

(as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of the issuing corporation's stock as of the beginning of such 2-year period.

(2) *De minimis amount.* For purposes of this paragraph (b), stock exceeds a de minimis amount only if the aggregate amount paid for the stock exceeds \$10,000 and more than 2 percent of all outstanding stock is purchased. The following rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of the stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock outstanding immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(c) *Transfers by shareholders in connection with the performance of services not treated as purchases.* A transfer of stock by a shareholder to an employee or independent contractor (or to a beneficiary of an employee or independent contractor) is not treated as a purchase of the stock by the issuing corporation for purposes of this section even if the stock is treated as having first been transferred to the corporation under § 1.83-6(d)(1) (relating to transfers by shareholders to employees or independent contractors).

(d) *Exceptions for termination of services, death, disability or mental incompetency, or divorce.* A stock purchase is disregarded if the stock is acquired in the following circumstances:

(1) *Termination of services—(i) Employees and directors.* The stock was acquired by the seller in connection with the performance of services as an employee or director and the stock is purchased from the seller incident to the seller's retirement or other bona fide termination of such services;

(ii) *Independent contractors.* [Reserved];

(2) *Death.* Prior to a decedent's death, the stock (or an option to acquire the stock) was held by the decedent or the decedent's spouse (or by both), by the decedent and joint tenant, or by a trust revocable by the decedent or the decedent's spouse (or by both), and—

(i) The stock is purchased from the decedent's estate, beneficiary (whether by bequest or lifetime gift), heir, surviving joint tenant, or surviving spouse, or from a trust established by the decedent or decedent's spouse; and

(ii) The stock is purchased within 3 years and 9 months from the date of the decedent's death;

(3) *Disability or mental incompetency.* The stock is purchased incident to the disability or mental incompetency of the selling shareholder; or

(4) *Divorce.* The stock is purchased incident to the divorce (within the meaning of section 1041(c)) of the selling shareholder.

(e) *Effective date.* This section applies to stock issued after August 10, 1993.

Approved: December 22, 1997.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97-33987 Filed 12-30-97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, 601, and 602

[TD 8742]

RIN 1545-AU42 and 1545-AV20

Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing the procedures for requesting an extension of time to make certain elections under the Internal Revenue Code. In addition, the regulations provide the standards that the Commissioner will use in determining whether to grant taxpayers extensions of time to make certain elections including changes in accounting method and accounting period. The regulations also set forth the time for filing a Form 3115, Application for Change in Accounting Method, with the Commissioner. The regulations affect taxpayers requesting an extension of time to make certain elections and taxpayers requesting to change their method of accounting for federal income tax purposes.

DATES: These regulations are effective December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Cheryl Lynn Oseekey, (202) 622-4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the

Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1488. Responses to this collection of information are required to obtain an extension of time to make an election.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent is 10 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may be material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On June 27, 1996, temporary regulations relating to the standards the Commissioner will use to grant taxpayers extensions of time to make certain elections were published in the **Federal Register** (TD 8680, 61 FR 33365), and cross-referenced to a notice of proposed rulemaking published in the **Federal Register** on the same date (61 FR 33408). The regulations, §§ 301.9100-1T through 301.9100-3T, provide an automatic 6-month extension from the due date of the return excluding extensions to make statutory and regulatory elections whose due dates are the due date of the return or the due date of the return including extensions. The regulations also provide an automatic 12-month extension of time to make certain regulatory elections. For regulatory elections not eligible for the automatic extensions of time, the regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. A public hearing on the regulations was held on October 30, 1996.

On May 15, 1997, temporary regulations setting forth the time for requesting a change in accounting method and the standards the Commissioner will use to grant an extension of time to request a change in

accounting method were published in the **Federal Register** (TD 8719, 62 FR 26740), and cross-referenced to a notice of proposed rulemaking published in the **Federal Register** on the same date (62 FR 26755). On May 27, 1997, corrections to TD 8719 were published in the **Federal Register** (62 FR 28630). The regulations extend the time for filing a Form 3115, Application for Change in Accounting Method, pursuant to §§ 1.446-1(e)(3)(i) and 601.204(b) by allowing a taxpayer to file its Form 3115 with the Commissioner anytime during the taxable year in which the taxpayer desires to make the change in method of accounting. The regulations also revised §§ 301.9100-1T and 301.9100-3T to provide that an extension of time to file a Form 3115 beyond the year provided in the regulations will be granted only in unusual and compelling circumstances. No public hearing on the regulations was requested or held.

