

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-209322-82]

RIN 1545-AU99

Return of Partnership Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to partnership returns. The proposed regulations were published in the **Federal Register** on January 23, 1986. These regulations revise the partnership filing requirement to reflect changes to the law made by the Taxpayer Relief Act of 1997 (TRA). All partnerships required to file partnership returns, including certain foreign partnerships, are affected by these regulations. This document also contains a notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by April 27, 1998. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for May 19, 1998, at 10 a.m., must be received by April 28, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-209322-82), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-

209322-82), 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 of 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 the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Martin Schäffer or Christopher Kelley, 202-622-3080; concerning foreign partnerships, Ronald Gootzeit, 202-622-3860; concerning submissions and the hearing, Michael Slaughter, 202-622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information must be

received by March 27, 1998. Comments are specifically requested on:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of the capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §1.6031(a)-1. This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income or gain or claiming the correct amount of losses, deductions, or credits from that taxpayer's interest in the partnership. The collection of information is mandatory. The likely respondents are businesses and other for-profit institutions.

The burden is reflected in the burden of Form 1065.

An agency may not conduct or sponsor, and a person is not

required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 6031 and 6063 of the Internal Revenue Code of 1986 (Code). These amendments are designed, in part, to reflect changes made to section 6031 by section 1141 of TRA, Public Law 105-34, 111 Stat. 788 (1997). Section 6031 contains rules regarding the filing of returns of partnership income (partnership returns).

On January 23, 1986, the IRS published in the **Federal Register** (51 FR 3075) proposed regulations under section 6031 of the Internal Revenue Code (existing proposed regulations). Section 1.6031-1 of the existing proposed regulations provides rules that, if finalized, would implement the partnership filing requirements of section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97-248, 96 Stat. 669 (1982). Because section 1141 of TRA supersedes the partnership filing requirements of section 404 of TEFRA, the IRS and Treasury consider it appropriate to reissue proposed

regulations reflecting recent changes to the law, while giving taxpayers another opportunity to comment. Accordingly, this document withdraws §1.6031-1 of the existing proposed regulations published in the **Federal Register** on January 23, 1986 (51 FR 3075). A partnership that has followed the rules contained in §1.6031-1 of the existing final regulations for all taxable years prior to the taxable year for which these new regulations will become effective will be treated as fully complying with the partnership filing requirements with respect to such taxable years.

Section 6063 provides that a partnership return shall be signed by any one of the partners. The proposed regulations clarify who must sign a partnership return filed solely for the purpose of making certain partnership-level elections.

Explanation of Provisions

Filing Requirement

Section 6031(a) requires every partnership to file a partnership return. New section 6031(e), as added by section 1141 of TRA, exempts certain foreign partnerships from the filing requirement of section 6031(a). Section 6031(e) provides that a foreign partnership is not required to file a return for a tax year unless during that year it derives gross income from sources within the United States or has gross income that is effectively connected with the conduct of a trade or business within the United States. Further exceptions to the filing requirement for foreign partnerships may be provided by regulations.

The proposed regulations separately describe the filing requirements for domestic and foreign partnerships. In accordance with section 6031(a), the proposed regulations provide that, except in certain limited circumstances, every domestic partnership must file a partnership return.

Under section 6031 and the proposed regulations, a foreign partnership generally must file a partnership return only if it has either United States source income or income effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States. However, under the proposed regulations, a foreign partnership that has no gross income that is effectively connected with the conduct of a trade or business within the United States, and that would be required to file a partnership return only because it has gross income derived from sources within the United States, will be exempt from the requirement to file a partnership return if (i) no United States person has a direct or indirect interest in the partnership; (ii) the gross income derived from sources within the United States is either fixed or determinable annual or periodical income described in §1.1441-2(b) or other amounts subject to withholding described in §1.1441-2(c); (iii) Forms 1042 and 1042-S are filed with respect to all such gross income in accordance with §1.1461-1(b) and (c); and (iv) the tax liability of the partners with respect to such gross income has been fully satisfied by the withholding of tax at the source, if applicable, under chapter 3. The foreign partnership's

obligation to file Forms 1042 and 1042-S is generally eliminated by the regulations under section 1461 published in the **Federal Register** on October 14, 1997 (62 FR 53387) if those returns are filed by the withholding agent (or agents) making the payments of United States source income to the partnership and the partners' tax liability with respect to United States source income has been fully satisfied by withholding. See §1.1461-1(b)(2) and (c)(4). The IRS and Treasury invite comments addressing other ways to reduce duplicative information filing.

Any domestic or foreign partnership that elects to be excluded from subchapter K of Chapter 1 of the Code under section 761(a) will not be required to file a partnership return, except that where a partnership makes an election under §1.761-2(b)(2)(i), the partnership must timely file a partnership return that contains the information required by §1.761-2(b)(2)(i) for the taxable year for which the election is made.

