

section and, in the case of an issue 95 percent or more of the net proceeds of which are to be used to provide residences for veterans, such issue also meets the requirements of paragraph (c) of this section. The requirements of section 143(g) and this section are applicable in addition to the requirements of section 148 and §§ 1.148-0 through 1.148-11.

(b) *Effective rate of mortgage interest not to exceed bond yield by more than 1.125 percentage points*—(1) *Maximum yield*. An issue shall be treated as meeting the requirements of this paragraph (b) only if the excess of the effective rate of interest on the mortgages financed by the issue, over the yield on the issue, is not greater over the term of the issue than 1.125 percentage points.

(2) *Effective rate of interest*. (i) In determining the effective rate of interest on any mortgage for purposes of this paragraph (b), there shall be taken into account all fees, charges, and other amounts borne by the mortgagor that are attributable to the mortgage or to the bond issue. Such amounts include points, commitment fees, origination fees, servicing fees, and prepayment penalties paid by the mortgagor.

(ii) Items that shall be treated as borne by the mortgagor and shall be taken into account in calculating the effective rate of interest also include—

(A) All points, commitment fees, origination fees, or similar charges borne by the seller of the property; and

(B) The excess of any amounts received from any person other than the mortgagor by any person in connection with the acquisition of the mortgagor's interest in the property over the usual and reasonable acquisition costs of a person acquiring like property when owner-financing is not provided through the use of mortgage revenue bonds.

(iii) The following items shall not be treated as borne by the mortgagor and shall not be taken into account in calculating the effective rate of interest—

(A) Any expected rebate of arbitrage profit under paragraph (c) of this section; and

(B) Any application fee, survey fee, credit report fee, insurance charge or similar settlement or financing cost to the extent such amount does not exceed amounts charged in the area in cases when owner-financing is not provided through the use of mortgage revenue bonds. For example, amounts paid for Federal Housing Administration, Veterans' Administration, or similar private mortgage insurance on an individual's mortgage, or amounts paid

for pool mortgage insurance on a pool of mortgages, are not taken into account so long as such amounts do not exceed the amounts charged in the area with respect to a similar mortgage, or pool of mortgages, that is not financed with mortgage revenue bonds. For this purpose, amounts paid for pool mortgage insurance include amounts paid to an entity (for example, the Government National Mortgage Association, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation, or other mortgage insurer) to directly guarantee the pool of mortgages financed with the bonds, or to guarantee a pass-through security backed by the pool of mortgages financed with the bonds.

(C) The following example illustrates the provisions of this paragraph (b)(2)(iii):

Example. Housing Authority X issues bonds intended to be qualified mortgage bonds under section 143(a). At the time the bonds are issued, X enters into an agreement with a group of mortgage lending institutions (lenders) under which the lenders agree to originate and service mortgages that meet certain specified requirements. After originating a specified amount of mortgages, each lender issues a "pass-through security" (each, a PTS) backed by the mortgages and sells the PTS to X. Under the terms of the PTS, the lender pays X an amount equal to the regular monthly payments on the mortgages (less certain fees), whether or not received by the lender (plus any prepayments and liquidation proceeds in the event of a foreclosure or other disposition of any mortgages). FNMA guarantees the timely payment of principal and interest on each PTS. From the payments received from each mortgagor, the lender pays a fee to FNMA for its guarantee of the PTS. The amounts paid to FNMA do not exceed the amounts charged in the area with respect to a similar pool of mortgages that is not financed with mortgage revenue bonds. Under this paragraph (b)(2)(iii), the fees for the guarantee provided by FNMA are an insurance charge because the guarantee is pool mortgage insurance. Because the amounts charged for the guarantee do not exceed the amounts charged in the area with respect to a similar pool of mortgages that is not financed with mortgage revenue bonds, the amounts charged for the guarantee are not taken into account in computing the effective rate of interest on the mortgages financed with X's bonds.

(3) *Additional rules*. To the extent not inconsistent with the Tax Reform Act of 1986, Public Law 99-514 (the 1986 Act), or subsequent law, § 6a.103A-2(i)(2) (other than paragraphs (i)(2)(i) and (i)(2)(ii)(A) through (C)) of this chapter applies to provide additional rules relating to compliance with the requirement that the effective rate of mortgage interest not exceed the bond

yield by more than 1.125 percentage points.

