

and the treatment of distributions by an S corporation.

**DATES:** This correction is effective December 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Martin Schaffer, Deane Burke, or David Shulman at (202) 622-3070, or Brenda Stewart at (202) 622-3120 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background

The correction to final regulations that are subject to this correction is under sections 1366, 1367, and 1368 of the Internal Revenue Code.

#### Need for Correction

As published, the correction to final regulations (TD 8852) contains a typographical error that may prove to be misleading and is in need of clarification.

#### Correction of Publication

Accordingly, the publication of the correction of the final regulations (TD 8852), which was the subject of FR Doc. 00-5244, is corrected as follows:

#### § 1.1367-1 [Corrected]

1. On page 12471, third column, the penultimate line of the correction for § 1.1367-1, the reference “§ 1.1377(b)(1)” is corrected to read “§ 1.1377-1(b)(1)”.

Dale D. Goode,

*Federal Register Liaison, Assistant Chief Counsel (Corporate).*

[FR Doc. 00-6693 Filed 3-27-00; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8870]

RIN 1545-AV39

#### General Rules for Making and Maintaining Qualified Electing Fund Elections; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction of final regulations.

**SUMMARY:** This document contains corrections to final regulations which were published in the *Federal Register* on Monday, February 7, 2000 (65 FR 5777), relating to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 to treat the PFIC as a qualified electing fund, and for PFIC shareholders

that wish to make a section 1295 election that will apply on a retroactive basis.

**DATES:** This correction is effective February 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Fung, (202) 622-3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations that are the subject of these corrections are under sections 1291, 1293, 1295 and 1298 of the Internal Revenue Code.

#### Need for Correction

As published, the final regulations (TD 8870) contain errors that are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (TD 8870), which were the subject of FR Doc. 00-1892, is corrected as follows:

#### PART 1—[CORRECTED]

1. On page 5779, beginning in column 1, instructional Paragraph 1, and the authority citation are corrected to read as follows:

Paragraph 1. The authority citation for part 1 is amended by removing the entries for 1.1291-1T, 1.1293-1T, 1.1295-1T, and 1.1295-3T, and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*  
 Sec. 1.1291-1 also issued under 26 U.S.C. 1291. \* \* \*  
 Sec. 1.1293-1 also issued under 26 U.S.C. 1293. \* \* \*  
 Sec. 1.1295-1 also issued under 26 U.S.C. 1295.  
 Sec. 1.1295-3 also issued under 26 U.S.C. 1295. \* \* \*

#### § 1.1293-0 [Corrected]

2. On page 5779, column 2, a new instructional paragraph 2a. is added to read as follows:

Par. 2a. Section 1.1293-0 is amended by:

1. Removing the reference “1.1293-1T” in the introductory text of the section and adding “1.1293-1” in its place.

2. Removing the “T” and the parenthetical “(temporary)” from the entry for § 1.1293-1T.

#### § 1.1295-0 [Corrected]

3. On page 5779, column 2, instruction 5 of instructional Par. 4. is corrected by removing the reference

“1.195-3”, and adding “1.1295-3” in its place.

Dale D. Goode,

*Federal Register Liaison, Assistant Chief Counsel (Corporate).*

[FR Doc. 00-6257 Filed 3-27-00; 8:45 am]

BILLING CODE 4830-01-U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8856]

RIN 1545-AX44

#### General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final rule.

**SUMMARY:** This document contains corrections to final regulations (TD 8856) which were published in the *Federal Register* on Thursday, December 30, 1999 (64 FR 73408), relating to the withholding of income tax on certain U.S. source income payments to foreign persons.

**DATES:** This correction is effective January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Laurie Hatten-Boyd at (202) 622-3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations that are subject to these corrections provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code.

#### Need for Correction

As published, the final regulations (TD 8856) contain errors that may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (TD 8856), which were the subject of FR Doc. 99-33515, is corrected as follows:

#### § 1.1441-1 [Corrected]

1. On page 73409, column 2, § 1.1441-1(f)(2)(i), line 24, the language,

a C corporation, (insert name and employer identification number of the C corporation, if different from name and employer identification number of RIC or REIT). This statement must be signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return for the first taxable year in which the assets of the C corporation become assets of the RIC or REIT.

(c) *Special rule.* In cases where the first taxable year in which the assets of the C corporation become assets of the RIC or REIT ends after June 10, 1987 but before March 8, 2000, the section 1374 election may be filed with the first Federal income tax return filed by the RIC or REIT after March 8, 2000.

(d) *Effective date.* In the case of carryover basis transactions involving the transfer of property of a C corporation to a RIC or REIT, the regulations apply to transactions occurring on or after June 10, 1987. In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the regulations apply to such qualifications that are effective for taxable years beginning on or after June 10, 1987.

Par. 3. In § 1.852-12, paragraph (d) is added to read as follows:

§ 1.852-12 Non-RIC earnings and profits.

(d) For treatment of net built-in gain assets of a C corporation that become assets of a RIC, see § 1.337(d)-5T.

Par. 4. In § 1.857-11, paragraph (c) is added to read as follows:

§ 1.857-11 Non-REIT earnings and profits.

(c) For treatment of net built-in gain assets of a C corporation that become assets of a REIT, see § 1.337(d)-5T.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

(b) \* \* \*

CFR Part or section where identified or described	Current OMB control No.
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CFR Part or section where identified or described	Current OMB control No.
1.337(d)-5T	1545-1672

Robert E. Wenzel,  
Deputy Commissioner of Internal Revenue.

Approved: January 21, 2000.  
Jonathan Talisman,  
Acting Assistant Secretary for Tax Policy.  
[FR Doc. 00-1894 Filed 2-4-00; 8:45 am]  
BILLING CODE 4830-01-U

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

[TD 8870]

RIN 1545-AV39

**General Rules for Making and Maintaining Qualified Electing Fund Elections**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations that provide guidance to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 (section 1295 election) to treat the PFIC as a qualified electing fund (QEF), and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis (retroactive election). In addition, this document contains a final regulation that provides guidance under section 1291 to a PFIC shareholder that is a tax-exempt organization. Lastly, this document contains final regulations under section 1293 for calculating and reporting net capital gain by a QEF, and also clarifies the application of the current income inclusion rules of section 1293 to interest in a QEF held through a domestic pass through entity.

**DATES:** *Effective Date.*

These regulations are effective February 7, 2000.

*Applicability Date.* In general, these regulations are applicable as of January 2, 1998. For special dates of applicability see § 1.1295-1(k).

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Fung, (202) 622-3840 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1555. Responses to these collections of information are mandatory for PFIC shareholders that wish to make the section 1295 election to treat the PFIC as a QEF.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224.

