

This action responds to a petition filed on behalf of the General Electric Co.

DATES: Effective May 20, 1985; objections by June 19, 1985.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of September 26, 1984 (49 FR 37851), FDA announced that a petition (FAP 4B3788) had been filed on behalf of the General Electric Co., c/o 1150 17th St. NW., Suite 1000, Washington, DC 20036, proposing that some limitations in § 177.1660 *Poly(tetramethylene terephthalate)* (21 CFR 177.1660) be removed. The petition would remove the restrictions that limit poly(tetramethylene terephthalate) to use in contact with nonalcoholic foods, and to exposure temperature and time of not more than 180 °F and 24 hours if the food-contact article is over 0.010 inch thick.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for Part 177 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1660 is amended by removing the word "nonalcoholic" from the introductory paragraph, by adding new paragraph (c)(2)(iv) as set forth below, and by removing paragraph (d):

§ 177.1660 Poly(tetramethylene terephthalate).

(c) * * *

(2) * * *

(iv) Not to exceed 0.02 milligram per square inch of food contact surface when extracted for 2 hours at 65.6 °C (150 °F) with 50 percent ethanol.

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 19, 1985, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective May 20, 1985.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: May 13, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-12030 Filed 5-17-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8024]

Effective Dates of the Economic Performance Requirement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the effective dates of the economic performance requirement. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect all taxpayers that use an accrual method of accounting.

DATES: These regulations are effective May 20, 1985. The regulations generally apply to amounts that would be allowable as a deduction after July 18, 1984, under the law in effect before the enactment of section 461(h) of the Internal Revenue Code. Alternatively, a taxpayer may elect to treat the application of section 461(h) as a change in accounting method to which section 481(a) applies. A taxpayer who makes this election may elect to apply the new method of accounting as of either July 19, 1984, or the first day of the taxable year that includes July 19, 1984.

FOR FURTHER INFORMATION CONTACT: C. Scott McLeod of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T), 202-566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) and the Table of OMB control numbers (26 CFR Part 602) to provide rules relating to the effective dates of section 461(h) of the Internal Revenue Code of 1954. Section 461(h) was added to the Code by section 91(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 598). The effective dates of section 461(h) are

contained in section 91(g) of the Tax Reform Act of 1984.

These temporary regulations are presented in the form of questions and answers. The questions and answers are not intended to address comprehensively the issues raised by section 461(h) of the Code or section 91(g) of the Tax Reform Act of 1984. Taxpayers may rely for guidance on these questions and answers, which the Internal Revenue Service will follow in resolving issues under section 461(h) of the Code and section 91(g) of the Tax Reform Act of 1984. No inference, however, should be drawn regarding questions not expressly raised and answered.

It is expected that further temporary regulations will be published in the near future containing additional guidance with respect to the economic performance requirement of section 461(h). The temporary regulations contained in this document will remain in effect until superseded by temporary or final regulations published in the Federal Register.

Explanation of Provisions

Section 461(h) generally provides that the amount of an item is not incurred under an accrual method of accounting until economic performance occurs. Under an exception for recurring items, the amount of an item may be incurred in the taxable year before economic performance occurs if (1) the all events test, without regard to economic performance, is satisfied with respect to the item during the taxable year; (2) economic performance occurs within a reasonable period (but in no event more than 8½ months) after the close of the taxable year; (3) the item is recurring in nature and the taxpayer consistently treats items of that type as incurred in the taxable year in which the all events test is met; and (4) either (a) the item is not material or (b) the accrual of the item in the taxable year in which the all events test is met results in a better matching of the item with the income to which it relates than would result from accruing the item in the year in which economic performance occurs.

Section 91(g)(1) of the Tax Reform Act of 1984 provides that, except as otherwise provided, section 461(h) applies to amounts that would be allowable as a deduction after July 18, 1984, under the law in effect before the enactment of section 461(h) ("cut-off method"). Alternatively, a taxpayer may elect to treat the application of section 461(h) as a change in accounting method to which section 481(a) applies. A taxpayer who makes this election may elect to apply the new method of accounting as of either July 19, 1984 ("part-year change in method"), or the first day of the taxable year that

includes July 19, 1984 ("full-year change in method").

The regulations contain guidance relating to the general effective date, the effect of electing alternative effective dates, the manner of making the elections, the scope of the elections, and the section 481(a) adjustment required by the elections. In general, the election to use a part-year change in method or a full-year change in method is made by attaching a statement to the taxpayer's Federal income tax return for the taxable year that includes July 19, 1984.

In the case of a part-year change in method, the regulations provide that a taxpayer may elect the change separately for each separate trade or business (as defined in § 1.446-1(d)), and for each trade or business may elect the change with respect to one or more types of items. In the case of a full-year change in method, the regulations provide that a taxpayer may elect the change separately for each separate trade or business (as defined in § 1.446-1(d)), but must elect the change for all items incurred in a trade or business.

The election to use part-year change in method or a full-year change in method is treated as a change in method of accounting initiated by the taxpayer and made with the consent of the Commissioner. In the case of a part-year change in method, the section 481(a) adjustment for each type of item subject to the election is calculated as of July 19, 1984, and is ordinarily taken into account ratably for the taxable year that includes July 19, 1984, and the two immediately succeeding taxable years. In the case of a full-year change in method, the section 481(a) adjustment is calculated as of the first day of the taxable year that includes July 19, 1984, and is ordinarily taken into account ratably for the taxable year that includes July 19, 1984, and the two immediately succeeding taxable years. In certain circumstances, however, the section 481(a) adjustment is taken into account over less than a three-year period or is taken into account non-ratably.

The regulations provide guidance relating to the adoption of the recurring item exception as a method of accounting and the application of the recurring item exception for the taxable year that includes July 19, 1984. In addition, the regulations provide rules and examples that explain how items incurred during the taxable year that includes July 19, 1984, are to be taken into account in computing taxable income under the cut-off method and the part-year change in method. Finally, the regulations provide a special effective date for the accrual of interest expense. **Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act**

The Commissioner of Internal Revenue has determined that this

temporary rule is not a major rule as defined in Executive Order 12291.

Accordingly, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required for temporary regulations. Accordingly, the temporary regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act.

Drafting Information

The principal author of these regulations is C. Scott McLeod 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 on matters of both substance and style.

List of Subjects

26 CFR 1.441-1 through 1.483-2

Income taxes, Accounting, Deferred compensation plans.

26 CFR Part 602

Reporting and recordkeeping requirements, OMB control numbers under the Paperwork Reduction Act.

Amendments to the Regulations

The amendments to 26 CFR Part 1 and Part 602 are as follows:

PART 1—[AMENDED]

Paragraph 1. These regulations are issued under the authority contained in 26 U.S.C. 7805 and 26 U.S.C. 461(h). The authority citation for Part 1 is amended by adding, "§ 1.461-3T also issued under 26 U.S.C. 461(h)."

Par. 2. The following new § 1.461-3T is added immediately after § 1.461-2 to read as follows:

§ 1.461-3T Questions and answers relating to the effective dates of section 461(h) (Temporary)

Q-1. What is the effective date of section 461(h)?

A-1. Except as otherwise provided in this section, section 461(h) applies to amounts that would be allowable as deductions after July 18, 1984, under the law in effect before the enactment of section 461(h) ("cut-off method"). See A-2 of this section for alternative effective dates that may be elected by a taxpayer and A-12 of this section for the effective date applicable to the accrual of interest expense. The following example

illustrates the effective date provided in the first sentence of this A-1.

