

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

Disallowance of Deductions and Credits for Failure to File Timely Return

REG-107100-00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the disallowance of deductions and credits for nonresident alien individuals and foreign corporations that fail to file a timely U.S. income tax return. The current regulations permit nonresident aliens and foreign corporations the benefit of deductions and credits only if they timely file a U.S. income tax return in accordance with subtitle F of the Internal Revenue Code, unless the Commissioner waives the filing deadlines. The temporary regulations revise the waiver standard. The text of the temporary regulations (T.D. 8981) on this subject in this issue of the Bulletin also serves as the text of these proposed regulations set forth in this cross-referenced notice of proposed rulemaking. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by April 29, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for June 3, 2002, at 10 a.m. must be received by May 13, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-107100-00), 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:ITA:RU (REG-107100-00), 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/tax_regs/regslst.html. The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Nina E. Chowdhry, (202) 622-3880; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Donna Poindexter (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to sections 874 and 882. These temporary regulations contain rules relating to the disallowance of deductions and credits for nonresident alien individuals and foreign corporations that fail to file a timely U.S. income tax return.

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 assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. 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 business.

Comments and Public Hearing

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

A public hearing has been scheduled for June 3, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC. 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 this hearing. Persons who wish to present oral comments at the hearing must submit electronic or 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 April 29, 2002. 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 Nina Chowdhry of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

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Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

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

PART 1—INCOME TAXES

(Filed by the Office of the Federal Register on January 28, 2002, 8:45 a.m., and published in the issue of the Federal Register for January 29, 2002, 67 F.R. 4217)

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

Authority: 26 U.S.C. 7805 * * *

Section 1.874-1 also issued under 26 U.S.C. 874. * * *

Section 1.882-4 also issued under 26 U.S.C. 882(c). * * *

Par. 2. Section 1.874-1 is amended by:

- 1. Revising paragraph (b)(2).
- 2. Paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(5) and (b)(6), respectively.
- 3. New paragraphs (b)(3) and (b)(4) are added.

The revision and additions read as follows:

§ 1.874-1 Allowance of deductions and credits to nonresident alien individuals.

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(b)(2) through (4) [The text of proposed paragraphs (b)(2), (3), and (4) is the same as the text of § 1.874-1T(b)(2), (3), and (4) published elsewhere in this issue of the **Federal Register**].

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Par. 3. Section 1.882-4 is amended by:

- 1. Revising paragraph (a)(3)(ii).
- 2. Paragraphs (a)(3)(iii) through (a)(3)(v) are redesignated as paragraphs (a)(3)(v) through (a)(3)(vii), respectively.
- 3. New paragraphs (a)(3)(iii) and (iv) are added.

The revision and additions read as follows:

§ 1.882-4 Allowance of deductions and credits to foreign corporations.

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(a)(3)(ii) through (iv) [The text of proposed paragraphs (a)(3)(ii) through (iv) is the same as the text of § 1.882-4T(a)(3)(ii) through (iv) published elsewhere in this issue of the **Federal Register**].