The estimated average annual burden per respondent and/or recordkeeper varies from fifteen minutes to three hours, depending on individual circumstances, with an estimated average of twenty-nine minutes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

On January 2, 1998, the Treasury and the IRS published temporary regulations regarding the section 1295 election and rules applicable to a PFIC shareholder under sections 1291, 1293, 1295 and 1297 (redesignated as section 1298 by the Taxpayer Relief Act of 1997, and hereafter referred to as section 1298) (TD 8750, 63 FR 6). On that same date, the Treasury and the IRS published a notice of proposed rulemaking in the Federal Register (63 FR 35). The text of the temporary regulations served as the text of the proposed regulations.

Sections 1291, 1293, 1295 and 1298 were added by the Tax Reform Act of 1986, effective for taxable years of foreign corporations beginning after December 31, 1986. As originally enacted, the section 1295 election was an election made by the PFIC. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) amended section

1295, effective for taxable years of foreign corporations beginning after December 31, 1986, to change the section 1295 election to a shareholder-by-shareholder election. Sections 1291, 1293 and 1298 were also amended by TAMRA, and sections 1293 and 1298 were further amended by the Omnibus Budget Reconciliation Act of 1993. Section 1298 also was amended by the Revenue Reconciliation Act of 1989 and the Small Business Job Protection Act of 1996. In addition, the Taxpayer Relief Act of 1997 (1997 TRA) amended section 1 to provide categories of long-term capital gain and the maximum rates of tax to which the categories are subject. In certain cases, this amendment affects the calculation of net capital gain for purposes of section 1293.

No written comments were received on the proposed regulations, and no public hearing was requested or held. The proposed regulations are adopted as final regulations as revised by this Treasury Decision. The revisions are summarized in the explanations below.

#### Explanation of Revisions

A foreign corporation is a PFIC for a taxable year if the foreign corporation satisfies either the income or asset test of section 1297(a) for that year. A foreign corporation is a PFIC under the income test if 75 percent or more of its gross income for its taxable year is passive, or investment-type, income. Alternatively, under the asset test, a foreign corporation is a PFIC if 50 percent or more of the average fair market value of its assets during its taxable year are assets that produce or are held for the production of passive income. A shareholder of a foreign corporation that qualifies as a PFIC is subject to the interest charge regime of section 1291 with respect to certain distributions by the PFIC and certain dispositions of its stock. Generally, a shareholder of a PFIC may avoid the interest charge regime by making a timely election under section 1295 to treat a PFIC as a QEF, in which case the shareholder will be taxed annually pursuant to section 1293 on its pro rata share of the ordinary earnings and net capital gain of the PFIC. Under section 1295(a), a section 1295 election will apply with respect to the PFIC if the PFIC complies with requirements prescribed by the Secretary for purposes of determining the ordinary earnings and net capital gain of the PFIC and otherwise carrying out the purposes of the PFIC provisions.

Section 1295(b)(1), as enacted by TAMRA, provides that a shareholder may make a section 1295 election with

respect to a PFIC for any taxable year of the shareholder (shareholder election year). Once made, the election will apply to that year and to all subsequent years of the shareholder unless revoked by the shareholder with the consent of the Secretary. Section 1295(b)(2) prescribes the time for making the election. In general, for the section 1295 election to be applicable to a taxable year, the shareholder must make the election by the due date, as extended under section 6081, for the shareholder's return for that taxable year. However, to the extent provided in the regulations, a section 1295 election may be made for a taxable year after the prescribed due date if the shareholder failed to make a timely election because the shareholder reasonably believed that the foreign corporation was not a PFIC.

Under temporary regulations § 1.1295-1T(d)(1) and (f)(1), the shareholder, as defined in § 1.1291-9(j)(3), of a PFIC makes the section 1295 election by filing a Form 8621 with the shareholder's Federal income tax return by the election due date for the shareholder election year, and by filing a copy of that form with the Philadelphia Service Center. In addition, under temporary regulation § 1.1295-1T(f)(2), the shareholder must file an annual Form 8621 with its Federal income tax return to report the shareholder's pro rata share of the ordinary earnings and net capital gain of the QEF. Temporary regulation § 1.1295-1T(f)(2) also required that a copy of the annual Form 8621 be filed with the Philadelphia Service Center. To reduce taxpayer burden, this final regulation eliminates the requirement for filing a copy of Form 8621 with the Philadelphia Service Center when the shareholder makes the section 1295 election or reports the shareholder's annual pro rata share of the ordinary earnings and net capital gain of the QEF.

In addition, this final regulation clarifies the rule in temporary regulation § 1.1295-1T(c)(2)(ii) for income inclusion by the shareholder of a QEF under section 1293 for any taxable year that the foreign corporation is not a PFIC under section 1297(a) and is not treated as a PFIC under section 1298(b)(1). This final regulation clarifies that in such case, the shareholder is not required to include pursuant to section 1293 the shareholder's pro rata share of ordinary earnings and net capital gain for such year, and the shareholder shall not be required to satisfy the section 1295 annual reporting requirement for such year. Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1295 election. Thus, if the foreign corporation

is a PFIC in any taxable year after a year in which it is not treated as a PFIC, the shareholder's original election under section 1295 continues to apply and the shareholder must take into account its pro rata share of ordinary earnings and net capital gain for such year and comply with the section 1295 annual reporting requirement.

The Taxpayer Relief Act of 1997 added section 1296 to provide PFIC shareholders with an alternative method for current income inclusion by making a mark-to-market election with respect to their PFIC stock that qualifies as marketable stock. The election is available to shareholders whose taxable years begin after December 31, 1997 for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year. The effect of a mark-to-market election on a section 1295 election will be addressed in subsequent regulations under section 1296. In addition, temporary regulation § 1.1297-3T(c) governing the deemed dividend election by a United States person that is a shareholder of a PFIC will be finalized in a future regulation project.

Notice 98-22 (1998-17 I.R.B. 5) provides that taxpayers will be permitted to apply the rules of the temporary regulations under § 1.1295-1T(b)(4) (section 1295 election by shareholders who file a joint return) and § 1.1295-1T(f) and (g) (procedures for making a section 1295 election and annual information requirements by the PFIC or intermediary) to taxable years beginning before January 1, 1998, for which the statute of limitations on the assessment of tax has not expired and, with respect to § 1.1295-1T(b)(4), if certain consistency requirements are met. The rule of Notice 98-22 has been incorporated into § 1.1295-1(k) of this regulation. Final regulation § 1.1295-1(k) is changed to reflect the special effective dates for § 1.1295-1(b)(4), (f) and (g) as provided by Notice 98-22. Accordingly, Notice 98-22 is obsolete since the effective date provisions are contained in this final regulation.

