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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 25, 26, 53, 55, 156, 157, and 301

REG-144898-04

RIN 1545-BE62

Extension of Time for Filing Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations relating to the simplification of procedures for automatic extensions of time to file certain returns. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronically generated comments and requests for a public hearing must be received by February 9, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-144898-04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 am and 4 pm to: CC:PA:LPD:PR (REG-144898-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically

via the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (IRS and REG-144898-04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Allen D. Madison, (202) 622-4940; concerning submissions of comments and requests for a public hearing, LaNita Van Dyke (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR parts 1, 25, 26, 53, 55, 156, 157, and 301 relating to section 6081. The temporary regulations allow taxpayers required to file an individual income tax return an automatic six-month extension if taxpayers submit an application on Form 4868, "Application for Automatic Extension of Time To File a U.S. Individual Income Tax Return." The temporary regulations also allow taxpayers who previously submitted three-month extension requests on Form 8736, "Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts" and requests for additional three-month extensions on Form 8800, "Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts," an automatic six-month extension of time to file if an application is submitted on Form 7004, "Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns."

The six-month automatic extension of time to file set forth in these temporary regulations applies to returns of pass-through entities, e.g., Form 1065 for partnerships. The Treasury Department and the IRS recognize that because the six-month automatic extension is available for returns of pass-through entities, some taxpayers may not receive information returns from the pass-through entities that they need in order to complete their own income tax returns before those returns are due. For example, an individual income taxpayer with a six-month extension of time to October 15 to file the Form 1040 may not receive a Schedule K-1 from a partnership in which the taxpayer holds an interest until after the partnership files its Form 1065 on its extended due date of October 15. Similarly, a C-corporation with a six-month extension to September 15 to file its Form 1120 may not receive a Schedule K-1 from a calendar year partnership in which it holds an interest until as much as 30 days after its return is due if the partnership files its Form 1065 and sends out the Schedule K-1s on its extended due date of October 15th. This filing anomaly existed under prior regulations when the pass-through entity received an extension of time to file to a date on or after the extended due date for the pass-through interest holder, but the automatic six-month extension in this regulation may cause this to happen with more frequency.

Because of this filing anomaly, the availability of a six-month extension of time to file for pass-through entities may result in taxpayers filing an increased number of amended income tax returns. Therefore, it may be appropriate for pass-through entities to have a shorter extension period than their partners or

shareholders. The Treasury Department and the IRS request comments on whether a shorter extension of time to file for pass-through entities might reduce overall taxpayer burden. Please follow the instructions in the “Comments and Requests for a Public Hearing” portion of this preamble. In order to minimize the burden that might be imposed as a result of this filing anomaly, the Treasury Department and the IRS encourage pass-through entities that request an extension of time to file to minimize the impact that such extension might have on their partners’ or members’ ability to timely file (with an extension) their own tax returns.

The temporary regulations also provide that taxpayers that requested additional time to file certain excise, income, information, and other returns by submitting Form 2758, “Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns,” may now request an automatic six-month extension of time to file by filing Form 7004.

The temporary regulations also allow administrators and sponsors of employee benefit plans subject to Employee Retirement Income Security Act of 1974 (ERISA) to report information concerning the plans and direct entities requesting an extension to use Form 5558, “Application for Extension of Time To File Certain Employee Plan Returns,” for an automatic two and one-half-month extension of time to file.

The temporary regulations also allow donors who do not request an extension of time to file an income tax return to request an automatic six-month extension of time to file Form 709, “United States Gift (and Generation-Skipping

Transfer) Tax Return” by filing Form 8892, “Payment of Gift/GST Tax and/or Application for Extension of Time to File Form 709.”

The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking 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, and, because these 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits comments. If a public hearing is

scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Tracey B. Leibowitz, of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 26

Generation-skipping transfer taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 55

Excise taxes, Investments, Reporting and recordkeeping requirements.

26 CFR Part 156

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 157

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 25, 26, 53, 55, 156, 157, and 301 are proposed to be amended to read 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 1.6081-1 is amended by revising paragraphs (b)(1) and (b)(5) to read as follows:

§1.6081-1 Extension of time for filing returns.

* * * * *

(b) * * *

(1) In general. A taxpayer desiring an extension of the time for filing a return, statement, or other document shall submit an application for extension on or before the due date of such return, statement, or other document. Except as provided in paragraph (b)(3) of this section and paragraph (b) of §301.6091-1 of this chapter (relating to hand-carried documents), the taxpayer should make the application for extension to the internal revenue officer with whom such return, statement, or other document is required to be filed. The application must be in

writing, signed by the taxpayer or his duly authorized agent, and must clearly set forth--

(i) The particular tax return, information return, statement, or other document, including the taxable year or period thereof, for which the taxpayer requests an extension, and

(ii) An explanation of the reasons for requesting the extension to aid the internal revenue officer in determining whether to grant the request.

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(5) Form of application. Taxpayers may apply for an extension of the time for filing a return, statement, or other document in a letter that includes the information required by paragraph (b)(3) of this section. In the case of an individual income tax return on Form 1040 series, however, taxpayers should apply for an extension of the time for filing in accordance with §1.6081-4 of this chapter.