One comment responding to the notice of proposed rulemaking published in the **Federal Register** on June 27, 1996 (61 FR 33408) was received. No comments responding to the notice of proposed rulemaking published in the **Federal Register** on May 15, 1997 (62 FR 26755) were received. After consideration of the comment received, the regulations are adopted as modified by this Treasury decision.

Public Comment

The commentator recommended several modifications to the regulations prior to their adoption as final regulations.

The commentator suggested that a request for extension of time to make an election should not be denied on the basis that the taxpayer fails to qualify for the underlying election. The commentator noted that the regulations provide that the granting of § 301.9100 relief is not a determination that the taxpayer is otherwise eligible to make the election. This suggested modification has not been adopted. The IRS and the Treasury Department believe it is in the interest of sound tax administration to deny § 301.9100 relief when it becomes apparent in considering the request for an extension of time that the taxpayer is not otherwise eligible to make the election. This ensures that the resources of the IRS are brought to bear in the resolution of the issue regarding eligibility at the earliest stage of the administrative process.

The commentator recommended that an extension of time to make an election be made available even when alternative

relief is provided by a statute, a regulation published in the **Federal Register**, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. This suggested modification has not been adopted. The IRS and the Treasury Department want to retain the ability to tailor relief for specific elections.

The commentator recommended measuring the 12-month automatic extension for eligible regulatory elections whose deadlines are the due date of the return or the due date of the return including extensions from the extended due date when the taxpayer has obtained an extension. This suggested modification has been adopted. The commentator also recommended that the automatic 6-month extension for statutory and regulatory elections be available even when the return for the year of the election was not timely filed. This suggested modification has not been adopted.

The commentator recommended that the regulations not provide that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any affected taxable years are closed by the period of limitations on assessment. This suggested modification was not adopted. There are two policies that must be balanced in formulating the standards for § 301.9100 relief. The first is the policy of promoting efficient tax administration by providing limited time periods for taxpayers to choose among alternative tax treatments and encouraging prompt tax reporting. The second is the policy of permitting taxpayers that are in reasonable compliance with the tax laws to minimize their tax liability by collecting from them only the amount of tax they would have paid if they had been fully informed and well advised. The IRS and the Treasury Department believe that the regulation achieves an appropriate balance between these policies. Furthermore, the language of the regulation does not foreclose in all circumstances consideration of whether the interests of the Government will not be prejudiced.

The commentator questioned the special rules for accounting method and accounting period regulatory elections. The regulations provide limited relief for accounting methods or periods subject to advance written consent from the Commissioner ordinarily not to exceed 90 days from the deadline for filing the Form 3115, Application for Change in Accounting Method, or the

Form 1128, Application to Adopt, Change, or Retain a Tax Year. The commentator suggested that the 90-day period be extended. The regulations published in the **Federal Register** on May 15, 1997 (TD 8719, 62 FR 26740) and corrected on May 27, 1997 (62 FR 28630) effectively extended the 90-day period for accounting methods by allowing the Form 3115 to be filed anytime during the taxable year in which the taxpayer desires to make the change in method of accounting. This rule is incorporated into the final regulations. However, a similar amendment was not made in regard to accounting period elections because extending the 90-day period would delay the filing of the short period return and result in less efficient tax administration.

The commentator recommended that the special rules for other accounting method regulatory elections be modified by eliminating the rule that, ordinarily, the interests of the Government are deemed to be prejudiced when the election requires an adjustment under section 481(a). This suggested modification was not adopted. The IRS and the Treasury Department believe it is in the interest of sound tax administration to generally preclude taxpayers from requesting, or otherwise making, a retroactive change in an adopted method of accounting, whether the change is from a permissible or impermissible method. See generally, Rev. Rul. 90-38 (1990-1 C.B. 57). In considering an exception, the IRS and the Treasury Department believe that § 301.9100 relief is most appropriate for accounting method elections that relate to nonrecurring transactions. These elections are generally made on a cut-off basis and a missed election would preclude accounting for a transaction in the year of the missed election under the elective method. In contrast, accounting method elections subject to section 481(a) generally will provide the benefit of the elective method for a transaction in the year of the missed election through an adjustment under section 481(a).