Notice 88-125 described the requirements a shareholder must satisfy to make and maintain a section 1295 election for taxable years beginning before January 1, 1998. As a result of the procedures and requirements set forth first in the temporary regulations published on January 2, 1998, and now in these final regulations, Notice 88-125 is obsolete effective February 7, 2000.

#### Effect On Other Documents

Notice 88-125 and Notice 98-22 are obsolete as of February 7, 2000.

**Special Analyses**

It has been determined that the final regulations are 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. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act (5 U.S.C. chapter 6), that the collection of information contained in these regulations will not have a significant economic impact on substantial number of small entities. The cost of collection of information to small entities is insignificant because the primary reporting burden is on individual PFIC shareholders who make the section 1295 election. Therefore, the collection of information will not have a substantial economic impact. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act 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 the final regulations is Margaret A. Fung, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

**26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**26 CFR Part 602**

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

**PART 1—INCOME TAXES**

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

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

Sec. 1.1291-1 also issued under 26 U.S.C. 1291. \* \* \*

Sec. 1.1293-1 also issued under 26 U.S.C. 1293. \* \* \*

Sec. 1.1295-3 also issued under 26 U.S.C. 1295. \* \* \*

**§ 1.1291-1T [Redesignated as § 1.1291-1]**

Par. 2. Section 1.1291-1T is redesignated as § 1.1291-1 and the section heading is revised to read as follows:

**§ 1.1291-1 Taxation of U.S. persons that are shareholders of PFICs that are not pedigreed QEFs.**  
\* \* \* \* \*

**§ 1.1293-1T [Redesignated as § 1.1293-1]**

Par. 3. Section 1.1293-1T is redesignated as § 1.1293-1 and the newly designated section is amended by revising the section heading and the first sentence of paragraph (c)(1) to read as follows:

**§ 1.1293-1 Current taxation of income from qualified electing funds.**  
\* \* \* \* \*

(c) Application of rules of inclusion with respect to stock held by a pass through entity—(1) *In general.* If a domestic pass through entity makes a section 1295 election, as provided in paragraph (d)(2) of this section, with respect to the PFIC shares that it owns, directly or indirectly, the domestic pass through entity takes into account its pro rata share of the ordinary earnings and net capital gain attributable to the QEF shares held by the pass through entity.  
\* \* \* \* \*

Par. 4. Section 1.1295-0 is amended by:

1. Revising the introductory text of the section.
2. Removing the entry for the heading of § 1.1295-1T, and adding an entry for the heading of § 1.1295-1 in its place.
3. Revising the entries for § 1.1295-1(d)(3) through (d)(5).
4. Adding entries for § 1.1295-1 (d)(6) and (e) (1) and (2).
5. Removing the entry for the heading of § 1.1295-3T, and adding an entry for the heading of § 1.1295-3 in its place.

The revisions and additions read as follows:

**§ 1.1295-0 Table of contents.**

This section contains a listing of the headings for §§ 1.1295-1 and 1.1295-3.

**§ 1.1295-1 Qualified electing funds.**  
\* \* \* \* \*

- (d) \* \* \*
- (3) Indirect ownership of a PFIC through other PFICs.
- (4) Member of consolidated return group as shareholder.
- (5) Option holder.

- (6) Exempt organization.
- (e) \* \* \*
- (1) General rule.
- (2) Examples.

**§ 1.1295-3 Retroactive elections.**  
\* \* \* \* \*

**§ 1.1295-1T [Redesignated as § 1.1295-1]**

Par. 5. Section § 1.1295-1T is redesignated as § 1.1295-1 and the newly designated section is amended by:

1. Revising the section heading.
2. Revising paragraph (b)(3)(iv)(B).
3. Adding paragraph (b)(3)(v).
4. Adding a sentence to the end of paragraph (b)(4).
5. Revising paragraphs (c)(2)(ii) and (iii).
6. Revising the third sentence in paragraph (c)(2)(v) *Example 3.*
7. Redesignating paragraphs (d)(3), (d)(4) and (d)(5) as paragraphs (d)(4), (d)(5) and (d)(6), respectively.
8. Adding a new paragraph (d)(3).
9. Revising paragraph (e).
10. In the last sentence of paragraph (f)(1)(iii), the language "capital gain; and" is removed and the language "capital gain." is added in its place.
11. Adding the word "and" at the end of paragraph (f)(1)(ii).
12. Removing paragraph (f)(1)(iv).
13. Adding the word "and" at the end of paragraph (f)(2)(i)(B).
14. In the last sentence of paragraph (f)(2)(i)(C), the language "capital gain; and" is removed and the language "capital gain." is added in its place.
15. Removing paragraph (f)(2)(i)(D).
16. Adding a new paragraph (f)(3).
17. Revising the introductory language of paragraph (g)(3).
18. Adding paragraph (g)(5).
19. Revising the first sentence of paragraph (h).
20. Revising paragraph (k).

The revisions and additions read as follows:

**§ 1.1295-1 Qualified electing funds.**  
\* \* \* \* \*

- (b) \* \* \*
- (3) \* \* \*
- (iv) \* \* \*
- (B) In the case of PFIC stock transferred by an interest holder or beneficiary to a pass through entity in a transaction in which gain is not fully recognized (including pursuant to regulations under section 1291(f)), the pass through entity makes the section 1295 election with respect to the PFIC stock transferred for the taxable year in which the transfer was made. The PFIC stock transferred will be treated as stock of a pedigreed QEF by the pass through

entity, however, only if that stock was treated as stock of a pedigreed QEF with respect to the interest holder or beneficiary at the time of the transfer, and the PFIC has been a QEF with respect to the pass through entity for all taxable years of the PFIC that are included wholly or partly in the pass through entity's holding period of the PFIC stock during which the foreign corporation was a PFIC within the meaning of § 1.1291-9(j).

(v) *Characterization of stock distributed by a partnership.* In the case of PFIC stock distributed by a partnership to a partner in a transaction in which gain is not fully recognized, the PFIC stock will be treated as stock of a pedigreed QEF by the partners only if that stock was treated as stock of a pedigreed QEF with respect to the partnership for all taxable years of the PFIC that are included wholly or partly in the partnership's holding period of the PFIC stock during which the foreign corporation was a PFIC within the meaning of § 1.1291-9(j), and the partner has a section 1295 election in effect with respect to the distributed PFIC stock for the partner's taxable year in which the distribution was made. If the partner does not have a section 1295 election in effect, the stock shall be treated as stock in a section 1291 fund. See paragraph (k) of this section for special applicability date of paragraph (b)(3)(v) of this section.

(4) \* \* \* See paragraph (k) of this section for special applicability date of paragraph (b)(4) of this section.