Failure to Meet Filing Requirement

If a partnership that is not a small partnership under section 6231(a)(1)(B) is required to file a partnership return under section 6031 but fails to do so, the period of limitations on assessment of tax attributable to items of that partnership remains open indefinitely under section 6229(a). The failure of a partnership to file a return required by section 6031 might also result in disallowance under section 6231(f) of the deductions, losses, and credits flowing through to the partners and could subject the partnership to penalties under section 6698

and/or section 7203.

Information To Be Furnished to Partners

Under section 6031(b), every partnership that is required by section 6031(a) to file a partnership return must furnish information to its partners as required by regulations. The rules governing partnership statements to partners and nominees are in §1.6031(b)-1T.

Partnership Elections

A foreign partnership otherwise exempt from the filing requirement that wants to make a partnership-level election under section 703(b) must file a partnership return for the year of the election. The proposed regulations provide rules similar to those contained in §1.7701-3(c)(2) of the entity classification regulations with respect to who has the authority to file such returns. Generally, the return must be signed by all partners or by an authorized partner.

Proposed Effective Dates

These regulations are proposed to be applicable to partnership tax years ending on or after the 90th day after final regulations on this subject are published in the **Federal Register**. However, the exceptions for certain foreign partnerships contained in §1.6031(a)-1(b)(2) will not be applicable to any partnership taxable years beginning before January 1, 1999.

Special Analyses

It has been determined that this notice of proposed

rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations. It is hereby certified that the collection of information contained in these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations would reduce (rather than increase) the number of small entities that are required to file a partnership return. Specifically, the proposed regulations would eliminate the filing requirements for certain foreign partnerships that are fully subject to withholding in order to prevent duplicative filing requirements. In addition to eliminating the filing requirements in these circumstances, for ease of reference the proposed regulations update and restate the general requirements to file a partnership return as set forth in existing regulations. Because the proposed regulations would not impose any new reporting requirements that are not imposed by the existing regulations, and the only significant modification of the existing regulations is to eliminate the filing requirement for certain foreign partnerships, the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these

proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, May 19, 1998, at 10 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 27, 1998, and submit 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 28, 1998.

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 authors of these regulations are Martin Schäffer and Christopher Kelley, Office of Assistant Chief Counsel (Passthroughs and Special Industries), and Ronald Gootzeit, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on January 23, 1986 (51 FR 3075) is withdrawn.

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 1.6031(a)-1 also issued under 26 U.S.C. 6031. * * *

§1.6031-1 [Removed]

Par. 1a. Section 1.6031-1 is removed.

Par. 2. Section 1.6031(a)-1 is added to read as follows:

§1.6031(a)-1 Return of partnership income.

(a) Domestic partnerships--(1) Return required. Except as provided in paragraphs (a)(3) and (c) of this section, every domestic organization that is a partnership must file a return of partnership income under section 6031 (partnership return) for each taxable year on the form prescribed for the partnership return. The partnership return must be filed for the taxable year of the partnership regardless of the taxable years of the partners. For taxable years of a partnership and of a partner, see section 706 and §1.706-1. For the rules governing partnership statements to partners and nominees, see §1.6031(b)-1T.

(2) Content of return. The partnership return must contain the information required by the prescribed form and the accompanying instructions.

(3) Special rule. A partnership that has no income, deductions, or credits for federal income tax purposes for a taxable year is not required to file a partnership return for that year.

(4) Failure to file. For the consequences of a failure to comply with the requirements of section 6031(a) and this paragraph (a), see sections 6229(a), 6231(f), 6698, and 7203.

(b) Foreign partnerships--(1) Return required. A foreign partnership must file a partnership return for a partnership taxable year only if it has gross income derived from sources within the United States or it has gross income that is (or is treated as) effectively connected with the conduct of a trade or

business within the United States for the taxable year. Certain exceptions to this requirement are provided in paragraphs (b)(2) and (c) of this section. A foreign partnership that is required to file a partnership return must file the partnership return in accordance with the rules provided for domestic partnerships in paragraph (a) of this section.

(2) Exception to partnership return requirement for certain foreign partnerships investing in the United States. A foreign partnership that has no gross income that is effectively connected with the conduct of a trade or business within the United States, and that would be required to file a partnership return only because it has gross income derived from sources within the United States, is not required to file a partnership return under section 6031 if--

- (i) No United States person has a direct or indirect interest in the partnership;
- (ii) The gross income derived from sources within the United States is either fixed or determinable annual or periodical income described in §1.1441-2(b) or other amounts subject to withholding described in §1.1441-2(c);
- (iii) Forms 1042 and 1042-S are filed with respect to all such gross income in accordance with §1.1461-1(b) and (c). In order to satisfy this requirement, Forms 1042 and 1042-S must be filed by the partnership unless the partnership is not required to file such returns under §1.1461-1(b)(2) and (c)(4), in which case, Forms 1042 and 1042-S must be filed by another withholding

agent (or agents); and

(iv) The tax liability of the partners with respect to such gross income has been fully satisfied by the withholding of tax at the source, if applicable, under chapter 3 of the Internal Revenue Code.