The commentator suggested that the regulations clarify when taxpayers may obtain an extension of time to file a request to change an accounting method or an accounting period under an unusual and compelling circumstances standard. This suggested modification was not adopted. What are unusual and compelling circumstances must be decided on a case-by-case basis in light of all applicable facts and circumstances.

Effective Date

The rules relating to the time for filing an application for change in accounting method apply to Forms 3115 submitted on or after December 31, 1997.

The rules relating to requests for an extension of time apply to requests submitted to the IRS on or after December 31, 1997. The rules relating to automatic extensions apply to elections for which corrective action is taken on or after December 31, 1997.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

Sections 1.446-1(e)(3)(i) and 601.204(b) in this regulation, originally published in the **Federal Register** for May 15, 1997 as a temporary regulation and cross-reference notice of proposed rulemaking, merely extend the time for filing a Form 3115, Application for Change in Accounting Method, with the Commissioner and, therefore, do not contain a new collection of information. Sections 301.9100-2 and 301.9100-3 of this regulation, originally published in the **Federal Register** for June 27, 1996 as a temporary regulation and cross-reference notice of proposed rulemaking, contain a collection of information. However, an initial regulatory flexibility analysis was not required because the regulations were published within 90 days of the enactment of Subtitle D of the Contract with America Advancement Act of 1996 (Public Law 104-21, 110 Stat. 847, 868 (1996)). With respect to these final regulations, it is hereby certified that the collection of information in those sections will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, on average, no more than 500 requests for an extension of time to make an election are received on an annual basis. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Cheryl Lynn Oseekey,

Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

26 CFR Part 601

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements, Taxes.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, 601, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

§ 1.446-1 [Amended]

Par. 2. Section 1.446-1 is amended as follows:

1. The first sentence of paragraph (e)(3)(i) is amended by removing the language “within 180 days after the beginning of” and adding “during” in its place.

2. Paragraph (e)(3)(iii) is revised to read as follows:

§ 1.446-1 General rule for methods of accounting.

* * * * *

(e) * * *

(3) * * *

(iii) This paragraph (e)(3) applies to Forms 3115 filed on or after December 31, 1997. For other Forms 3115, see § 1.446-1(e)(3) in effect prior to December 31, 1997 (§ 1.446-1(e)(3) as contained in the 26 CFR part 1 edition revised as of April 1, 1997).

§ 1.446-1T [Removed]

Par. 3. Section 1.446-1T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.9100-0 is added to read as follows:

§ 301.9100-0 Outline of regulations.

This section lists the paragraphs in §§ 301.9100-1 through 301.9100-3.

§ 301.9100-1 Extensions of time to make elections.

- (a) Introduction.
- (b) Terms.
- (c) General standards for relief.
- (d) Exceptions.
- (e) Effective dates.

§ 301.9100-2 Automatic extensions.

- (a) Automatic 12-month extension.
 - (1) In general.
 - (2) Elections eligible for automatic 12-month extension.
- (b) Automatic 6-month extension.
- (c) Corrective action.
- (d) Procedural requirements.
- (e) Examples.

§ 301.9100-3 Other extensions.

- (a) In general.
- (b) Reasonable action and good faith.
 - (1) In general.
 - (2) Reasonable reliance on a qualified tax professional.
 - (3) Taxpayer deemed to have not acted reasonably or in good faith.
- (c) Prejudice to the interests of the Government.
 - (1) In general.
 - (i) Lower tax liability.
 - (ii) Closed years.
 - (2) Special rules for accounting method regulatory elections.
 - (3) Special rules for accounting period regulatory elections.
 - (d) Effect of amended returns.
 - (1) Second examination under section 7605(b).
 - (2) Suspension of the period of limitations under section 6501(a).
 - (e) Procedural requirements.
 - (1) In general.
 - (2) Affidavit and declaration from taxpayer.
 - (3) Affidavits and declarations from other parties.
 - (4) Other information.
 - (5) Filing instructions.
 - (f) Examples.

Par. 6. Section 301.9100-1 is revised to read as follows:

§ 301.9100-1 Extensions of time to make elections.

(a) *Introduction.* The regulations under this section and §§ 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. The regulations under this section and § 301.9100-2 also provide an automatic extension of time to make certain statutory elections. An extension of time is available for elections that a taxpayer is otherwise eligible to make. However,

the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election. Section 301.9100-2 provides automatic extensions of time for making regulatory and statutory elections when the deadline for making the election is the due date of the return or the due date of the return including extensions. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2.