Example—(1) Facts. X corporation, a calendar year, accrual method taxpayer, has been a self-insurer with respect to workers' compensation claims since 1977. Before July 19, 1984, X accrues workers' compensation liabilities for the taxable year in which the award is determined by the applicable state commission. In addition, workers' compensation liabilities are not inventoriable costs of X under § 1.471-3 or § 1.471-11(c)(2). For the taxable year ending December 31, 1983, X accrues a liability to employee A in the amount of \$12,000 based on a determination by the state commission that occurred during 1983. X pays A \$6,000 on both March 15, 1984, and November 15, 1984, in complete satisfaction of the workers' compensation liability. On May 15, 1984, the state commission determines that X is liable to pay B \$8,000 as workers' compensation, and on December 15, 1984, the state commission determines that X is liable to pay C \$4,000 as workers' compensation. The liabilities to B and C remain unpaid as of December 31, 1984. The exception provided in section 461(h)(3)(A) for certain recurring items does not apply to workers' compensation liabilities.

(2) **Cut-off method.** If X does not elect the alternative effective dates provided in A-2 of this section, the cut-off method applies to the workers' compensation liabilities. Under the cut-off method, the \$12,000 liability to A is deductible under the law in effect before the enactment of section 461(h) for the taxable year ending December 31, 1983. The \$8,000 liability to B is deductible under the law in effect before the enactment of section 461(h) for the taxable year ending December 31, 1984. The \$4,000 liability to C is subject to section 461(h) and is not deductible until paid. Because the full amount of the liabilities to A and B is deductible under the law in effect before the enactment of section 461(h), no deduction is permitted when those liabilities are paid.

Q-2. What elections are available to a taxpayer with respect to the effective dates of section 461(h)?

A-2. A taxpayer may elect to treat the changes in the timing of deductions required by section 461(h) as a change in method of accounting initiated by the taxpayer and deemed made with the consent of the Commissioner. A taxpayer making this election must further elect for the change in method of accounting to be applicable either to—

(a) Taxable years ending after July 18, 1984, but, in the case of a taxable year that includes July 19, 1984 ("taxable year of change"), only to the portion of such taxable year that occurs after July 18, 1984 ("part-year change in method"); or

(b) Taxable years ending after July 18, 1984 ("full-year change in method").

If an election under this A-2 is not properly made in accordance with this section, the effective date provided in A-1 of this section (the cut-off method) shall apply.

Q-3. What items are subject to the elections described in A-2 of this section?

A-3. (a) With respect to any separate trade or business of a taxpayer, a part-year change in method may be elected for one or more types of items incurred in such separate trade or business. If the part-year change in method is elected with respect to a type of item in a separate trade or business, the election applies to the entire amount of each item of that type incurred in that trade or business. If the part-year change in method is elected with respect to one or more types of items in a separate trade or business, the other types of items in such trade or business with respect to which the part-year change in method is not elected are subject to the cut-off method. A taxpayer may elect a part-year change in method with respect to a type of item incurred in one trade or business and not with respect to the same type of item incurred in a separate trade or business.

(b) With respect to any separate trade or business of a taxpayer, a full-year change in method may be elected for all items incurred in such separate trade or business. If the full-year change in method is elected for a trade or business, the election applies to the entire amount of all items of all types incurred in the trade or business. Thus, an election to use a full-year change in method for a trade or business precludes the use of the part-year change in method or the cut-off method with respect to any item incurred in the trade or business. A taxpayer may, however, elect a full-year change in method for one trade or business and not for a separate trade or business.

(c) For purposes of this section, a taxpayer is engaged in separate trades or businesses (whether or not different methods of accounting are used for such trades or businesses) if, and only if, the trades or businesses are separate and distinct within the meaning of § 1.446-1(d).

(d) For purposes of this section, items are to be classified by type in a manner that results in classifications that are no less inclusive than the classifications of production costs provided in the full-absorption regulations of § 1.471-11 (b) and (c), whether or not the taxpayer is required to maintain inventories.

(e) The following example illustrates the provisions of this A-3:

Example—(1) Facts. Y corporation, a calendar year, accrual method taxpayer, is engaged in a personal service business and a manufacturing business that are separate and distinct trades or businesses within the meaning of § 1.446-1(d). During the taxable year ending December 31, 1984, the personal service business of Y incurs advertising expenses and insurance costs, and the manufacturing business of Y incurs advertising expenses, insurance costs and research and experimental expenses.

(2) **Part-year change in method.** (i) Y may elect the part-year change in method with

respect to a type of item incurred in either trade or business without electing the part-year change in method with respect to other types of items incurred in the same trade or business. Thus, Y may elect the part-year change in method with respect to the advertising expenses incurred in the personal service business without electing the part-year change in method with respect to the insurance costs incurred in the personal service business.

(ii) Y may also elect the part-year change in method with respect to a type of item incurred in either trade or business without electing the part-year change in method with respect to items of the same type incurred in the other trade or business. Thus, Y may elect the part-year change in method with respect to the advertising expenses or the insurance costs incurred in the personal service business without electing the part-year change in method with respect to the advertising expenses or the insurance costs incurred in the manufacturing business.

(3) **Full-year change in method.** (i) If Y elects the full-year change in method for either trade or business, the election applies to all items incurred in that trade or business. Thus, if Y elects the full-year change in method for the manufacturing business, the election applies to the advertising expenses, insurance costs and research and experimental expenses.

(ii) Y may elect the full-year change in method for either trade or business without electing the full-year change in method for the other trade or business. Thus, Y may elect the full-year change in method for the manufacturing business without electing the full-year change in method for the personal service business.

Q-4. What is the effect of electing a part-year change in method or a full-year change in method?

A-4. (a) An election to use a part-year change in method or a full-year change in method shall be treated for purposes of section 446(e) as a change in method of accounting initiated by the taxpayer and deemed made with the consent of the Commissioner.

(b) In the case of a part-year change in method, the change in method of accounting occurs on July 19, 1984, and a section 481(a) adjustment for each type of item is determined as of that date (i.e., for purposes of computing the section 481(a) adjustment, the first day of the taxable year of change is July 19, 1984, and the last day of the preceding taxable year is July 18, 1984). Although July 18, 1984, is treated as the last day of a taxable year for purposes of computing the section 481(a) adjustment, an election to use a part-year change in method does not terminate the taxable year or change for any other purpose.

(c) In the case of a full-year change in method, the change in method of accounting occurs on the first day of the taxable year that includes July 19, 1984 ("taxable year of change"), and the section 481(a) adjustment is determined as of that date.

(d) The following example illustrates the provisions of this A-4:

Example—(1) Facts. Assume the same facts as provided in the example contained in A-1 of this section.

(2) **Part-year change in method.** (i) If X elects to use a part-year change in method with respect to employee benefits (a type of item that includes workers' compensation liabilities under § 1.471-11(c)(2)(iii)(c)), the \$12,000 liability to A is deductible under the law in effect before the enactment of section 461(h) for the taxable year ending December 31, 1983. In addition, the \$8,000 liability to B is deductible under the law in effect before the enactment of section 461(h) for the taxable year ending December 31, 1984. The \$6,000 paid to A on November 15, 1984, and the \$8,000 paid to B in a later taxable year are deductible under section 461(h) for the taxable year in which paid. The \$4,000 liability to C is not deductible for the taxable year ending December 31, 1984, but, instead, is deductible under section 461(h) for the taxable year in which paid.

