

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Immediate Payment

REG-159079-01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these proposed regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations on this subject (T.D. 8977) 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.

DATES: Written or electronic comments and requests for a public hearing must be received by April 17, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-159079-01), 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:ITA:RU (REG-159079-01), 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://irs.gov/tax_regs/reglist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan A. Sambur at (202) 622-3840; concerning submissions, Donna Poindexter, (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend 26 CFR parts 1 and 301. The temporary regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

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. Because these regulations impose no new collection of information on small entities, 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 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 Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the 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 parts 1 and 301 are proposed to be amended as follows:

PART 1 — INCOME TAXES

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

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

Par. 2. Section 1.1441-1 is amended as follows:

§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

[The text of the proposed amendments to this section is the same as the text of § 1.1441-1T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1441–6 is amended as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

[The text of the proposed amendments to this section is the same as the text of § 1.1441–6T published elsewhere in this issue of the **Federal Register**].

PART 301—ADMINISTRATIVE PRACTICES AND PROCEDURE, Income Taxes, Reporting and Recordkeeping requirements

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6109–1 is amended as follows:

§ 301.6109–1 Identifying numbers.

[The text of the proposed amendments to this section is the same as the text of § 301.6109–1T published elsewhere in this issue of the **Federal Register**].

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

(Filed by the Office of the Federal Register on January 16, 2002, 8:45 a.m., and published in the issue of the Federal Register for January 17, 2002, 67 F.R. 2387)