * * *

Example 3 through Example 6 [The text of this proposed paragraph (b)(4)(iv) Example 3 through Example 6 is the same as

the text of §1.865-2T(b)(4)(iv) *Example 3* through *Example 6* published in T.D. 8805.]

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Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

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