(ii) A section 481(a) adjustment of \$14,000 (determined as of July 19, 1984) is required and ordinarily is to be taken into account ratably for X's 1984, 1985 and 1986 taxable years (see A-9 of this section).

(3) **Full-year change in method.** (i) If X elects to use a full-year change in method, the \$12,000 liability to A is deductible under the law in effect before the enactment of section 461(h) for the taxable year ending December 31, 1983. In addition, the \$8,000 amounts paid to A on March 15, 1984, and November 15, 1984, are deductible under section 461(h) for the taxable year ending December 31, 1984. The liabilities to B and C are not deductible for the taxable year ending December 31, 1984, but, instead, are deductible under section 461(h) for the taxable year in which paid.

(ii) A section 481(a) adjustment of \$12,000 (determined as of January 1, 1984, the first day of the taxable year of change) is required and ordinarily is to be taken into account ratably for X's 1984, 1985 and 1986 taxable years (see A-9 of this section).

Q-5. How does a taxpayer elect to use a part-year change in method or a full-year change in method?

A-5. (a) The election to use a part-year change in method or a full-year change in method is irrevocable and must be made by attaching a statement (hereafter "Election Statement") to the taxpayer's timely filed Federal income tax return for the taxable year that includes July 19, 1984 ("taxable year of change").

If the taxpayer has filed a return for the taxable year of change on or before June 19, 1985, the taxpayer may make the election by attaching the Election Statement to a return, as amended, or an amended return for such year provided that the return or amended return is filed on or before August 19, 1985.

(b) The Election Statement shall include the following information—

(1) The legend "Election under § 1.461-3T" typed or legibly printed at the top of the first page;

(2) The taxpayer's name, address and

taxpayer identification number;

(3) An identification of the election as either a part-year or full-year change in method;

(4) The dates on which the taxable year of change begins and ends;

(5) Whether the electing taxpayer is subject to any of the conditions listed in section 4.01 of Rev. Proc. 84-74, 1984-44 I.R.B. 15, at the time the Election Statement is filed, and, if so, a description of each such condition;

(6) Whether the electing taxpayer has an application for change in accounting method pending with the Internal Revenue Service at the time the Election Statement is filed, and, if so, the type of change requested in each application;

(7) Whether the electing taxpayer has a request for a ruling or technical advice pertaining to any accounting method pending with the Internal Revenue Service at the time the Election Statement is filed, and, if so, a description of the issue involved in each request;

(8) If the electing taxpayer is a member of an affiliated group filing a consolidated return for the taxable year of change, the information required in paragraph (b) (5), (6), and (7) of this A-5 for each member of the group that is not an electing taxpayer (if more than one member of the group is an electing taxpayer, this information may be provided in a separate statement that is attached to the consolidated return and incorporated by reference in each Election Statement);

(9) For each type of item with respect to which an election of a part-year change in method is to apply—

(i) A description of the type of item;

(ii) Whether the method of accounting for the type of item has been used for two taxable years or less, and, if so, the number of years;

(iii) Whether the type of item includes inventoriable costs within the meaning of § 1.471-3 or § 1.471-11 or costs that must be capitalized;

(iv) The amount of the section 481(a) adjustment for the type of item; and

(v) The amount of the section 481(a) adjustment for the type of item that is attributable to the taxable year immediately preceding the taxable year of change (see paragraph (c) of A-9 of this section); and

(10) If the election is a full-year change in method—

(i) Whether the method of accounting being changed has been used for two taxable years or less, and, if so, the number of years;

(ii) Whether any of the types of items that are subject to the election include inventoriable costs within the meaning of § 1.471-3 or § 1.471-11 or costs that must be capitalized, and, if so, a description of each such type of item;

(iii) The amount of the section 481(a) adjustment required by the change in method of accounting; and

(iv) The amount of the section 481(a) adjustment that is attributable to the taxable year immediately preceding the taxable year of change (see paragraph (c) of A-9 of this section).

(c) If a taxpayer elects to use a part-year change in method or a full-year change in method with respect to a separate trade or business (as defined in paragraph (c) of A-3 of the section), but does not make the same election with respect to all trades or business, separate Election Statement containing the information specified in paragraph (b) of this A-5 is required for each separate trade or business with respect to which an election is made. In addition, the separate Election Statement shall describe the nature of the trade or business.

Q-6. If a taxpayer elects to use either a part-year change in method or a full-year change in method, how does the recurring item exception apply?

A-6. If, with respect to a type of item, the taxpayer elects to use a part-year change in method or a full-year change in method and also adopts the recurring item exception of section 461(h)(3) as a method of accounting for the taxable year of change (see A-7 of the section), the following rules apply:

(a) An amount that was taken into account under the taxpayer's method of accounting for a taxable year preceding the taxable year of change and that would have been taken into account under the recurring item exception for the same taxable year preceding the taxable year of change shall not be taken into account in computing the taxable income of the taxpayer under the taxpayer's new method of accounting. An amount would have been taken into account under the recurring item exception for a taxable year preceding the taxable year of change if all elements of the recurring item exception were satisfied for any taxable year preceding the taxable year of change.

(b) If, under paragraph (a) of this A-6, an amount is not permitted to be taken into account under the taxpayer's new method of accounting, the amount shall not be taken into account in computing the amount of the section 481(a) adjustment.

(c) For purposes of the A-6, in the case of a part-year change in method, the recurring item exception and the rules of paragraph (a) and (b) of this A-6 shall be applied as if the portion of the taxable year of change that precedes July 19, 1984, were a separate taxable year preceding the taxable year of change, except as provided below with respect to the determination of whether

an item is material and whether a more proper match with income will result. Thus, in the case of a part-year change in method, an amount would have been taken into account under the recurring item exception for a taxable year preceding the taxable year of change if all elements of the recurring item exception were satisfied for any taxable year preceding the taxable year of change or for the portion of the taxable year of change that precedes July 19, 1984. In determining whether economic performance occurs within the shorter of (1) a reasonable period after the close of the portion of the taxable year of change that precedes July 19, 1984, or (2) 8½ months after the close of such portion of the taxable year of change, the last day of the taxable year is to be considered July 18, 1984, and the 8½ month period does not extend beyond March 31, 1985. In determining whether an item is a material item, and in determining whether the accrual of an item in the portion of the taxable year of change that precedes July 19, 1984, results in a more proper match against income than accruing such item in the taxable year in which economic performance occurs, all items of income, gain, loss, deduction, or credit for the entire taxable year that includes July 18, 1984, shall be considered.

(d) The following examples illustrate the principles of this A-6:

Example (1)—(i) Facts. V corporation, a calendar year, accrual method taxpayer, properly elects to use a full-year change in method and adopts the recurring item exception as a method of accounting for items of type 1. For the taxable year ending December 31, 1983, V incurs A, an item of type 1, under the law in effect before the enactment of section 461(h). Economic performance with respect to item A occurs on August 1, 1984. In addition, all the elements of the recurring item exception are satisfied with respect to item A for the taxable year ending December 31, 1983.

(ii) **Full-year change in method.** Under the law in effect before the enactment of section 461(h), V takes item A into account for the taxable year ending December 31, 1983. Even though economic performance occurs with respect to item A in the taxable year ending December 31, 1984, the item is not taken into account a second time because, under the recurring item exception, the item would have been taken into account for the taxable year ending December 31, 1983. Since there is no duplication or omission with respect to item A by reason of the change in method of accounting, V will not take A into account in computing the section 481(a) adjustment.

