

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9510]

RIN 1545-BJ54

Requirement of a Statement Disclosing Uncertain Tax Positions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations allowing the IRS to require corporations to file a schedule disclosing uncertain tax positions related to the tax return as required by the IRS.

DATES: Effective date: This regulation is effective on December 15, 2010.

Applicability date: For dates of applicability, see §1.6012-2 (a)(5).

FOR FURTHER INFORMATION CONTACT: Kathryn Zuba at (202) 622-3400 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 6012 relating to the returns of income corporations are required to file. Section 6011 provides that persons liable for a tax imposed by Title 26 shall make a return when required by regulations prescribed by the Secretary of the Treasury

according to the forms and regulations prescribed by the Secretary. Treasury Regulation §1.6011-1 requires every person liable for income tax to make the returns required by regulation. Section 6012 requires corporations subject to an income tax to make a return with respect to that tax. Treasury Regulation §1.6012-2 sets out the corporations that are required to file returns and the form those returns must take.

A proposed regulation under section 6012 (REG-119046-10) was published in the **Federal Register** on September 9, 2010. Requirement of a Statement Disclosing Uncertain Tax Positions, 75 Fed. Reg. 54802 (proposed Sept. 9, 2010). The IRS received one written comment concerning the proposed regulation, and a public hearing regarding the proposed regulation was held on October 19, 2010. Neither of the two speakers at the public hearing had comments relating to the proposed regulation, although both organizations the speakers represented had previously submitted written comments concerning the draft Schedule UTP and instructions. Announcement 2010-30, 2010-19 IRB 668. After considering the comments, the proposed regulation is adopted by this Treasury decision with one non-substantive change related to the effective date. While the proposed regulation applied to returns filed for tax years beginning after December 15, 2009 and ending after the date the regulations were published in the **Federal Register**, the final regulation applies to returns filed for tax years beginning on or after January 1, 2010.

Explanation and Summary of Comments

This rule will authorize the IRS to require certain corporations, as set out in forms, publications, instructions, or other guidance, to provide information concerning uncertain tax positions concurrent with the filing of a return. On September 24, 2010,

the IRS released Schedule UTP with accompanying instructions that explain how the IRS plans to implement the authority provided by this regulation. One commentator asked that the proposed regulation not be adopted because Schedule UTP would require the disclosure of privileged information. If the regulation is adopted, the commentator recommended it should state that taxpayer may assert any applicable privileges to providing information sought by Schedule UTP and that any disclosure of information on that schedule will not constitute a waiver of any applicable privilege.

The final regulation does not adopt this recommendation. The regulation addresses the IRS's authority to require certain corporations to provide information concerning uncertain tax positions. The IRS has decided to require the filing of Schedule UTP based on its determination that the information about uncertain tax positions taken in a tax return required by the schedule is essential to achieving an effective and efficient self-assessment tax system. Provisions relating to the assertion of privilege are not included in this regulation, since it does not affect the existence of any applicable privileges taxpayers may have concerning information requested by a return or how they may assert those privileges.

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

This regulation will only affect taxpayers that prepare or are required to issue audited financial statements. Small entities rarely prepare or are required to issue audited financial statements due to the expense involved. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small

entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, a regulatory flexibility analysis is not required. Pursuant to 5 U.S.C. 553(d)(3), it has been determined that there is good cause for the effective date of this final rule, which is less than 30 days after the date of publication.

Pursuant to section 7805(f) of the Internal Revenue 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 their impact on small business.

Drafting Information

The principal author of these regulations is Kathryn Zuba of the Office of the Associate Chief Counsel (Procedure and Administration).

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 is amended by adding an entry in numerical order to read as follows:

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

Section 1.6012-2 is also issued under the authority of 26 U.S.C. 6011 and 6012.

Par. 2. Section 1.6012-2 is amended by adding paragraphs (a)(4) and (5) to read as follows:

§1.6012-2 Corporations required to make returns of income.

(a) * * *

(4) Disclosure of uncertain tax positions. A corporation required to make a return under this section shall attach Schedule UTP, Uncertain Tax Position Statement, or any successor form, to such return, in accordance with forms, instructions, or other appropriate guidance provided by the IRS.

(5) Effective/applicability date. Paragraph (a)(4) of this section applies to returns filed for tax years beginning on or after January 1, 2010.

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Deputy Commissioner for Services and Enforcement.

Steven T. Miller

Approved: December 9, 2010

Assistant Secretary of the Treasury (Tax Policy).

Michael Mundaca

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