

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 467, effective date May 10, 2007]

From	To	MEA
KLUNG, AK FIX	S BND	8000
	N BND	10000
GULKANA, AK VOR/DME	GULKANA, AK VOR/DME. N BND	6500
	S BND	10000
DOZEY, AK FIX	DOZEY, AK FIX. N BND	12000
	S BND	4000
PAXON, AK FIX	PAXON, AK FIX. S BND	7000
	N BND	12000
DONEL, AK FIX	DONEL, AK FIX	*12000
*11500—MOCA	*BIG DELTA, AK VORTAC. N BND	7000
	S BND	12000
*7800—MCA BIG DELTA, AK VORTAC, S BND		
*10500—MCA DONEL, AK S BND		

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9323]

RIN 1545-BF64

Revisions to Regulations Relating to Repeal of Tax on Interest of Nonresident Alien Individuals and Foreign Corporations Received From Certain Portfolio Debt Investments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 871 and 881 of the Internal Revenue Code (Code) relating to the exclusion from gross income of portfolio interest paid to a nonresident alien individual or foreign corporation. These regulations clarify how the portfolio interest rules apply with respect to interest paid to a partnership (or simple or grantor trust) that has foreign partners (or beneficiaries or owners). These regulations also retroactively remove the rule in Treasury Regulation § 1.1441-1(b)(7)(iii) that would impose interest under section 6601 when no underlying tax liability is due.

DATES: *Effective Date:* These regulations are effective on April 12, 2007.

Applicability Dates: The regulations relating to the application of the 10-percent shareholder test for interest paid

to partnerships applies to interest paid after April 12, 2007. However, taxpayers may choose to apply the rules in the final regulations to interest paid during any taxable year which is not closed by the period of limitations, provided they do so consistently with respect to all relevant partnerships during such years. The regulations removing the rule imposing interest and penalties on withholding agents when no underlying tax has in fact been imposed apply to payments made after December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn Holman of the Office of the Associate Chief Counsel (International), (202) 622-3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 871(a) of the Code imposes a tax of 30 percent on U.S. source fixed or determinable annual or periodic (FDAP) income, including interest, received by a nonresident alien individual to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States. Section 881(a) imposes a similar tax with respect to FDAP income, including interest, received by a foreign corporation. Both sections 871(h)(3)(A) and 881(c)(3)(B) provide, among other limitations, that portfolio interest does not include interest received by a 10-percent shareholder, as defined in section 871(h)(3)(B).

Explanation of Provisions and Summary of Comments

The IRS and the Treasury Department issued proposed regulations (REG-

118775-06) under sections 871(h) and 881(c) in the **Federal Register** (71 FR 34047) on June 13, 2006. The proposed regulations address the application of the 10-percent shareholder test when U.S. source interest is paid to a partnership that has a nonresident alien individual or foreign corporation as a partner. The proposed regulations provide that, for interest paid on obligations issued on or after the date that final regulations are published, the 10-percent shareholder test is to be applied only at the partner level and at the time that the withholding agent would otherwise be required to withhold.

No public hearing was requested or held. However, a few comments were received. After consideration of the comments, the proposed regulations are adopted in these final regulations, with two modifications. In addition, these final regulations implement section 5 of Notice 2006-99 (46 IRB 907) (See § 601.601(d)(2) of this chapter), modifying § 1.1441-1(b)(7)(iii), as discussed below.

1. Time for Applying the 10-Percent Shareholder Test

The proposed regulations provide that the 10-percent shareholder test applies at the time the withholding agent would otherwise be required to withhold. The regulations then provide an example in which the test is stated to apply on the “earliest” of when the interest is distributed, the date the statement under section 6031(c) is mailed, or the due date for furnishing the statement. In order to make clear that the test may be applied on multiple dates (and not only on the date of a first partial distribution of such interest), the example has been

rephrased. The example now states that the 10-percent shareholder test is applied when any distributions that include the interest are made to a foreign partner and, to the extent that a foreign partner's distributive share of the interest has not actually been distributed, on the earlier of the date that the statement required under section 6031(c) is mailed or otherwise provided to such partner, or the due date for furnishing such statement. This change conforms more closely to the language of § 1.1441-5(c)(2).