Example (2)—(i) Facts. W corporation, a calendar year, accrual method taxpayer, properly elects to use a part-year change in method for items of type 2 and adopts the recurring item exception as a method of accounting for items of type 2. The books and records of W indicate that, under the law in

effect before the enactment of section 461(h), B, an item of type 2, was incurred during the taxable year ending December 31, 1984, and before July 19, 1984. Economic performance with respect to item B occurs on August 1, 1984. Income with respect to item B is properly accounted for after July 18, 1984, but during the taxable year ending December 31, 1984. In addition, all the other elements of the recurring item exception are satisfied with respect to item B as of July 18, 1984.

(ii) **Part-year change in method.** Under the law in effect before the enactment of section 461(h), W takes item B into account for the taxable year ending December 31, 1984. Even though economic performance occurs with respect to item B after July 18, 1984, and even though income with respect to item B is accounted for after July 18, 1984, the item is not taken into account a second time because, under the recurring item exception, the item would have been taken into account for the portion of the taxable year that precedes July 19, 1984. Since there is no duplication or omission with respect to item B by reason of the change in method of accounting, W will not take item B into account in computing the section 481(a) adjustment. The result provided in this example would be the same even though economic performance with respect to item B occurred on February 1, 1985, provided that such date is within the reasonable period specified in section 461(h)(3)(A)(ii).

Q-7. How does a taxpayer adopt the recurring item exception of section 461(h)(3) as a method of accounting?

A-7. (a) The recurring item exception of section 461(h)(3) is a method of accounting that must be consistently applied with respect to a type of item from one taxable year to the next in order to clearly reflect income. Except as otherwise provided in paragraph (b) of this A-7 (relating to the adoption of the recurring item exception for the taxable year that includes July 19, 1984), the rules of section 446(e) and § 1.446-1(e) apply to changes to or from the recurring item exception as a method of accounting for a type of item.

(b) For the taxable year that includes July 19, 1984, a taxpayer need not obtain the Commissioner's consent to adopt the recurring item exception as a method of accounting for a type of item, but must instead—

(1) Account for the type of item on its return for such taxable year by using the recurring item exception as a method of accounting (see paragraph (a) of A-6 of this section for the manner in which the recurring item exception applies to those types of items with respect to which the taxpayer elects to use a part-year or full-year change in method); and

(2) Identify on a statement attached to the return for such taxable year each trade or business with respect to which the recurring item exception is adopted and, unless the recurring item exception is adopted with respect to all types of

items (as defined in paragraph (d) of A-3 of this section) incurred in the trade or business (in which case the attached statement must so indicate), the types of items with respect to which the recurring item exception is adopted.

Q-8. If a taxpayer elects to use either a part-year change in method or a full-year change in method, how is the section 481(a) adjustment calculated?

A-8. (a) If a taxpayer elects to use a part-year change in method, the section 481(a) adjustment is calculated as follows:

(1) If the taxpayer elects to use a part-year change in method for more than one trade or business, or with respect to more than one type of item, a separate section 481(a) adjustment is required for each type of item incurred in each separate trade or business.

(2) For each type of item, the section 481(a) adjustment is determined as of July 19, 1984, and may be computed in the following manner. First, a hypothetical section 481(a) adjustment is calculated as if section 461(h) became effective as of the first day of the taxable year that follows the taxable year of change (as defined in paragraph (a) of A-2 of this section). This amount is reduced by the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect before the enactment of section 461(h) and increased by the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect after the enactment of section 461(h). For an example of the computation of the section 481(a) adjustment, see the example contained in paragraph (b) of A-10 of this section.

(b) If a taxpayer elects to use a full-year change in method for more than one separate trade or business, a separate section 481(a) adjustment must be determined for each trade or business as of the first day of the taxable year of change (as defined in paragraph (c) of A-4 of this section).

(c) A taxpayer must maintain adequate books and records so that the Service may, upon examination, verify the calculation of the section 481(a) adjustment.

Q-9. If a taxpayer elects to use either a part-year change in method or a full-year change in method, how are the separate section 481(a) adjustments taken into account?

A-9. (a) Except as otherwise provided in paragraph (b) of this A-9, a taxpayer who elects either a part-year change in method or a full-year change in method shall take into account one-third of any separate section 481(a)

adjustment (determined in accordance with A-8 of this section) in the taxable year of change and one-third of such adjustment in each of the two immediately succeeding taxable years.

(b) Any separate section 481(a) adjustment shall be taken into account in fewer than three taxable years in the following cases:

(1) If 75% or more of the section 481(a) adjustment is attributable to the taxable year immediately preceding the taxable year of change, the amount of the adjustment attributable to the taxable year immediately preceding the taxable year of change shall be taken into account in the taxable year of change and, except as otherwise provided in paragraph (b)(2) of this A-9, one-half of the remaining section 481(a) adjustment shall be taken into account in each of the two immediately succeeding taxable years.

(2) If the taxpayer has employed the same method of accounting with respect to the type of item or for the trade or business for only the two taxable years immediately preceding the taxable year of change, one-half of the section 481(a) adjustment, or, if greater, the amount determined under paragraph (b)(1) of this A-9, is to be taken into account in the taxable year of change and the remaining section 481(a) adjustment is to be taken into account in the immediately succeeding taxable year.

(3) The taxpayer shall take into account, in the taxable year in which the taxpayer dies or ceases to engage in the trade or business to which the section 481(a) adjustment relates, the balance of the adjustment not previously taken into account. For purposes of the preceding sentence, a taxpayer is not considered to have ceased to engage in a trade or business if the cessation is the result of a transaction to which section 381 of the Code applies, but in that case the acquiring corporation shall continue to be subject to the provisions of this A-9.

(4) If the taxpayer is a cooperative within the meaning of section 1361(a) of the Code, the total amount of the section 481(a) adjustment is to be taken into account in the taxable year of change.

(c) For purposes of this A-9, the taxable year immediately preceding the taxable year of change is the last taxable year of the taxpayer ending before July 19, 1984. The amount of the section 481(a) adjustment attributable to the taxable year immediately preceding the taxable year of change is the excess of (1) the amount of the section 481(a) adjustment (determined under A-8 of this section), over (2) the amount of the adjustment that would have been required under section 481(a) if the same change in method of accounting had

been made in the taxable year immediately preceding the taxable year of change. If a taxpayer's books and records do not contain sufficient information to compute the section 481(a) adjustment attributable to the taxable year immediately preceding the taxable year of change, the taxpayer must reasonably estimate the amount of such adjustment and must include the following statement as part of the Election Statement:

(1) The books and records of (name of taxpayer) do not contain sufficient information to permit a computation of the section 481(a) adjustment attributable to the taxable year immediately preceding the taxable year of change.

(2) Based on the information contained in the books and records, (indicate "75% or more" or "less than 75%" as the case may be) of the section 481(a) adjustment is attributable to the taxable year immediately preceding the taxable year of change.

For the penalties of perjury applicable to this statement, see section 6065 and the declaration of the taxpayer included on the return.

Q-10. If a taxpayer elects to use a part-year change in method with respect to a type of item, how is the amount of an item of that type taken into account in computing taxable income for the taxable year of change?

A-10. (a) If a taxpayer elects to use a part-year change in method with respect to a type of item, the amount of an item of that type is taken into account in computing taxable income for the taxable year of change in accordance with the following rules:

(1) If the taxpayer can determine that, under the law in effect before the enactment of section 461(h), the amount was incurred during the taxable year of change and before July 19, 1984, the amount is taken into account for the taxable year of change.

