

Notice 99-23

This notice effects interim revisions to Schedule P of Form 1120-FSC (1998) filed by foreign sales corporations, and the instructions thereto. The Department of the Treasury (“Treasury”) and the Internal Revenue Service (the “Service”) also seek public comments on certain proposed revisions to Schedule P for subsequent taxable years.

SECTION I. BACKGROUND

Schedule P, “Transfer Price or Commission,” of Form 1120-FSC, “U.S. Income Tax Return of a Foreign Sales Corporation,” is used by foreign sales corporations (FSCs) to compute the transfer price to charge a FSC or the commission to pay to a FSC under the FSC administrative pricing rules of section 925 of the Internal Revenue Code. The transfer price or commission is used to allocate between a FSC and its related supplier foreign trading gross receipts from the sale of export property and certain services.

Each transaction generating foreign trading gross receipts under the administrative pricing rules is reportable on Schedule P. A FSC and its related supplier may elect under Temp. Treas. Reg. § 1.925(a)-1T(c)(8) to group these transactions on a product or product line basis and must make the election for each group on Schedule P. Line B of Schedule P provides checkboxes for a FSC to indicate whether the Schedule P is filed “Transaction-by-transaction” or with respect to a “Group of transactions.”

For taxable years beginning before January 1, 1998, Line B of Schedule P also contained a third checkbox labeled “Aggregate of transactions,” which represented an additional option. Under this option, the instructions to Schedule P allowed the FSC to combine on a single Schedule P transactions or groups of transactions based on product or product line using the administrative pricing rules. In cases where such aggregation was chosen, the instructions required the FSC and its related supplier to maintain a supporting schedule for each transaction or group

of transactions reported in the aggregate form. For taxable years beginning before January 1, 1998, many FSCs and their related suppliers chose to file Schedules P in the aggregate form.

For the 1998 version of Schedule P (“Schedule P (1998)”), the aggregation option was eliminated. The purpose of the revision was to enable the Service to better determine and identify on the face of the Schedule P (1998) the particular product or product line for which the FSC was making a grouping election under the administrative pricing rules.

The ability of the Service to identify elected groupings readily is increasingly important in light of the amendments made to Temp. Treas. Reg. § 1.925(a)-1T(c)(8) by T.D. 8764, 63 F.R. 10305, 1998-15 I.R.B. 9. Effective March 3, 1998, for taxable years beginning after December 31, 1997, T.D. 8764 provides that an election to group transactions based on product or product line must be made on a timely filed Schedule P and cannot be changed thereafter. No untimely or amended returns will be allowed to elect to group, to change a grouping basis, or to change from a grouping basis to a transaction-by-transaction basis (collectively “grouping redeterminations”). For FSCs reporting on a calendar-year basis, the temporary regulations as amended first apply to returns due March 15, 1999, or, as extended, September 15, 1999.

Under a transition rule, the temporary regulations as amended also permit grouping redeterminations with respect to taxable years beginning before January 1, 1998, provided such grouping redeterminations are made no later than the due date (including extensions) for the FSC’s timely filed return for its first taxable year beginning after December 31, 1997. Notice 99-24, page 74 of this Bulletin, announces the intent of the Service in final regulations to extend the time for filing under this transition rule to the due date of the FSC’s timely filed return (including extensions) for the FSC’s first taxable year beginning on or after January 1, 1999. For FSCs reporting on a calendar-year basis, grouping redeterminations under the transition rule in the final regulations will first be due March 15, 2000, or, as extended, September 15, 2000.

Accordingly, the Service, FSCs, and their related suppliers now have a heightened interest in clearly identifying groupings of transactions elected on Schedule P of a timely filed FSC return.

During the filing season for 1998 FSC returns, several taxpayers, practitioners, and Internal Revenue Service Centers have brought to the Service’s attention that an increasing number of FSCs and their related suppliers are reporting their foreign trading gross receipts on a transaction-by-transaction basis and that the removal of the aggregation option, in requiring a Schedule P (1998) to be filed for each transaction, has the effect of significantly increasing the paper and processing burden on both taxpayers and the Service. Treasury and the Service have concluded that this unintended increase in paper burden can and should be alleviated.

Beginning with the Schedule P (1998), the Service has decided to restore the aggregation option contained in the 1997 version of the schedule. The aggregation option shall remain available to taxpayers until the Service develops an appropriate method for taxpayers to identify their grouping elections without creating an unreasonable paper burden. This notice seeks public comments on a proposed method to achieve this objective.

SECTION II. REVISIONS TO SCHEDULE P AND INSTRUCTIONS

For taxable years beginning on or after January 1, 1998, Schedule P may be completed as if Line B included the same three checkboxes as appeared on the 1997 version of Schedule P except as otherwise provided in instructions to successor forms Schedule P. Pursuant to the preceding sentence, FSCs may insert in Line B a checkbox numbered “3” and labeled “Aggregate of transactions.” Instructions to such checkbox are as follows:

3. **Aggregate of transactions.**— Check box 3 if the FSC **combines** its transactions or group of transactions using the administrative pricing rules. File one Schedule P if the FSC aggregates its transactions. Under this method, the FSC and its related supplier must maintain a supporting schedule for each transaction or group of transactions.

FSCs filing aggregate Schedules P in accordance with this paragraph should enter "FILED UNDER NOTICE 99-23" across the top of the schedule.

information regarding this notice, contact Mr. Giblen at (202) 874-1490 (not a toll-free call).

SECTION III. REQUEST FOR COMMENTS

The Service is exploring alternatives for amending Schedule P and its instructions to require FSCs to present all Schedule P information in the form of a summary schedule in spreadsheet or similar format in lieu of filing a separate Schedule P for each transaction or group of transactions. Exceptions to this requirement may be provided in the case of small FSCs or those FSCs with de minimis amounts of foreign trading gross receipts. Moreover, with respect to transactions that are not subject to an election to group but rather are reported on a transaction-by-transaction basis, the Service expects to permit a FSC, in lieu of filing a summary schedule for such transactions, to aggregate on a single Schedule P those transactions within a product or product line to which the same administrative pricing method is applied, provided that a supporting schedule is maintained for each transaction.

Treasury and the Service invite public comments on these proposed changes to Schedule P. Comments should be submitted in writing by June 30, 1999. Comments may be mailed to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Attn: CC:CORP:T:R (Notice 99-23)
Room 5228
Washington, DC 20044

or may be hand-delivered between the hours of 6 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 99-23), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, comments may be submitted via the Internet at: http://www.irs.us-treas.gov/prod/tax_regs/comments.html

The comments submitted will be available for public inspection and copying.

SECTION IV. DRAFTING INFORMATION

The principal author of this notice is Douglas Giblen of the Office of Associate Chief Counsel (International). For further