2. Effective Date of the Regulation

The new provisions set forth in the proposed regulations were proposed to apply to interest paid on obligations issued after the date that final regulations are published. One commentator stated that, in order to provide for consistency and to eliminate uncertainty and avoid possible disputes with respect to interest paid to partnerships prior to the date that the final regulations are published, the final regulations should apply to interest paid after July 18, 1984, with respect to obligations issued after July 18, 1984, the effective date of the portfolio interest provisions. Another commentator stated that the final regulations should apply to interest paid after the date the final regulations are issued.

The IRS and the Treasury Department agree that taxpayers should be able to apply the regulations to interest paid in certain prior taxable years. Accordingly, while the final regulations generally provide that the provisions relating to the 10-percent shareholder test for interest paid to partnerships are to apply to interest paid after the date the regulations are published as final regulations, the regulations also permit taxpayers to choose to apply the provisions to interest paid in any taxable year that is not closed by the period of limitations, provided that the taxpayer consistently applies the provisions to all relevant partnerships during such years.

3. Interest Imposed When No Tax Due

Treasury Regulation § 1.1441-1(b)(7)(iii) provides that a withholding agent that has failed to withhold tax other than based on reliance on the appropriate presumptions is not relieved from liability for interest under section 6601. It further provides that such liability exists even when there is no underlying tax that is ultimately shown to be due. That is, the regulation imposes an interest charge under section 6601 on a withholding agent for an amount of tax that has not in fact

been imposed. Treasury Regulation § 1.1441-1(b)(7)(v) sets forth two examples that illustrate the operation of this rule.

In Notice 2006-99 (2006-46 IRB 907), the IRS and the Treasury Department announced their intention to remove the rule in Treasury Regulation § 1.1441-1(b)(7)(iii), and the accompanying examples illustrating the rule in Treasury Regulation § 1.1441-1(b)(7)(v), that impose interest under section 6601 when no underlying tax liability is imposed. Further, the Notice announced that the IRS and the Treasury Department intend to clarify that, like interest, penalties that are computed based on underpayments of tax will not be imposed when no tax has in fact been imposed.

These final regulations retroactively remove, in accordance with Notice 2006-99, the rule in § 1.1441-1(b)(7)(iii) that would impose interest and penalties based on hypothetical underpayments of tax when in fact no tax has been imposed. The examples illustrating this rule in Treasury Regulation § 1.1441-1(b)(7) are also removed.

Special Analyses

It has been determined that these regulations are 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 regulations do 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 Code, the proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of the proposed regulations is Kathryn Holman, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

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 1.871-14 is amended as follows:

- 1. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), respectively.
- 2. New paragraph (g) is added.
- 3. Newly-designated paragraph (i)(1) is amended by adding two sentences at the end of the paragraph.

The additions read as follows:

§ 1.871-14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(g) *Portfolio interest not to include interest received by 10-percent shareholders—(1) In general.* For purposes of section 871(h), the term *portfolio interest* shall not include any interest received by a 10-percent shareholder.

(2) *Ten-percent shareholder—(i) In general.* The term *10-percent shareholder* means—

(A) In the case of an obligation issued by a corporation, any person who owns 10-percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote; or

(B) In the case of an obligation issued by a partnership, any person who owns 10-percent or more of the capital or profits interest in such partnership.

(ii) *Ownership—(A) Stock ownership.* For purposes of paragraph (g)(2)(i)(A) of this section, *stock owned* means stock directly or indirectly owned and stock owned by reason of the attribution rules of section 318(a), as modified by section 871(h)(3)(C).

(B) *Ownership of partnership interest.* For purposes of paragraph (g)(2)(i)(B) of this section, rules similar to the rules in paragraph (g)(2)(ii)(A) of this section shall be applied in determining the ownership of a capital or profits interest in a partnership.

(3) *Application of 10-percent shareholder test to partners receiving interest through a partnership—(i) Partner level test.* Whether interest paid to a partnership and included in the distributive share of a partner that is a nonresident alien individual or foreign corporation is received by a 10 percent shareholder shall be determined by applying the rules of this paragraph (g) only at the partner level.

