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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9211

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Allocation and Apportionment of Deductions for Charitable Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the allocation and apportionment of the deduction for charitable contributions allowed under sections 170, 873(b)(2), and 882(c)(1)(B) and the deduction for charitable contributions allowed under an income tax treaty. These regulations apportion the deduction for charitable contributions on the basis of income from sources within the United States. These regulations affect individuals and corporations that make contributions to charitable organizations and that have foreign source income and calculate their foreign tax credit limitations under section 904.

DATES: Effective Date: These regulations are effective July 28, 2004, except §1.861-8(e)(12)(ii), which is effective July 14, 2005.

Applicability Dates: For dates of applicability, see §§1.861-8(e)(12)(iv) and 1.861-14(e)(6)(ii). The regulations generally apply to charitable contributions made on or after July 28, 2004, although taxpayers generally may choose to apply these regulations to contributions made before July 28, 2004, but during a taxable year

ending on or after July 28, 2004. Section 1.861-8(e)(12)(ii) applies to contributions made on or after July 14, 2005, although taxpayers may choose to apply that section to contributions made before July 14, 2005, but during a taxable year ending on or after July 14, 2005.

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes at (202) 622-3850 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains amendments to 26 CFR part 1. Section 1.861-8(e)(9)(iv) (the 1977 regulations) provided that deductions for charitable contributions generally were not definitely related to any gross income and therefore were ratably apportioned to the statutory and residual groupings on the basis of gross income. In 1991, the Treasury Department and the IRS issued proposed regulations (the 1991 proposed regulations) that would have changed the ratable apportionment rule of the 1977 regulations to a rule that, assuming certain requirements were met, generally would have apportioned the deduction for a charitable contribution based on where the contribution would have been used.

Prop. Treas. Reg. §1.861-8(e)(12), 56 Fed. Reg. 10,395.

On July 28, 2004, the Treasury Department and the IRS issued temporary regulations (T.D. 9143, 2004-36 I.R.B. 442) relating to the allocation and apportionment of the deduction for charitable contributions allowed under sections 170, 873(b)(2), and 882(c)(1)(B) of the Internal Revenue Code. A notice of proposed rulemaking by cross reference to the temporary regulations (REG-208246-

90, 2004-36 I.R.B. 450) was also published in the **Federal Register** on the same date. That notice of proposed rulemaking also proposed rules governing the allocation and apportionment of the deduction for charitable contributions that is allowed under a U.S. income tax treaty (rather than under sections 170, 873(b)(2), and 882(c)(1)(B)). As part of the issuance of the temporary and proposed regulations, the Treasury Department and the IRS removed the 1977 regulations and withdrew the 1991 proposed regulations. REG-208246-90; 2004-36 I.R.B. 450. Although a public hearing on the proposed regulations was originally scheduled for December 2, 2004, the public hearing was cancelled because no person requested to provide an oral statement at the hearing.

### **Explanation of Provisions**

These final regulations adopt the rules of the temporary and proposed regulations, which provide that the deduction for charitable contributions allowed under sections 170, 873(b)(2), and 882(c)(1)(B) is definitely related and allocable to all of the taxpayer's gross income and is apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources in the United States in each grouping. The corresponding temporary regulations are removed.

One written comment responding to the temporary and proposed regulations was received. The comment requested that taxpayers be permitted to elect to apply the new allocation and apportionment rules to deductions for charitable contributions previously claimed on timely filed tax returns for all open tax years. After consideration, the Treasury Department and the IRS concluded that adoption of the

comment's suggestion is not appropriate. The new allocation and apportionment rules apply to charitable contributions made on or after July 28, 2004. Although the temporary regulations permit taxpayers to apply the new rules to charitable contributions made before July 28, 2004, this election applies only to charitable contributions made in a taxable year that ends on or after July 28, 2004. The purpose of this election is to allow taxpayers to apply only one set of allocation and apportionment rules to charitable contributions made in the same taxable year. To permit taxpayers to apply the new rules to all open tax years would not provide such simplification and would raise concerns regarding fairness and administration.

The regulations also adopt, as proposed, the rules with respect to deductions for charitable contributions that are allowed under an income tax treaty (rather than by sections 170, 873(b)(2), and 882(c)(1)(B)). The regulations make one change to the effective date in the proposed regulations. As with the deduction for charitable contributions allowed under sections 170, 873(b)(2), and 882(c)(1)(B), the regulations give taxpayers the opportunity to apply the new rules for all charitable contributions made during the taxable year. Accordingly, the rule for the deduction for charitable contributions allowed under an income tax treaty is effective for taxable years beginning on or after July 14, 2005, with an election to apply the rule to contributions made before July 14, 2005, but during a taxable year that ends on or after July 14, 2005.

