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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9224]

RIN 1545-BD17

Updating Estimated Income Tax Regulations under Section 6654

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to certain changes made to the law by the Tax Reform Act of 1984.

These final regulations are necessary to update, clarify, and reorganize the rules and procedures for making payments of estimated income tax by individuals. These final regulations do not impose any new requirements for taxpayers.

DATES: Effective Date: These final regulations are effective September 2, 2005.

FOR FURTHER INFORMATION CONTACT: Tatiana Belenkaya of the Office of Associate Chief Counsel (Procedure and Administration), (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1.

Section 412 of the Tax Reform Act of 1984, Public Law 98-369 (98 Stat. 792), repealed section 6015 of the Internal Revenue Code (Code), which required individuals to file declarations of estimated income tax. Public Law 98-369 (98 Stat. 792) is effective for taxable years beginning after December 31, 1984; however, individual taxpayers still must pay estimated tax in quarterly installments under section 6654 of the Code.

Explanation of Provisions

In general, section 6654(a) of the Code provides that in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year an amount determined by applying (1) the underpayment rate established under section 6621, (2) to the amount of the underpayment, (3) for the period of the underpayment. Section 6654(m) authorizes the Secretary to prescribe such regulations as may be necessary to carry out the purposes of section 6654.

Prior to its repeal in 1984, section 6015 of the Code, and §§1.6015(a)-1 through 1.6015(j)-1 of the Income Tax Regulations, provided rules for making declarations of estimated income tax by individuals. Section 6015 of the Code was repealed for taxable years beginning after December 31, 1984. The repeal of section 6015 rendered §§1.6015(a)-1

through 1.6015(j)-1 obsolete, except to the extent that portions of these sections provide guidance still relevant to the payment of estimated tax under section 6654.

These final regulations remove §§1.6015(a)-1 through 1.6015(j)-1, revise §§1.6654-2 and 1.6654-3, and add §§1.6654-5 and 1.6654-6. Removing the obsolete declaration of estimated income tax regulations and revising the current estimated income tax regulations will clarify the estimated income tax regulations under section 6654 of the Code. Removal of §§1.6015(a)-1 through 1.6015(j)-1 also alleviates any confusion under the current section 6015 regulations, which address relief from joint and several liability for an individual who has made a joint return. Adding §§1.6654-5 and 1.6654-6 will provide additional instructions for determining estimated tax payments and additional guidance for nonresident alien individuals required to make estimated tax payments.

Special Analyses

Because these regulations are interpretative and generally re-codify, under an existing statute, existing rules promulgated under a prior statute, notice and public comment procedures are not required pursuant to 5 U.S.C. 553(b)(A) and (B), and a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2) and (3). Because no notice of proposed

rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 (et seq.) do not apply. Further, because this Treasury decision is not a significant regulatory action for purposes of Executive Order 12866, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, these regulations were 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 Tatiana Belenkaya, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 * * *

§§1.6015(a)-1 through 1.6015(j)-1 [Removed]

Par. 2. Sections 1.6015(a)-1 through 1.6015(j)-1 are

removed.

Par. 3. Section 1.6654-2 is amended by:

1. Revising the last sentence of paragraph (e)(1)(ii).
2. Adding paragraphs (e)(5), (e)(6), and (e)(7).

The revision and additions read as follows:

§1.6654-2 Exceptions to imposition of the addition to the tax in the case of individuals.

* * * * *

(e) * * *

(1) * * *

(ii) * * * For rules with respect to the allocation of joint payments of estimated tax, see §1.6654-2(e)(5).

* * * * *

(5) Joint payments of estimated tax--(i) In general. A husband and wife may make a joint payment of estimated tax even though they are not living together. However, a joint payment of estimated tax may not be made if the husband and wife are separated under a decree of divorce or of separate maintenance. A joint payment of estimated tax may not be made if the taxpayer's spouse is a nonresident alien (including a nonresident alien who is a bona fide resident of Puerto Rico or a possession to which section 931 applies during the entire taxable year), unless an election is in effect for the taxable

year under section 6013(g) or (h) and the regulations. In addition, a joint payment of estimated tax may not be made if the taxpayer's spouse has a taxable year different from that of the taxpayer. If a joint payment of estimated tax is made, the amount estimated as the income tax imposed by chapter 1 of the Internal Revenue Code must be computed on the aggregate estimated taxable income of the spouses (see section 6013(d)(3) and §1.2-1), whereas, if applicable, the amount estimated as the self-employment tax imposed by chapter 2 of the Internal Revenue Code must be computed on the separate estimated self-employment income of each spouse. See sections 1401 and 1402 and §1.6017-1(b)(1). The liability with respect to the estimated tax, in the case of a joint payment, shall be joint and several.

