

(R.S. 251, as amended, sections 554, 624, 46 Stat. 743, 759 (19 U.S.C. 66, 1554, 1624))

William T. Archey,

Acting Commissioner of Customs.

Approved: July 14, 1981.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81-21605 Filed 7-23-81; 8:45 am]

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19 CFR Part 151

[T.D. 81-189]

Examination of Cigars, Cigarillos, and Tobacco of Cuban Origin

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Customs Regulations to centralize responsibility for the general supervision of the examination of all imported tobacco which may be of Cuban origin, in the tobacco National Import Specialist at the port of New York.

Previously, tobacco suspected to be of Cuban origin was examined by import specialists at the ports of New York and Tampa.

Customs has determined that to improve the efficiency of service to the public and to utilize fully its personnel resources, centralization of that examination function is necessary.

EFFECTIVE DATE: August 24, 1981.

FOR FURTHER INFORMATION CONTACT:

George Pinto, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2957).

SUPPLEMENTARY INFORMATION:

Background

The Cuban Assets Control Regulations issued by the Office of Foreign Assets Control, Department of Treasury (31 CFR 515.201-515.801), prohibit the unlicensed importation of all goods of Cuban origin, all goods imported from or through Cuba, and also the unlicensed importation of merchandise derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba.

Accordingly, in the early 1960's, Customs developed and issued regulations (present § 151.111, Customs Regulations (19 CFR 151.111)), and operational guidelines designed to prevent the unlicensed importation of cigars, cigarillos, and tobacco, which may be made or derived in whole or in part of Cuban articles, or which may be of Cuban origin.

From the inception of Customs program to implement the provisions of the Cuban Assets Control Regulations, general supervision of the examination of all cigars or cigarillos suspected of being Cuban articles has been the responsibility of the tobacco import specialist at the port of New York, regardless of the actual U.S. port of importation (section 151.111(a)).

However, § 151.111(b) divided the responsibility for the general supervision of the examination of tobacco suspected to be of Cuban origin between the tobacco import specialist at New York and the tobacco import specialist at Tampa, Florida. Supervision of imports of such tobacco occurring in Customs Regions I (Boston), II (New York), III (Baltimore), and IX (Chicago) was assigned to New York, while Tampa supervised examination of such tobacco imported in Regions IV (Miami), V (New Orleans), VI (Houston), VII (Los Angeles), and VIII (San Francisco).

That system of dividing operational responsibility for a commodity between two import specialists is unique in Customs. Headquarters and Regional surveys have uniformly agreed that the present procedures relative to those tobacco importations are contrary to good management principles and do not result in optimum utilization of available import specialist resources. As a result, it has been decided to amend § 151.111 as set forth below to centralize responsibility for examination of tobacco which may be of Cuban origin in the tobacco National Import Specialist at the port of New York. The Tampa position will be used for normal import specialist functional responsibilities within the Tampa Customs District alone.

Notice of Proposed Rulemaking Unnecessary

Because this minor amendment involves a matter relating solely to agency personnel management, pursuant to 5 U.S.C. 553(a)(2), notice and public procedure thereon are unnecessary.

Executive Order 12291 and Regulatory Flexibility Act

It has been determined that the amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis has been prepared.

In addition, it has been determined that the amendment is not subject to the provisions of Pub. L. 96-354, the Regulatory Flexibility Act (5 U.S.C. 601-612), because publication of a notice of proposed rulemaking is not required by

the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other law.

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, other Customs personnel participated in its development.

Amendment to the Regulations

Part 151, Subpart I, Customs Regulations (19 CFR Part 151, Subpart I), is amended by revising § 151.111 to read as follows:

§ 151.111 Cigars, cigarillos, and tobacco of Cuban origin.

The tobacco National Import Specialist at the port of New York shall have general supervision of the examination of (a) all cigars or cigarillos which may be made or derived in whole or in part of Cuban articles, and (b) all tobacco which may be of Cuban origin.

(R.S. 251, as amended, sections 499, 624, 46 Stat. 728, as amended, 759 (19 U.S.C. 66, 1499, 1624))

William T. Archey,

Acting Commissioner of Customs.

