

chemical intermediate. They are not sold at retail.

### How Did Red Phosphorus, White Phosphorus, and Hypophosphorus Acid (and Its Salts) Become List I Chemicals?

On September 25, 2000, DEA published a Notice of Proposed Rulemaking (65 FR 57577) that proposed that red phosphorus, white phosphorus, and hypophosphorus acid (and its salts) be placed in list I by amending 21 Code of Federal Regulations (CFR) 1310.02(a). On October 17, 2001, a Final Rule with request for comments was published in the **Federal Register** (66 FR 52670) which amended 21 CFR 1310.02(a) and placed these chemicals in list I of the CSA. Placing these forms of phosphorus in list I became necessary because they are used in the illicit manufacturing of methamphetamine, a Schedule II controlled substance.

The CSA requires that all handlers of red phosphorus, white phosphorus, and hypophosphorus acid (and its salts) must register as set forth in 21 CFR part 1309 and keep records and file reports as set forth in 21 CFR part 1310. Until regulations that delineate criteria and procedures for exempting specific regulated phosphorus-containing chemical mixtures are finalized, DEA is treating regulated phosphorus-containing chemical mixtures as being exempt from the chemical regulatory requirements of the CSA.

### Why Is DEA Interested in Learning About Chemical Mixtures Containing Regulated Phosphorus?

DEA is in the process of establishing regulations that define which chemical mixtures are exempt from CSA regulatory controls. The CSA defines the term "chemical mixture" as "a combination of two or more chemical substances, at least one of which is not a list I chemical or a list II chemical, except that such term does not include any combination of a list I chemical or a list II chemical that is present solely as an impurity." The CSA further allows exemption of chemical mixtures "based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered."

A notice of proposed rule making (NPRM) regarding the exemption of chemical mixtures was published in the **Federal Register** on September 16, 1998 (63 FR 49506). The NPRM proposed regulations to identify if a chemical mixture is automatically exempt from

CSA regulatory controls. When the NPRM was published, white phosphorus, red phosphorus, and hypophosphorus acid (and its salts) were not regulated chemicals. Therefore, regulations addressing the exemption of chemical mixtures containing regulated phosphorus were not proposed.

The NPRM proposed a concentration limit for each listed chemical. If a listed chemical is found in a chemical mixture at or below the concentration limit, the mixture is exempt. Also proposed were categories of exempt chemical mixtures and an application process. The application process is a means to exempt chemical mixtures not automatically exempted by regulation. These approaches were well received by the regulated industry and may be proposed to identify exempt chemical mixtures containing regulated phosphorus.

### What Is DEA Requesting in This ANPRM?

To propose regulations in line with the above approaches, DEA is interested in learning about formulations that contain regulated phosphorus. While some formulations containing regulated phosphorus have been identified, DEA is not aware of the entire scope of mixtures containing regulated phosphorus, including how they are used, traded, and their chemical composition. DEA invites all interested persons to provide any information on chemical mixtures containing regulated phosphorus. Both quantitative and qualitative information is requested. If the concentration of a chemical(s) varies in a formulation, DEA is interested in the range of concentration. Also of interest is how the mixtures are packaged, distributed, type of application, and the target market (*e.g.*, type of industry, availability at retail, Internet sales). This information will be used to propose regulations to exempt any chemical mixture that, according to 21 U.S.C. 802(39)(A)(v), is "formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered."

Such information may be submitted to the address listed above and is requested by April 1, 2003. Information designated as confidential or proprietary will be treated accordingly. The release of confidential business information that is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), is governed by section 310(c) of the CSA (21 U.S.C. 830(c)) and the Department of

Justice procedures set forth in 28 CFR 16.8.

Dated: January 22, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-125638-01]

RIN 1545-BA00

### Guidance Regarding Deduction and Capitalization of Expenditures; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking and notice of public hearing that explains how section 263(a) of the Internal Revenue Code (Code) applies to amounts paid to acquire, create, or enhance intangible assets. This document was published in the **Federal Register** on December 19, 2002 (67 FR 77701).

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Keyso (202) 927-9397 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The proposed regulations that are the subject of these corrections are under sections 263(a), 167, and 446 of the Internal Revenue Code.

##### Need for Correction

As published, the proposed regulations REG-125638-01, contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the publication of the proposed regulations REG-125638-01, which is the subject of FR Doc. 02-31859, is corrected as follows:

1. On page 77704, column 1, in the preamble, under the paragraph heading "Amounts Paid to Obtain or Modify Contract Rights", paragraph 4, the last two lines of the paragraph, the language "agreement is a separate and distinct asset" is corrected to read "agreement is a separate and distinct intangible asset".

**§ 1.263(a)–4 [Corrected]**

2. On page 77722, column 2, § 1.263(a)–4, paragraph (h)(4)(i), line 6, the language “(relating to *de minimis* applicable to” is corrected to read “(relating to *de minimis* rules applicable to”.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 31 and 301**

[REG–116641–01]

RIN 1545–BA17

**Information Reporting and Backup Withholding for Payment Card Transactions**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

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

**SUMMARY:** In the Rules and Regulation section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the IRS Taxpayer Identification Number (TIN) Matching Program. The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of this portion of the proposed regulations. This document also contains proposed regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions. These regulations affect payors (and their authorized agents) and payees of certain reportable payments and provide guidance necessary to comply with the law. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by May 1, 2003. Outlines of topics to be discussed at the public hearing scheduled for May 21, 2003, must be received by April 30, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG–116641–01), 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 4 p.m. to: CC:PA:RU (REG–116641–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Concerning the regulations, Donna Welch, (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The collections of information contained in this notice of proposed rulemaking have 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 collections 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, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by April 1, 2003. Comments are specifically requested concerning:

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 collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

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

The collection of information in this proposed regulation is in § 31.3406(g)–

1(f)(3). This information is required in order for a Qualified Payment Card Agent (QPCA) to notify a cardholder/payor that a merchant/payee is not a qualified payee for purposes of the proposed regulations. This information will alert a cardholder/payor that backup withholding under 3406 may apply. The collection of information is voluntary to obtain a benefit. The likely respondents are business or other for-profit institutions.

*Estimated total annual reporting burden:* 11,750,000 hours.

*Estimated average annual burden hours per respondent:* 5,875 hours.

*Estimated number of respondents:* 2,000.

*Estimated annual frequency of responses:* monthly.

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****1. Summary**

This document contains proposed amendments to 26 CFR part 31 relating to backup withholding under section 3406 of the Internal Revenue Code and proposed amendments to 26 Part 301 relating to waivers under section 6724 of information reporting penalties under sections 6721 and 6722.

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** provide that, for purposes of the IRS TIN Matching Program, the term *payor* includes an agent designated by the payor to participate in TIN matching on behalf of the payor. The text of those temporary regulations also serves as the text of proposed amendments to § 31.3406(j)–1(a) of the regulations. The preamble to the temporary regulations explains the proposed amendments to § 31.3406(j)–1(a).

**2. Information Reporting and Backup Withholding Provisions**

Section 6041(a) requires persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations,