



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9856]

RIN 1545-BN63

Disclosures of Return Information Reflected on Returns to Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulation.

SUMMARY: This document contains a final regulation that authorizes the disclosure of specified items of return information to the Bureau of the Census (Census Bureau).

This regulation finalizes a proposed regulation cross-referencing a temporary regulation that was made pursuant to a request from the Secretary of Commerce. This final regulation requires no action by taxpayers and has no effect on their tax liabilities. No taxpayers are likely to be affected by the disclosures authorized by this guidance.

DATES: Effective date: This regulation is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For dates of applicability, see §301.6103(j)(1)-1(e).

FOR FURTHER INFORMATION CONTACT: William Rowe, (202) 317-6834 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR Part 301 (Procedure and Administration Regulations). Section 6103(j)(1)(A) of the Internal Revenue Code authorizes the Secretary of the Treasury (Secretary) to furnish, upon written request by the Secretary of Commerce, such returns or return information as the Secretary may prescribe by regulation to officers and employees of the Census Bureau for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law. Section 301.6103(j)(1)-1 of the existing regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

By letter dated August 2, 2016, the Secretary of Commerce requested amendments to §301.6103(j)(1)-1 to allow disclosure of several additional items of return information to the Census Bureau for purposes of its economic statistics program, structuring the censuses, and related program evaluations. The Secretary of Commerce's letter lists the additional items of return information requested based on the Census Bureau's specific need for each item of information. The Secretary of Commerce asserted that good cause exists to amend §301.6103(j)(1)-1 to add these additional items to the list of items of return information that may be disclosed to the Census Bureau. The Department of the Treasury (Treasury Department) and the IRS agree that amending existing regulations to permit disclosure of these items to the Census Bureau is appropriate to meet the needs of the Census Bureau.

On December 9, 2016, a temporary regulation (TD 9802) was published in the **Federal Register** (81 FR 89004). The text of the temporary regulation also serves as

the text of the proposed regulation set forth in a notice of proposed rulemaking (REG-133353-16) published in the **Federal Register** on the same day (81 FR 89022). The preamble to the temporary regulation describes the categories of information requested by the Secretary of Commerce. No public hearing was requested or held. No comments were received in response to the notice of proposed rulemaking.

Accordingly, the proposed regulation, the contents of which are described in the following Explanation of Provisions, is adopted by this Treasury decision without change, and the corresponding temporary regulation is removed, applicable to disclosures on or after December 9, 2016.

Explanation of Provisions

The proposed regulation authorized disclosure of additional expense items from business tax returns in order to improve the expense data that is collected by the Census Bureau. Specifically, the proposed regulation authorized disclosure of the following enumerated components of total expenses or total deductions from business tax returns (Forms 1065, Forms in the 1120 series, and Form 1040, Schedule C, E or C/EZ): (1) repairs (and maintenance) expense; (2) rents (or lease) expense; (3) taxes and licenses expense; (4) interest expense, including mortgage or other interest; (5) depreciation expense; (6) depletion expense; (7) advertising expense; (8) pension and profit-sharing plans (retirement plans) expense; (9) employee benefit programs expense; (10) utilities expense; (11) supplies expense; (12) contract labor expense; and (13) management (and investment advisory) fees. The proposed regulation also authorized disclosure of purchases from Form 1125-A and the following additional items

from Form 1040, Schedule C: (1) materials and supplies; and (2) purchases less cost of items withdrawn for personal use.

The proposed regulation also authorized disclosure of additional items of return information from business tax returns for the purpose of directing a high proportion of research and development surveys towards businesses with known research activities. Specifically, the proposed regulation authorized disclosure of additional items of return information from Forms 6765 (when filed with corporation income tax returns): (1) cycle posted; and (2) the research tax credit amount to be carried over to a business return, schedule, or form.

The proposed regulation also authorized disclosure of additional items of return information for purposes of maintaining a centralized, continuous Business Register that comprehensively lists and characterizes United States business establishments and their domestic parent enterprises. Specifically, the proposed regulation authorized disclosure of additional items of return information from employment tax returns: (1) if a business has closed or stopped paying wages; (2) final date a business paid wages; and (3) if a business is a seasonal employer and does not have to file a return for every quarter of the year. The proposed regulation also authorized disclosure of the electronic system filing indicator from business tax returns and the cycle from the IRS's Business Master Files.

The proposed regulation also authorized disclosure of additional items of return information for purposes of modeling firm survival for production of statistics on business dynamics. Specifically, the proposed regulation authorized disclosure of

additional items of return information from business tax returns: (1) dividends, including ordinary and qualified; and (2) type of REIT (from Form 1120-REIT).

The proposed regulation also authorized disclosure of additional items of return information for purposes of the Survey of Business Owners. Specifically, the proposed regulation authorized disclosure of the following additional items of return information from Form 1065, Schedule K-1: (1) publicly-traded partnership indicator; (2) partner's share of nonrecourse, qualified nonrecourse, and recourse liabilities; and (3) ordinary business income (loss). The proposed regulation also authorized disclosure of ordinary business income (loss) from Forms 1120S, Schedule K-1.