(b) *Terms.* The following terms have the meanings provided below—

Election includes an application for relief in respect of tax; a request to adopt, change, or retain an accounting method or accounting period; but does not include an application for an extension of time for filing a return under section 6081.

Regulatory election means an election whose due date is prescribed by a regulation published in the **Federal Register**, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

Statutory election means an election whose due date is prescribed by statute.

Taxpayer means any person within the meaning of section 7701(a)(1).

(c) *General standards for relief.* The Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

(d) *Exceptions.* Notwithstanding the provisions of paragraph (c) of this section, an extension of time will not be granted—

(1) For elections under section 4980A(f)(5); or

(2) For elections that are expressly excepted from relief or where alternative relief is provided by a statute, a regulation published in the **Federal Register**, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(e) *Effective dates.* In general, this section and §§ 301.9100-2 and 301.9100-3 apply to all requests for an extension of time submitted to the Internal Revenue Service (IRS) on or after December 31, 1997. However, the automatic 12-month and 6-month extensions provided in § 301.9100-2 apply to elections for which corrective

action is taken on or after December 31, 1997. For other requests for an extension of time, see §§ 301.9100-1T through 301.9100-3T in effect prior to December 31, 1997 (§§ 301.9100-1T through 301.9100-3T as contained in the 26 CFR part 1 edition revised as of April 1, 1997).

Par. 7. Sections 301.9100-2 and 301.9100-3 are added to read as follows:

§ 301.9100-2 Automatic extensions.

(a) *Automatic 12-month extension—*

(1) *In general.* An automatic extension of 12 months from the due date for making a regulatory election is granted to make elections described in paragraph (a)(2) of this section provided the taxpayer takes corrective action as defined in paragraph (c) of this section within that 12-month extension period. For purposes of this paragraph (a), the due date for making a regulatory election is the extended due date of the return if the due date of the election is the due date of the return or the due date of the return including extensions and the taxpayer has obtained an extension of time to file the return. This extension is available regardless of whether the taxpayer timely filed its return for the year the election should have been made.

(2) *Elections eligible for automatic 12-month extension.* The following regulatory elections are eligible for the automatic 12-month extension described in paragraph (a)(1) of this section—

(i) The election to use other than the required taxable year under section 444;

(ii) The election to use the last-in, first-out (LIFO) inventory method under section 472;

(iii) The 15-month rule for filing an exemption application for a section 501(c)(9), 501(c)(17), or 501(c)(20) organization under section 505;

(iv) The 15-month rule for filing an exemption application for a section 501(c)(3) organization under section 508;

(v) The election to be treated as a homeowners association under section 528;

(vi) The election to adjust basis on partnership transfers and distributions under section 754;

(vii) The estate tax election to specially value qualified real property (where the Internal Revenue Service (IRS) has not yet begun an examination of the filed return) under section 2032A(d)(1);

(viii) The chapter 14 gift tax election to treat a qualified payment right as other than a qualified payment under section 2701(c)(3)(C)(i); and

(ix) The chapter 14 gift tax election to treat any distribution right as a qualified payment under section 2701(c)(3)(C)(ii).

(b) *Automatic 6-month extension.* An automatic extension of 6 months from the due date of a return excluding extensions is granted to make regulatory or statutory elections whose due dates are the due date of the return or the due date of the return including extensions provided the taxpayer timely filed its return for the year the election should have been made and the taxpayer takes corrective action as defined in paragraph (c) of this section within that 6-month extension period. This paragraph (b) does not apply to regulatory or statutory elections that must be made by the due date of the return excluding extensions.

(c) *Corrective action.* For purposes of this section, corrective action means taking the steps required to file the election in accordance with the statute or the regulation published in the **Federal Register**, or the revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). For those elections required to be filed with a return, corrective action includes filing an original or an amended return for the year the regulatory or statutory election should have been made and attaching the appropriate form or statement for making the election. Taxpayers who make an election under an automatic extension (and all taxpayers whose tax liability would be affected by the election) must file their return in a manner that is consistent with the election and comply with all other requirements for making the election for the year the election should have been made and for all affected years; otherwise, the IRS may invalidate the election.