(2) If, under the law in effect before the enactment of section 461(h), the amount was incurred during the taxable year of change, but the taxpayer cannot determine whether the amount was so incurred before July 19, 1984, or after July 18, 1984, a portion of the amount is taken into account under this paragraph (a)(2) for the taxable year of change. The portion taken into account under this paragraph (a)(2) is the entire amount of the item multiplied by a fraction, the numerator of which is the number of days in the taxable year of change that precede July 19, 1984, and the denominator of which is the total number of days in such year (e.g., in the case of a calendar taxable year, the fraction is $\frac{180}{365}$ or .55 if rounded).

(3) If the taxpayer can determine that, under the law in effect after the

enactment of section 461(h), the amount was incurred during the taxable year of change and after July 18, 1984, the amount is taken into account for the taxable year of change.

(4) If, under the law in effect after the enactment of section 461(h), the amount was incurred during the taxable year of change, but the taxpayer cannot determine whether the amount was so incurred before July 19, 1984, or after July 18, 1984, a portion of the amount is taken into account under this paragraph (a)(4) for the taxable year of change. The portion taken into account under this paragraph (a)(4) is the entire amount of the item multiplied by a fraction, the numerator of which is the number of days in the taxable year of change that follow July 18, 1984, and the denominator of which is the total number of days in such year (e.g., in the case of a calendar taxable year, the fraction is $\frac{185}{365}$ or .51 if rounded).

(5) The amount taken into account with respect to the item for the taxable year of change equals the amount, if any, determined under paragraph (a)(1) or paragraph (a)(2) of this A-10, plus the amount, if any, determined under paragraph (a)(3) or paragraph (a)(4) of this A-10.

(6) If a taxpayer maintains books and records that permit a determination of amounts incurred as of the end of a calendar month or calendar quarter but do not permit a determination of whether amounts were incurred before July 19, 1984, or after July 18, 1984, the proration rules of paragraph (a)(2) and paragraph (a)(4) of this A-10 may be applied at the election of the taxpayer by treating the calendar month or calendar quarter as the taxable year.

(7) The rules of paragraphs (a)(1) through (a)(6) of this A-10 are to be applied in determining the amount of each separate section 481(a) adjustment under paragraph (a) of A-8 of this section.

(b) The following example illustrates the principles of paragraph (a) of this A-10.

Example—(1) Facts. Z corporation, a calendar year, accrual method taxpayer, properly elects to use a part-year change in method with respect to items of type 1 and type 2. Z can determine that, under the law in effect before the enactment of section 461(h), items of type 1 in the amount of \$12,000 were incurred during the taxable year ending December 31, 1984, \$10,000 of which were so incurred before July 19, 1984, and \$2,000 of which were so incurred after July 18, 1984. Of the items of type 1 in the amount of \$12,000, Z can determine that, under the law in effect after the enactment of section 461(h), items in the amount of \$7,000 were incurred during the taxable year ending December 31, 1984, and

after July 18, 1984. The books and records of Z also indicate that as of December 31, 1984, the remaining items of type 1 in the amount of \$5,000 had not been incurred under the law in effect after the enactment of section 461(h). The recurring item exception does not apply to items of type 1.

The books and records of Z also indicate that, under the law in effect before the enactment of section 461(h), items of type 2 in the amount of \$15,000 were incurred during the taxable year ending December 31, 1984, but Z cannot determine whether the items were so incurred before July 19, 1984, or after July 18, 1984. Of the items of type 2 in the amount of \$15,000, Z can determine that, under the law in effect after the enactment of section 461(h), items in the amount of \$12,000 were incurred during the taxable year ending December 31, 1984, but Z cannot determine whether the items were so incurred before July 19, 1984, or after July 18, 1984. The books and records of Z also indicate that, as of December 31, 1984, the remaining items of type 2 in the amount of \$3,000 had not been incurred under the law in effect after the enactment of section 461(h). The recurring item exception does not apply to items of type 2.

(2) *Part-year change in method.* In computing taxable income for the taxable year ending December 31, 1984, Z takes into account items of type 1 in the amount of \$17,000. Of this \$17,000 amount, items in the amount of \$10,000 are taken into account under paragraph (a)(1) of this A-10 and items in the amount of \$7,000 are taken into account under paragraph (a)(3) of this A-10. Under paragraph (a)(2) of A-8 of this section, a section 481(a) adjustment of \$10,000 is required with respect to items of type 1 (\$5,000 end of year adjustment, decreased by \$2,000 for the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect before the enactment of section 461(h) and increased by \$7,000 for the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect after the enactment of section 461(h)).

In addition, in computing taxable income for the taxable year ending December 31, 1984, Z takes into account items of type 2 in the amount of \$13,640. Of this \$13,640 amount, items in the amount of \$8,197 ($\$15,000 \times 200/366$) are taken into account under paragraph (a)(2) of this A-10 and items in the amount of \$5,443 ($\$12,000 \times 168/366$) are taken into account under paragraph (a)(4) of this A-10. Under paragraph (a)(2) of A-8 of this section, a section 481(a) adjustment of \$1,640 is required with respect to items of type 2 (\$3,000 end of year adjustment reduced by \$6,803 for the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect before the enactment of section 461(h) and increased by \$5,443 for the amount of items incurred during the taxable year of change and after July 18, 1984, under the law in effect after the enactment of section 461(h)).

Q-11. If a taxpayer does not elect to use a full-year change in method or a part-year change in method with respect to a type of item, how is the amount of

an item of such type taken into account in computing taxable income?

A-11. (a) If a taxpayer does not elect to use a full-year change in method or a part-year change in method with respect to a type of item (i.e., the cut-off method applies to the type of item), the amount of an item of that type is taken into account in computing taxable income in accordance with the following rules:

(1) If the taxpayer can determine that, under the law in effect before the enactment of section 461(h), the amount was incurred before July 19, 1984, the amount is taken into account for the taxable year in which so incurred.

(2) If the taxpayer can determine that, under the law in effect before the enactment of section 461(h), the amount was incurred after July 18, 1984, the amount is taken into account for the taxable year in which incurred under the law in effect after the enactment of section 461(h).

(3) If, under the law in effect before the enactment of section 461(h), the amount was incurred during the taxable year that includes July 19, 1984, but the taxpayer cannot determine whether the amount was so incurred before July 19, 1984, or after July 18, 1984—

(i) The amount is taken into account for the taxable year in which incurred under the law in effect after the enactment of section 461(h); or

(ii) At the taxpayer's election, the amount is taken into account under paragraph (a)(4) of this A-11.

(4) An amount is taken into account under this paragraph (a)(4) as follows:

(i) A portion of the amount equal to the entire amount of the item multiplied by a fraction, the numerator of which is the number of days in such taxable year that precede July 19, 1984, and the denominator of which is the total number of days in such year (e.g., in the case of a calendar year, the fraction is $\frac{200}{366}$ or .55 if rounded) is taken into account for the taxable year that includes July 19, 1984.

(ii) The remainder of the amount is taken into account for the taxable year or years (which may include the taxable year that includes July 19, 1984) that include all or a part of the adjustment period (as defined in paragraph (a)(5) of this A-11). The amount taken into account for a taxable year that includes all or a part of the adjustment period is the amount not taken into account under paragraph (a)(4)(i) of this A-11 multiplied by a fraction, the numerator of which is the number of days in the adjustment period that occur during the taxable year and the denominator of which is the total number of days in the adjustment period.

