

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8811]

RIN 1545-AV83

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to additions to, and deletions from, the list of items of information disclosed to the Bureau of the Census for use in certain statistical programs. These regulations provide guidance to IRS personnel responsible for disclosing the information. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective January 25, 1999.

Applicability Date: For dates of applicability, see §301.6103(j)(1)-1T(e) of these regulations.

FOR FURTHER INFORMATION CONTACT: Jamie Bernstein, (202) 622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1) of the Internal Revenue Code, upon written request from the Secretary of Commerce, the Secretary is to furnish to the Bureau of the Census ("Bureau") tax return information that is prescribed by Treasury regulations for the purpose of structuring censuses and national economic accounts and conducting related statistical activities. Section 301.6103(j)(1)-1 of the regulations provides an itemized description of the return information authorized to be disclosed for this purpose. Periodically, the disclosure regulations are amended to reflect the changing needs of the Bureau for data for its statutorily authorized statistical activities.

This document adopts temporary regulations that authorize IRS personnel to disclose the additional items of return information that have been requested by the Secretary of Commerce. The temporary regulations also delete certain items of return information that are enumerated in the existing regulations but that the Secretary of Commerce has indicated are no longer needed.

Except for §301.6103(j)(1)-1T(b)(3), (b)(6)(i)(A) and (b)(6)(iii), the text of the temporary regulations is the same as 26 CFR 301.6103(j)(1)-1. The changes made by §301.6103(j)(1)-1T(b)(3), (b)(6)(i)(A) and (b)(6)(iii) are discussed below.

Explanation of Provisions

The request by the Secretary of Commerce for additional items of return information has indicated several areas in which changes to existing Bureau access to tax return information either would improve present statistical programs or are necessary to implement new programs.

To reduce small businesses' direct reporting burden in quinquennial economic censuses and current economic surveys, and to improve the quality of the data received, the Bureau needs certain items of information set forth in tax returns. These items include total expenses or deductions, beginning- and end-of-year inventories, net gain from sales of business property, other income, and total income.

The Secretary of Commerce also has requested identity information of parent corporations as shown on corporate tax returns. This information will enable the Bureau to collect data for various economic surveys at the subsidiary or division level rather than at the establishment level. Restructuring data collection in accordance with such new organizational linkages will reduce the burden on individual business establishments to estimate data relating to their affiliates, enhance the quality of the data collected, and provide the Bureau with an efficient sampling frame for surveys collecting certain data, such as capital expenditures, that are typically not available at the establishment level.

To eliminate the follow-up contact of corporate taxpayers presently required under the Quarterly Financial Report (QFR) program in order to establish S corporation status, the Bureau needs the document code and district office code from corporate returns. Another improvement to the QFR program would be effected by the requested disclosure of parent corporation identity information, because subsidiaries could then be linked before a sample was selected and would be relieved of the separate Census reporting requirements. Finally, the Bureau seeks to enhance the quality and reduce the size of sample frames under the QFR program by identifying inactive corporations so that they can be excluded from the universe subject to sampling. This requires that certain items of corporate employment tax information (employer identification number, tax period, total compensation, and taxable wages and tips), available to the Bureau under the existing regulations for economic census purposes, be available to the Bureau as well for QFR purposes.

The Secretary of Commerce has advised that the Bureau no longer uses certain items of information listed in the existing regulations: sales of livestock and produce raised, Schedule E information filed with the Form 1120 series, and, with respect to the QFR program, net income or loss. Accordingly, the temporary regulations have deleted these items from the enumeration of return information to be

disclosed to the Bureau.

The transfer of the Census of Agriculture to the Department of Agriculture under the Census of Agriculture Act of 1997 (Public Law 105-113) has also obviated the need for the Secretary of Commerce to receive certain items of information. These items are: Schedule F filed with the Form 1040 series, net farm profits, agricultural activity code, and answers to material participation questions. These items have been deleted in the temporary regulations.

For simplification and consistency, the term "loss" is not expressly stated in these regulations as an alternative to "income" or "gain," but it is the intent of the Secretary to interpret "income" or "gain" as including negative or loss figures and to provide any such figures to the Bureau.