(3) Partnership information or returns required of partners who are United States persons--(i) In general. If a United States person is a partner in a partnership that is not required to file a partnership return, the district director or director of the service center may require that person to render the statements or provide the information necessary to verify the accuracy of the reporting by that person of any items of partnership income, gain, loss, deduction, or credit.

(ii) Certain partnership elections. For a partnership that is not otherwise required to file a partnership return, if an election that can only be made by the partnership under section 703 (affecting the computation of taxable income derived from a partnership) is to be made by or for the partnership, a return on the form prescribed for the partnership return must be filed for the partnership. The return must be signed by--

(A) Each partner that is a partner in the partnership at the time the election is made; or

(B) Any partner of the partnership who is authorized (under local law or the partnership's organizational documents) to make the election and who represents to having such authorization under penalties of perjury.

(iii) Controlled foreign partnerships. Certain United States persons who are partners in a foreign partnership controlled (within the meaning of section 6038(e)(1)) by United States persons may be required to provide information with respect to the partnership under section 6038.

(4) Exclusion for certain organizations. The return requirement of section 6031 and this section does not apply to the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, or any organization that is a successor of either.

(c) Partnerships excluded from the application of subchapter K--(1) Wholly excluded--(i) Year of election. An eligible partnership as described in §1.761-2(a) that elects to be excluded from all the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified by §1.761-2(b)(2)(i) must timely file the form prescribed for the partnership return for the taxable year for which the election is made. In lieu of the information otherwise required, the return must contain or be accompanied by the information required by §1.761-2(b)(2)(i).

(ii) Subsequent years. Except as otherwise provided in paragraph (c)(1)(i) of this section, an eligible partnership that elects to be wholly excluded from the application of subchapter K is not required to file a partnership return.

(2) Deemed excluded. An eligible partnership that is deemed to have elected exclusion from the application of subchapter K

beginning with its first taxable year, as specified in §1.761-2(b)(2)(ii), is not required to file a partnership return.

(d) Definitions--(1) Partnership. For the meaning of the term partnership, see §1.761-1(a).

(2) United States person. In applying this section, United States person means a person described in section 7701(a)(30); the government of the United States, a State, or the District of Columbia (including an agency or instrumentality thereof); or a corporation created or organized in Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, if the requirements of sections 881(b)(1)(A), (B), and (C) are met for such corporation. The term does not include an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, as determined under §301.7701(b)-1(d) of this chapter.

(e) Procedural requirements--(1) Place for filing--(i) Domestic partnerships. The return of a domestic partnership that is required to file under paragraph (a) of this section must be filed with the service center for the internal revenue district in which the partnership has its principal office or principal place of business in the United States.

(ii) Foreign partnerships with United States business or income. The return of a foreign partnership that is required to file under paragraph (b)(1) of this section must be filed--

(A) With the service center for the internal revenue

district in which the partnership has its principal office or principal place of business in the United States; or

(B) With the Internal Revenue Service Center, Philadelphia, PA 19255-0011 if the partnership has no office or place of business in the United States.

(iii) Foreign partnerships without United States business or income. The return of a foreign partnership filed under paragraph (b)(3)(ii) of this section (regarding partnerships for which an election under section 703 is made) must be filed with the Internal Revenue Service Center, Philadelphia, PA 19255-0011. A statement must be attached to the partnership return indicating that the return is being filed pursuant to paragraph (b)(3)(ii) of this section solely to make one or more elections under section 703.

(2) Time for filing. The return of a partnership must be filed on or before the fifteenth day of the fourth month following the close of the taxable year of the partnership.

(3) Magnetic media filing. For magnetic media filing requirements with respect to partnerships, see section 6011(e)(2) and the regulations thereunder.

(f) Effective date. This section applies to taxable years of a partnership ending on or after the 90th day after the date final regulations on this subject are published in the **Federal Register.** However, in no event will paragraph (b)(2) of this section apply to taxable years of a partnership that begin before January 1, 1999.

Par. 3. Section 1.6063-1 is amended by adding paragraph (c) to read as follows:

§1.6063-1 Signing of returns, statements, and other documents made by partnerships.

* * * * *

(c) Certain partnership elections--(1) In general. For rules regarding the authority of a partner to sign a partnership return filed solely for the purpose of making certain partnership-level elections, see §1.6031(a)-1(b)(3)(ii).

(2) Effective date. The provisions of paragraph (c) of this section apply for taxable years of a partnership ending on or after the 90th day after the date final regulations on this subject are published in the **Federal Register**.

Michael P. Dolan

Deputy Commissioner of Internal Revenue