

[4830-01-p]

Published July 28, 2004

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-208246-90

RIN 1545-BD47

Allocation and Apportionment of Deductions for Charitable Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking, notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

SUMMARY: This document withdraws the notice of proposed rulemaking published on March 12, 1991 (the 1991 proposed regulations), relating to the allocation and apportionment of charitable deductions. In addition, in the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and the IRS are issuing temporary regulations providing that the deduction for a charitable contribution (as defined in section 170(c)) is to be allocated to all of the taxpayer's gross income and apportioned on the basis of income from sources within the United States. The text of the temporary regulations also serves as the text of these proposed regulations. Further, regulations are proposed in this document, without cross-reference to temporary regulations, with respect to deductions for charitable contributions that are provided by an income tax treaty rather than by sections 170, 873(b)(2), and

882(c)(1)(B). This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 26, 2004.

Outlines of topics to be discussed at the public hearing scheduled for December 2, 2004, at 10 a.m. must be received by November 12, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-208246-90), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-208246-90), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC or sent electronically, via the IRS internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS and REG-208246-90). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the withdrawal of the 1991 proposed regulations and the proposed regulations, Teresa Burridge Hughes, (202) 622-3850 (not a toll-free number); concerning the submission of comments, the hearing, and/or placement on the building access list to attend the hearing, Treena Garrett, (202) 622-7180 (not a toll-free number).

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

Section 1.861-8(e)(9) provides that the deduction for charitable contributions allowed by sections 170, 873(b)(2), and 882(c)(1)(B) is generally considered as not definitely related to any gross income and therefore is ratably apportioned to all of a taxpayer's gross income. On March 12, 1991, Treasury and the IRS published in the **Federal Register** (56 FR 10395) a notice of proposed rulemaking (INTL-116-90, REG-208246-90) that would have modified the allocation and apportionment of the deduction for charitable contributions. The 1991 proposed regulations generally would have provided for the allocation and apportionment of a deduction for a charitable contribution to sources within or without the United States based on where the contribution was used. Where the deduction for a charitable contribution would not have been allocable to United States or foreign source gross income based on the new test, it would have been ratably apportioned to all gross income. Written comments were received and a public hearing on the 1991 proposed regulations was held on August 1, 1991. In response to comments received, and after further consideration of the issue, the 1991 proposed regulations are withdrawn.

Contemporaneously with the withdrawal of the 1991 proposed regulations, the Treasury Department and the IRS are issuing a Treasury decision containing temporary regulations that are published in the Rules and Regulations section in this issue of the **Federal Register**. The temporary regulations provide for the allocation and apportionment of the deduction for charitable contributions to U.S.

source income. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations discusses the comments received on the 1991 proposed regulations, the reasons for the withdrawal of the 1991 proposed regulations, and the approach of the temporary regulations.

This document also proposes a rule for the allocation and apportionment of deductions for charitable contributions that are allowed under a U.S. income tax treaty (rather than under sections 170, 873(b)(2), and 882(c)(1)(B)) that limits the amount of the deduction based on a percentage of income that arises from sources within the treaty partner. In such case, these proposed regulations would provide that the deduction is definitely related and allocable to all of the taxpayer's gross income. The deduction would be apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources within the treaty partner within each grouping. This rule is proposed to be effective for taxable years beginning on or after the date final regulations are published in the **Federal Register**.

### **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 notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their 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. The IRS and the Treasury Department request comments on the clarity of the proposed rules 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 2, 2004, beginning at 10 a.m. in the IRS Auditorium of the 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 area more than 30 minutes before the hearing starts. For more 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 by October 26, 2004, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 12, 2004. 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 this document is Teresa Burridge Hughes, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in its development.

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

Income taxes, Reporting and recordkeeping requirements.

### **Withdrawal of a Notice of Proposed Rulemaking**

Under the authority of 26 U.S.C. 7805, §1.861-8(e) and (g) of the notice of proposed rulemaking (INTL-116-90) published in the **Federal Register** on March 12, 1991, (56 FR 10395) is withdrawn.

### **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 as follows:

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

Par. 2. Section 1.861-8(e)(12) is added to read as follows:

§1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.

\* \* \* \* \*

(e) \* \* \* (1) \* \* \*

(e)(12)(i) and (ii) [The text of the proposed addition of §1.861-8(e)(12)(i) and (ii) is the same as §1.861-8T(e)(12)(i) and (ii) published elsewhere in this issue of the **Federal Register**.]

(e)(12)(iii) Treaty provisions. (A) In general. If a deduction for charitable contributions not otherwise permitted by sections 170, 873(b)(2), and 882(c)(1)(B) is allowed under a U.S. income tax treaty, and such treaty limits the amount of the deduction based on a percentage of income arising from sources within the treaty partner, the deduction is definitely related and allocable to all of the taxpayer's gross income. The deduction allocated under this paragraph (e)(12)(iii) shall be apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources within the treaty partner within each grouping.

(B) The rules of this paragraph (e)(12)(iii) are applicable for charitable contributions made on or after the date of publication of this document as a final regulation in the **Federal Register**.

(e)(12)(iv)(A) [The text of the proposed addition of §1.861-8(e)(12)(iv)(A) is the same as §1.861-8T(e)(12)(iv)(A) published elsewhere in this issue of the **Federal Register**.]

(e)(12)(iv)(B) [Reserved].

Par. 4. Section 1.861-14(e)(6) is revised to read as follows:

§1.861-14 Special rules for allocating and apportioning certain expenses (other than interest expense) of an affiliated group of corporations.

\* \* \* \* \*

(e) \* \* \* (1) \* \* \*

(e)(6) [The text of the proposed revision of §1.861-14(e)(6) is the same as §1.861-14T(e)(6) through (e)(6)(ii)(A) published elsewhere in this issue of the **Federal Register.**]

\* \* \* \* \*

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement