

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9309

RIN 1545-BD40

Qualified Amended Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that state the rules relating to qualified amended returns by providing circumstances that end the period within which a taxpayer may file an amended return that constitutes a qualified amended return. The IRS uses qualified amended returns to determine whether an underpayment exists that is potentially subject to the accuracy-related penalty on underpayments. Among other things, these final regulations provide that the period for filing a qualified amended return is terminated once the IRS has served a John Doe summons on a third party with respect to the taxpayer's tax liability. In addition, for taxpayers who have claimed tax benefits from undisclosed listed transactions, the regulations provide that the period for filing a qualified amended return is terminated once the IRS requests information related to the transaction that is required to be included on a list under section 6112 from any person who made a tax statement to or for the benefit of the taxpayer, or any person who gave material aid, assistance, or advice to the taxpayer. The regulations also provide that the date on which published guidance is issued announcing a settlement

initiative for a listed transaction in which penalties, in whole or in part, are compromised or waived is an additional date by which a taxpayer must file a qualified amended return.

DATES: Effective Date: These regulations are effective January 9, 2007.

Applicability Dates: For dates of applicability, see §1.6664-1(b)(3).

FOR FURTHER INFORMATION CONTACT: Laura Urich Daly, 202-622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

This document contains Final Regulations under 26 CFR part 1 relating to qualified amended returns. Temporary regulations (TD 9186) relating to qualified amended returns were published in the **Federal Register** (70 FR 10037) on March 2, 2005. A notice of proposed rulemaking (REG-122847-04) cross-referencing the temporary regulations was published in the **Federal Register** (70 FR 10062) for the same day. A correction (70 FR 36345) and a correcting amendment (70 FR 36344) to the regulations were published in the **Federal Register** on June 23, 2005, and a correction to the correction was published in the **Federal Register** (70 FR 43635) on July 28, 2005. No written or electronic comments were received from the public in response to the notice of proposed rulemaking and no public hearing was requested or held. The proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

## **Explanation of Revisions**

The final regulations clarify the applicability date of the regulations. Under the Special Rules section, the sentence in the proposed and temporary regulations regarding disclosure pursuant to §1.6011-4 was removed in these final regulations because it could be incorrectly interpreted to provide relief from the section 6707A penalty. These final regulations are not intended to have any effect upon the applicability of the section 6707A penalty. In addition, examples one, four, five, six, and seven in the proposed and temporary regulations were further clarified. Finally, example eight in the proposed and temporary regulations was removed as unnecessary.

No other substantive revisions were made to the proposed and temporary regulations or the corrections to those regulations. These final regulations do, however, include revisions to the table of contents to the regulations under section 6664.

## **Special Analyses**

It has been determined that this Treasury decision 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 regulation does 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) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was 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 this regulation is Laura Ulrich Daly, Office of the Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 1.6664-0 is amended by adding entries for §§1.6664-1(b)(3) and 1.6664-2(c)(3)(i), (ii) and (5), and revising the entry for §1.6664-2(c)(4) to read as follows:

#### §1.6664-0 Table of contents.

\* \* \* \* \*

#### §1.6664-1 Accuracy-related and fraud penalties; definitions, effective date and special rules.

\* \* \* \* \*

(b) \* \* \*

(3) Qualified amended returns.

#### §1.6664-2 Underpayment.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) General rule.

(ii) Undisclosed listed transactions.

(4) Special rules.

(5) Examples.

\* \* \* \* \*

Par. 3. Section 1.6664-1 is amended by:

1. Revising the section heading.

2. Adding paragraph (b)(3).

The revision and addition read as follows:

§1.6664-1 Accuracy-related and fraud penalties; definitions, effective date and special rules.

\* \* \* \* \*

(b) \* \* \*

(3) Qualified amended returns. Sections 1.6664-2(c)(1), (c)(2), (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(i)(D)(2), (c)(3)(i)(E), and (c)(4) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Sections 1.6664-2(c)(3)(i)(D)(1) and (c)(3)(ii)(B) and (C) are applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004. The applicability date for §1.6664-2(c)(3)(ii)(A) varies depending upon which event occurs under §1.6664-2(c)(3)(i). For purposes of §1.6664-2(c)(3)(ii)(A), the date described in §1.6664-2(c)(3)(i)(D)(1) is applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004. For purposes of §1.6664-2(c)(3)(ii)(A), the dates described in §1.6664-2(c)(3)(i)(A), (B), (C), (D)(2), and (E) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Section 1.6664-2(c)(1) through (c)(3), as contained in 26 CFR part 1 revised as of April 1, 2004 and as modified by Notice 2004-38, 2004-1 C.B. 949, applies with respect to returns and requests for administrative adjustment filed on or after April 30, 2004 and before March 2, 2005. Section 1.6664-2(c)(1) through (3), as

contained in 26 CFR part 1 revised as of April 30, 2004, applies with respect to returns and requests for administrative adjustment filed before April 30, 2004.