(d) *Procedural requirements.* Any return, statement of election, or other form of filing that must be made to obtain an automatic extension must provide the following statement at the top of the document: "FILED PURSUANT TO § 301.9100-2". Any filing made to obtain an automatic extension must be sent to the same address that the filing to make the election would have been sent had the filing been timely made. No request for a letter ruling is required to obtain an automatic extension. Accordingly, user fees do not apply to taxpayers taking corrective action to obtain an automatic extension.

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Automatic 12-month extension. Taxpayer A fails to make an election described in paragraph (a)(2) of this section when filing A's 1997 income tax return on March 16, 1998, the due date of the return. This election does not affect the tax liability of any other taxpayer. The applicable regulation requires that the election be made by attaching the appropriate form to a timely filed return including extensions. In accordance with paragraphs (a) and (c) of this section, A may make the regulatory election by taking the corrective action of filing an amended return with the appropriate form by March 15, 1999 (12 months from the March 16, 1998 due date of the return). If A obtained a 6-month extension to file its 1997 income tax return, A may make the regulatory election by taking the corrective action of filing an amended return with the appropriate form by September 15, 1999 (12 months from the September 15, 1998 extended due date of the return).

Example 2. Automatic 6-month extension. Taxpayer B fails to make an election not described in paragraph (a)(2) of this section when filing B's 1997 income tax return on March 16, 1998, the due date of the return. This election does not affect the tax liability of any other taxpayer. The applicable regulation requires that the election be made by attaching the appropriate form to a timely filed return including extensions. In accordance with paragraphs (b) and (c) of this section, B may make the regulatory election by taking the corrective action of filing an amended return with the appropriate form by September 15, 1998 (6 months from the March 16, 1998 due date of the return).

§ 301.9100-3 Other extensions.

(a) *In general.* Requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of this section. Requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in paragraph (e) of this section) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

(b) *Reasonable action and good faith—(1) In general.* Except as provided in paragraphs (b)(3)(i) through (iii) of this section, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

(i) Requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service (IRS);

(ii) Failed to make the election because of intervening events beyond the taxpayer's control;

(iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the

taxpayer was unaware of the necessity for the election;

(iv) Reasonably relied on the written advice of the Internal Revenue Service (IRS); or

(v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

(2) *Reasonable reliance on a qualified tax professional.* For purposes of this paragraph (b), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not—

(i) Competent to render advice on the regulatory election; or

(ii) Aware of all relevant facts.

(3) *Taxpayer deemed to have not acted reasonably or in good faith.* For purposes of this paragraph (b), a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer—

(i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3) of this chapter) and the new position requires or permits a regulatory election for which relief is requested;

(ii) Was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or

(iii) Uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

(c) *Prejudice to the interests of the Government—(1) In general.* The Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. This paragraph (c) provides the standards the Commissioner will use to determine when the interests of the Government are prejudiced.

(i) *Lower tax liability.* The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election

had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

(ii) *Closed years.* The interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. The IRS may condition a grant of relief on the taxpayer providing the IRS with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to paragraph (e)(3) of this section) certifying that the interests of the Government are not prejudiced under the standards set forth in paragraph (c)(1)(i) of this section.

(2) *Special rules for accounting method regulatory elections.* The interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election for which relief is requested—

(i) Is subject to the procedure described in § 1.446-1(e)(3)(i) of this chapter (requiring the advance written consent of the Commissioner);

(ii) Requires an adjustment under section 481(a) (or would require an adjustment under section 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable year the election should have been made);

(iii) Would permit a change from an impermissible method of accounting that is an issue under consideration by examination, an appeals office, or a federal court and the change would provide a more favorable method or more favorable terms and conditions than if the change were made as part of an examination; or

(iv) Provides a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.

(3) *Special rules for accounting period regulatory elections.* The interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if an election is an accounting period regulatory election (other than the election to use

other than the required taxable year under section 444) and the request for relief is filed more than 90 days after the due date for filing the Form 1128, Application to Adopt, Change, or Retain a Tax Year (or other required statement).

(d) *Effect of amended returns*—(1)

Second examination under section 7605(b). Taxpayers requesting and receiving an extension of time under this section waive any objections to a second examination under section 7605(b) for the issue(s) that is the subject of the relief request and any correlative adjustments.

(2) *Suspension of the period of limitations under section 6501(a).* A request for relief under this section does not suspend the period of limitations on assessment under section 6501(a). Thus, for relief to be granted, the IRS may require the taxpayer to consent under section 6501(c)(4) to an extension of the period of limitations on assessment for the taxable year in which the regulatory election should have been made and any taxable years that would have been affected by the election had it been timely made.