Approved: July 9, 1981.

Robert E. Powis,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81-21606 Filed 7-23-81; 8:45 am]

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Internal Revenue Service

26 CFR Part 1

[T.D. 7784]

Income Tax; Definition of a Private Foundation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the definition of a private foundation. Changes to the applicable tax law were made by Pub. L. 94-81, enacted August 9, 1975. The regulations affect certain tax-exempt organizations seeking to qualify as other than private foundations which acquire unrelated trades or businesses after June 30, 1975. The regulations provide such organizations with guidance necessary to determine whether they qualify as other than private foundations.

DATES: The regulations are effective for taxable years ending after June 30, 1975.

FOR FURTHER INFORMATION CONTACT:

Samuel E. Berger of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3544, not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

On October 10, 1980, proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 507 and 509 of the Internal Revenue Code of 1954 were published in the *Federal Register* (45 FR 67360). The amendments were proposed to conform the regulations to section 3 of the Act of August 9, 1975 (Pub. L. 94-81, 89 Stat. 418). No comments concerning the proposed regulations were received. No Public hearing was requested or held.

Explanation of Provisions

Prior to the amendment of section 509(a)(2)(B) of the Internal Revenue Code of 1954, an organization which normally received not more than one-third of its annual support from gross investment income could, if it satisfied the other support requirements of section 509(a)(2), qualify as other than a private foundation. Gross investment income includes, generally, interest, rents, dividends and royalties. The amendment to section 509(a)(2)(B) provides that income from an unrelated trade or business acquired by the organization after June 30, 1975 (less any tax imposed by section 511 on such income), is to be treated like gross investment income in determining whether an organization meets the test under section 509(a)(2)(B).

Drafting Information

The principal author of these proposed regulations is Samuel E. Berger of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations. The proposed amendments to 26 CFR Part 1, as set forth in the notice of proposed rulemaking in the *Federal Register* on October 10, 1980 (45 FR 67360), are hereby adopted as proposed.

This Treasury decision is issued under the authority contained in section 7805

of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805)

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 26, 1981.

John E. Chapoton,

Assistant Secretary of the Treasury.

§ 1.507-2 [Amended]

Paragraph 1. Paragraph (c)(1)(iv)(A) of § 1.507-2 is amended by removing the words "gross investment income" and inserting in lieu thereof "items described in section 509(a)(2)(B)".

Par 2. Section 1.509(a)-3 is amended as follows:

1. Paragraph (a)(1) is amended by adding the heading "General rule," and removing the words "one-third gross investment income" in the second sentence and inserting in lieu thereof "not-more-than-one-third support".

2. Paragraph (a)(2) is amended by adding the heading "One-third support test."

3. Paragraph (a)(4) is amended by adding the heading "Purposes," and removing the words "one-third gross investment income" and inserting in lieu thereof "not-more-than-one-third support".

4. Paragraph (c)(1)(i) is amended by removing the words "gross investment income" in the second sentence wherever it appears and inserting in lieu thereof "items described in section 509(a)(2)(B)".

5. Paragraph (c)(1)(iii)(a) is amended by removing the words "one-third gross investment income" in the first sentence and inserting in lieu thereof "not-more-than-one-third support".

6. Paragraph (c)(3) is amended by removing the words "one-third gross investment income" in the first sentence and inserting in lieu thereof "not-more-than-one-third support" and by removing the words "of gross investment income" in the fourth sentence and inserting in lieu thereof "described in section 509(a)(2)(B)".

7. Paragraph (c)(6) is amended by removing the words "gross investment income referred to" in the third sentence of example 1 and inserting in lieu thereof "items described" and by removing the words "gross investment income" in the fourth sentence of example 1 and inserting in lieu thereof "items described in section 509(a)(2)(B)".

8. Paragraph (d)(2) is amended by removing the words "one-third gross investment income" in the first sentence and inserting in lieu thereof "not-more-than-one-third support" and by removing the words "gross investment income" from the second sentence and

inserting in lieu thereof "items described in section 509(a)(2)(B)".