(5) For purposes of paragraph (a)(4)(ii) of this A-11, the adjustment period is the period that begins on the day following the last day of the transition period and that is equal in duration to the period that begins on July 19, 1984, and ends on the last day of the taxable year that includes July 19, 1984. For this purpose, the transition period is the period that begins on August 1, 1984, and is equal in duration to the number of full months that typically elapse (determined on a reasonable and consistent basis) between the date an item of that type is incurred under the law in effect before the enactment of section 461(h) and the date such an item is incurred under the law in effect after the enactment of section 461(h).

(b) The following example illustrates the principles of paragraph (a) of this A-11.

Example—(1) Facts. Assume the same facts as provided in the example contained in paragraph (b) of A-10 of this section, except that Z does not elect a part-year change in method with respect to items of type 1 and type 2. In addition, assume that the items of type 1 in the amount of \$7,000 that were incurred during the taxable year ending December 31, 1984, and after July 18, 1984, under the law in effect after the enactment of section 461(h) were among the items of type 1 in the amount of \$10,000 that were incurred during the taxable year ending December 31, 1984, and before July 19, 1984, under the law in effect before the enactment of section 461(h). Finally, assume that the transition period for items of type 2 is one month, beginning on August 1, 1984, and ending on August 31, 1984. Thus, the adjustment period for items of type 2 begins on September 1, 1984, and ends on February 13, 1985.

(2) *Cut-off method.* In computing taxable income for the taxable year ending December 31, 1984, Z takes into account items of type 1 in the amount of \$10,000 under paragraph (a)(1) of this A-11. No additional amount is taken into account when the items taken into account under the preceding sentence are incurred under the law in effect after the enactment of section 461(h). Thus, neither the amount of items so incurred during the taxable year ending December 31, 1984 (\$7,000), nor the amount of items to be incurred in a later taxable year (\$3,000) are taken into account under the law in effect after the enactment of section 461(h). In addition, the items of type 1 in the amount of \$2,000 that were incurred during the taxable year ending December 31, 1984, and after July 18, 1984, under the law in effect before the enactment of section 461(h), are not to be taken into account for the taxable year ending December 31, 1984, but, instead, are to be taken into account under paragraph (a)(2) of this A-11 for the taxable year in which incurred under the law in effect after the enactment of section 461(h).

If Z does not elect the rules contained in paragraph (a)(4) of this A-11 for all items of type 2, in computing taxable income for the

taxable year ending December 31, 1984. Z takes into account items of type 2 in the amount of \$12,000 under paragraph (a)(3)(i) of this A-11. The remaining items of type 2 in the amount of \$3,000 are to be taken into account under paragraph (a)(3)(i) of this A-11 for the taxable year in which incurred under the law in effect after the enactment of section 461(h).

If Z elects the rules contained in paragraph (a)(4) of this A-11 for all items of type 2, in computing taxable income for the taxable year ending December 31, 1984, Z takes into account items of type 2 in the amount of \$13,197. The remaining items of type 2 in the amount of \$1,803 are taken into account for the taxable year ending December 31, 1985. These amounts are determined as follows:

(i) Under paragraph (a)(4)(i) of this A-11, items of type 2 in the amount of \$8,197 (\$15,000x200/366) are taken into account for the taxable year ending December 31, 1984.

(ii) Under paragraph (a)(5) of this A-11, the one month transition period begins on August 1, 1984, and ends on August 31, 1984, and the adjustment period begins on September 1, 1984, and ends on February 13, 1985. Thus, 122 days (the number of days from September 1, 1984, through December 31, 1984) of the 166 day adjustment period occur in the taxable year ending December 31, 1984. Under paragraph (a)(4)(ii) of this A-11, items of type 2 in the amount of \$5,000 (\$6,803x122/166) are taken into account for the taxable year ending December 31, 1984.

(iii) The remaining 44 days of the 166 day adjustment period occur in the taxable year ending December 31, 1985. Under paragraph (a)(4)(ii) of this A-11, items of type 2 in the amount of \$1,803 (\$6,803x44/166) are taken into account for the taxable year ending December 31, 1985.

Q-12. What is the effective date of section 461(h) with respect to the accrual of interest expense?

A-12. Section 461(h) applies to interest accruing under any obligation (whether or not evidenced by a debt instrument) if the obligation (a) is incurred in any transaction occurring after June 8, 1984, and (b) is not incurred under a written contract which was binding on March 1, 1984, and at all times thereafter until the obligation is incurred. Interest accruing under an obligation described in the preceding sentence is subject to section 461(h) even if the interest accrues before July 19, 1984. Similarly, interest accruing under any obligation incurred in a transaction occurring before June 9, 1984, (or under a written contract which was binding on March 1, 1984, and at all times thereafter until the obligation is incurred) is not subject to section 461(h) even to the extent the interest accrues after July 18, 1984.

Q-13. How do section 461(h) and this section affect taxpayers subject to any of the conditions listed in section 4.01 of Rev. Proc. 84-74, 1984-44 I.R.B. 15?

A-13. An accrual method taxpayer

that is subject to any of the conditions listed in section 4.01 of Rev. Proc. 84-74, 1984-44 I.R.B. 15, on the date a return is filed for the taxable year that includes July 19, 1984, may be required to change its method of accounting for a taxable year preceding the taxable year that includes July 19, 1984. If a change is required, such change shall be taken into account in applying the rules of this section.

PART 602—[AMENDED]

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table

"§ 1.461-3T..... 1545-0917."

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 6, 1985.

Ronald A. Pearlman,

Assistant Secretary to the Treasury.

[FR Doc. 85-12148 Filed 5-17-85; 9:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1, 53, 301, and 602

[T.D. 8026]

Simplification of Private Foundation Return and Reporting Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the simplification of private foundation and nonexempt charitable trust returns and reporting requirements. Changes to the applicable law were made by section 1 of the Act of December 28, 1980. The regulations provide private foundations and nonexempt charitable trusts with the guidance needed to comply with the Act, and primarily affect such organizations.

DATES: Effective May 20, 1985. The amendments are applicable after December 31, 1980, and apply to taxable years beginning after December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum 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:EE-35-81, (202-566-3422) (not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 21, 1984, a notice of proposed rulemaking was published in the Federal Register (49 FR 33145). On August 29, 1984, a correction notice was published in the Federal Register (49 FR 34240) solely for the purpose of correcting typographical errors.

One comment was received concerning the general requirements of private foundation returns and reporting. That comment did not address the substance of the notice of proposed rulemaking.

No hearing was requested or held.

Regulatory Flexibility Act; Executive Order 12291; and Paperwork Reduction Act of 1980

The Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

Drafting Information

The principal author of this regulation is Monice Rosenbaum 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.

List of Subjects

26 CFR 1.6001-1-1.6109-2

Income taxes, Administration and Procedure, Filing requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Trusts and trustees.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crimes, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

OMB control numbers under the Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 53 and 301 are amended by adopting, without change, the regulations proposed as a notice of proposed rulemaking published in the *Federal Register* on August 21, 1984 (49 FR 33145) as corrected by the correction notice published in the *Federal Register* on August 29, 1984 (49 FR 34240).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: April 25, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

PART 1—[AMENDED]

Paragraph 1. These regulations are issued under the authority contained in 26 U.S.C. 7805. The authority citation for Part 1 is unchanged.