(c) \* \* \*

(2) \* \* \*

(ii) *Effect of PFIC status on election.* A foreign corporation will not be treated as a QEF for any taxable year of the foreign corporation that the foreign corporation is not a PFIC under section 1297(a) and is not treated as a PFIC under section 1298(b)(1). Therefore, a shareholder shall not be required to include pursuant to section 1293 the shareholder's pro rata share of ordinary earnings and net capital gain for such year and shall not be required to satisfy the section 1295 annual reporting requirement of paragraph (f)(2) of this section for such year. Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1295 election. Thus, if the foreign corporation is a PFIC in any taxable year after a year in which it is not treated as a PFIC, the shareholder's original election under section 1295 continues to apply and the shareholder must take into account its pro rata share of ordinary earnings and net capital gain for such year and comply with the

section 1295 annual reporting requirement.

(iii) *Effect on election of complete termination of a shareholder's interest in the PFIC.* Complete termination of a shareholder's direct and indirect interest in stock of a foreign corporation will not terminate a shareholder's section 1295 election with respect to the foreign corporation. Therefore, if a shareholder reacquires a direct or indirect interest in any stock of the foreign corporation, that stock is considered to be stock for which an election under section 1295 has been made and the shareholder is subject to the income inclusion and reporting rules required of a shareholder of a QEF.

\* \* \* \* \*

(v) \* \* \*

*Example 3.* \* \* \* If P does not make the section 1295 election with respect to the FC stock, C will continue to be subject, in C's capacity as an indirect shareholder of FC, to the income inclusion and reporting rules required of shareholders of QEFs in 1999 and subsequent years for that portion of the FC stock C is treated as owning indirectly through the partnership. \* \* \*

(d) \* \* \*

(3) *Indirect ownership of a PFIC through other PFICs—(i) In general.* An election under section 1295 shall apply only to the foreign corporation for which an election is made. Therefore, if a shareholder makes an election under section 1295 to treat a PFIC as a QEF, that election applies only to stock in that foreign corporation and not to the stock in any other corporation which the shareholder is treated as owning by virtue of its ownership of stock in the QEF.

(ii) *Example.* The following example illustrates the rules of paragraph (d)(3)(i) of this section:

*Example.* In 1988, T, a U.S. person, purchased stock of FC, a foreign corporation that is a PFIC. FC also owns the stock of SC, a foreign corporation that is a PFIC. T makes an election under section 1295 to treat FC as a QEF. T's section 1295 election applies only to the stock T owns in FC, and does not apply to the stock T indirectly owns in SC.

\* \* \* \* \*

(e) *Time for making a section 1295 election—(1) In general.* Except as provided in § 1.1295-3, a shareholder making the section 1295 election must make the election on or before the due date, as extended under section 6081 (election due date), for filing the shareholder's income tax return for the first taxable year to which the election will apply. The section 1295 election must be made in the original return for that year, or in an amended return, provided the amended return is filed on or before the election due date.

(2) *Examples.* The following examples illustrate the rules of paragraph (e)(1) of this section:

*Example 1.* In 1998, C, a domestic corporation, purchased stock of FC, a foreign corporation that is a PFIC. Both C and FC are calendar year taxpayers. C wishes to make the section 1295 election for its taxable year ended December 31, 1998. The section 1295 election must be made on or before March 15, 1999, the due date of C's 1998 income tax return as provided by section 6072(b). On March 14, 1999, C files a request for a three-month extension of time to file its 1998 income tax return under section 6081(b). C's time to file its 1998 income tax return and to make the section 1295 election is thereby extended to June 15, 1999.

*Example 2.* The facts are the same as in *Example 1* except that on May 1, 1999, C filed its 1998 income tax return and failed to include the section 1295 election. C may file an amended income tax return for 1998 to make the section 1295 election provided the amended return is filed on or before the extended due date of June 15, 1999.

\* \* \* \* \*

(f) \* \* \*

(3) *Effective date.* See paragraph (k) of this section for special applicability date of paragraph (f) of this section.

(g) \* \* \*

(3) *Annual Intermediary Statement.* In the case of a U.S. person that is an indirect shareholder of a PFIC that is owned through an intermediary, as defined in paragraph (j) of this section, an Annual Intermediary Statement issued by an intermediary containing the information described in paragraph (g)(1) of this section and reporting the indirect shareholder's pro rata share of the ordinary earnings and net capital gain of the QEF as described in paragraph (g)(1)(ii)(A) of this section, may be provided to the indirect shareholder in lieu of the PFIC Annual Information Statement if the following conditions are satisfied—

\* \* \* \* \*

(5) *Effective date.* See paragraph (k) of this section for special applicability date of paragraph (g) of this section.

(h) *Transition rules.* Taxpayers may rely on Notice 88-125 (1988-2 C.B. 535) (see § 601.601(d)(2) of this chapter), for rules on making and maintaining elections for shareholder election years (as defined in paragraph (j) of this section) beginning after December 31, 1986, and before January 1, 1998. \* \* \*

\* \* \* \* \*

(k) *Effective dates.* Paragraphs (b)(2)(iii), (b)(3), (b)(4) and (c) through (j) of this section are applicable to taxable years of shareholders beginning after December 31, 1997. However, taxpayers may apply the rules under paragraphs (b)(4), (f) and (g) of this section to a taxable year beginning before January 1,

1998, provided the statute of limitations on the assessment of tax has not expired as of April 27, 1998 and, in the case of paragraph (b)(4) of this section, the taxpayers who filed the joint return have consistently applied the rules of that section to all taxable years following the year the election was made. Paragraph (b)(3)(v) of this section is applicable as of February 7, 2000, however a taxpayer may apply the rules to a taxable year prior to the applicable date provided the statute of limitations on the assessment of tax for that taxable year has not expired.

**§ 1.1295-3T [Redesignated as § 1.1295-3]**

Par. 6. Section § 1.1295-3T is redesignated as § 1.1295-3 and the

newly designated section is amended by revising the section heading and paragraphs (b)(1) and (c)(5)(i) to read as follows:

**§ 1.1295-3 Retroactive elections.**

\* \* \* \* \*

**(b) \* \* \***

(1) Reasonably believed, within the meaning of paragraph (d) of this section, that as of the election due date, as defined in § 1.1295-1(e), the foreign corporation was not a PFIC for its taxable year that ended during the retroactive election year;

\* \* \* \* \*

**(c) \* \* \***

(5) *Time of and manner for filing a Protective Statement—(i) In general.*

Except as provided in paragraph (c)(5)(ii) of this section, a Protective Statement must be attached to the shareholder's federal income tax return for the shareholder's first taxable year to which the Protective Statement will apply. The shareholder must file its return and the copy of the Protective Statement by the due date, as extended under section 6081, for the return.

\* \* \* \* \*

Par. 7. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column.

