

Information Returns by Donees Relating to Qualified Intellectual Property Contributions

REG-158138-04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that provide guidance for the filing of information returns by donees relating to qualified intellectual property contributions. The text of the temporary regulations (T.D. 9206) published in this issue of the Bulletin also serves as the text of these proposed regulations. The regulations affect donees receiving qualified intellectual property contributions after June 3, 2004.

DATES: Written or electronic comments and requests for a public hearing must be received by August 22, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-158138-04), room 5203, 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:LPD:PR (REG-158138-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at www.irs.gov/regs, or via the Federal eRulemaking Portal at www.regulations.gov (IRS-REG-158138-04). A public hearing may be scheduled if requested by any person who timely submits comments.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Donnell M. Rini-Swyers, (202) 622-4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has 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 collection 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, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 22, 2005. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, 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 collection 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 services to provide information.

The collections of information in this proposed regulation are in 1.6050L-2. Section 6050L(b) requires certain donees of qualified intellectual property to annually report certain information regarding the qualified intellectual property to the In-

ternal Revenue Service and to provide the information to the donor of the qualified intellectual property. Section 1.6050L-2 provides guidance for the filing of information returns by donees relating to qualified intellectual property contributions. These collections of information are required to obtain a tax benefit. The likely respondents are tax-exempt organizations.

Estimated total annual reporting and/or recordkeeping burden: 200 hours. Estimated average annual burden per respondent and/or recordkeeper is two hours.

Estimated number respondents and/or recordkeepers: 100.

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

Background

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 6050L. The temporary regulations provide guidance for filing information returns by donees relating to qualified intellectual property contributions.

This document contains proposed Income Tax Regulations under the American Jobs Creation Act of 2004 (Public Law 108-357, 118 Stat. 1418) (the Act). They are necessary to implement section 882 of that 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 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), under specified conditions. 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 IRS 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 2005–41, 2005–23 I.R.B. 1203, 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 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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few, if any, small entities will be required to file under these regulations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed

original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

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

* * * * *

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. Section 1.6050L–2 is added to read as follows:

§1.6050L–2 Information returns by donees relating to qualified intellectual property contributions.

[The text of §1.6050L–2 is the same as the text of §1.6050L–2T published elsewhere in this issue of the Bulletin].

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on May 20, 2005, 8:45 a.m., and published in the issue of the Federal Register for May 23, 2005, 70 F.R. 29460)