**§1.6664-1T [Removed]**

Par. 4. Section 1.6664-1T is removed.

Par. 5. Section 1.6664-2(c) is revised to read as follows :

§1.6664-2 Underpayment.

\* \* \* \* \*

(c) Amount shown as the tax by the taxpayer on his return--(1) Defined. For purposes of paragraph (a) of this section, the amount shown as the tax by the taxpayer on his return is the tax liability shown by the taxpayer on his return, determined without regard to the items listed in paragraphs (b)(1), (2), and (3) of this section, except that it is reduced by the excess of--

(i) The amounts shown by the taxpayer on his return as credits for tax withheld under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), as payments of estimated tax, or as any other payments made by the taxpayer with respect to a taxable year before filing the return for such taxable year, over

(ii) The amounts actually withheld, actually paid as estimated tax, or actually paid with respect to a taxable year before the return is filed for such taxable year.

(2) Effect of qualified amended return. The amount shown as the tax by the taxpayer on his return includes an amount shown as additional tax on a qualified amended return (as defined in paragraph (c)(3) of this section), except that such amount is not included if it relates to a fraudulent position on the original return.

(3) Qualified amended return defined--(i) General rule. A qualified amended return is an amended return, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year (determined with regard to extensions of time to file) and before the earliest of--

(A) The date the taxpayer is first contacted by the Internal Revenue Service (IRS) concerning any examination (including a criminal investigation) with respect to the return;

(B) The date any person is first contacted by the IRS concerning an examination of that person under section 6700 (relating to the penalty for promoting abusive tax shelters) for an activity with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A);

(C) In the case of a pass-through item (as defined in §1.6662-4(f)(5)), the date the pass-through entity (as defined in §1.6662-4(f)(5)) is first contacted by the IRS in connection with an examination of the return to which the pass-through item relates;

(D)(1) The date on which the IRS serves a summons described in section 7609(f) relating to the tax liability of a person, group, or class that includes the taxpayer (or pass-through entity of which the taxpayer is a partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) with respect to an activity for which the taxpayer claimed any tax benefit on the return directly or indirectly.

(2) The rule in paragraph (c)(3)(i)(D)(1) of this section applies to any return on which the taxpayer claimed a direct or indirect tax benefit from the type of activity that is the

subject of the summons, regardless of whether the summons seeks the production of information for the taxable period covered by such return; and

(E) The date on which the Commissioner announces by revenue ruling, revenue procedure, notice, or announcement, to be published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), a settlement initiative to compromise or waive penalties, in whole or in part, with respect to a listed transaction. This rule applies only to a taxpayer who participated in the listed transaction and for the taxable year(s) in which the taxpayer claimed any direct or indirect tax benefits from the listed transaction. The Commissioner may waive the requirements of this paragraph or identify a later date by which a taxpayer who participated in the listed transaction must file a qualified amended return in the published guidance announcing the listed transaction settlement initiative.

(ii) Undisclosed listed transactions. An undisclosed listed transaction is a transaction that is the same as, or substantially similar to, a listed transaction within the meaning of §1.6011-4(b)(2) (regardless of whether §1.6011-4 requires the taxpayer to disclose the transaction) and was neither previously disclosed by the taxpayer within the meaning of §1.6011-4 or §1.6011-4T, nor disclosed under Announcement 2002-2 (2002-1 C.B. 304), (see §601.601(d)(2)(ii) of this chapter) by the deadline therein. In the case of an undisclosed listed transaction for which a taxpayer claims any direct or indirect tax benefits on its return (regardless of whether the transaction was a listed transaction at the time the return was filed), an amended return or request for administrative adjustment under section 6227 will not be a qualified amended return if filed on or after the earliest of—



(A) The dates described in paragraph(c)(3)(i) of this section;

(B) The date on which the IRS first contacts any person regarding an examination of that person's liability under section 6707(a) with respect to the undisclosed listed transaction of the taxpayer; or

(C) The date on which the IRS requests, from any person who made a tax statement to or for the benefit of the taxpayer or from any person who gave the taxpayer material aid, assistance, or advice as described in section 6111(b)(1)(A)(i) with respect to the taxpayer, the information required to be included on a list under section 6112 relating to a transaction that was the same as, or substantially similar to, the undisclosed listed transaction, regardless of whether the taxpayer's information is required to be included on that list.

(4) Special rules. (i) A qualified amended return includes an amended return that is filed to disclose information pursuant to §1.6662-3(c) or §1.6662-4(e) and (f) even though it does not report any additional tax liability. See §1.6662-3(c), §1.6662-4(f), and §1.6664-4(c) for rules relating to adequate disclosure.