(e) *Procedural requirements*—(1) *In general.* Requests for relief under this section must provide evidence that satisfies the requirements in paragraphs (b) and (c) of this section, and must provide additional information as required by this paragraph (e).

(2) *Affidavit and declaration from taxpayer.* The taxpayer, or the individual who acts on behalf of the taxpayer with respect to tax matters, must submit a detailed affidavit describing the events that led to the failure to make a valid regulatory election and to the discovery of the failure. When the taxpayer relied on a qualified tax professional for advice, the taxpayer's affidavit must describe the engagement and responsibilities of the professional as well as the extent to which the taxpayer relied on the professional. The affidavit must be accompanied by a dated declaration, signed by the taxpayer, which states: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete." The individual who signs for an entity must have personal knowledge of the facts and circumstances at issue.

(3) *Affidavits and declarations from other parties.* The taxpayer must submit detailed affidavits from the individuals having knowledge or information about the events that led to the failure to make a valid regulatory election and to the

discovery of the failure. These individuals must include the taxpayer's return preparer, any individual (including an employee of the taxpayer) who made a substantial contribution to the preparation of the return, and any accountant or attorney, knowledgeable in tax matters, who advised the taxpayer with regard to the election. An affidavit must describe the engagement and responsibilities of the individual as well as the advice that the individual provided to the taxpayer. Each affidavit must include the name, current address, and taxpayer identification number of the individual, and be accompanied by a dated declaration, signed by the individual, which states: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete."

(4) *Other information.* The request for relief filed under this section must also contain the following information—

(i) The taxpayer must state whether the taxpayer's return(s) for the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made is being examined by a district director, or is being considered by an appeals office or a federal court. The taxpayer must notify the IRS office considering the request for relief if the IRS starts an examination of any such return while the taxpayer's request for relief is pending;

(ii) The taxpayer must state when the applicable return, form, or statement used to make the election was required to be filed and when it was actually filed;

(iii) The taxpayer must submit a copy of any documents that refer to the election;

(iv) When requested, the taxpayer must submit a copy of the taxpayer's return for any taxable year for which the taxpayer requests an extension of time to make the election and any return affected by the election; and

(v) When applicable, the taxpayer must submit a copy of the returns of other taxpayers affected by the election.

(5) *Filing instructions.* A request for relief under this section is a request for a letter ruling. Requests for relief should be submitted in accordance with the applicable procedures for requests for a letter ruling and must be accompanied by the applicable user fee.

(f) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Taxpayer discovers own error.

Taxpayer A prepares A's 1997 income tax return. A is unaware that a particular regulatory election is available to report a transaction in a particular manner. A files the 1997 return without making the election and reporting the transaction in a different manner. In 1999, A hires a qualified tax professional to prepare A's 1999 return. The professional discovers that A did not make the election. A promptly files for relief in accordance with this section. Assume paragraphs (b)(3)(i) through (iii) of this section do not apply. Under paragraph (b)(1)(i) of this section, A is deemed to have acted reasonably and in good faith because A requested relief before the failure to make the regulatory election was discovered by the IRS.

Example 2. Reliance on qualified tax professional. Taxpayer B hires a qualified tax professional to advise B on preparing B's 1997 income tax return. The professional was competent to render advice on the election and B provided the professional with all the relevant facts. The professional fails to advise B that a regulatory election is necessary in order for B to report income on B's 1997 return in a particular manner. Nevertheless, B reports this income in a manner that is consistent with having made the election. In 2000, during the examination of the 1997 return by the IRS, the examining agent discovers that the election has not been filed. B promptly files for relief in accordance with this section, including attaching an affidavit from B's professional stating that the professional failed to advise B that the election was necessary. Assume paragraphs (b)(3)(i) through (iii) of this section do not apply. Under paragraph (b)(1)(v) of this section, B is deemed to have acted reasonably and in good faith because B reasonably relied on a qualified tax professional and the tax professional failed to advise B to make the election.

Example 3. Accuracy-related penalty.

Taxpayer C reports income on its 1997 income tax return in a manner that is contrary to a regulatory provision. In 2000, during the examination of the 1997 return, the IRS raises an issue regarding the reporting of this income on C's return and asserts the accuracy-related penalty under section 6662. C requests relief under this section to elect an alternative method of reporting the income. Under paragraph (b)(3)(i) of this section, C is deemed to have not acted reasonably and in good faith because C seeks to alter a return position for which an accuracy-related penalty could be imposed under section 6662.