(ii) Application to separate returns. (A) Although a husband and wife may make a joint payment of estimated tax, they, nevertheless, can file separate returns. If they make a joint payment of estimated tax and file separate returns for the same taxable year with respect to which the joint payment was made, the payment made on account of the estimated tax for that taxable year may be treated as a payment on account of the tax liability of either the husband or wife for the taxable year, or may be divided between them in such manner as

they may agree.

(B) In the event the husband and wife fail to agree to a division of the estimated tax payment, such payment shall be allocated between them in accordance with the following rule.

The portion of such payment to be allocated to a taxpayer shall be that portion of the aggregate of all such payments as the amount of tax imposed by chapter 1 of the Internal Revenue Code shown on the separate return of the taxpayer (plus, if applicable, the amount of tax imposed by chapter 2 of the Internal Revenue Code shown on the return of the taxpayer) bears to the sum of the taxes imposed by chapter 1 of the Internal Revenue Code shown on the separate returns of the taxpayer and the spouse (plus, if applicable, the sum of the taxes imposed by chapter 2 of the Internal Revenue Code shown on the separate returns of the taxpayer and the spouse).

(6) Example. The rule described in paragraph (e)(5) of this section may be illustrated by the following example:

Example. (i) H and W make a joint payment of estimated tax of \$19,500 for the taxable year. H and W subsequently file separate returns for the taxable year showing tax imposed by chapter 1 of the Internal Revenue Code in the amount of \$11,500 and \$8,000, respectively. In addition, H's return shows a tax imposed by chapter 2 of the Internal Revenue Code in the amount of \$500. H and W fail to agree to a division of the estimated tax paid. The amount of the aggregate estimated tax payments allocated to H is determined as follows:

(A) Chapter 1 tax shown on H's
return.....\$11,500

(B) Plus: Amount of tax imposed by chapter 2 shown on H's return.....\$ 500

(C) Total taxes imposed by chapter 1 and by chapter 2 shown on H's return.....\$12,000

(D) Amount of tax imposed by chapter 1 shown on W's return.....\$8,000

(E) Total taxes imposed by chapter 1 and by chapter 2 on both H's and W's returns.....\$20,000

(F) Proportion of taxes shown on H's return to total amount of taxes show on both H's and W's returns.....(\$12,000/\$20,000) 60%

(G) Amount of estimated tax payments allocated to H (60% of \$19,500).....\$11,700

(ii) Accordingly, H's return would show a balance due in the amount of \$300 (\$12,000 taxes shown less \$11,700 estimated tax allocated).

(7) Death of spouse. (i) A joint payment of estimated tax may not be made after the death of either the husband or wife. However, if it is reasonable for a surviving spouse to assume that there will be filed a joint return for himself and the deceased spouse for his taxable year and the last taxable year of the deceased spouse, he may, in making a separate payment of estimated tax for his taxable year which includes

the period comprising such last taxable year of his spouse, estimate the amount of the tax imposed by chapter 1 of the Internal Revenue Code on his and his spouse's taxable income on an aggregate basis and compute his estimated tax with respect to chapter 1 tax in the same manner as though a joint return had been filed.

(ii) If a husband and wife make a joint payment of estimated tax and thereafter one spouse dies, no further payments of joint estimated tax liability are required from the estate of the decedent. The surviving spouse, however, shall be liable for the payment of any subsequent installments of the joint estimated tax. For the purpose of making an amended payment of estimated tax by the surviving spouse, and the allocation of payments made pursuant to a joint payment of estimated tax between the surviving spouse and the legal representative of the decedent in the event a joint return is not filed, the payment of estimated tax may be divided between the decedent and the surviving spouse in such proportion as the surviving spouse and the legal representative of the decedent may agree.