### **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. 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 Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

### **Drafting Information**

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

### **List of Subjects 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 for part 1 continues to read in part as follows:

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

Par. 2. Section §1.861-8 is amended as follows:

1. Remove the last sentence of paragraph (a)(5)(i).
2. Revise paragraph (e)(12).

The revision and addition read as follows:

§1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.

\* \* \* \* \*

(e) \* \* \* (1) \* \* \*

(12) Deductions for certain charitable contributions--(i) In general. The deduction for charitable contributions that is allowed under sections 170, 873(b)(2), and 882(c)(1)(B) is definitely related and allocable to all of the taxpayer's gross income. The deduction allocated under this paragraph (e)(12)(i) shall be apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources in the United States in each grouping.

(ii) Treaty provisions. If a deduction for charitable contributions not otherwise permitted by sections 170, 873(b)(2), and 882(c)(1)(B) is allowed under a U.S. income tax treaty, and such treaty limits the amount of the deduction based on a percentage of income arising from sources within the treaty partner, the deduction is definitely related and allocable to all of the taxpayer's gross income. The deduction allocated under this paragraph (e)(12)(ii) shall be apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources within the treaty partner within each grouping.

(iii) Coordination with §§1.861-14 and 1.861-14T. A deduction for a charitable contribution by a member of an affiliated group shall be allocated and apportioned under the rules of this section, §1.861-14(e)(6), and §1.861-14T(c)(1).

(iv) Effective date. (A) The rules of paragraphs (e)(12)(i) and (iii) of this section shall apply to charitable contributions made on or after July 28, 2004. Taxpayers may apply the provisions of paragraphs (e)(12)(i) and (iii) of this section to charitable contributions made before July 28, 2004, but during the taxable year ending on or after July 28, 2004.

(B) The rules of paragraphs (e)(12)(ii) of this section shall apply to charitable contributions made on or after July 14, 2005. Taxpayers may apply the provisions of paragraph (e)(12)(ii) of this section to charitable contributions made before July 14, 2005, but during the taxable year ending on or after July 14, 2005.

\* \* \* \* \*

Par. 3. Section 1.861-8T is amended as follows:

1. Remove paragraph (e)(12).
2. Revise the second sentence of paragraph (h) introductory text.

The revision reads as follows:

§1.861-8T Computation of taxable income from sources within the United States and from other sources and activities (temporary).

\* \* \* \* \*

(h) \* \* \* However, see §§1.861-8(e)(12)(iv) and 1.861-14(e)(6) for rules concerning the allocation and apportionment of deductions for charitable contributions. \* \* \*

\* \* \* \* \*

Par. 4. Section 1.861-14 is amended by removing paragraphs (d)(3) through (j), adding new paragraphs (d)(3) through (e)(5), adding paragraph (e)(6), and adding new paragraphs (f) through (j) to read as follows:

§1.861-14 Special rules for allocating and apportioning certain expenses (other than interest expense) of an affiliated group of corporations.

\* \* \* \* \*

(d)(3) through (e)(5) [Reserved]. For further guidance, see §1.861-14T(d)(3) through (e)(5).

(e)(6) Charitable contribution expenses--(i) In general. A deduction for a charitable contribution by a member of an affiliated group shall be allocated and apportioned under the rules of §§1.861-8(e)(12) and 1.861-14T(c)(1).

(ii) Effective date. (A) The rules of this paragraph shall apply to charitable contributions subject to §1.861-8(e)(12)(i) that are made on or after July 28, 2004, and, for taxpayers applying the second sentence of §1.861-8(e)(12)(iv)(A), to charitable contributions made during the taxable year ending on or after July 28, 2004.

(B) The rules of this paragraph shall apply to charitable contributions subject to §1.861-8(e)(12)(ii) that are made on or after July 14, 2005, and, for taxpayers applying the second sentence of §1.861-8(e)(12)(iv)(B), to charitable contributions made during the taxable year ending on or after July 14, 2005.

(f) through (j) [Reserved]. For further guidance, see §1.861-14T(f) through (j).



**§1.861-14T [Amended]**

Par. 5. Section 1.861-14T is amended by removing paragraph (e)(6).

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement

Approved: July 5, 2005

/s/ Eric Solomon

Acting Deputy Assistant Secretary of the Treasury