

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG-156779-06]

RIN 1545-BG27

**Determining the Amount of Taxes Paid for Purposes of Section 901**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing

**SUMMARY:** In the Rules and Regulations section in this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit. The regulations affect taxpayers that claim direct and indirect foreign tax credits. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by October 14, 2008. Outlines of topics to be discussed at the public hearing scheduled for December 11, 2008, at 10 a.m. must be received by November 20, 2008.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-156779-06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-156779-06), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-156779-06). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Michael I. Gilman, (202) 622-3850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina Johnson, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR Part 1) which provide rules relating to the determination of the amount of taxes paid for purposes of the foreign tax credit. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations affect individuals and corporations claiming foreign tax credits.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6), does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In particular, the IRS and Treasury Department continue to study arrangements in which the foreign payments attributable to income of a special purpose vehicle (SPV) do not substantially exceed the foreign taxes that would have been paid by a controlled foreign corporation that owns the SPV in the absence of the arrangement. The IRS and Treasury Department seek additional comments on how to overcome the administrative challenges of determining the amount of foreign taxes that would have been paid but for such arrangement. The IRS and Treasury Department also request comments on whether the regulations should contain additional guidance on the extent to which activities are conducted by an entity's employees or on the treatment of employees of

affiliates that are seconded to, or supervised by employees of, the tested entity. Finally, the IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 11, 2008, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments by October 14, 2008, and an outline of the topics to be discussed and time to be devoted to each topic (a signed original and eight (8) copies) by November 20, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

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

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be 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 \* \* \*

**Par. 2.** Section 1.901–1 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1.901–1 Allowance of credit for taxes.**

(a) and (b) [The text of proposed § 1.901–2(a) and (b) is the same as the text of § 1.901–1T(a) and (b) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**Par 3.** Section 1.901–2 is amended by revising paragraphs (e)(5)(iii), (e)(5)(iv), and (h)(2) to read as follows:

**§ 1.901–2 Income, war profits, or excess profits tax paid or accrued.**

\* \* \* \* \*

(e) \* \* \*

(5) \* \* \*

(iii) and (iv) [The text of proposed § 1.901–2(e)(5)(iii) and (iv) is the same as the text of § 1.901–2T(e)(5)(iii) and (iv) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(h) \* \* \*

(2) [The text of proposed § 1.901–2(h)(2) is the same as the text of § 1.901–2T(h)(2) published elsewhere in this issue of the **Federal Register**.]

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8–16331 Filed 7–15–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG–101258–08]

RIN 1545–BH66

#### Guidance Under Sections 642 and 643 (Income Ordering Rules); Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking (REG–101258–08) that was published in the **Federal Register** on Wednesday, June 18, 2008 (73 FR 34670) providing guidance under Internal Revenue Code section 642(c) with regard to the Federal tax consequences of an ordering provision in a trust, a will, or a provision of local law that attempts to determine the tax character of the amounts paid to a charitable beneficiary of the trust or estate. The proposed regulations also

make conforming amendments to the regulations under section 643(a)(5). The proposed regulations affect estates, charitable lead trusts (CLTs) and other trusts making payments or permanently setting aside amounts for a charitable purpose.

**FOR FURTHER INFORMATION CONTACT:**

Vishal Amin at (202) 622–3060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The correction notice that is the subject of this document is under sections 642 and 643 of the Internal Revenue Code.

#### Need for Correction

As published, the notice of proposed rulemaking (REG–101258–08) contains errors that may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–101258–08), which was the subject of FR Doc. E8–13611, is corrected as follows:

1. On page 34671, column 1, in the preamble, under the paragraph heading “Explanation of Provisions”, first paragraph, line 19, the language “proposed regulation will amend the” is corrected to read “proposed regulations will amend the”.

2. On page 34671, column 2, in the preamble, under the paragraph heading “Explanation of Provisions”, first paragraph of the column, line 3, the language “unrelated business tax income and tax-” is corrected to read “unrelated business taxable income and tax-”.

3. On page 34671, column 2, in the preamble, under the paragraph heading “Explanation of Provisions”, first paragraph of the column, line 22, the language “independent of the income tax” is corrected to read “independent of income tax”.

#### § 1.642(c)–3 [Corrected]

4. On page 34672, column 1, § 1.642(c)–3, paragraph 2., first entry of the amendatory instructions, the language “Revising the paragraph heading of paragraph (b) and add a heading to paragraph (b)(1).” is corrected to read “Revising the paragraph heading of paragraph (b) and adding a heading to paragraph (b)(1).”.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. E8–16178 Filed 7–15–08; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 54

[REG–120476–07]

RIN 1545–BG71

#### Employer Comparable Contributions to Health Savings Accounts Under Section 4980G, and Requirement of Return for Filing of the Excise Tax Under Section 4980B, 4980D, 4980E or 4980G

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G of the Internal Revenue Code (Code) as amended by sections 302, 305 and 306 of the Tax Relief and Health Care Act of 2006 (the Act). The proposed regulations also provide guidance relating to the requirement of a return to accompany payment of the excise tax under section 4980B, 4980D, 4980E, or 4980G of the Code and the time for filing that return. These proposed regulations would affect employers that contribute to employees' HSAs and Archer MSAs, employers or employee organizations that sponsor a group health plan, and certain third parties such as insurance companies or HMOs or third-party administrators who are responsible for providing benefits under the plan. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by October 14, 2008. Outlines of topics to be discussed at the public hearing scheduled for October 30, 2008, at 10 a.m., must be received by October 13, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–120476–07), Internal Revenue Service, room 5203, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–120476–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG–120476–07). The public hearing will be held in