(c) *Arbitrage and investment gains to be used to reduce costs of owner-financing*. As provided in section 143(g)(3), certain earnings on nonpurpose investments must either be paid or credited to mortgagors, or paid to the United States, in certain circumstances. To the extent not inconsistent with the 1986 Act or subsequent law, § 6a.103A-2(i)(4) of this chapter applies to provide guidance relating to compliance with this requirement.

(d) *Effective dates*—(1) *In general*. Except as otherwise provided in this section, § 1.143(g)-1 applies to bonds sold on or after May 23, 2005, that are subject to section 143.

(2) *Permissive retroactive application in whole*. Except as provided in paragraph (d)(4) of this section, issuers may apply § 1.143(g)-1, in whole, but not in part, to bonds sold before May 23, 2005, that are subject to section 143.

(3) *Bonds subject to the Internal Revenue Code of 1954*. Except as provided in paragraph (d)(4) of this section and subject to the applicable effective dates for the corresponding statutory provisions, an issuer may apply § 1.143(g)-1, in whole, but not in part, to bonds that are subject to section 103A(i) of the Internal Revenue Code of 1954.

(4) *Special rule for pre-July 1, 1993 bonds*. To the extent that an issuer applies this section to bonds issued before July 1, 1993, § 6a.103A-2(i)(3) of this chapter also applies to the bonds.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: May 12, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9206]

RIN 1545-BE12

Information Returns by Donees Relating to Qualified Intellectual Property Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance for the filing of information returns by donees relating to qualified intellectual property contributions. These temporary regulations affect donees receiving net income from qualified intellectual property contributions made after June 3, 2004. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective date:* These regulations are effective May 23, 2005.

FOR FURTHER INFORMATION CONTACT: Donnell M. Rini-Swyers, (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1932. Responses to this collection of information are required to obtain a tax benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

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 return information are confidential, as required by 26 U.S.C. 6103.

Explanation of Provisions

This document contains temporary Income Tax Regulations under the American Jobs Creation Act of 2004 (Pub. L. 108-357, 118 Stat. 1418) (the Act). They are necessary to implement section 882 of the Act, which directs that regulations be issued regarding

information returns by donees relating to qualified intellectual property contributions made after June 3, 2004.

The Act provides rules that under specified conditions enable taxpayers who donate qualified intellectual property to receive additional charitable contribution deductions if and when their donated property produces net income for the donee (qualified donee income). Section 170(m)(2), (8), (9). Under the Act, a taxpayer who contributes a "patent, copyright (other than a copyright described in section 1221(a)(3) or 1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property," to a donee described in section 170(c) (other than to a private foundation referred to in section 170(e)(1)(B)(ii)) may be allowed an initial charitable contribution deduction limited to the lesser of the taxpayer's basis or the fair market value of the qualified intellectual property. In addition, the taxpayer may be permitted to deduct certain additional amounts in the year of contribution or in subsequent taxable years based on a specified percentage of the qualified donee income received by the donee with respect to the qualified intellectual property.

Section 882(c)(1) of the Act amended section 6050L to require donees to make an annual information return that reports the qualified donee income for the taxable year and other specified information relating to qualified intellectual property contributions. The Service expects to issue a new Form 8899 on which donees will report qualified donee income.

Under section 170(m)(8)(B), a donor must notify the donee of the donor's intent to treat a charitable contribution as a qualified intellectual property contribution under sections 170(m) and 6050L. For rules relating to donor notification see section 170(m)(8)(B) and Notice 2005-XX issued thereunder. Unless timely notice is provided, the donor has not made a qualified intellectual property contribution, and the donee has no reporting obligation under section 6050L or these regulations.

The donee is not required to make an information return if the qualified intellectual property produced no net income for the donee's taxable year. Under section 170(m)(5) and (m)(6), income received or accrued during the donee's taxable year is not treated as allocated to qualified intellectual property if such income is received or accrued after the 10-year period

beginning on the date of the contribution or after the expiration of the legal life of the qualified intellectual property. Thus, the donee is not required to make a return with regard to a qualified intellectual property contribution for taxable years beginning after the expiration of the legal life of such qualified intellectual property. Additionally, section 6050L(b) requires a return only for specified taxable years of the donee, which years are defined in section 6050L(b)(2)(B) as any taxable year any portion of which is part of the 10-year period beginning on the date of contribution of the qualified intellectual property. Therefore, the donee is not required to make a return for taxable years beginning more than 10 years after the date of the qualified intellectual property contribution.