Par. 2. Paragraph (a)(7) of § 1.6012-3 is revised to read as follows:

§ 1.6012-3 Returns by fiduciaries.

(a) *For estates and trusts.* * * *
(7) *Certain trusts described in section 4947(a)(1).* For taxable years beginning after December 31, 1980, in the case of a trust described in section 4947(a)(1) which has no taxable income for a taxable year, the filing requirements of section 6012 and this section shall be satisfied by the filing, pursuant to § 53.6011-1 of this chapter (Foundation Excise Tax Regulations) and § 1.6033-2(a), by the fiduciary of such trust of—
(i) Form 990-PF if such trust is treated as a private foundation, or
(ii) Form 990 if such trust is not treated as a private foundation.

When the provisions of this paragraph (7) are met, the fiduciary shall not be required to file Form 1041.

Par. 3. The heading of § 1.6033-2 is revised to read as follows:

§ 1.6033-2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

Par. 4. The following new paragraph (a)(4) is added to § 1.6033-2:

§ 1.6033-2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

(a) *In general.* * * *

(4) For taxable years beginning after December 31, 1980, trusts described in section 4947(a)(1) and nonexempt private foundations shall comply with the requirements of section 6033 and this section in the same manner as organizations described in section 501(c)(3) which are exempt from tax under section 501(a). This section shall be applied for taxable years beginning after December 31, 1980 as if trusts described in section 4947(a)(1) and nonexempt private foundations were described in section 501(c)(3). Therefore, for purposes of this section, all references to exempt organizations shall include section 4947(a)(1) trusts and nonexempt private foundations and all references to private foundations shall include section 4947(a)(1) trusts that would be private foundations if they were described in section 501(c)(3) and all nonexempt private foundations. Similarly, for purposes of paragraph (a)(2)(ii)(d), the purposes for which a section 4947(a)(1) trust or a nonexempt private foundation is organized shall be treated as the purposes for which it is exempt. For purposes of this section, the term "nonexempt private foundation" means a taxable organization (other than a section 4947(a)(1) trust) and that is a private foundation. See section 509(b) and § 1.509(b)-1. See also section 642(c)(6) and § 1.642(c)-4.

Par. 5. Paragraph (j) of § 1.6033-2 is removed, and paragraph (k) of § 1.6033-2 is redesignated as paragraph (j).

Par. 6. The following new § 1.6033-3 is added immediately after § 1.6033-2:

§ 1.6033-3 Additional provisions relating to private foundations.

(a) *In general.* The foundation managers (as defined in section 4946(b)) of every organization (including a trust described in section 4947(a)(1)) which is (or is treated as) a private foundation (as defined in section 509) the assets of which are at least \$5,000 at any time during a taxable year shall include the following information on its annual return in addition to that information required under § 1.6033-2(a):

(1) An itemized statement of its securities and all other assets at the close of the year, showing both book and market value.

(2) An itemized list of all grants and contributions made or approved for future payment during the year, showing the amount of each such grant or contribution, the name and address of the recipient (other than a recipient who is not a disqualified person and who receives, from the foundation, grants to indigent or needy persons that, in the aggregate, do not exceed \$1,000 during the year), any relationship between any individual recipient and the foundation's managers or substantial contributors, and a concise statement of the purpose of each such grant or contribution.

(3) The address of the principal office of the foundation and (if different) of the place where its books and records are maintained.

(4) The names and addresses of its foundation managers (within the meaning of section 4946(b)), that are substantial contributors (within the meaning of section 507(d)(2)) or that own 10 percent or more of the stock of any corporation of which the foundation owns 10 percent or more of the stock, or corresponding interests in partnerships or other entities, in which the foundation has a 10 percent or greater interest.

For purposes of subparagraph (2) of this paragraph, the business address of an individual grant recipient or foundation manager may be used by the foundation in its annual return in lieu of the home address of such recipient or manager, and the term "relationship" shall include, but is not limited to, any case in which an individual recipient of a grant or contribution by a private foundation is (i) a member of the family (as defined in section 4946(d)) of a substantial contributor or foundation manager of such foundation, (ii) a partner of such substantial contributor or foundation manager, or (iii) an employee of such substantial contributor or foundation manager or of an organization which is effectively controlled (within the meaning of section 4946(a)(1)(H)(i) and the regulations thereunder), directly or indirectly, by one or more such substantial contributors or foundation managers.

(b) *Notice to public of availability of annual return.* A copy of the notice required by section 6104(d) (relating to public inspection of private foundations' annual returns), and proof of publication thereof, shall be filed with the annual return required by § 1.6033-2(a). A copy of such notice as published, and a statement signed by a foundation manager stating that such notice was

published, setting forth the date of publication and the publication in which it appeared, shall be sufficient proof of publication for purposes of this paragraph.

(c) *Special rules*—(1) *Furnishing of copies to State officers.* The foundation managers of a private foundation shall furnish a copy of the annual return required by section 6033 and § 1.6033-2 to the Attorney General of:

(i) each State which the foundation is required to list on its return pursuant to § 1.6033-2(a)(2)(iv),

(ii) the State in which is located the principal office of the foundation, and

(iii) the State in which the foundation was incorporated or created.

The annual return shall be sent to each Attorney General described in paragraph (c)(1) (i), (ii), or (iii) of this section at the same time as it is sent to the Internal Revenue Service. Upon request the foundation managers shall also furnish a copy of the annual return to the Attorney General or other appropriate State officer (within the meaning of section 6104 (c)(2)) of any State. The foundation managers shall attach to each copy of the annual return sent to State officers under this subparagraph a copy of the Form 4720, if any, filed by the foundation for the year.

(2) *Cross-reference.* For additional rules with respect to private foundations' returns and the public inspection of such returns, see section 6104(d) and the regulations thereunder.

(d) *Special rules for certain foreign organizations.* The provisions of paragraphs (b) and (c) of this section shall not apply with respect to an organization described in section 4948(b). The foundation managers of such organizations are not required to publish notice of availability of the annual return for inspection, to make the annual return available at the principal office of the foundation for public inspection under section 6104(d), or to send copies of the annual return to State officers.

(e) *Effective date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1980.

Par. 7. In § 1.6034-1, the heading of that section, the second sentence of paragraph (a), and the entire text of paragraph (b) are revised to read as follows:

§ 1.6034-1 *Information returns required of trusts described in section 4947(a)(2) or claiming charitable or other deductions under section 642(c).*

(a) *In general.* * * * In addition, for taxable years beginning after December 31, 1969, every trust (other than a trust

described in paragraph (b) of this section) described in section 4947 (a) (2) (including trusts described in section 664) shall file such return for each taxable year, unless all transfers in trust occurred before May 27, 1969. * * *

(b) *Exceptions*—(1) *In general.* A trust is not required to file a Form 1041-A for any taxable year with respect to which the trustee is required by the terms of the governing instrument and applicable local law to distribute currently all of the income of the trust. For this purpose, the income of the trust shall be determined in accordance with section 643(b) and §§ 1.643(b)-1 and 1.643(b)-2.

(2) *Trusts described in section 4947(a)(1).* For taxable years beginning after December 31, 1980, a trust described in section 4947(a)(1) is not required to file a Form 1041-A.

§ 1.6056-1 (Removed)

Par. 8. Section 1.6056-1, relating to annual reports by private foundations, is removed.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 9. These regulations are issued under the authority contained in 26 U.S.C. 7805. The authority citation for Part 53 is unchanged.