Affected Section	Remove	Add
1.1293-1(c)(1), last sentence	§ 1.295-1T(j)	§ 1.1295-1(j).
1.1293-1(c)(2)(i), first sentence	§ 1.1295-1T(D)(2)	§ 1.1295-1(d)(2).
1.1295-1(b)(3)(iv)(A)	stock, and	stock) and
1.1295-1(c)(2)(ii), first sentence	1296(a)	1297(a)
1.1295-1(c)(2)(ii), first sentence	1297(b)(1).	1298(b)(1).
1.1295-1(c)(2)(iv), last sentence	§ 1.1293-1T(c).	§ 1.1293-1(c).
1.1295-1(d)(1), last sentence	(d)(5)	(d)(6)
1.1295-1(d)(2)(i)(A), last sentence	§ 1.1293-1T(c)(1).	§ 1.1293-1(c)(1).
1.1295-1(d)(2)(ii), last sentence	§ 1.1293-1T(c)(1).	§ 1.1293-1(c)(1).
1.1295-1(d)(2)(iii), last sentence	§ 1.1293-1T(c)(1).	§ 1.1293-1(c)(1).
1.1295-1(d)(6), first sentence	§ 1.1291-1T(e).	§ 1.1291-1(e).
1.1295-1(f)(1)(iii), last sentence	QEF calculated the QEF's	PFIC calculated the PFIC's
1.1295-1(g)(1) introductory text, second sentence, last word.	representation—	representations—
1.1295-1(g)(1)(ii)(A)	§ 1.1293-1T(a)(2)	§ 1.1293-1(a)(2)
1.1295-1(h), second sentence	§ 1.1295-1T	§ 1.1295-1
1.1295-1(i)(1)(iii), last sentence	never was made.	was never made.
1.1295-1(i)(3)(iii)	through 1297	through 1298
1.1295-3(a), first sentence	§ 1.1295-1T(j).	§ 1.1295-1(j).
1.1295-3(a), first sentence	§ 1.1295-1T(e)	§ 1.1295-1(e)
1.1295-3(b)(2)	and 1297	and 1298
1.1295-3(c)(3)	§ 1.1295-1T(d).	§ 1.1295-1(d).
1.1295-3(c)(4)(i)(A), third sentence	assessment of taxes	assessment of all PFIC related taxes
1.1295-3(c)(6)(i), last sentence	see § 1.1295-1T(c)(2)(iii).	see § 1.1295-1(c)(2)(iii).
1.1295-3(d)(1), first sentence	section 1296(a)	section 1297(a)
1.1295-3(d)(1), second sentence	section 1296(a)	section 1297(a)
1.1295-3(f)(2)(i) introductory text, second sentence	PFIC and the availability	PFIC and of the availability
1.1295-3(f)(4)(vi), first sentence	§ 1.1295-1T(d).	§ 1.1295-1(d).
1.1295-3(g)(3), first sentence	§ 1.1295-1T(d).	§ 1.1295-1(d).

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In 602.101, paragraph (b) is amended by removing the entries for § 1.1295-1T and 1.1295-3T and adding entries in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where identified and described	Current OMB control no.
* * * * *	
1.1295-1	1545-1555
1.1295-3	1545-1555

\* \* \* \* \*

Robert E. Wenzel,  
Deputy Commissioner of Internal Revenue.  
Approved: January 14, 2000.

Jonathan Talisman,  
Acting Assistant Secretary of the Treasury.  
[FR Doc. 00-1892 Filed 2-4-00; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF THE INTERIOR**

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA-114-FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Virginia permanent

Interest on Tax Deferral

● ● CCH Explanation

treated in the same manner as foreign currency gain, which is attributable to a Code Sec. 988 transaction.—CCH.

.40 Regulated investment companies.—The IRS has provided guidance for regulated investment companies that may wish to elect to market their stock in passive foreign investment companies as provided in Proposed Reg. § 1.1291-8. According to the IRS, the final regulations will provide that eligible RICs may apply Proposed Reg. § 1.1291-8 for tax years ending after March 31, 1992 and before April 1, 1993. Notice 92-53, 1992-2 CB 384.

.50 Multi-tier qualified electing funds.—Provided certain requirements were met, no gain or

loss would be recognized to a foreign parent corporation and its first-tier and second-tier foreign subsidiaries by reason of the complete liquidation of the second-tier subsidiary. If the three corporations were qualified electing funds with respect to a QEF shareholder, for all their tax years as passive foreign investment companies, all of which years were wholly or partly included in the QEF shareholder's holding period, the QEF shareholder would not be taxed on the indirect disposition of the second-tier subsidiary.

IRS Letter Ruling 9007014, November 16, 1989.

[ 33,060 ]

CURRENT TAXATION OF INCOME FROM QUALIFIED ELECTING FUNDS

Sec. 1293 [1986 Code]. (a) INCLUSION.—

(1) IN GENERAL.—Every United States person who owns (or is treated under section 1297(a) as owning) stock of a qualified electing fund at any time during the taxable year of such fund shall include in gross income—

(A) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such year, and

(B) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such year.

(2) YEAR OF INCLUSION.—The inclusion under paragraph (1) shall be for the taxable year of the shareholder in which or with which the taxable year of the fund ends.

(b) PRO RATA SHARE.—The pro rata share referred to in subsection (a) in the case of any shareholder is the amount which would have been distributed with respect to the shareholder's stock if, on each day during the taxable year of the fund, the fund had distributed to each shareholder a pro rata share of that day's ratable share of the fund's ordinary earnings and net capital gain for such year. To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period.

(c) PREVIOUSLY TAXED AMOUNTS DISTRIBUTED TAX FREE.—If the taxpayer establishes to the satisfaction of the Secretary that any amount distributed by a passive foreign investment company is paid out of earnings and profits of the company which were included under subsection (a) in the income of any United States person, such amount shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distribution shall immediately reduce earnings and profits. If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).

(d) BASIS ADJUSTMENTS.—The basis of the taxpayer's stock in a passive foreign investment company shall be—

(1) increased by any amount which is included in the income of the taxpayer under subsection (a) with respect to such stock, and

(2) decreased by any amount distributed with respect to such stock which is not includible in the income of the taxpayer by reason of subsection (c).

A similar rule shall apply also in the case of any property if by reason of holding such property the taxpayer is treated under section 1297(a) as owning stock in a qualified electing fund.

1 33,043.40 Code § 1293(a)(1)(A)

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(e) ORDINARY EARNINGS.—For purposes of this section—

(1) ORDINARY EARNINGS.—The term "ordinary earnings" means the excess of the earnings and profits of the qualified electing fund for the taxable year over its net capital gain for such taxable year.

(2) LIMITATION ON NET CAPITAL GAIN.—A qualified electing fund's net capital gain for any taxable year shall not exceed its earnings and profits for such taxable year.