(iii) If the surviving spouse and the legal representative of the decedent fail to agree to a division of a payment, such payment shall be allocated in accordance with

the following rule. The portion of such payment to be allocated to the surviving spouse shall be that portion of the aggregate amount of such payments as the amount of tax imposed by chapter 1 of the Internal Revenue Code shown on the separate return of the surviving spouse (plus, if applicable, the amount of tax imposed by chapter 2 of the Internal Revenue Code shown on the return of the surviving spouse) bears to the sum imposed by chapter 1 of the Internal Revenue Code shown on the separate returns of the surviving spouse and of the decedent (plus, if applicable, the sum of the taxes imposed by chapter 2 of the Internal Revenue Code shown on the returns of the surviving spouse and of the decedent); and the balance of such payments shall be allocated to the decedent. This rule may be illustrated by analogizing the surviving spouse described in this rule to H in the example contained in paragraph (e)(6) of this section and the decedent in this rule to W in that example.

Par. 4. Section 1.6654-3 is amended by revising paragraph (a) to read as follows:

§1.6654-3 Short taxable years of individuals.

(a) In general. The provisions of section 6654, with certain modifications relating to the application of section 6654(d), which are explained in paragraph (b) of this section,

are applicable in the case of a short taxable year.

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§1.6654-5 [Redesignated as §1.6654-7]

Par. 5. Section 1.6654-5 is redesignated as §1.6654-7.

Par. 6. New §1.6654-5 is added to read as follows:

§1.6654-5 Payments of estimated tax.

(a) In general. A payment of estimated tax by an individual shall be determined on Form 1040-ES. For the purpose of determining the estimated tax, the amount of gross income which the taxpayer can reasonably expect to receive or accrue, depending upon the method of accounting upon which taxable income is computed, and the amount of the estimated allowable deductions and credits to be taken into account in computing the amount of estimated tax, shall be determined upon the basis of the facts and circumstances existing at the time prescribed for determining the estimated tax, as well as those reasonably to be anticipated for the taxable year. If, therefore, the taxpayer is employed at the date prescribed for making an estimated tax payment at a given wage or salary, the taxpayer should presume, in the absence of circumstances indicating the contrary, for the purpose of the estimated tax payment that such employment will continue to the end of the

taxable year at the wage or salary received by the taxpayer as of such date. In the case of income other than wages and salary, the regularity in the payment of income, such as dividends, interest, rents, royalties, and income arising from estates and trusts is a factor to be taken into consideration.

Thus, if the taxpayer owns shares of stock in a corporation, and dividends have been paid regularly for several years upon the stock, the taxpayer should, in the absence of information indicating a change in the dividend policy, include the prospective dividends from the corporation for the taxable year as well as those actually received in such year prior to determining the estimated tax. In the case of a taxpayer engaged in business on his own account, there shall be made an estimate of gross income and deductions and credits in the light of the best available information affecting the trade, business, or profession.

(b) Computation of estimated tax. In computing the estimated tax the taxpayer should take into account the taxes, credits, and other amounts listed in §1.6654-1(a)(4).

Par. 7. Section 1.6654-6 is added to read as follows:

§1.6654-6 Nonresident alien individuals.

(a) In general. A nonresident alien individual is required to make a payment of estimated tax if that

individual's gross income meets the requirements of section 6654 and §1.6654-1. In making the determination under section 6654 as to whether the amount of the gross income of a nonresident alien individual is such as to require making a payment of estimated income tax, only the filing status relating to a single individual (other than a head of household) or to a married individual not entitled to file a joint return shall apply, unless an election is in effect for the taxable year under section 6013(g) or (h) and the regulations.

(b) Determination of gross income. To determine the gross income of a nonresident alien individual who is not, or does not expect to be, a bona fide resident of Puerto Rico or a possession to which section 931 applies during the entire taxable year, see section 872 and §§1.872-1 and 1.872-2. To determine the gross income of a nonresident alien individual that is, or expects to be, a bona fide resident of Puerto Rico or a possession to which section 931 applies during the entire taxable year; see section 876 and the regulations. For rules for determining whether an individual is a bona fide resident of a United States possession (including Puerto Rico), see section 937 and the regulations.

Mark E. Matthews,
Deputy Commissioner for Services and
Enforcement.

Approved: August 21, 2005

Eric Solomon,
Acting Deputy Assistant Secretary of the
Treasury.