



[4830-01-P]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-113903-10]

RIN 1545-BJ59

Allocation and Apportionment of Interest Expense

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section in this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance relating to the allocation and apportionment of interest expense. The temporary regulations provide guidance concerning the allocation and apportionment of interest expense by corporations owning a 10 percent or greater interest in a partnership, as well as the allocation and apportionment of interest expense using the fair market value asset method. The temporary regulations also update the interest allocation regulations to conform to the changes made to the applicable law by the legislation commonly referred to as the Education Jobs and Medicaid Assistance Act (EJMAA), enacted on August 10, 2010 (Public Law 111-226, 124 Stat. 2389 (2010)), which affect corporations owning certain foreign corporations engaged in the conduct of a trade or business in the United States. The text of those temporary regulations published in this issue of the **Federal Register**

also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 13, 2012. Outlines of topics to be discussed at the public hearing scheduled for April 3, 2012, at 10 a.m. must be received by March 13, 2012.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-113903-10), room 5203, 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-113903-10), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-113903-10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jeffrey L. Parry, (202) 622-3850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Oluwfunmilayo Taylor (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR Part 1) which provide rules under section 861 relating to the affiliation of certain foreign corporations for purposes of section 864, the allocation and apportionment of interest

expense by corporations owning a 10 percent or greater interest in a partnership, and the allocation and apportionment of interest expense using the fair market value method. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations affect taxpayers that allocate and apportion interest expense under section 864.

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, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 3, 2012, in the IRS auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to

building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance 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 by March 13, 2012, 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 March 13, 2012. 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 Jeffrey L. Parry of the Office of Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

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 continues to read in part as follows:

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

Par. 2. In §1.861-9, paragraphs (e)(2), (e)(3), (h)(4), and (k) are revised to read as follows:

§1.861-9 Allocation and apportionment of interest expense

* * * * *

(e) * * *

(2) and (3) [The text of the proposed amendments to §1.861-9(e)(2) and §1.861-9(e)(3) is the same as the text of §1.861-9T(e)(2) and §1.861-9T(e)(3) published elsewhere in this issue of the **Federal Register**.]

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(h) * * *

(4) [The text of the proposed amendment to §1.861-9(h)(4) is the same as the text of §1.861-9T(h)(4) published elsewhere in this issue of the **Federal Register**.]

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(k) [The text of the proposed amendment to §1.861-9(k) is the same as the text of §1.861-9T(k) published elsewhere in this issue of the **Federal Register**.]

Par. 3. In §1.861-11, paragraphs (d)(6)(ii) and (h) are revised to read as follows:

§1.861-11 Special rules for allocating and apportioning interest expense of an affiliated group of corporations.

* * * * *

(d) * * *

(6)(ii) [The text of proposed §1.861-11(d)(6)(ii) is the same as the text of §1.861-11T(d)(6)(ii) published elsewhere in this issue of the **Federal Register**.]

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(h) [The text of the proposed amendment to §1.861-11(h) is the same as the text of §1.861-11T(h) published elsewhere in this issue of the **Federal Register**.]

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

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