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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 46

[TD 9024]

RIN 1545-AY93

Liability For Insurance Premium Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 4374 relating to liability for the insurance premium excise tax. This document affects persons who make, sign, issue, or sell a policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer.

DATES: Effective Date: These regulations are effective November 27, 2002.

Applicability Date: These regulations are applicable to premiums paid on or after November 27, 2002.

FOR FURTHER INFORMATION CONTACT: David Lundy at (202) 622-3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

On January 7, 2002, the IRS and Treasury published a notice of proposed rulemaking (REG-125450-01), 2002-5 IRB 457) in the **Federal Register** (67 FR 707) under section 4374 relating to

the insurance premium excise tax imposed by section 4371 on certain policies issued by foreign insurance and reinsurance companies. One comment letter responding to the notice of proposed rulemaking was received. After consideration of these comments, the proposed regulations are adopted as final regulations as revised by this Treasury decision.

### **Explanation of Provisions**

These final section 4374 regulations clarify the persons who are liable for payment of the insurance premium excise tax and conform the regulations to the amendments made to section 4374 by the Tax Reform Act of 1976 (90 Stat. 1525). In particular, these regulations clarify that liability for the excise tax is incurred by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold.

One commentator suggested that the final regulation restrict application of the section 7270 penalty to a failure to pay the excise tax by the person who remitted the tax to the foreign insurer or reinsurer. Section 46.4374-1(d) of the regulation only is a cross-reference to section 7270, which section imposes a penalty of double the amount of tax when an underpayment results from an intention to evade the tax. Substantive guidance on the application of section 7270 is beyond the scope of this regulation, and accordingly, no change to the regulation was made as a result of this suggestion.

The same commentator suggested that the final regulation clarify whether the insured person under an insurance policy may be liable for the excise tax if all or a portion of the risks from such policy are reinsured with a foreign reinsurer on the basis that the insured may be treated as a person for whose benefit the reinsurance policy was made, signed, issued or sold. In response to the commentator's suggestion, § 46.4374-1(a) of these regulations has been revised to provide that in the case of a

reinsurance policy other than assumption reinsurance, the insured person on the underlying insurance policy, the risk of which is covered in whole or in part by such reinsurance policy, shall not constitute a person for whose use or benefit the reinsurance policy was made, signed, issued or sold. In these cases, when an insurer or reinsurer reinsures a risk with a foreign reinsurer, the insurer or reinsurer generally is the person for whose use or benefit the reinsurance policy is issued or sold for purposes of section 4374.

### **Effective Date**

The final regulations are effective for premiums paid on or after November 27, 2002.

### **Special Analyses**

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

### **Drafting Information**

The principal author of these regulations is David Lundy of the Office of Associate Chief

Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 46**

Excise taxes, Insurance, Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 46 is amended as follows:

#### **PART 46 - - EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM**

Paragraph 1. The authority citation for part 46 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 46.4374-1 is revised to read as follows:

#### **§46.4374-1 Liability for tax.**

(a) **In general.** Any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, shall be liable for the tax imposed by section 4371. For purposes of this section, in the case of a reinsurance policy that is subject to the tax imposed by section 4371(3), other than assumption reinsurance, the insured person on the underlying insurance policy, the risk of which is covered in whole or in part by such reinsurance policy, shall not constitute a person for whose use or benefit the reinsurance policy is made, signed, issued, or sold.

(b) **When liability for tax attaches.** The liability for the tax imposed by section 4371 shall attach at the time the premium payment is transferred to the foreign insurer or reinsurer (including transfers to

any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker. A person required to pay tax under this section may remit such tax before the time the tax attaches if he keeps records consistent with such practice.

(c) Payment of tax. The tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

(d) Penalty for failure to pay tax. Any person who fails to comply with the requirements of this section with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of tax. (See section 7270.)

(e) Effective date. This section is applicable for premiums paid on or after November 27, 2002.

/s/ Robert E. Wenzel

Deputy Commissioner of Internal Revenue

Approved: November 13, 2002

/s/ Pamela F. Olson

Assistant Secretary of the Treasury (Tax Policy)