(3) DETERMINATION OF EARNINGS AND PROFITS.—The earnings and profits of any qualified electing fund shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the qualified electing fund.

(f) FOREIGN TAX CREDIT ALLOWED IN THE CASE OF 10-PERCENT CORPORATE SHAREHOLDER.—For purposes of section 960—

(1) any amount included in the gross income under subsection (a) shall be treated as if it were included under section 951(a), and

(2) any amount excluded from gross income under subsection (c) shall be treated in the same manner as amounts excluded from gross income under section 959.

(g) OTHER SPECIAL RULES.—

(1) EXCEPTION FOR CERTAIN INCOME.—For purposes of determining the amount included in the gross income of any person under this section, the ordinary earnings and net capital gain of a qualified electing fund shall not include any item of income received by such fund if—

(A) such fund is a controlled foreign corporation (as defined in section 957(a)) and such person is a United States shareholder (as defined in section 951(b)) in such fund, and

(B) such person establishes to the satisfaction of the Secretary that—

(i) such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11, or

(ii) such income is—

(I) from sources within the United States,

(II) effectively connected with the conduct by the qualified electing fund of a trade or business in the United States, and

(III) not exempt from taxation (or subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(2) PREVENTION OF DOUBLE INCLUSION.—The Secretary shall prescribe such adjustment to the provisions of this section as may be necessary to prevent the same item of income of a qualified electing fund from being included in the gross income of a United States person more than once.

86 Code

.01 Added by P.L. 99-514. Amended by P.L. 103-66 and P.L. 100-647. For details, see the Code Volumes.

#### Committee Reports on P.L. 103-66 (Omnibus Budget Reconciliation Act of 1993)

**23 Earnings of controlled foreign corporations.**—The bill limits the availability of deferral of U.S. tax on certain earnings of controlled foreign corporations. As explained in detail below, the bill generally requires current inclusions in the income of U.S. shareholders of a controlled foreign corporation to the extent of the corporation's accumulated earnings invested in excess passive assets. The bill also conforms the treatment of earnings of controlled foreign corporations invested in U.S. property to the new rules for earnings invested in excess passive assets, and makes related modifications to other rules applicable to controlled foreign corporations and PFICs.

#### Modification of certain PFIC rules in the case of U.S. shareholders of controlled foreign corporations.—

The bill modifies the present-law rules for applying the PFIC asset test in the case of U.S. shareholders of controlled foreign corporations. In testing a controlled foreign corporation for PFIC status with respect to its "U.S. shareholders," under the bill, assets generally are measured by adjusted basis as determined for purposes of calculating earnings and profits, with no option to use fair market value.

Adjusted basis for this purpose is modified to take into account certain research and experimental expenditures and certain payments for the use of intangible property that is licensed to the controlled foreign corporation. First, the aggregate adjusted basis of the total assets of the controlled foreign corporation is increased by the total amount of research and development expenditure made by the controlled foreign corporation, for qualified research or experimental expenditures (as defined for purposes of Code section 174 and the Treasury regula

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Code § 1293(g)(2) ¶ 33,066



## Payment Extension Election

### ● ● CCH Explanation

(without extensions) for the tax year in which such disposition or cessation occurs. Events causing the termination of an extension are: (1) any distribution of previously taxed earnings not includible in the shareholder's income under Code Sec. 1293(c); (2) a transfer of PFIC stock; (3) the discontinuance of a PFIC as a qualified electing fund; and (4) any direct or indirect loans to the shareholder (Code Sec. 1294(c); Temporary Reg. § 1.1294-1T(e)). For this purpose, a distribution is treated as made from the most recently accumulated earnings and profits (Code Sec. 1294(c)(1)(B)). Events (2) and (3), above, will cause all unexpired payment extensions to terminate as indicated above.

**.03 Election procedures.**—The election to defer payment of tax on undistributed earnings of a qualified electing fund (QEF) must be made not later than the time for filing a return (including extensions) for the tax year (Code Sec. 1294(d)). The election must be made on Form 8621 (Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund), or equivalent, for any tax year in which the shareholder reports income under Code Sec. 1293. The election must be made by the due date, as extended, of the shareholder's tax return for the year (except where the shareholder receives late notification from the QEF) (Temporary Reg. § 1.1294-1T(c)).—CCH.

[133,100]

### QUALIFIED ELECTING FUND

Sec. 1295 [1986 Code]. (a) GENERAL RULE.—For purposes of this part, any passive foreign investment company shall be treated as a qualified electing fund with respect to the taxpayer if—

(1) an election by the taxpayer under subsection (b) applies to such company for the taxable year, and

(2) such company complies with such requirements as the Secretary may prescribe for purposes of—

(A) determining the ordinary earnings and net capital gain of such company, and

(B) otherwise carrying out the purposes of this subpart.

(b) ELECTION.—

(1) IN GENERAL.—A taxpayer may make an election under this subsection with respect to any passive foreign investment company for any taxable year of the taxpayer. Such an election, once made with respect to any company, shall apply to all subsequent taxable years of the taxpayer with respect to such company unless revoked by the taxpayer with the consent of the Secretary.

(2) WHEN MADE.—An election under this subsection may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believed that the company was not a passive foreign investment company.

.01 Added by P.L. 99-514. Amended by P.L. 100-647. For details, see the Code Volumes.

Committee Reports on P.L. 100-647  
(Technical and Miscellaneous Revenue Act of  
1988)

.24 [Election to treat PFIC stock as stock in a  
qualified electing fund].—The bill provides that the

election to be a qualified electing fund is to be made at the U.S. investor level, rather than at the company level. The investor-level election is available, however, only where the PFIC complies with appropriate requirements (as prescribed by regulation) to determine the income of the company and other information necessary to carry out the PFIC provisions. The effect of the election is to treat a PFIC as a qualified electing fund with respect to each electing investor so that, for example, an electing investor will not be subject to the deferred tax and

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Code § 1295(b)(2) ¶ 33,100

and the treatment of distributions by an S corporation.

**DATES:** This correction is effective December 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Martin Schaffer, Deane Burke, or David Shulman at (202) 622-3070, or Brenda Stewart at (202) 622-3120 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background

The correction to final regulations that are subject to this correction is under sections 1366, 1367, and 1368 of the Internal Revenue Code.

#### Need for Correction

As published, the correction to final regulations (TD 8852) contains a typographical error that may prove to be misleading and is in need of clarification.

#### Correction of Publication

Accordingly, the publication of the correction of the final regulations (TD 8852), which was the subject of FR Doc. 00-5244, is corrected as follows:

#### § 1.1367-1 [Corrected]

1. On page 12471, third column, the penultimate line of the correction for § 1.1367-1, the reference “§ 1.1377(b)(1)” is corrected to read “§ 1.1377-1(b)(1)”.

