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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9261

RIN 1545-BF32

Intercompany Transactions; Manufacturer Incentive Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code. Example 13 of the intercompany transaction regulations illustrates the treatment of manufacturer incentive payments. Because a premise underlying the example is under reconsideration, these final regulations remove and reserve this example. The regulations will affect corporations filing consolidated returns.

DATES: Effective Date: These regulations are effective on May 8, 2006.

FOR FURTHER INFORMATION CONTACT: Frances Kelly, (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1.1502-13 of the consolidated return regulations provides rules for taking into account items of income, gain, deduction, and loss of members from intercompany transactions. In particular, §1.1502-13(c)(7)(ii), Example 13, illustrates how the matching rule of the intercompany transaction regulations treats a transaction involving

manufacturer incentive payments. On August 13, 2004, the IRS and Treasury Department published a notice of proposed rulemaking (REG-131264-04) in the **Federal Register** (69 FR 50112) proposing regulations to address additional transactions involving manufacturer incentive payments and to clarify the proper treatment of such incentive payments under the intercompany transaction regulations.

On April 25, 2005, the IRS and Treasury Department published Rev. Rul. 2005-28 (2005-19 IRB 997), which suspends, in part, Rev. Rul. 76-96 (1976-1 CB 23). Rev. Rul. 2005-28 states that the IRS will not apply, and taxpayers may not rely upon, the conclusion reached in Rev. Rul. 76-96 that certain rebates made by a manufacturer to retail customers are ordinary and necessary business expenses deductible under section 162, pending the IRS's reconsideration of the issue and publication of subsequent guidance.

Explanation of Provisions

The manufacturer incentive payment transaction described in §1.1502-13(c)(7)(ii), Example 13 relies, in part, upon the premise that the manufacturer incentive payment is an ordinary and necessary business expense deductible under section 162. To the extent that this premise is correct, this example illustrates the proper application of the intercompany transaction regulations. However, because Rev. Rul. 2005-28 suspends Rev. Rul. 76-96, in pertinent part, these final regulations remove §1.1502-13(c)(7)(ii), Example 13 pending further guidance on the section 162 issue considered in Rev. Rul. 76-96.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. These final regulations do not alter substantive provisions of the intercompany transaction regulations. They merely remove an example which may be misleading and cause confusion for taxpayers. Accordingly, good cause is found for dispensing with prior notice and comment pursuant to 5 U.S.C 553(b), and for dispensing with a delayed effective date pursuant to 5 U.S.C 553(d). Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Drafting Information

The principal author of these regulations is Frances Kelly of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and 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 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502-13 also issued under 26 U.S.C. 1502. * * *

Par. 2. In §1.1502-13, paragraph (c)(7)(ii), Example 13 is removed and reserved.

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement.

Approved: April 28, 2006

/s/ Eric Solomon

Deputy Assistant Secretary of the Treasury.