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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9355]

RIN 1545-BF66

Clarification of Section 6411 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations clarifying that for purposes of allowing a tentative adjustment, the IRS may credit or reduce the tentative adjustment by an assessed tax liability, whether or not that tax liability was assessed before the date the application for tentative carryback was filed, and other unassessed tax liabilities in certain other circumstances. The portions of this document that are final regulations provide technical revisions that remove all references to IRS district director and service center director, as those positions no longer exist within the IRS. The offices of the district director and service center director were eliminated by the IRS reorganization implemented pursuant to the IRS Reform and Restructuring Act of 1998. The text of the temporary regulations serves as the text of the proposed regulations, set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective August 27, 2007.

Applicability Date: These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007.

FOR FURTHER INFORMATION CONTACT: Cynthia A. McGreevy, (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

These regulations clarify the Income Tax Regulations (26 CFR part 1) under section 6411 relating to the computation and allowance of the tentative carryback adjustment. The tentative allowance is computed pursuant to § 1.6411-2 but applied pursuant to § 1.6411-3. These temporary regulations clarify that, for purposes of computing the allowance, the Commissioner will not consider amounts to which the taxpayer and the Commissioner are in disagreement. For purposes of applying the allowance, however, the Commissioner may credit or reduce the tentative adjustment by any assessed tax liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances. Regarding unassessed liabilities determined in a statutory notice of deficiency, see Rev. Rul. 2007-51. Regarding unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, see Rev. Rul. 2007-52. See § 601.601(d)(2). The IRS plans to adopt procedures requiring IRS National Office review prior to a credit or reduction of the tentative adjustment by an unassessed liability that constitutes a rare and unusual circumstance.

These regulations also contain final regulations that remove all references to IRS district director or service center director, to account for the IRS's current organizational structure. The text of the temporary regulations serves as the text of the proposed regulations, published

elsewhere in this issue of the **Federal Register**.

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 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. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the Special Analyses section of the preamble of the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these final and temporary regulations is Cynthia A. McGreevy of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is 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 * * *.

§ 1.6411-2 [Amended]

■ **Par. 2.** In the list below, for each section listed in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.6411-2(a), first sentence	, unused investment credit, or unused WIN credit	, or unused investment credit
1.6411-2(a), fourth sentence	Internal Revenue Service	Commissioner
1.6411-2(a), last sentence	32	33
1.6411-2(b), third sentence	Internal Revenue Service	Commissioner

Section	Remove	Add
1.6411-2(b), fourth sentence	District director	Commissioner
1.6411-2(b), fourth sentence	Internal Revenue Service	Commissioner

■ **Par. 3.** Section 1.6411-2(c) is added to read as follows:

§ 1.6411-2 Computation of tentative carryback adjustment.

* * * * *

(c) *Effective/applicability date.* These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007.

■ **Par. 4.** Section 1.6411-2T is added to read as follows:

§ 1.6411-2T Computation of tentative carryback adjustment (temporary).

(a) *Tax previously determined.* The taxpayer is to determine the amount of decrease, attributable to the carryback, in tax previously determined for each taxable year before the taxable year of the net operating loss, net capital loss, or unused investment credit. The tax previously determined is to be ascertained in accordance with the method prescribed in section 1314(a). Thus, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies before the date of the filing of the application for a tentative carryback adjustment, and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to that date. Any items as to which the Commissioner and the taxpayer are in disagreement at the time of the filing of the application shall, for purposes of § 1.6411-2, be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return, or were reflected in any amounts assessed

(or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application. The tax previously determined, therefore, will reflect the foreign tax credit and the credit for tax withheld at source provided in section 33.

(b) *Decrease attributable to carryback.* After ascertaining the tax previously determined in the manner described in paragraph (a) of this section, the taxpayer shall determine the decrease in tax previously determined attributable to the carryback and any related adjustments on the basis of the items of tax taken into account in computing the tax previously determined. In determining any decrease attributable to the carryback or any related adjustment, items shall be taken into account under this subsection only to the extent that they were reported in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application for a tentative carryback adjustment. If the Commissioner and the taxpayer are in disagreement as to the proper treatment of any item, it shall be assumed for purposes of determining the decrease in the tax previously determined that the item was correctly reported by the taxpayer unless, and to the extent that, the disagreement has resulted in the assessment of a deficiency (or the collection of an amount without an assessment), or the allowing or making of an abatement, credit, refund, or other repayment,

before the date of filing the application. Thus, if the taxpayer claimed a deduction on its return of \$50,000 for salaries paid its officers but the Commissioner proposes that the deduction should not exceed \$20,000, and the Commissioner and the taxpayer have not agreed on the amount properly deductible before the date the application for a tentative carryback adjustment is filed, \$50,000 shall be considered as the amount properly deductible for purposes of determining the decrease in tax previously determined in respect of the application for a tentative carryback adjustment. In determining the decrease in tax previously determined, any items which are affected by the carryback must be adjusted to reflect the carryback. Thus, unless otherwise provided, any deduction limited, for example, by adjusted gross income, such as the deduction for medical, dental, etc., expenses, is to be recomputed on the basis of the adjusted gross income as affected by the carryback. See § 1.6411-3T(d) for rules on the application of the decrease in tax to any tax liability.