9. Paragraph (d)(3)(iii) is amended by removing the words "gross investment income" and inserting in lieu thereof "items described in section 509(a)(2)(B)".

10. Paragraph (e)(4)(i)(f) is amended by removing the words "gross investment income" from the second, third, fourth and second sentences of examples 1, 2, 3, and 4 respectively and inserting in lieu thereof "not-more-than-one-third support".

11. Paragraph (a)(3) is revised to read as follows:

§ 1.509(a)-3 Broadly, publicly supported organizations.

(a) * * *

(3) *Not-more-than-one-third support test—(i) In general.* An organization will meet the not-more-than-one-third support test under section 509(a)(2)(B) if it normally (within the meaning of paragraph (c), (d), or (e) of this section) receives not more than one-third of its support in each taxable year from the sum of its gross investment income (as defined in section 509(e)) and the excess (if any) of the amount of its unrelated business taxable income (as defined in section 512) derived from trades or businesses which were acquired by the organization after June 30, 1975, over the amount of tax imposed on such income by section 511. For purposes of this section the amount of support received from items described in section 509(a)(2)(B) will be referred to as the numerator of the not-more-than-one-third support fraction, and the total amount of support (as defined in section 509(d)) will be referred to as the denominator of the not-more-than-one-third support fraction. For purposes of section 509(a)(2), paragraph (m) of this section distinguishes gross receipts from gross investment income.

(ii) *Trade or business.* For purposes of section 509(a)(2)(B)(ii), a trade or business acquired after June 30, 1975, by an organization shall include, in addition to other trades or businesses:

(A) A trade or business acquired after such date from, or as a result of the liquidation of, an organization's subsidiary which is described in section 502 whether or not the subsidiary was held on June 30, 1975.

(B) A new trade or business commenced by an organization after such date.

(iii) *Allocation of deductions between businesses acquired before, and businesses acquired after, June 30, 1975.* Deductions which are allowable under section 512 but are not directly connected to a particular trade or

business, such as deductions referred to in paragraphs (10) and (12) of section 512(b), shall be allocated in the proportion that the unrelated trade or business taxable income derived from trades or businesses acquired after June 30, 1975, bears to the organization's total unrelated business taxable income, both amounts being determined without regard to such deductions.

(iv) *Allocation of tax.* The tax imposed by section 511 shall be allocated in the same proportion as in paragraph (a)(3)(iii) of this section.

§ 1.509(a)-4 [Amended]

Par. 3. Paragraph (k)(2) of § 1.509(a)-4 is amended by removing the words "gross investment income" in the third and sixth sentences of the example and inserting in lieu thereof "items described in section 509(a)(2)(B)".

§ 1.509(a)-5 [Amended]

Par. 4. Section 1.509(a)-5 is amended as follows:

1. Paragraph (a)(1) is amended by removing the words "gross investment income" in the first sentence and inserting in lieu thereof "not-more-than-one-third support".

2. Paragraph (b)(1) is amended by removing the words "one-third gross investment income" in the first sentence and inserting in lieu thereof "not-more-than-one-third support".

3. Paragraph (c) is amended by removing the words "one-third gross investment income" and inserting in lieu thereof "not-more-than-one-third support".

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26 CFR Part 6a

[T.D. 7780]

Mortgage Subsidy Bonds; Temporary Income Tax Regulations

Corrections

In FR Doc. 81-19338 appearing on page 34311 in the issue of Wednesday, July 1, 1981, make the following changes:

1. On page 34314, first column, third paragraph, first line, "§ 1.103A-" should read "§ 6a.103A-"; and in the second column, § 6a.103A-1 (a)(3), third line, "§ 1a.103A-3" should read "§ 6a.103A-3".

2. On page 34318, first column, § 6a.103A-1 (c)(2), last line, "§ 1.103A-1" should read "§ 6a.103A-1"; third column, § 6a.103A-1 (d)(3), second line, "§ 1.103A-1" should read "§ 6a.103A-1".

