

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

Awards of Attorney's Fees and Other Costs Based Upon Qualified Offers

REG-121928-98

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In T.D. 8922 on page 508 of this Bulletin, the IRS is issuing temporary regulations relating to the circumstances in which a party, by reason of having made a qualified offer, will be entitled to an award of court costs and certain fees in a civil tax proceeding brought in a court of the United States (including the Tax Court). The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by April 4, 2001. Outlines of topics to be discussed at the public hearing scheduled for May 23, 2001, at 10 a.m., must be received by May 2, 2001. The IRS and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-121928-98), room 5226, 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 5 p.m. to: CC:M&SP:RU (REG-121928-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/prod/tax_regs/reglist.htm

ml. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, submission of written comments, and to be placed on the building access list to attend the hearing, Treena V. Garrett, (202) 622-7180; concerning the regulations, Thomas D. Moffitt (202) 622-7900 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8922 provide rules relating to the circumstances in which a party, by reason of having made a qualified offer, will be entitled to an award of court costs and certain fees in a civil tax proceeding brought in a court of the United States (including the Tax Court). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Comments are specifically requested on the rule requiring the provision of information and arguments regarding adjustments raised by taxpayers after the issuance of the first letter of proposed deficiency which provides the taxpayer with an opportunity for administrative review in the Internal Revenue Service Office of Appeals and still unresolved at the time the last qualified offer is made. The changes to section 7430 made by Congress anticipate qualified offers based upon the adjustments at issue when the first letter of proposed deficiency is sent. Adjustments subsequently raised by taxpayers would not be subject to the audit development preceding the issuance of such first letter of proposed deficiency. The proposed rule is intended to eliminate any such differences between the adjustments subject to the last qualified offer.

Comments are also specifically requested on the rule establishing the end of the qualified offer period, for courts using trial calendars, at the point where the case remains listed on a trial calendar thirty days before the scheduled date for the calendar call for that trial session. The proposed rule is intended to keep the qualified

offer period open until shortly before trial while ensuring that the last day of the qualified offer period can be ascertained on that day.

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 also has 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 these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis 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 Public Hearing

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

A public hearing has been scheduled for May 23, 2001, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. 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 area more than 15 minutes before the hearing starts. For information about having a visitor's name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CON-**

TACT caption.

An outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) must be submitted by any person that wishes to present oral comments at the hearing. Outlines must be received by May 2, 2001.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. 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 requests to speak has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be 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 * * *

§301.7430-0 [Removed]

Par. 2. Section 301.7430-0 is removed.

Par. 3. Section 301.7430-7 is added to read as follows:

§301.7430-7 Qualified offers.

[The text of this proposed section is the same as the text of §301.7430-7T published in T.D. 8922.]

Robert E. Wenzel,
*Deputy Commissioner
of Internal Revenue.*

(Filed by the Office of the Federal Register on January 3, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 4, 2001, 66 F.R. 749)