**Dale D. Goode,**

*Federal Register Liaison, Assistant Chief Counsel (Corporate).*

[FR Doc. 00-6693 Filed 3-27-00; 8:45 am]

BILLING CODE 4830-01-U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8870]

RIN 1545-AV39

#### General Rules for Making and Maintaining Qualified Electing Fund Elections; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction of final regulations.

**SUMMARY:** This document contains corrections to final regulations which were published in the Federal Register on Monday, February 7, 2000 (65 FR 5777), relating to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 to treat the PFIC as a qualified electing fund, and for PFIC shareholders

that wish to make a section 1295 election that will apply on a retroactive basis.

**DATES:** This correction is effective February 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Fung, (202) 622-3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations that are the subject of these corrections are under sections 1291, 1293, 1295 and 1298 of the Internal Revenue Code.

#### Need for Correction

As published, the final regulations (TD 8870) contain errors that are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (TD 8870), which were the subject of FR Doc. 00-1892, is corrected as follows:

#### PART 1—[CORRECTED]

1. On page 5779, beginning in column 1, instructional Paragraph 1, and the authority citation are corrected to read as follows:

**Paragraph 1.** The authority citation for part 1 is amended by removing the entries for 1.1291-1T, 1.1293-1T, 1.1295-1T, and 1.1295-3T, and by adding entries in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
 Sec. 1.1291-1 also issued under 26 U.S.C. 1291. \* \* \*  
 Sec. 1.1293-1 also issued under 26 U.S.C. 1293. \* \* \*  
 Sec. 1.1295-1 also issued under 26 U.S.C. 1295.  
 Sec. 1.1295-3 also issued under 26 U.S.C. 1295. \* \* \*

#### § 1.1293-0 [Corrected]

2. On page 5779, column 2, a new instructional paragraph 2a. is added to read as follows:

**Par. 2a.** Section 1.1293-0 is amended by:

1. Removing the reference “1.1293-1T” in the introductory text of the section and adding “1.1293-1” in its place.

2. Removing the “T” and the parenthetical “(temporary)” from the entry for § 1.1293-1T.

#### § 1.1295-0 [Corrected]

3. On page 5779, column 2, instruction 5 of instructional Par. 4. is corrected by removing the reference

“1.195-3”, and adding “1.1295-3” in its place.

**Dale D. Goode,**

*Federal Register Liaison, Assistant Chief Counsel (Corporate).*

[FR Doc. 00-6257 Filed 3-27-00; 8:45 am]

BILLING CODE 4830-01-U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8856]

RIN 1545-AX44

#### General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final rule.

**SUMMARY:** This document contains corrections to final regulations (TD 8856) which were published in the Federal Register on Thursday, December 30, 1999 (64 FR 73408), relating to the withholding of income tax on certain U.S. source income payments to foreign persons.

**DATES:** This correction is effective January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Laurie Hatten-Boyd at (202) 622-3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations that are subject to these corrections provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code.

#### Need for Correction

As published, the final regulations (TD 8856) contain errors that may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (TD 8856), which were the subject of FR Doc. 99-33515, is corrected as follows:

#### § 1.1441-1 [Corrected]

1. On page 73409, column 2, § 1.1441-1(f)(2)(i), line 24, the language,

a C corporation, [insert name and employer identification number of the C corporation, if different from name and employer identification number of RIC or REIT]. This statement must be signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return for the first taxable year in which the assets of the C corporation become assets of the RIC or REIT.

(c) *Special rule.* In cases where the first taxable year in which the assets of the C corporation become assets of the RIC or REIT ends after June 10, 1987 but before March 8, 2000, the section 1374 election may be filed with the first Federal income tax return filed by the RIC or REIT after March 8, 2000.

(d) *Effective date.* In the case of carryover basis transactions involving the transfer of property of a C corporation to a RIC or REIT, the regulations apply to transactions occurring on or after June 10, 1987. In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the regulations apply to such qualifications that are effective for taxable years beginning on or after June 10, 1987.

Par. 3. In § 1.852-12, paragraph (d) is added to read as follows:

**§ 1.852-12 Non-RIC earnings and profits.**  
\* \* \* \* \*

(d) For treatment of net built-in gain assets of a C corporation that become assets of a RIC, see § 1.337(d)-5T.

Par. 4. In § 1.857-11, paragraph (c) is added to read as follows:

**§ 1.857-11 Non-REIT earnings and profits.**  
\* \* \* \* \*

(e) For treatment of net built-in gain assets of a C corporation that become assets of a REIT, see § 1.337(d)-5T.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB control numbers.**  
\* \* \* \* \*

(b) \* \* \*

CFR Part or section where identified or described	Current OMB control No.
1.337(d)-5T	1545-1672

CFR Part or section where identified or described	Current OMB control No.
1.337(d)-5T	1545-1672

Robert E. Wenzel,  
Deputy Commissioner of Internal Revenue.  
Approved: January 21, 2000.  
Jonathan Talisman,  
Acting Assistant Secretary for Tax Policy.  
[FR Doc. 00-1894 Filed 2-4-00; 8:45 am]  
BILLING CODE 4830-01-U

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

26 CFR Parts 1 and 602

[TD 8870]

RIN 1545-AV39

**General Rules for Making and Maintaining Qualified Electing Fund Elections**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations that provide guidance to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 (section 1295 election) to treat the PFIC as a qualified electing fund (QEF), and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis (retroactive election). In addition, this document contains a final regulation that provides guidance under section 1291 to a PFIC shareholder that is a tax-exempt organization. Lastly, this document contains final regulations under section 1293 for calculating and reporting net capital gain by a QEF, and also clarifies the application of the current income inclusion rules of section 1293 to interest in a QEF held through a domestic pass through entity.

**DATES:** *Effective Date.*

These regulations are effective February 7, 2000.

*Applicability Date.* In general, these regulations are applicable as of January 2, 1998. For special dates of applicability see § 1.1295-1(k).

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Fung, (202) 622-3840 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1555. Responses to these collections of information are mandatory for PFIC shareholders that wish to make the section 1295 election to treat the PFIC as a QEF.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP-FS:FP, Washington, DC 20224.

The estimated average annual burden per respondent and/or recordkeeper varies from fifteen minutes to three hours, depending on individual circumstances, with an estimated average of twenty-nine minutes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

On January 2, 1998, the Treasury and the IRS published temporary regulations regarding the section 1295 election and rules applicable to a PFIC shareholder under sections 1291, 1293, 1295 and 1297 (redesignated as section 1298 by the Taxpayer Relief Act of 1997, and hereafter referred to as section 1298) (TD 8750, 63 FR 6). On that same date, the Treasury and the IRS published a notice of proposed rulemaking in the Federal Register (63 FR 35). The text of the temporary regulations served as the text of the proposed regulations.