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. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) see the Special Analyses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal

Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Douglas Giblen, Office of the Associate Chief Counsel (International) (formerly of the Office of Assistant Chief Counsel (Disclosure Litigation)). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

Section 301.6103(j)(1)-1T also issued under 26 U.S.C. 6103(j)(1); * * *

Par. 2. Section 301.6103(j)(1)-1 is amended by revising

paragraphs (b)(3) and (b)(6)(i)(A) to read as follows:
§301.6103(j)(1)-1 Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

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(b)(3)[Reserved]. For further guidance, see §301.6103(j)(1)-1T(b)(3).

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(b)(6)(i)(A)[Reserved]. For further guidance, see §301.6103(j)(1)-1T(b)(6)(i)(A).

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Par. 3. Section 301.6103(j)(1)-1T is added to read as follows:

§301.6103(j)(1)-1T Disclosure of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities (temporary).

(a) through (b)(2)[Reserved]. For further guidance, see §301.6103(j)(1)-1(a) through (b)(2).

(b)(3) Officers or employees of the Internal Revenue Service will disclose the following business related return information reflected on the return of a taxpayer to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, demographic, economic, and agricultural

statistics programs, censuses, and surveys. The "return of a taxpayer" includes, but is not limited to, Form 941; Form 990 series; Form 1040 series and Schedules C and SE; Form 1065 and all attending schedules and Form 8825; Form 1120 series and all attending schedules and Form 8825; Form 851; Form 1096; and other business returns, schedules and forms that the Internal Revenue Service may issue--

(i) Taxpayer identity information (as defined in section 6103(b)(6)) including parent corporation, shareholder, partner, and employer identity information;

(ii) Gross income, profits, or receipts;

(iii) Returns and allowances;

(iv) Cost of labor, salaries, and wages;

(v) Total expenses or deductions;

(vi) Total assets;

(vii) Beginning- and end-of-year inventory;

(viii) Royalty income;

(ix) Interest income, including portfolio interest;

(x) Rental income, including gross rents;

(xi) Tax-exempt interest income;

(xii) Net gain from sales of business property;

(xiii) Other income;

(xiv) Total income;

(xv) Percentage of stock owned by each shareholder;

(xvi) Percentage of capital ownership of each partner;

(xvii) End-of-year code;

(xviii) Months actively operated;

(xix) Principal industrial activity code, including the business description;

(xx) Total number of documents and the total amount reported on the Form 1096 transmitting Forms 1099-MISC;

(xxi) Form 941 indicator and business address on Schedule C; and

(xxii) Consolidated return indicator.

(b)(4) and (5)[Reserved]. For further guidance, see §301.6103(j)(1)-1(b)(4) and (5).

(b)(6)(i) Officers or employees of the Internal Revenue Service will disclose the following return information (but not including return information described in section 6103(o)(2)) reflected on the return of a corporation with respect to the tax imposed by Chapter 1 to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, developing and preparing, as authorized by law, the Quarterly Financial Report--

(A) From the business master files of the Internal Revenue Service--

(1) Taxpayer identity information (as defined in section 6103(b)(6)), including parent corporation identity information;

(2) Document code;

(3) District office code;

(4) Consolidated return and final return indicators;

- (5) Principal industrial activity code;
- (6) Partial year indicator;
- (7) Annual accounting period;
- (8) Gross receipts less returns and allowances; and
- (9) Total assets.

(b)(6)(i)(B) and (ii)[Reserved]. For further guidance, see §301.6103(j)(1)-1(b)(6)(i)(B) and (ii).

(iii) Information from an employment tax return disclosed pursuant to §301.6103(j)(1)-1(b)(2)(iii)(A), (B), (D), (I) and (J) may be used by officers and employees of the Bureau of the Census for the purpose described in and subject to the limitations of this paragraph (b)(6).

(c) and (d) [Reserved]. For further guidance, see §301.6103(j)(1)-1(c) and (d).

(e) Effective date. This section is applicable to the Bureau of the Census on January 25, 1999, through January 22, 2002.

/s/ Robert E. Wenzel

Deputy Commissioner of Internal Revenue

Approved: December 29, 1998

/s/ Donald C. Lubick

Assistant Secretary of the Treasury

