

[4830-01-p]

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DEPARTMENT OF THE TREASURY

Corrected August 16, 2006

Internal Revenue Service

26 CFR Part 1

REG-112994-06

RIN 1545-BF47

Guidance under Section 7874 Regarding Expatriated Entities and their Foreign Parents

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the determination of whether a foreign entity shall be treated as a surrogate foreign corporation under section 7874(a)(2)(B) of the Internal Revenue Code. The text of those 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 September 5, 2006.

Outlines of topics to be discussed at the public hearing scheduled for October 31, 2006, at 10 a.m., must be received by October 10, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-112994-06), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044 or sent electronically, via the IRS Internet site at: [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal

eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-112994-06). The public hearing will be held in the auditorium, Internal Revenue Building, New Carrollton Federal Building (NCFB), 5000 Ellin Rd., Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Milton Cahn at (202) 927-0889 or 622-3918; concerning submission and delivery of comments and the public hearing, Kelly.D. Banks@irsounsel.treas.gov, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

### **Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 7874. The temporary regulations set forth rules relating to the determination of whether a foreign entity shall be treated as a surrogate foreign corporation under section 7874(a)(2)(B) of the Internal Revenue Code. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is

not required. The nature of the businesses that are most likely to consider corporate expatriation transactions, as well as the complexity and the costs of structuring and implementing those transactions, makes it unlikely that a substantial number of small entities will engage in such transactions. In addition, any economic impact to entities affected by section 7874, large or small, is derived from the operation of the statute or its intended application, not the proposed regulations in this notice of proposed rulemaking. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 31, 2006, at 10 a.m., in the auditorium, Internal Revenue Building, New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. Due to building security procedures, visitors must enter at the Main 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 area 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 at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by [INSERT DATE]. 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 Jefferson VanderWolk of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and 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 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 1.7874-2 also issued under 26 U.S.C. 7874(c)(6) and (g). \* \* \*

Par. 2. Section 1.7874-2 is added to read as follows:

§1.7874-2 Surrogate foreign corporation.

[The text of proposed §1.7874-2 is the same as the text of §1.7874-2T published

elsewhere in this issue of the **Federal Register**].

Mark E. Matthews  
Deputy Commissioner for Services and Enforcement.