(c) *Effective/applicability date.* (1) These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007. (2) The applicability of this section expires on or before August 24, 2010.

■ **Par. 5.**

§ 1.6411-3 [Amended].

In the list below, for each section listed in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.6411-3(a), first sentence	district director or director of a service center (either of whom are sometimes hereinafter referred to in this section as internal revenue officer)	Commissioner
1.6411-3(a)(2), first sentence	, unused investment credit, or unused WIN credit	, or unused investment credit
1.6411-3(b), first sentence	district director or director of a service center	Commissioner
1.6411-3(b), first sentence	he deems	Deemed
1.6411-3(b), second sentence	he	The Commissioner
1.6411-3(b), fourth sentence	Such internal revenue officer	The Commissioner
1.6411-3(b), fourth sentence	he may discover	discovered
1.6411-3(b), fifth sentence	he accordingly	the Commissioner accordingly
1.6411-3(b), fifth sentence	he may	May
1.6411-3(b), fifth sentence	, unused investment credit, or unused WIN credit	, or unused investment credit
1.6411-3(b), fifth sentence	, investment credit or WIN credit	, or investment credit
1.6411-3(b), sixth sentence	such internal revenue officer	the Commissioner
1.6411-3(b), sixth sentence	he	the Commissioner
1.6411-3(b), sixth sentence	his	the Commissioner's

Section	Remove	Add
1.6411-3(b), seventh sentence	such internal revenue officer	the Commissioner
1.6411-3(b), seventh sentence	he believes	the Commissioner believes
1.6411-3(b), seventh sentence	he will	the Commissioner will
1.6411-3(b), seventh sentence	such officer	the Commissioner
1.6411-3(c), first sentence	district director or director of a service center	Commissioner
1.6411-3(c), first sentence	he	the Commissioner
1.6411-3(c), second sentence	he deems	the Commissioner deems
1.6411-3(c), second sentence	by him	
1.6411-3(c), second sentence	he	the Commissioner
1.6411-3(c), third sentence	Such internal revenue officer's	The Commissioner's
1.6411-3(c), third sentence	he	the Commissioner
1.6411-3(c), fourth sentence	his	the Commissioner's
1.6411-3(c), fifth sentence	such internal revenue officer	the Commissioner
1.6411-3(d)(1), first sentence	district director or director of a service center	Commissioner
1.6411-3(d)(1)(iii), first sentence	including an amount the time for payment of which has been extended under section 6162, but	
1.6411-3(d)(2), first sentence	district director, or director of a service center	Commissioner
1.6411-3(d)(2), fifth sentence	such internal revenue officer	The Commissioner
1.6411-3(d)(2), fifth sentence	, unused investment credit, or unused WIN credit	, or unused investment credit
1.6411-3(d)(3), first sentence	district director or director of a service center	Commissioner

■ **Par. 6.** Section 1.6411-3(e) is added to read as follows:

§ 1.6411-3 Allowance of adjustments.

* * * * *

(e) *Effective/applicability date.* These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007.

■ **Par. 7.** Section 1.6411-3T is added to read as follows:

§ 1.6411-3T Allowance of adjustments (temporary).

(a) *Time prescribed.* The Commissioner shall act upon any application for a tentative carryback adjustment filed under section 6411(a) within a period of 90 days from whichever of the following two dates is the later—

(1) The date the application is filed; or

(2) The last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, or unused investment credit from which the carryback results.

(b) *Examination.* Within the 90-day period described in paragraph (a) of this section, the Commissioner shall make, to the extent deemed practicable within this period, an examination of the application to discover omissions and errors of computation. The Commissioner shall determine within this period the decrease in tax previously determined, affected by the carryback or any related adjustments, upon the basis of the application and examination. The decrease shall be determined in the same manner as that provided in section 1314(a) for the

determination by the taxpayer of the decrease in taxes previously determined which must be set forth in the application for a tentative carryback adjustment. The Commissioner, however, may correct any errors of computation or omissions discovered upon examination of the application. In determining the decrease in tax previously determined which is affected by the carryback or any related adjustment, the Commissioner may correct any mathematical error appearing on the application and may likewise correct any modification required by the law and incorrectly made by the taxpayer in computing the net operating loss, net capital loss, or unused investment credit, the resulting carrybacks, or the net operating loss deduction, capital loss deduction, or investment credit allowable. If the required modification has not been made by the taxpayer and the Commissioner has the necessary information to make the modification within the 90-day period, the Commissioner may, in the Commissioner's discretion, make the modification. In determining the decrease, however, the Commissioner will not, for example, change the amount claimed on the return as a deduction for depreciation because the Commissioner believes that the taxpayer has claimed an excessive amount; likewise, the Commissioner will not include in gross income any amount not so included by the taxpayer, even though the Commissioner believes that the amount is subject to tax and properly should be included in gross income.