Finally, the proposed regulation authorized disclosure of additional items of return information for purposes of developing and preparing the Quarterly Financial Report. Specifically, the proposed regulation authorized disclosure of the following additional items of return information from Forms 1120-REIT: (1) type of Real Estate Investment Trust ("REIT"); and (2) gross rents from real property. The proposed regulation also authorized disclosure of the corporation's method of accounting from Form 1120F and the total amount reported from Form 1096.

The proposed regulation also amended language in the existing regulations to clarify that the TD 9500, which was published in the **Federal Register** (75 FR 52458), authorized disclosure only of categorical information for total qualified research expenses from Forms 6765. In accordance with the preamble to TD 9500, the existing regulations do not authorize the disclosure of the exact amount of total research expenses as reported on Form 6765. By letter dated February 6, 2006, the Secretary of Commerce requested disclosure of categorical information on total qualified research

expenses in three ranges: greater than zero, but less than \$1 million; greater than or equal to \$1 million, but less than \$3 million; and, greater than or equal to \$3 million. The proposed regulation amended the existing regulations to more clearly reflect the categorical nature of the disclosure of total research expenses from Form 6765.

Lastly, the proposed regulation also removed duplicate paragraphs contained in the existing regulations. Under the existing regulations, each of the following items of return information from business-related returns was authorized for disclosure by two identical paragraphs: Social Security tip income; total Social Security taxable earnings; and gross distributions from employer-sponsored and individual retirement plans from Form 1099-R. Because there is no need for duplicate paragraphs that authorize disclosure of the same items of return information for the same purpose, the proposed regulation removed the duplicate paragraphs.

Special Analyses

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. 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. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations do not impose a collection of information on small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the

Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is William Rowe, Office of the Associate Chief Counsel (Procedure & Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301---PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6103(j)(1)-1 is amended by:

1. Revising paragraph (b)(2)(iii)(l) and adding paragraphs (b)(2)(iii)(K) through (M);
2. Revising paragraphs (b)(3)(v) and (b)(3)(xxv) through (xxx);
3. Adding paragraphs (b)(3)(xxxi) through (xxxv) and (b)(6)(i)(C) through (E);
and
4. Revising paragraph (e).

The revisions and additions read as follows:

§ 301.6103(j)(1)-1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(l) Total taxable wages paid for purposes of chapter 21;

* * * * *

(K) If a business has closed or stopped paying wages;

(L) Final date a business paid wages; and

(M) If a business is a seasonal employer and does not have to file a return for every quarter of the year;

* * * * *

(3) * * *

(v) Total expenses or deductions, including totals of the following components

thereof:

(A) Repairs (and maintenance) expense;

(B) Rents (or lease) expense;

(C) Taxes and licenses expense;

(D) Interest expense, including mortgage or other interest;

(E) Depreciation expense;

(F) Depletion expense;

- (G) Advertising expense;
- (H) Pension and profit-sharing plans (retirement plans) expense;
- (I) Employee benefit programs expense;
- (J) Utilities expense;
- (K) Supplies expense;
- (L) Contract labor expense; and
- (M) Management (and investment advisory) fees.

* * * * *

(xxv) From Form 6765 (when filed with corporation income tax returns)—

(A) Indicator that total qualified research expenses is greater than zero, but less than \$1 million; greater than or equal to \$1 million, but less than \$3 million; or, greater than or equal to \$3 million;

(B) Cycle posted; and

(C) Research tax credit amount to be carried over to a business return, schedule, or form.

(xxvi) Total number of documents reported on Form 1096 transmitting Forms 1099-MISC.

(xxvii) Total amount reported on Form 1096 transmitting Forms 1099-MISC.

(xxviii) Type of REIT.

(xxix) From Form 1125-A— purchases.

(xxx) From Form 1040, Schedule C—

(A) Purchases less cost of items withdrawn for personal use; and

(B) Materials and supplies.

- (xxxi) Electronic filing system indicator.
- (xxxii) Posting cycle date relative to filing.
- (xxxiii) Dividends, including ordinary or qualified.
- (xxxiv) From Form 1120S, Schedule K-1— ordinary business income (loss).
- (xxxv) From Form 1065, Schedule K-1—
 - (A) Publicly-traded partnership indicator;
 - (B) Partner’s share of nonrecourse, qualified nonrecourse, and recourse liabilities; and
 - (C) Ordinary business income (loss).

* * * * *

- (6) * * *
 - (i) * * *
 - (C) From Form 1120-REIT—
 - (1) Type of REIT; and
 - (2) Gross rents from real property;
 - (D) From Form 1120F— corporation’s method of accounting.
 - (E) From Form 1096— total amount reported.

* * * * *

(e) Applicability date. Paragraphs (b)(2)(iii)(I), (b)(2)(iii)(K) through (b)(2)(iii)(M), (b)(3)(v), (b)(3)(xxv) through (b)(3)(xxxv), and (b)(6)(i)(C) through (b)(6)(i)(E) of this section apply to disclosure to the Bureau of the Census made on or after December 9, 2016. For rules that apply to disclosure to the Bureau of the Census before December 9, 2016, see 26 CFR 301.6103(j)(1)-1 (revised as of April 1, 2016).

§301.6103(j)(1)-1T [Removed]

Par. 3. Section 301.6103(j)(1)-1T is removed.

Kirsten Wielobob

Deputy Commissioner for Services and Enforcement.

Approved: March 19, 2019.

David J. Kautter

Assistant Secretary of the Treasury (Tax Policy).

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