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Par. 3. Section 1.6081-2 is added to read as follows:

§1.6081-2 Automatic extension of time to file certain returns filed by partnerships.

[The text of proposed §1.6081-2 is the same as the text of §1.6081-2T published elsewhere in this issue of the **Federal Register**].

Par. 4. In §1.6081-3, paragraph (a)(1) is revised to read as follows:

§1.6081-3 Automatic extension of time for filing corporation income tax returns.

(a) * * *

(1) [The text of proposed §1.6081-3(a)(1) is the same as the text of §1.6081-3T(a)(1) published elsewhere in this issue of the **Federal Register**].

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Par. 5. Section 1.6081-4 is added to read as follows:

§1.6081-4 Automatic extension of time for filing individual income tax return.

[The text of proposed §1.6081-4 is the same as the text of §1.6081-4T published elsewhere in this issue of the **Federal Register**].

Par. 6. Section 1.6081-5 is amended by revising paragraph (b) to read as follows:

§1.6081-5 Extensions of time in the case of certain partnerships, corporations, and U.S. citizens and residents.

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(b) [The text of proposed §1.6081-5(b) is the same as the text of §1.6081-5T(b) published elsewhere in this issue of the **Federal Register**].

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Par. 7. Section 1.6081-6 is added to read as follows:

§1.6081-6 Automatic extension of time to file estate or trust income tax return.

[The text of proposed §1.6081-6 is the same as the text of §1.6081-6T published elsewhere in this issue of the **Federal Register**].

Par. 8. Section 1.6081-7 is added to read as follows:

§1.6081-7 Automatic extension of time to file Real Estate Mortgage Investment Conduit (REMIC) income tax return.

[The text of proposed §1.6081-7 is the same as the text of §1.6081-7T published elsewhere in this issue of the **Federal Register**].

Par. 9. Section 1.6081-10 is added to read as follows:

§1.6081-10 Automatic extension of time to file withholding tax return for U.S. source income of foreign persons.

[The text of proposed §1.6081-10 is the same as the text of §1.6081-10T published elsewhere in this issue of the **Federal Register**].

Par. 10. Section 1.6081-11 is added to read as follows:

§1.6081-11 Automatic extension of time for filing certain employee plan returns.

[The text of proposed §1.6081-11 is the same as the text of §1.6081-11T published elsewhere in this issue of the **Federal Register**].

PART 25-- GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 11. The authority citation for part 25 continues to read, in part, as follows:

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

Par. 12. Section 25.6081-1 is added to read as follows:

§25.6081-1 Automatic extension of time for filing gift tax returns.

[The text of proposed §25.6081-1 is the same as the text of §25.6081-1T published elsewhere in this issue of the **Federal Register**].

PART 26--GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Par. 13. The authority citation for part 26 continues to read, in part, as follows:

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

Par. 14. Section 26.6081-1 is added to read as follows:

§26.6081-1 Automatic extension of time for filing generation-skipping transfer tax returns.

[The text of proposed §26.6081-1 is the same as the text of §26.6081-1T published elsewhere in this issue of the **Federal Register**].

PART 53--FOUNDATION AND SIMILAR EXCISE TAXES

Par. 15. The authority citation for part 53 continues to read, in part, as follows:

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

Par. 16. Section 53.6081-1 is added to read as follows:

§53.6081-1 Automatic extension of time for filing the return to report taxes due under section 4951 for self-dealing with a nuclear decommissioning fund.

[The text of proposed §53.6081-1 is the same as the text of §53.6081-1T published elsewhere in this issue of the **Federal Register**].

PART 55--EXCISE TAX ON REAL INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

Par. 17. The authority citation for part 55 continues to read, in part, as follows:

Authority: 26 U.S.C. 6001, 6011, 6071, 6091, and 7805 * * *

Par. 18. Section 55.6081-1 is added to read as follows:

§55.6081-1 Automatic extension of time for filing a return due under Chapter 44.

[The text of proposed §55.6081-1 is the same as the text of §55.6081-1T published elsewhere in this issue of the **Federal Register**].

PART 156--EXCISE TAX ON GREENMAIL

Par. 19. The authority citation for part 156 continues to read, in part, as follows:

Authority: 26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805

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Par. 20. Section 156.6081-1 is added to read as follows:

§156.6081-1 Automatic extension of time for filing a return due under Chapter 54.

[The text of proposed §156.6081-1 is the same as the text of §156.6081-1T published elsewhere in this issue of the **Federal Register**].

PART 157-- EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Par. 21. The authority citation for part 157 continues to read, in part, as follows:

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

Par. 22. Section 157.6081-1 is added to read as follows:

§157.6081-1 Automatic extension of time for filing a return due under Chapter 55.

[The text of proposed §157.6081-1 is the same as the text of §157.6081-1T published elsewhere in this issue of the **Federal Register**].

PART 301--PROCEDURE AND ADMINISTRATION

Par. 23. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 24. Section 301.6081-2 is added to read as follows:

§301.6081-2 Automatic extension of time for filing an information return with respect to certain foreign trusts.

[The text of proposed §301.6081-2 is the same as the text of §301.6081-2T published elsewhere in this issue of the **Federal Register**].

Deputy Commissioner for Services and Enforcement.