Par. 10. Paragraph (d) of section 53.6011-1 is revised to read as follows:

§ 53.6011-1 *General requirement of return, statement, or list.*

(d) For taxable years ending on or after December 31, 1975, every trust described in section 4947(a)(2) which is subject to any of the provisions of Chapter 42 as if it were a private foundation shall file an annual return on Form 5227. For taxable years beginning after December 31, 1980, every trust described in section 4947(a)(1) which is a private foundation shall file an annual return on Form 990-PF.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 11. These regulations are issued under the authority contained in 26 U.S.C. 7805. The authority citation for Part 301 is unchanged.

Par. 12. Section 301.6034-1 is revised to read as follows:

§ 301.6034-1. *Returns by trusts described in section 4947(a)(2) or claiming charitable or other deductions under section 642(c).*

For provisions relating to the requirement of returns by trusts described in section 4947(a)(2) or

claiming charitable or other deductions under section 642(c), see § 1.6034-1 of this chapter (Income Tax Regulations).

Par. 13. Section 301.6104(d)-1 is amended by removing the word "report" wherever it appears and adding in its place the word "return"; by removing the word "reports" wherever it appears and adding in its place the word "returns"; and removing the language "6056" wherever it appears and adding in its place the language "6033".

Par. 14. Paragraph (b)(1) of section 301.6104(d)-1 is removed, paragraphs (b)(2) and (b)(3) are redesignated as (b)(3) and (b)(4), respectively and the following new paragraphs (b)(1) and (b)(2) are added:

§ 301.6104(d)-1 *Public inspection of private foundations' annual returns.*

(b) *Definitions and special rules*—(1) *Private foundation.* For purposes of this section, the term "private foundation" includes both exempt and nonexempt private foundations and also includes trusts described in section 4947(a)(1) that are treated as private foundations for purposes of section 6033.

(2) *Manner of making annual return available for public inspection.* The foundation managers of a private foundation which has no principal office, or whose principal office is in a personal residence, may satisfy the requirement that the annual return be made available for public inspection at the foundation's principal office by having the return available for public inspection at an appropriate substitute location or by furnishing a copy free of charge (including postage and copying) to persons who request inspection in the manner and at the time prescribed therefor in section 6104(d) and the regulations thereunder. In addition to its principal office, a private foundation may designate an additional location at which its annual return shall be made available in the manner and at the time prescribed therefor in section 6104(d).

Par. 15. Section 301.6652-2 is amended by revising the section heading, paragraph (a)(1) and paragraphs (c) (1), (2) and (3) to read as follows:

§ 301.6652-2 *Failure by exempt organizations and certain nonexempt organizations to file certain returns or to comply with section 6104(d) for taxable years beginning after December 31, 1969.*

(a) *Exempt organization or trust.* In the case of a failure to file a return required by—

(1) Section 6033, relating to returns by exempt organizations, trusts described

in section 4947(a)(1) and nonexempt private foundations.

(c) *Public inspection of private foundations' annual returns*—(1) *In general.* In the case of a failure to comply with the requirements of section 6104(d), relating to public inspection of private foundations' annual returns, within the time and in the manner prescribed for complying with section 6104(d), unless it is shown that such failure is due to reasonable cause, there shall be paid by the person or persons responsible for failing to comply with section 6104(d) \$10 for each day during which such failure continues. However, the total amount imposed under this subparagraph on all persons responsible for any such failure with regard to any one annual return shall not exceed \$5,000.

(2) *Amount imposed.* The amount imposed under section 6652(d)(3) is \$10 per day for a failure to comply with section 6104(d). For example, assume that an annual return must be filed by private foundation X on or before May 15, 1982, for the calendar year 1981. The foundation without reasonable cause does not comply with section 6104(d) by publishing notice of the availability of the annual return until July 30, 1982. In this case, the person failing to comply with section 6104(d) within the prescribed time is required to pay \$760 for complying with section 6104(d) 76 days late.

(3) *Cross reference.* For the penalty for willful failure to comply with section 6104(d), see § 301.6685-1.

Par. 16. Section 301.6685-1 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

§ 301.6685-1 Assessable penalties with respect to private foundations' failure to comply with section 6104 (d).

(a) *In general.* In addition to the penalty imposed by section 72.7, relating to fraudulent returns, statements, or other documents, any person (as defined in paragraph (b) of this section) who is required to comply with the requirements of section 6104(d), relating to public inspection of private foundations' annual returns, and who fails so to comply, if such failure is willful, shall pay a penalty of \$1,000 with respect to each such return with respect to which there is a failure so to comply.

(d) *Cross reference.* For the amount imposed for failure to comply with

section 6104(d), see paragraph (c) of § 301.6652-2.

§ 301.7207-1 [Amended]

Par. 17. Section 301.7207-1 is amended by removing the words "after December 31, 1969, section 6056 or" from the second sentence and adding in their place the word "section".

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 18. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 19. Section 602.101(c) is amended by inserting in the appropriate places in the tables "1.6012-3(a)(7) . . . 1545-0092, 1.6033-2 . . . 1545-0092, 1.6033-3 . . . 1545.0012, 1.6034-1 . . . 1545-0092, 53.6011-1(d) . . . 1545-0092, 301.6034-1 . . . 1545-0092, 301.6104(d)-1(b) . . . 1545-0092, 301.6652-2 . . . 1545-0092, 301.6685-1(a) . . . 1545-0092 and 301.7207-1 . . . 1545-0092".

[FR Doc. 85-12150 Filed 5-17-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

(CGD 12-85-02)

Drawbridge Operation Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document corrects miscellaneous amendments to a final rule which reorganized the Coast Guard regulations for drawbridges across the navigable waters of the United States published in the Federal Register on Tuesday, April 24, 1984 [49 FR 17450], and revokes the regulation for a drawbridge. This action is necessary to correct the mile locations on several bridges, and to revoke the regulation on a drawbridge that has been removed. **EFFECTIVE DATE:** This rule becomes effective on May 9, 1985.

FOR FURTHER INFORMATION CONTACT: R.E. Guerra, (415) 437-3514.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this rule are Mrs. Rose E. Guerra, project officer, and Lieutenant Wayne C. Raabe, project attorney.

This action has no economic consequences. It merely corrects mile

locations and revokes a regulation that is now meaningless because it pertains to a drawbridge that no longer exists. Consequently, this action is considered to be a non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures [44 FR 11034, February 28, 1979].

Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 533, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant effect on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 489; and 49 CFR 1.46 and 33 CFR 1.05-1(g).

§ 117.155 [Amended]

2. § 117.155 is amended by removing "mile 0.5 at Eureka" and inserting in its place "mile 0.3 at Eureka".

§ 117.169 [Amended]

3. In § 117.169 paragraph (b) is amended by removing "mile 7.8 at Brazos" and inserting in its place "mile 10.6 at Brazos".

4. In § 117.169 paragraph (c) is amended by removing "mile 14.8 near Imola" and inserting in its place "mile 17.6 near Imola".

§ 117.185 [Amended]

5. § 117.185 is amended by removing "Contra Costa County highway bridge, mile 0.5, and Southern Pacific railroad bridge, mile 0.5" and inserting in its place "Contra Costa County highway bridge, mile 1.0, and Southern Pacific Railroad bridge, mile 1.1".

§ 117.195 [Amended]

6. Section 117.195 is amended by removing paragraph (a).

7. Section 117.195 is further amended by removing the designation "(b)" preceding the regulation of the Sacramento County bridge at Walnut Grove.