3. On page 34319, first column, § 6a.103A-1 (e)(2)(iii), second line should read as follows: "(as defined in § 6a.103A-2(b)(10))."

4. On page 34325, first column, § 6a.103A-3 (f), twelfth line, "basis * * *" should read "basic * * *".

BILLING CODE 1505-01-M

26 CFR Part 31

[T.D. 7783]

Employment Taxes; Interest-Free Adjustment With Respect to Erroneous Filing of FICA and RRTA Returns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations permitting an interest-free adjustment in certain circumstances where an employer erroneously either files a Federal Insurance Contributions Act (FICA) tax return instead of a Railroad Retirement Tax Act (RRTA) return, or files a RRTA tax return instead of a FICA tax return. The amendment affects employers required to deduct and withhold either FICA tax or RRTA tax.

EFFECTIVE DATE: The regulations are effective on July 23, 1981.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3294).

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1980, the Federal Register published a proposed amendment to the Employment Tax Regulations (26 CFR Part 31) under section 6205 of the Internal Revenue Code of 1954 (45 FR 63879). The amendment was proposed to clarify the regulations under section 6205 of the Code. No public hearing was requested or held. No public comment concerning this amendment was received. Accordingly, the amendment is adopted by this Treasury decision as proposed.

Explanation of Provisions

The Employment Tax Regulations presently provide that if an employer has filed a return, and if no employment tax, or less than the correct amount of tax upon employees' wages or compensation under either the Federal Insurance Contributions Act or the Railroad Retirement Tax Act has been

reported on the return and paid, the employer may, in certain circumstances, make an interest-free adjustment of such underpayment. The amendment adds a new provision to make clear that an employer who has erroneously filed Form 941 and paid FICA tax on an employee's wages rather than filing Form CT-1 and paying RRTA tax, or vice versa, under certain circumstances, may make such an interest-free adjustment if he timely pays and reports the adjustment in accordance with § 31.6205-1(b)(2)(iii).

Evaluation of the effectiveness of these regulations will be based on comments received from offices within the Treasury and the Internal Revenue Service, other governmental agencies, and the public. These regulations will impose no new reporting or recordkeeping requirements.

Drafting Information

The principal author of these regulations is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations. Accordingly, the regulations proposed to be prescribed as final Employment Tax Regulations (26 CFR Part 31) published as a notice of proposed rulemaking in the Federal Register for September 26, 1980 (45 FR 63879), are hereby adopted as proposed.

This Treasury decision is issued under the authority contained in sections 6205 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 768, 917; 26 U.S.C. 6205, 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: July 1, 1981.

John E. Chapoton,

Assistant Secretary of the Treasury.

Paragraph (b)(2) of § 31.6205-1 is amended by adding a new subdivision (iii) immediately after subdivision (ii) to read as follows:

§ 31.6205-1 Adjustments of underpayments.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act.*

(2) *Underpayment ascertained after return is filed.* * * * (iii) If a return relating to tax under the Federal Insurance Contributions Act is filed

although a return relating to tax under the Railroad Retirement Tax Act was required to be filed, or vice versa, and if the amount reported on the return filed and paid to the district director was less than the correct amount which should have been reported on the return required to be filed, the employer shall adjust the underpayment by reporting the additional amount due on an original return for the correct tax for the return period in which the payment of wages or compensation was made, accompanied by an explanation of the adjustment being reported. The reporting of such additional amount on an original return constitutes an adjustment within the meaning of this section only when the original return is filed on or before the last day on which the return for the correct tax is required to be filed for the return period in which the error is ascertained. The amount of each underpayment adjusted in accordance with this subdivision shall be paid to the district director, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subdivision, but the amount thereof is not paid when due, interest thereafter accrues (see section 6601).

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-004M]

Occupational Exposure to Lead, New Trigger Levels for Medical Removal Protection; Denial of Petitions for Stays; Notice of Variance Applications; Interim Orders

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Denial of petitions and notice of variance applications and interim orders.