(c) *Disallowance in whole or in part.* If the Commissioner finds that an application for a tentative carryback adjustment contains material omissions or errors of computation, the Commissioner may disallow such application in whole or in part without further action. If, however, the Commissioner deems that any error of computation can be corrected within the 90-day period, the Commissioner may do so and allow the application in whole or in part. The Commissioner's determination as to whether the Commissioner can correct any error of computation within the 90-day period shall be conclusive. Similarly, the Commissioner's action in disallowing, in whole or in part, any application for a tentative carryback adjustment shall be final and may not be challenged in any proceeding. The taxpayer may, however, file a claim for credit or refund under section 6402, and may maintain a suit based on the claim if it is disallowed or if the Commissioner does not act upon the claim within 6 months from the date it is filed.

(d) *Application of decrease.* (1) Each decrease determined by the Commissioner in any previously determined tax which is affected by the carryback or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. The unpaid amount of tax may include one or more of the following:

(i) An amount with respect to which the taxpayer is delinquent.

(ii) An amount the time for payment of which has been extended under section 6164 and which is due and

payable on or after the date of the allowance of the decrease.

(iii) An amount (not including an amount the time for payment of which has been extended under section 6164) which is due and payable on or after the date of the allowance of the decrease, including any assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances.

(2) If the unpaid amount of tax includes more than one unpaid amount, the Commissioner in his discretion, shall determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in paragraphs (d)(1)(i) through (iii) of this section in the order named. If there are several amounts of the type described in paragraph (d)(1)(iii) of this section, any amount of the decrease which is to be applied against the amount will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied is "the tax" and that the taxpayer had elected to pay the tax in installments. The unpaid amount of tax against which a decrease may be applied under paragraph (d)(1) of this section may not include any amount of tax for any taxable year other than the year of the decrease. After making the application, the Commissioner will credit any remainder of the decrease against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, capital loss, or unused investment credit, the time for payment of which has been extended under section 6164.

(3) Any remainder of the decrease after the application and credits may, within the 90-day period, in the discretion of the Commissioner, be credited against any tax liability or installment thereof then due from the taxpayer (including assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances), and, if not so credited, shall be refunded to the taxpayer within the 90-day period.

(e) *Effective/applicability date.* (1) These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007.

(2) The applicability of this section expires on or before August 24, 2010.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: August 1, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7-16878 Filed 8-24-07; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA-R02-OAR-2006-0920; FRL-8441-7]

Approval and Promulgation of Implementation Plans; New Jersey; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving a state implementation plan revision submitted by the State of New Jersey. The State's revision adopts California's second generation low emission vehicle program for light-duty vehicles, LEV II, beginning with the 2009 model year. EPA is not taking action on two provisions of New Jersey's program: the zero-emission vehicle sales mandate and the greenhouse gas emission standards. The intended effect of this rulemaking is to approve a control strategy which will result in emissions reductions that will help New Jersey achieve attainment of national ambient air quality standard for ozone.

DATES: *Effective Date:* This rule will be effective September 26, 2007.

ADDRESSES: Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,
Region 2 Office, Air Programs Branch,
290 Broadway, 25th Floor, New York,
New York 10007-1866.

New Jersey Department of
Environmental Protection, Public
Access Center, 401 East State Street,
1st Floor, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT:

Matthew Laurita,
laurita.matthew@epa.gov at the
Environmental Protection Agency,
Region 2 Office, Air Programs Branch,
290 Broadway, 25th Floor, New York,
NY 10007-1866, telephone number

(212) 637-3895, fax number (212) 637-3901.

SUPPLEMENTARY INFORMATION:

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I. Description of the SIP Revision

Section 209(a) of the Clean Air Act (CAA or the Act) prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, under section 209(b) of the CAA, EPA shall grant a waiver of the section 209(a) prohibition to the State of California (unless EPA makes specified findings), thereby allowing California to adopt its own motor vehicle emissions standards. Section 177 of the CAA allows other states to adopt and enforce California's standards relating to the control of emissions from new motor vehicles, provided that, among other things, such state standards are identical to the California standards for which a waiver has been granted under CAA section 209(b). In addition to the identity requirement, the state must adopt such standards at least two years prior to the commencement of the model year to which the standards will apply. All state implementation plan (SIP) revisions submitted to EPA for approval must also meet the requirements of CAA section 110.

In January 2004, the New Jersey Legislature passed legislation requiring the New Jersey Department of Environmental Protection (NJDEP) to adopt the California low emission vehicle (LEV) program, known as the LEV II program. Pursuant to this legislation, New Jersey promulgated regulations to adopt a LEV program identical to California's LEV II program. New Jersey's regulations were adopted on November 28, 2005. New Jersey's LEV program will affect light-duty motor vehicles manufactured in model year 2009 and later.

On June 2, 2006, New Jersey submitted a SIP revision to EPA, seeking federal approval of its LEV regulations. New Jersey's SIP revision submittal meets the requirements of sections 177 and 110 of the Act. EPA's approval of New Jersey's LEV program makes it federally-enforceable, further ensuring that planned emission reductions will continue to take place. For further information on New Jersey's LEV program see the March 21, 2007, Proposed Rulemaking (72 FR 13227).