(ii) *Time at which 10-percent shareholder test is applied.* The

determination of whether a nonresident alien individual or foreign corporation that is a partner in a partnership is a 10-percent shareholder under the rules of section 871(h)(3), section 881(c)(3), and this paragraph (g) with respect to interest paid to such partnership shall be made at the time that the withholding agent, absent the provisions of section 871(h), 881(c) and the rules of this paragraph, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest. For example, in the case of U.S. source interest paid by a domestic corporation to a domestic partnership or withholding foreign partnership (as defined in § 1.1441-5(c)(2)), the 10-percent shareholder test is applied when any distributions that include the interest are made to a foreign partner and, to the extent that a foreign partner's distributive share of the interest has not actually been distributed, on the earlier of the date that the statement required under section 6031(c) is mailed or otherwise provided to such partner, or the due date for furnishing such statement. See § 1.1441-5(b)(2) and (c)(2)(iii).

(4) *Application of 10-percent shareholder test to interest paid to a simple trust or grantor trust.* Whether interest paid to a simple trust or grantor trust and distributed to or included in the gross income of a nonresident alien individual or foreign corporation that is a beneficiary or owner of such trust, as the case may be, is received by a 10-percent shareholder shall be determined by applying the rules of this paragraph (g) only at the beneficiary or owner level. The 10-percent shareholder test is applied with respect to a nonresident alien individual or foreign corporation that is a beneficiary of a simple trust or an owner of a grantor trust at the time that a withholding agent, absent any exceptions, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest.

(i) * * * (1) * * * The rules of paragraph (g) apply to interest paid after April 12, 2007. Taxpayers may choose to apply the rules of paragraph (g) to interest paid in any taxable year not closed by the period of limitations as of April 12, 2007, provided they do so consistently for all relevant partnerships during such years.

■ **Par. 3.** Section 1.881-2 (a)(6) is added to read as follows:

§ 1.881-2 Taxation of foreign corporations not engaged in U.S. business.

(a) * * *

(6) Interest received by a foreign corporation pursuant to certain portfolio debt instruments is not subject to the flat tax of 30 percent described in paragraph (a)(1) of this section. For rules applicable to a foreign corporation's receipt of interest on certain portfolio debt instruments, see sections 871(h), 881(c), and § 1.871-14.

* * * * *

■ **Par. 4.** Section 1.1441-1(b)(7) is amended as follows:

- 1. Paragraph (b)(7)(iii) is revised.
- 2. Paragraph (b)(7)(v) is removed.

The revision reads as follows:

§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

- (b) * * *
- (7) * * *

(iii) *Liability for interest and penalties.* For payments made after December 31, 2000, if a withholding agent fails to deduct and withhold any tax imposed under sections 1441 or 1442, and the tax against which such tax may be credited under section 1462 is paid, then the amount of tax required to be deducted and withheld shall not be collected from the withholding agent. However, the withholding agent is not relieved from liability for interest or any penalties or additions to the tax otherwise applicable in respect of the failure to deduct and withhold. See section 1463. Further, in the event that a tax liability is assessed against the beneficial owner under section 871, 881, or 882 and interest under section 6601(a) is assessed against, and collected from, the beneficial owner, the interest charge imposed on the withholding agent shall be abated to that extent so as to avoid the imposition of a double interest charge.

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Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

Approved: March 30, 2007.

Eric Solomon,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7-6766 Filed 4-11-07; 8:45 am]

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POSTAL SERVICE

39 CFR Part 111

New Standards for Mailing Adult Fowl

AGENCY: Postal Service

ACTION: Final rule.

SUMMARY: The Postal Service revises the requirements for containers used for mailing adult chickens. The new standards require all mailable adult fowl, including chickens, to be mailed in containers approved by the manager of Mailing Standards.

EFFECTIVE DATES: April 12, 2007.

FOR FURTHER INFORMATION CONTACT: Bert Olsen, 202-268-7276.

SUPPLEMENTARY INFORMATION: The Postal Service published a proposal in the **Federal Register** (71 FR 32, February 16, 2007) to revise the standards for mailing containers when shipping chickens. The revised mailing standards would promote the safety of our employees, customers, and all mailed adult fowl.

Comments Received

We received one comment. The commenter stated that no birds should be mailed in the United States because of a chance of spreading bird diseases.

We have accepted birds in the mail for many years without incident, and we are comfortable in continuing to provide service to bird industries as well as individual customers. We are aware of concerns associated with handling bird containers in transit, and we will continually monitor and revise our mailing requirements to mitigate potential risk.

We adopt the following amendments to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3626, 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

600 Basic Standards for All Mailing Services

601 Mailability

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9.0 Perishables

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