(ii) The Commissioner may by revenue procedure prescribe the manner in which the rules of paragraph (c) of this section regarding qualified amended returns apply to particular classes of taxpayers.

(5) Examples. The following examples illustrate the provisions of paragraphs (c)(3) and (c)(4) of this section:

Example 1. T, an individual taxpayer, claimed tax benefits on its 2002 Federal income tax return from a transaction that is substantially similar to the transaction identified as a listed transaction in Notice 2002-65, 2002-2 C.B. 690 (Partnership Entity Straddle Tax Shelter). T did not disclose his participation in this transaction on a Form 8886, "Reportable Transaction Disclosure Statement," as required by §1.6011-4. On June 30, 2004, the IRS requested from P, T's material advisor, an investor list required

to be maintained under section 6112. The section 6112 request, however, related to the type of transaction described in Notice 2003-81, 2003-2 C.B. 1223 (Tax Avoidance Using Offsetting Foreign Currency Option Contracts). T did not participate in (within the meaning of §1.6011-4(c)) a transaction described in Notice 2003-81. T may file a qualified amended return relating to the transaction described in Notice 2002-65 because T did not claim a tax benefit with respect to the listed transaction described in Notice 2003-81, which is the subject of the section 6112 request.

Example 2. The facts are the same as in Example 1, except that T's 2002 Federal income tax return reflected T's participation in the transaction described in Notice 2003-81. As of June 30, 2004, T may not file a qualified amended return for the 2002 tax year.

Example 3. (i) Corporation X claimed tax benefits from a transaction on its 2002 Federal income tax return. In October 2004, the IRS and Treasury Department identified the transaction as a listed transaction. In December 2004, the IRS contacted P concerning an examination of P's liability under section 6707(a) (as in effect prior to the amendment to section 6707 by section 816 of the American Jobs Creation Act of 2004 (the Jobs Act), Public Law 108-357 (118 Stat. 1418)). P is the organizer of a section 6111 tax shelter (as in effect prior to the amendment to section 6111 by section 815 of the Jobs Act) who provided representations to X regarding tax benefits from the transaction, and the IRS has contacted P about the failure to register that transaction. Three days later, X filed an amended return.

(ii) X's amended return is not a qualified amended return, because X did not disclose the transaction before the IRS contacted P. X's amended return would have been a qualified amended return if it was submitted prior to the date on which the IRS contacted P.

Example 4. The facts are the same as in Example 3 except that, instead of contacting P concerning an examination under section 6707(a), in December 2004, the IRS served P with a John Doe summons described in section 7609(f) relating to the tax liability of participants in the type of transaction for which X claimed tax benefits on its return. X cannot file a qualified amended return after the John Doe summons has been served regardless of when, or whether, the transaction becomes a listed transaction.

Example 5. On November 30, 2003, the IRS served a John Doe summons described in section 7609(f) on Corporation Y, a credit card company. The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. Corporation Y complied with the summons, and identified, among others, Taxpayer B. On May 31, 2004, before the IRS first contacted Taxpayer B concerning an examination of Taxpayer B's Federal income tax return for the taxable year 2002, Taxpayer B filed an amended return for that taxable year, that showed an increase in Taxpayer B's Federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended

return is not a qualified amended return because it was not filed before the John Doe summons was served on Corporation Y.

Example 6. The facts are the same as in Example 5. Taxpayer B continued to maintain the offshore credit card account through 2003 and filed an original tax return for the 2003 taxable year claiming tax benefits attributable to the existence of the account. On March 21, 2005, Taxpayer B filed an amended return for the taxable year 2003, that showed an increase in Taxpayer B's Federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the John Doe summons for 2001 and 2002 was served on Corporation Y, and the return reflects benefits from the type of activity that is the subject of the John Doe summons.

Example 7. (i) On November 30, 2003, the IRS served a John Doe summons described in section 7609(f) on Corporation Y, a credit card company. The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. Taxpayer C did not have signature authority over any of Corporation Y's credit cards during either 2001 or 2002 and, therefore, was not a person described in the John Doe summons.

(ii) In 2003, Taxpayer C first acquired signature authority over a Corporation Y credit card issued by an offshore financial institution. Because Taxpayer C did not have signature authority during 2001 or 2002 over a Corporation Y credit card issued by an offshore financial institution, and was therefore not covered by the John Doe summons served on November 30, 2003, Taxpayer C's ability to file a qualified amended return for the 2003 taxable year is not limited by paragraph (c)(3)(i)(D) of this section.

\* \* \* \* \*

**§1.6664-2T [Removed]**

Par. 6. Section 1.6664-2T is removed.

Mark E. Matthews

Deputy Commissioner for Services and Enforcement.

Approved: December 21, 2006

Eric Solomon

Assistant Secretary of the Treasury (Tax Policy).