

[4830-01-p]

Published July 8, 2004

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9135

RIN 1545-BB44

Rents and Royalties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the inclusion in gross income of advance rentals. The regulations authorize the Commissioner to provide rules allowing for the inclusion of advance rentals in gross income in a year other than the year of receipt. The regulations will affect taxpayers that receive advance payments for the use of certain items (such as intellectual property and computer software) to be designated by the Commissioner.

DATES: Effective Date: These regulations are effective July 8, 2004.

Applicability Date: The amendments made by these regulations apply after December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Edwin B. Cleverdon, (202) 622-7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

On December 18, 2002, the IRS published a notice of proposed rulemaking (REG-151043-02) in the **Federal Register** (67 FR 77450), proposing amendments to 26 CFR part 1 under section 61 of the Internal Revenue Code (Code) regarding the inclusion in gross income of advance rentals. The notice of proposed rulemaking invited comments and requests for a public hearing, but no comments were received and no public hearing was requested or held.

Contemporaneously with the publication of the notice of proposed rulemaking, the IRS published a proposed revenue procedure in Notice 2002-79 (2002-2 C.B. 964) that, when final, implements the amendments made by these final regulations. The proposed revenue procedure was finalized, with modifications, as Rev. Proc. 2004-34 (2004-22 I.R.B. 991). Comments received in connection with the proposed revenue procedure, including comments concerning the proposed treatment of advance rentals, are addressed in Announcement 2004-48 (2004-22 I.R.B. 998), which accompanies Rev. Proc. 2004-34.

### **Explanation of Provisions**

This document contains amendments to 26 CFR part 1 relating to the inclusion in gross income of advance rentals under section 61 of the Code. Prior to amendment, ' 1.61-8(b) provided that, except as provided in section 467 and the regulations thereunder, advance rentals must be included in gross income in the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer. The amendments authorize the Commissioner to provide, through administrative guidance, rules for deferring income inclusion of advance rentals to a taxable year other than the year of receipt. This

amendment ensures that the Commissioner, in modifying Rev. Proc. 71-21 (1971-2 C.B. 549), may provide deferral rules for the use of intellectual property and computer software.

### **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 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 Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit any comments on the regulations.

### **Drafting Information**

The principal author of these regulations is Edwin B. Cleverdon of the Office of Associate Chief Counsel (Income Tax and Accounting). 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.

### **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 \* \* \*

**§1.61-8 [Amended]**

Par. 2. The first sentence of §1.61-8(b) is amended by adding the language “and except as otherwise provided by the Commissioner in published guidance (see ' 601.601(d)(2) of this chapter),” immediately after “thereunder,”.

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

Approved: June 30, 2004

Gregory Jenner,  
Acting Assistant Secretary of the Treasury.