

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-119046-10]

RIN 1545-BJ54

Requirement of a Statement Disclosing Uncertain Tax Positions

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations allowing the IRS to require corporations to file a schedule disclosing uncertain tax positions related to the tax return as required by the IRS. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 11, 2010.

Outlines of topics to be discussed at the public hearing scheduled for October 15, 2010, at 10 a.m., must be received by October 11, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-119046-10), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-119046-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent

electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-119046-10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kathryn Zuba at (202) 622-3400; concerning submissions of comments, the public hearing, and to be placed on the building access list to attend the public hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6012 relating to the returns of income corporations are required to file. Section 6011 provides that persons liable for a tax imposed by Title 26 shall make a return when required by regulations prescribed by the Secretary of the Treasury according to the forms and regulations prescribed by the Secretary. Treasury Regulation §1.6011-1 requires every person liable for income tax to make such returns as are required by regulation. Section 6012 requires corporations subject to an income tax to make a return with respect to that tax. Treasury Regulation §1.6012-2 sets out the corporations that are required to file returns and the form those returns must take.

In Announcement 2010-9, 2010-7 I.R.B. 408, and Announcement 2010-17, 2010-13 I.R.B. 515, the IRS announced it was developing a schedule requiring certain taxpayers to report uncertain tax positions on their tax returns. The IRS released the draft schedule, Schedule UTP, accompanied by draft instructions that provide a further

explanation of the IRS's proposal in conjunction with Announcement 2010-30, IRB 2010-19. That announcement invited public comment by June 1, 2010, on the draft schedule and instructions, which would be finalized after the IRS received and considered the comments regarding the overall proposal and the draft schedule and instructions.

The draft schedule and instructions provide that, beginning with the 2010 tax year, certain corporations with both uncertain tax positions and assets equal to or exceeding \$10 million will be required to file Schedule UTP if they or a related party issued audited financial statements. The draft schedule and instructions stated that, for 2010 tax years, the IRS will require corporations filing the following returns to file Schedule UTP: Form 1120, U.S. Corporation Income Tax Return; Form 1120 L, U.S. Life Insurance Company Income Tax Return; Form 1120 PC, U.S. Property and Casualty Insurance Company Income Tax Return; and Form 1120 F, U.S. Income Tax Return of a Foreign Corporation. The draft schedule and instructions do not require a Schedule UTP from any other Form 1120 series filers, pass-through entities, or tax-exempt organizations in 2010 tax years.

A substantial number of public comments have been received regarding the draft schedule. The IRS and Treasury Department are currently reviewing the comments and anticipate publishing a final Schedule UTP in sufficient time to allow taxpayers to comply with the proposed effective date of these regulations.

Explanation of Provisions

These proposed regulations require corporations to file a Schedule UTP consistent with the forms, instructions, and other appropriate guidance provided by the

IRS. As explained in Announcement 2010-9, the United States federal income tax system relies on taxpayers to make a self-assessment of tax and to file returns that show the facts upon which tax liability may be determined and assessed. Section 601.103 of the Procedure and Administration Regulations. To discharge its obligation to fairly and uniformly administer the tax laws, the IRS must be able to quickly and efficiently identify those returns, and the issues underlying those returns, that present a significant risk of noncompliance with the Internal Revenue Code.

Existing corporate tax returns do not currently require that taxpayers separately identify and explain the uncertain tax positions that are identified in the process of complying with generally accepted accounting principles. Instead, to identify uncertain tax positions the IRS must select a return for audit and expend a substantial amount of effort by revenue agents to determine what uncertain tax positions might relate to the return.

Corporations that prepare financial statements are required by generally accepted accounting principles to identify and quantify all uncertain tax positions as described in Financial Accounting Standards Board, Interpretation No. 48, Accounting for Uncertainty in Income Taxes (June 2006) (FIN 48). FIN 48 is now codified in FASB ASC Topic 740-10 Income Taxes. Income Taxes, Accounting Standards Codification Subtopic 740-10 (Fin. Accounting Standards Bd. 2010). Other corporations that file returns of income in the United States may be subject to other requirements regarding accounting for uncertain tax positions. For example, corporations may be subject to other generally accepted accounting standards, including International Financial Reporting Standards and country-specific generally accepted accounting standards.

Congress, through the Internal Revenue Code, has given the IRS broad authority and discretion to specify the form and content of returns, so long as the IRS promulgates regulations requiring persons made liable for a tax to file those returns. This regulation will authorize the IRS to require certain corporations, as set out in forms, publications, or instructions, or other guidance, to provide information concerning uncertain tax positions concurrent with the filing of a return. This information will aid the IRS in identifying those returns that pose the most significant risks of noncompliance and in selecting issues for examination. The IRS intends to implement the authority provided in this regulation initially by issuing a schedule and explanatory publication that require those corporations that prepare audited financial statements to file a schedule identifying and describing the uncertain tax positions, as described in FIN 48 and other generally accepted accounting standards, that relate to the tax liability reported on the return.

Proposed Effective/Applicability Date

When adopted as a final regulation, this rule will apply to returns filed for tax years beginning after December 15, 2009, and ending after the date of publication of these rules as final regulations in the **Federal Register**.

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.

This regulation will only affect taxpayers that prepare or are required to issue audited financial statements. Small entities rarely prepare or are required to issue

audited financial statements due to the expense involved. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, 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 their 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 (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments submitted by the public will be made available for public inspection and copying. A public hearing has been scheduled for October 15, 2010, beginning at 10 a.m. in the IRS Auditorium, of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identifications to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 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 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 October 11, 2010.

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 Kathryn Zuba of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 1.6012-2 is also issued under the authority of 26 U.S.C. 6011 and 6012.

Par. 2. Section 1.6012-2 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

§1.6012-2 Corporations required to make returns of income.

(a) * * *

(4) Disclosure of uncertain tax positions. A corporation required to make a return under this section shall attach Schedule UTP, Uncertain Tax Position Statement, or any successor form, to such return, in accordance with forms, instructions, or other appropriate guidance provided by the IRS.

(5) Effective/applicability date. Paragraph (a)(4) of this section applies to returns filed for tax years beginning after December 15, 2009, and ending after the date of publication of the adoption of these rules as final regulations in the **Federal Register**.

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Steven T. Miller

Deputy Commissioner for Services and Enforcement.

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