Under these regulations, the donee generally is required to file an information return (with a copy of such return to the donor) on or before the last day of the first full month following the close of the donee's taxable year. See section 7701(a)(23) for the definition of taxable year. Transition rules are provided to take into account these filing requirements before a form is prescribed by the Internal Revenue Service and for donees' taxable years ending prior to or on the date of issuance of these regulations.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble of the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Donnell M. Rini-Swyers, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are 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 1.6050L-2T is added to read as follows:

§ 1.6050L-2T Information returns by donees relating to qualified intellectual property contributions (temporary).

(a) *In general.* Each donee organization described in section 170(c), except a private foundation (as defined in section 509(a)), other than a private foundation described in section 170(b)(1)(E), that receives or accrues net income during a taxable year from any qualified intellectual property contribution (as defined in section 170(m)(8)) must make an annual information return on the form prescribed by the Internal Revenue Service. The information return is required for any taxable year of the donee that includes any portion of the 10-year period beginning on the date of the contribution, but not for taxable years beginning after the expiration of the legal life of the qualified intellectual property.

(b) *Information required to be provided on return.* The information return required by section 6050L and paragraph (a) of this section shall include the following—

(1) The name, address, taxable year, and employer identification number of the donee making the information return;

(2) The name, address, and taxpayer identification number of the donor;

(3) A description of the qualified intellectual property in sufficient detail to identify the qualified intellectual property received by such donee;

(4) The date of the contribution to the donee;

(5) The amount of net income of the donee for the taxable year that is properly allocable to the qualified intellectual property (determined without regard to paragraph (10)(B) of section 170(m) and with the modifications described in paragraphs (5) and (6) of such section); and

(6) Such other information as may be specified by the form or its instructions.

(c) *Special rule—statement to be furnished to donors—*(1) *In general.*

Every donee making an information return under section 6050L and this section with respect to a qualified intellectual property contribution shall furnish a copy of the information return to the donor of the property. The information return required by section 6050L and this section shall be furnished to the donor on or before the date the donee is required to file the return with the Internal Revenue Service.

(2) *Before a form is prescribed by the Internal Revenue Service.* Before a form is prescribed by the Internal Revenue Service, every donee required to make an information return under section 6050L and this section with respect to qualified intellectual property contributions shall furnish, in lieu of the prescribed form, a statement to the donor that includes all information required by paragraphs (b)(1) through (b)(5) of this section. This statement shall be furnished to the donor on or before the date the donee would have been required to file the return with the Internal Revenue Service under paragraph (d)(2)(i) of this section had a form been prescribed.

(3) *Donee taxable years ending prior to or on the date of issuance of regulations.* If the donee's taxable year to which net income from the qualified intellectual property is properly allocable ends prior to or on May 23, 2005, the donee shall furnish the information required under section 6050L and this section to the donor on or before the 90th day following May 23, 2005.

(d) *Place and time for filing information return—*(1) *Place for filing.* The information return required by section 6050L and this section shall be filed with the Internal Revenue Service location listed on the prescribed form or in its instructions.

(2) *Time for filing—*(i) *In general.* A donee is required to file the return required by section 6050L and this section on or before the last day of the first full month following the close of the donee's taxable year to which net income from the qualified intellectual property is properly allocable.

(ii) *Before a form is prescribed by the Internal Revenue Service.* If the information return required by section 6050L and this section is required to be filed before a form is prescribed by the Internal Revenue Service, then an information return for such taxable year shall be filed on or before the last day of the second full month following the release of such prescribed form by the Internal Revenue Service.

(e) *Penalties.* For penalties for failure to comply with the requirements of this section, see sections 6721 through 6724.

(f) *Effective date.* The rules of this section apply to qualified intellectual property contributions made after June 3, 2004.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 8.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 9.** In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.6050L-2T	1545-1932
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Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: May 16, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9203]

RIN 1545-BC32

Deemed Election To Be an Association Taxable as a Corporation for a Qualified Electing S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that deem certain eligible entities that file timely S corporation elections to have elected to be classified as associations taxable as corporations. These regulations affect certain eligible entities filing timely elections to be S corporations on or after July 20, 2004.