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DEPARTMENT OF THE TREASURY

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Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9206]

RIN 1545-BE12

Information Returns by Donees Relating to Qualified Intellectual
Property Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that
provide guidance for the filing of information returns by donees
relating to qualified intellectual property contributions.

These temporary regulations affect donees receiving net income
from qualified intellectual property contributions made after
June 3, 2004. The text of these temporary regulations also
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 May 23,
2005.

FOR FURTHER INFORMATION CONTACT: Donnell M. Rini-Swyers, (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1932. Responses to this collection of information are required to obtain a tax benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Explanation of Provisions

This document contains temporary Income Tax Regulations under the American Jobs Creation Act of 2004 (Public Law 108-357, 118 Stat. 1418) (the Act). They are necessary to implement section 882 of the Act, which directs that regulations be issued regarding information returns by donees relating to qualified intellectual property contributions made after June 3, 2004.

The Act provides rules that under specified conditions enable taxpayers who donate qualified intellectual property to receive additional charitable contribution deductions if and when their donated property produces net income for the donee (qualified donee income). Section 170(m)(2), (8), (9). Under the Act, a taxpayer who contributes a "patent, copyright (other than a copyright described in section 1221(a)(3) or 1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property," to a donee described in section 170(c) (other than to a private foundation referred to in section 170(e)(1)(B)(ii)) may be allowed an initial charitable contribution deduction limited to the lesser of the taxpayer's

basis or the fair market value of the qualified intellectual property. In addition, the taxpayer may be permitted to deduct certain additional amounts in the year of contribution or in subsequent taxable years based on a specified percentage of the qualified donee income received by the donee with respect to the qualified intellectual property.

Section 882(c)(1) of the Act amended section 6050L to require donees to make an annual information return that reports the qualified donee income for the taxable year and other specified information relating to qualified intellectual property contributions. The Service expects to issue a new Form 8899 on which donees will report qualified donee income.

Under section 170(m)(8)(B), a donor must notify the donee of the donor's intent to treat a charitable contribution as a qualified intellectual property contribution under sections 170(m) and 6050L. For rules relating to donor notification see section 170(m)(8)(B) and Notice 2005-41, 2005-23, I.R.B. 1203, issued thereunder. Unless timely notice is provided, the donor has not made a qualified intellectual property contribution, and the donee has no reporting obligation under section 6050L or these regulations.

The donee is not required to make an information return if the qualified intellectual property produced no net income for the donee's taxable year. Under section 170(m)(5) and (m)(6),

income received or accrued during the donee's taxable year is not treated as allocated to qualified intellectual property if such income is received or accrued after the 10-year period beginning on the date of the contribution or after the expiration of the legal life of the qualified intellectual property. Thus, the donee is not required to make a return with regard to a qualified intellectual property contribution for taxable years beginning after the expiration of the legal life of such qualified intellectual property. Additionally, section 6050L(b) requires a return only for specified taxable years of the donee, which years are defined in section 6050L(b)(2)(B) as any taxable year any portion of which is part of the 10-year period beginning on the date of contribution of the qualified intellectual property. Therefore, the donee is not required to make a return for taxable years beginning more than 10 years after the date of the qualified intellectual property contribution.

Under these regulations, the donee generally is required to file an information return (with a copy of such return to the donor) on or before the last day of the first full month following the close of the donee's taxable year. See section 7701(a)(23) for the definition of taxable year. Transition rules are provided to take into account these filing requirements before a form is prescribed by the Internal Revenue

Service and for donees' taxable years ending prior to or on the date of issuance of these regulations.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) 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 will be 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 regulations is Donnell M. Rini-Swyers, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and Recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are 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 1.6050L-2T is added to read as follows:

§1.6050L-2T Information returns by donees relating to qualified intellectual property contributions (temporary).

(a) In general. Each donee organization described in section 170(c), except a private foundation (as defined in section 509(a)), other than a private foundation described in section 170(b)(1)(E), that receives or accrues net income during a taxable year from any qualified intellectual property contribution (as defined in section 170(m)(8)) must make an annual information return on the form prescribed by the Internal Revenue Service. The information return is required for any taxable year of the donee that includes any portion of the 10-year period beginning on the date of the contribution, but not for taxable years beginning after the expiration of the legal life of the qualified intellectual property.

(b) Information required to be provided on return. The information return required by section 6050L and paragraph (a) of this section shall include the following--

- (1) The name, address, taxable year, and employer

identification number of the donee making the information return;

(2) The name, address, and taxpayer identification number of the donor;

(3) A description of the qualified intellectual property in sufficient detail to identify the qualified intellectual property received by such donee;

(4) The date of the contribution to the donee;

(5) The amount of net income of the donee for the taxable year that is properly allocable to the qualified intellectual property (determined without regard to paragraph (10)(B) of section 170(m) and with the modifications described in paragraphs (5) and (6) of such section); and

(6) Such other information as may be specified by the form or its instructions.

(c) Special rule--statement to be furnished to donors--(1) In general. Every donee making an information return under section 6050L and this section with respect to a qualified intellectual property contribution shall furnish a copy of the information return to the donor of the property. The information return required by section 6050L and this section shall be furnished to the donor on or before the date the donee is required to file the return with the Internal Revenue Service.

(2) Before a form is prescribed by the Internal Revenue

Service. Before a form is prescribed by the Internal Revenue Service, every donee required to make an information return under section 6050L and this section with respect to qualified intellectual property contributions shall furnish, in lieu of the prescribed form, a statement to the donor that includes all information required by paragraphs (b)(1) through (b)(5) of this section. This statement shall be furnished to the donor on or before the date the donee would have been required to file the return with the Internal Revenue Service under paragraph (d)(2)(i) of this section had a form been prescribed.

(3) Donee taxable years ending prior to or on the date of issuance of regulations. If the donee's taxable year to which net income from the qualified intellectual property is properly allocable ends prior to or on May 23, 2005, the donee shall furnish the information required under section 6050L and this section to the donor on or before August 22, 2005.

(d) Place and time for filing information return--(1) Place for filing. The information return required by section 6050L and this section shall be filed with the Internal Revenue Service location listed on the prescribed form or in its instructions.

(2) Time for filing--(i) In general. A donee is required to file the return required by section 6050L and this section on or before the last day of the first full month following the close of the donee's taxable year to which net

income from the qualified intellectual property is properly allocable.

(ii) Before a form is prescribed by the Internal Revenue Service. If the information return required by section 6050L and this section is required to be filed before a form is prescribed by the Internal Revenue Service, then an information return for such taxable year shall be filed on or before the last day of the second full month following the release of such prescribed form by the Internal Revenue Service.

(e) Penalties. For penalties for failure to comply with the requirements of this section, see sections 6721 through 6724.

(f) Effective date. The rules of this section apply to qualified intellectual property contributions made after June 3, 2004.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

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

Par. 9. In §602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

§602.101 OMB Control numbers.

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(b) * * *

CFR part or section where
identified and described

Current OMB
Control No.

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1.6050L-2T. 1545-1932

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/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement.

Approved: May 16, 2005

/s/ Eric Solomon

Acting Deputy Assistant Secretary of the Treasury.