Example 4. Election not requiring adjustment under section 481(a). Taxpayer D prepares D's 1997 income tax return. D is unaware that a particular accounting method regulatory election is available. D files D's 1997 return without making the election and uses another permissible method of accounting. The applicable regulation provides that the election is made on a cut-off basis (without an adjustment under section 481(a)). In 1998, D requests relief under this section to make the election under the regulation. If D were granted an extension of time to make the election, D would pay no

less tax than if the election had been timely made. Assume that paragraphs (c)(2) (i), (iii), and (iv) of this section do not apply. Under paragraph (c)(2)(ii) of this section, the interests of the Government are not deemed to be prejudiced because the election does not require an adjustment under section 481(a).

Example 5. Election requiring adjustment under section 481(a). The facts are the same as in Example 4 of this paragraph (f) except that the applicable regulation provides that the election requires an adjustment under section 481(a). Under paragraph (c)(2)(ii) of this section, the interests of the Government are deemed to be prejudiced except in unusual or compelling circumstances.

Example 6. Under examination by the IRS. A regulation permits an automatic change in method of accounting for an item on a cut-off basis. Taxpayer E reports income on E's 1997 income tax return using an impermissible method of accounting for the item. In 2000, during the examination of the 1997 return by the IRS, the examining agent notifies E in writing that its method of accounting for the item is an issue under consideration. Any change from the impermissible method made as part of an examination is made with an adjustment under section 481(a). E requests relief under this section to make the change pursuant to the regulation for 1997. The change on a cut-off basis under the regulation would be more favorable than if the change were made with an adjustment under section 481(a) as part of an examination. Under paragraph (c)(2)(iii) of this section, the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances because E seeks to change from an impermissible method of accounting that is an issue under consideration in the examination on a basis that is more favorable than if the change were made as part of an examination.

§§ 301.9100-1T, 301.9100-2T, and 301.9100-3T [Removed]

Par. 8. Sections 301.9100-1T, 301.9100-2T, and 301.9100-3T are removed.

PART 601—STATEMENT OF PROCEDURAL RULES

Par. 9. The authority citation for part 601 continues to read as follows:

Authority: 26 U.S.C. 301 and 552, unless otherwise noted.

§ 601.204 [Amended]

Par. 10. Section 601.204 is amended as follows:

1. In paragraph (b), the fourth sentence is amended by removing the language "within 180 days after the beginning of" and adding "during" in its place.

2. In paragraph (b), the last sentence is removed.

§ 601.204T [Removed]

Par. 11. Section 601.204T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 13. Section 602.101(c) is amended by removing the entries for §§ 301.9001-2T and 301.9001-3T, and adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

CFR part or section where identified and described	Current OMB control No.
301.9100-1	1545-1488

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: December 10, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97-33357 Filed 12-30-97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8746]

RIN 1545-AU09

Amortizable Bond Premium

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the federal income tax treatment of bond premium and bond issuance premium. The regulations reflect changes to the law made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The regulations will provide needed guidance to holders and issuers of debt instruments.

DATES: *Effective date:* March 2, 1998.

Applicability dates: For dates of applicability of the final regulations, see *Effective Dates* under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: William E. Blanchard, (202) 622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1491. Responses to these collections of information are required by the IRS to determine whether a holder of a bond has elected to amortize bond premium and whether an issuer or a holder has changed its method of accounting for premium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from 0.25 hours to 0.75 hours, depending on individual circumstances, with an estimated average of 0.5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to the collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Sections 1.171-1 through 1.171-4 of the Income Tax Regulations were promulgated in 1957 and last amended in 1968. In the Tax Reform Act of 1986, section 171(b) was amended to require that bond premium be amortized by reference to a constant yield. In the Technical and Miscellaneous Revenue Act of 1988, section 171(e) was amended to require that amortizable bond premium be treated as an offset to interest income.

On June 27, 1996, the IRS published a notice of proposed rulemaking in the **Federal Register** (61 FR 33396) relating to the federal income tax treatment of bond premium and bond issuance premium. A public hearing was not held because no one requested to speak at the hearing that had been scheduled for October 23, 1996. The IRS did receive