

Notice of Proposed Rulemaking and Notice of Public Hearing

Liability for Insurance Premium Excise Tax

REG-125450-01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to liability for the insurance premium excise tax. This document affects persons who make, sign, issue, or sell a policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 19, 2002, at 10 a.m. must be received by February 26, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-125450-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 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-125450-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 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.gov/tax_regs/regslst.html. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amanda Ehrlich, (202) 622-3880;

concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The insurance premium excise tax imposed by section 4371 originated as a stamp tax on certain insurance policies in the Act of February 24, 1919, Title IX, section 1100. This provision was re-enacted unchanged in the Revenue Act of 1924, as section 800; in the Revenue Act of 1926, as section 800; and in the Internal Revenue Code of 1939 (1939 Code), as section 1804. Section 1809(a) of the 1939 Code required the tax imposed by section 1804 to be paid "by any person who makes, signs, issues, [or] sells ... any of the documents [or] instruments ... [including insurance policies subject to tax] ... or for whose use or benefit the same are made, signed, issued, [or] sold ..." Section 1809(b)(1) of the 1939 Code required the tax to be paid by the purchase of stamps to be affixed to taxable documents.

The insurance premium excise tax imposed by section 1804 of the 1939 Code was reenacted in the Internal Revenue Code of 1954 (1954 Code) as section 4371. Section 1809(a) and (b)(1) of the 1939 Code (relating to who is liable for the tax and how it is to be paid) were reenacted as sections 4383 and 4374 of the 1954 Code, respectively. Section 4383 of the 1954 Code was renumbered as section 4384 by the Excise Technical Changes Act of 1958.

Section 4374 was amended in 1965 to authorize the Secretary or the Secretary's delegate to provide by regulations that the tax imposed by section 4371 shall be paid on the basis of a return, instead of by stamp. Excise Tax Reduction Act of 1965, Public Law 89-44, section 804(a), 79 Stat. 136, 160 (1965). Pursuant to this statutory authorization, the Secretary promulgated 26 CFR § 46.4374-1 in 1970, which provides that the tax imposed by section 4371 shall be paid on the basis of a return and remitted by the person who

pays the premium to a foreign insurer or reinsurer. T.D. 7023 (1970-1 C.B. 233, 236). For these purposes, the person who makes payment of the premium is the resident person who actually transferred the money, check, or its equivalent to the foreign insurer or reinsurer. The regulation further provided a reference to section 4384 for purposes of determining the persons liable for the tax. § 46.4374-1(a).

The Tax Reform Act of 1976 (1976 Act) combined sections 4374 and 4384 into a single Code section, and eliminated any references therein to the payment of the tax by stamps. Tax Reform Act of 1976, Public Law 94-455, section 1904(a)(12), 90 Stat. 1520, 1812-14 (1976). The 1976 Act repealed section 4374, which had required payment of the tax by stamps or by return pursuant to regulations. It renumbered section 4384 as section 4374, which imposes liability for the tax. Finally, the 1976 Act amended the new section 4374 to require payment of the tax by return. The regulations under section 4374 have not been changed to reflect the 1976 statutory amendments.

Some taxpayers have taken the position, contrary to the statute, that § 46.4374-1 (which does not reflect the 1976 legislative changes) imposes liability and requires payment of tax only if a premium is paid by a resident of the United States. This interpretation ignores the cross-reference in § 46.4374-1(a) to prior Code section 4384 for purposes of determining the persons who are liable for the tax. The proposed regulations revise § 46.4374-1(a) to conform the regulations to the 1976 statutory amendments by providing that any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, is liable for the tax imposed by section 4371. Section 46.4374-1(c) also provides that the tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any non-resident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section

4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

Proposed Effective Date

These regulations are proposed to apply to premiums paid on or after the date final regulations are published in the **Federal Register**.

Special Analysis

It has 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 the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any 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 March 19, 2002, at 10 a.m., in room 4718, 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 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

February 26, 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 Amanda Ehrlich 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

Accordingly, 26 CFR part 46 is proposed to be amended as follows:

PART 46 — EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

Paragraph 1. The authority citation for part 46 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 46.4374-1 is revised to read as follows:

§ 46.4374-1 Liability for tax.

(a) *In general.* Any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, shall be liable for the tax imposed by section 4371.

(b) *When liability for tax attaches.* The liability for the tax imposed by section 4371 shall attach at the time the premium payment is transferred to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker. A person required to pay tax under this section may remit such tax before the time the tax attaches if he keeps records consistent with such practice.

(c) *Payment of tax.* The tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

(d) *Penalty for failure to pay tax.* Any person who fails to comply with the requirements of this section with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of tax. (See section 7270.)

(e) *Effective date.* This section is applicable for premiums paid on or after the date final regulations are published in the **Federal Register**.

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

(Filed by the Office of the Federal Register on January 4, 2002, 8:45 a.m., and published in the issue of the Federal Register for January 7, 2002, 67 F.R. 707)