SUMMARY: OSHA hereby denies petitions by the primary and secondary lead smelting industries for one-year, industry-wide stays of the new trigger levels for medical removal protection (MRP) under the lead standard (29 CFR 1910.1025(k)). The new triggers thus will take effect for lead smelters on July 21, 1981. OSHA also hereby denies the lead battery manufacturers' petition for reconsideration of OSHA's earlier denial of its request for an industry-wide stay. These actions are taken

because data submitted by industry were insufficient to justify granting industry-wide stays.

The data did, however, show serious and potentially serious problems of compliance with the new triggers in certain smelting and battery manufacturing plants. As a result, conditioned upon OSHA receiving by August 3, 1981, for each such plant a variance application, certification of notice to affected employees, and written acceptance of the requirements of the Order, the Agency is granting interim orders under section 6(b)(6)(A) of the OSHA Act to those lead smelting and battery manufacturing plants that have supplied data sufficient to establish the need for relief. The interim orders relieve those facilities from having to comply with the 60/40 removal return triggers, but obligate them to comply with the 70/50 triggers, all other provisions of the lead standard, and certain other requirements set out in the Interim Order. OSHA also invites other eligible lead smelting and battery manufacturing plants, including those that have submitted data but have not been granted an Interim Order via this notice, if they choose, to apply individually for temporary variances. Finally, OSHA requests every applicant to submit particular data needed by the Agency to determine whether to issue a temporary variance, and invites public comment on the variance requests.

DATES: The effective date of the new trigger levels (29 CFR 1910.1025(k)) originally published on November 14, 1978 at 43 FR 53007) for primary and secondary smelters is July 21, 1981.

For all companies conditionally granted interim orders, variance applications, written acceptances and certifications must be received by August 3, 1981. All data requested herein by OSHA in support of each application for a temporary variance must be received by September 1, 1981. The last date for interested persons to submit comments on the variance applications is September 30, 1981. The last date for affected employers and employees to request a hearing on the applications is September 30, 1981.

ADDRESSES: Send applications, submissions, comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3662, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Concannon, Director, Office of Variance Determination, at the above address, telephone: (202) 523-7144.

SUPPLEMENTARY INFORMATION:

A. Background

On March 3, 1981, OSHA published a notice in the *Federal Register* (46 FR 14897) delaying the effective date of the new removal and return trigger levels for medical removal protection (MRP) from March 1, 1981, as specified in the standard on occupational exposure to lead (29 CFR 1910.1025(k), November 14, 1978, 43 FR 53007) to April 1, 1981. That notice summarized the provisions of MRP and explained the need in the standard for progressively phased-in blood-lead levels triggering employee removal from, and subsequent return to, lead-exposed jobs. The notice also explained that the delay was granted as an interim measure in response to applications from certain employers and industry groups representing several lead industries for a one-year delay in the effective date of the new trigger levels. In the notice, interested persons were invited to submit information and views on all issues involved in the applications.

In support of their request for a stay of the 60 µg/100g removal and 40 µg/100g return triggers, the lead industries allege that implementation of the new trigger levels is infeasible. Essentially, industry makes a four-pronged feasibility argument: (1) The 60/40 triggers will require for the first time the removal of many "supervisory" and "highly skilled" employees, whose blood-lead levels allegedly tend to fall in the 60-70 µg/100g range; (2) their removal will be prolonged beyond OSHA's original expectations in order for their blood leads to drop to the 40 µg/100g return level; (3) since these employees are highly paid, crucially positioned, and extremely difficult to replace, putting them on MRP not only will be costly but also can result in reduced production and a less safe and healthful workplace; and (4) the 60/40 triggers will require the removal of many production workers as well, thus adding to the cost of MRP. In combination, these factors assertedly will make implementation of the new triggers infeasible.

Since industry's allegations raised serious questions concerning the feasibility of the new trigger levels and what relief, if any, would be appropriate, the March 1, 1981, effective date of the new triggers was delayed for all lead industries until April 1, 1981, to enable the Agency to obtain and consider additional evidence.

To facilitate this process, OSHA in a letter dated March 5, 1981, specifically requested certain information from the lead industries. That request