Sections 1291, 1293, 1295 and 1298 were added by the Tax Reform Act of 1986, effective for taxable years of foreign corporations beginning after December 31, 1986. As originally enacted, the section 1295 election was an election made by the PFIC. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) amended section

RG-11579597

1295, effective for taxable years of foreign corporations beginning after December 31, 1986, to change the section 1295 election to a shareholder-by-shareholder election. Sections 1291, 1293 and 1298 were also amended by TAMRA, and sections 1293 and 1298 were further amended by the Omnibus Budget Reconciliation Act of 1993. Section 1298 also was amended by the Revenue Reconciliation Act of 1989 and the Small Business Job Protection Act of 1996. In addition, the Taxpayer Relief Act of 1997 (1997 TRA) amended section 1 to provide categories of long-term capital gain and the maximum rates of tax to which the categories are subject. In certain cases, this amendment affects the calculation of net capital gain for purposes of section 1293.

No written comments were received on the proposed regulations, and no public hearing was requested or held. The proposed regulations are adopted as final regulations as revised by this Treasury Decision. The revisions are summarized in the explanations below.

#### Explanation of Revisions

A foreign corporation is a PFIC for a taxable year if the foreign corporation satisfies either the income or asset test of section 1297(a) for that year. A foreign corporation is a PFIC under the income test if 75 percent or more of its gross income for its taxable year is passive, or investment-type, income. Alternatively, under the asset test, a foreign corporation is a PFIC if 50 percent or more of the average fair market value of its assets during its taxable year are assets that produce or are held for the production of passive income. A shareholder of a foreign corporation that qualifies as a PFIC is subject to the interest charge regime of section 1291 with respect to certain distributions by the PFIC and certain dispositions of its stock. Generally, a shareholder of a PFIC may avoid the interest charge regime by making a timely election under section 1295 to treat a PFIC as a QEF, in which case the shareholder will be taxed annually pursuant to section 1293 on its pro rata share of the ordinary earnings and net capital gain of the PFIC. Under section 1295(a), a section 1295 election will apply with respect to the PFIC if the PFIC complies with requirements prescribed by the Secretary for purposes of determining the ordinary earnings and net capital gain of the PFIC and otherwise carrying out the purposes of the PFIC provisions.

Section 1295(b)(1), as enacted by TAMRA, provides that a shareholder may make a section 1295 election with

respect to a PFIC for any taxable year of the shareholder (shareholder election year). Once made, the election will apply to that year and to all subsequent years of the shareholder unless revoked by the shareholder with the consent of the Secretary. Section 1295(b)(2) prescribes the time for making the election. In general, for the section 1295 election to be applicable to a taxable year, the shareholder must make the election by the due date, as extended under section 6081, for the shareholder's return for that taxable year. However, to the extent provided in the regulations, a section 1295 election may be made for a taxable year after the prescribed due date if the shareholder failed to make a timely election because the shareholder reasonably believed that the foreign corporation was not a PFIC.

Under temporary regulations § 1.1295-1T(d)(1) and (f)(1), the shareholder, as defined in § 1.1291-9(j)(3), of a PFIC makes the section 1295 election by filing a Form 8621 with the shareholder's Federal income tax return by the election due date for the shareholder election year, and by filing a copy of that form with the Philadelphia Service Center. In addition, under temporary regulation § 1.1295-1T(f)(2), the shareholder must file an annual Form 8621 with its Federal income tax return to report the shareholder's pro rata share of the ordinary earnings and net capital gain of the QEF. Temporary regulation § 1.1295-1T(f)(2) also required that a copy of the annual Form 8621 be filed with the Philadelphia Service Center. To reduce taxpayer burden, this final regulation eliminates the requirement for filing a copy of Form 8621 with the Philadelphia Service Center when the shareholder makes the section 1295 election or reports the shareholder's annual pro rata share of the ordinary earnings and net capital gain of the QEF.

In addition, this final regulation clarifies the rule in temporary regulation § 1.1295-1T(c)(2)(ii) for income inclusion by the shareholder of a QEF under section 1293 for any taxable year that the foreign corporation is not a PFIC under section 1297(a) and is not treated as a PFIC under section 1298(b)(1). This final regulation clarifies that in such case, the shareholder is not required to include pursuant to section 1293 the shareholder's pro rata share of ordinary earnings and net capital gain for such year, and the shareholder shall not be required to satisfy the section 1295 annual reporting requirement for such year. Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1295 election. Thus, if the foreign corporation

is a PFIC in any taxable year after a year in which it is not treated as a PFIC, the shareholder's original election under section 1295 continues to apply and the shareholder must take into account its pro rata share of ordinary earnings and net capital gain for such year and comply with the section 1295 annual reporting requirement.

The Taxpayer Relief Act of 1997 added section 1296 to provide PFIC shareholders with an alternative method for current income inclusion by making a mark-to-market election with respect to their PFIC stock that qualifies as marketable stock. The election is available to shareholders whose taxable years begin after December 31, 1997 for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year. The effect of a mark-to-market election on a section 1295 election will be addressed in subsequent regulations under section 1296. In addition, temporary regulation § 1.1297-3T(c) governing the deemed dividend election by a United States person that is a shareholder of a PFIC will be finalized in a future regulation project.

Notice 98-22 (1998-17 I.R.B. 5) provides that taxpayers will be permitted to apply the rules of the temporary regulations under § 1.1295-1T(b)(4) (section 1295 election by shareholders who file a joint return) and § 1.1295-1T(f) and (g) (procedures for making a section 1295 election and annual information requirements by the PFIC or intermediary) to taxable years beginning before January 1, 1998, for which the statute of limitations on the assessment of tax has not expired and, with respect to § 1.1295-1T(b)(4), if certain consistency requirements are met. The rule of Notice 98-22 has been incorporated into § 1.1295-1(k) of this regulation. Final regulation § 1.1295-1(k) is changed to reflect the special effective dates for § 1.1295-1(b)(4), (f) and (g) as provided by Notice 98-22. Accordingly, Notice 98-22 is obsolete since the effective date provisions are contained in this final regulation.

Notice 88-125 described the requirements a shareholder must satisfy to make and maintain a section 1295 election for taxable years beginning before January 1, 1998. As a result of the procedures and requirements set forth first in the temporary regulations published on January 2, 1998, and now in these final regulations, Notice 88-125 is obsolete effective February 7, 2000.

#### Effect On Other Documents

Notice 88-125 and Notice 98-22 are obsolete as of February 7, 2000.

**Special Analyses**

It has been determined that the final regulations are 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. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act (5 U.S.C. chapter 6), that the collection of information contained in these regulations will not have a significant economic impact on substantial number of small entities. The cost of collection of information to small entities is insignificant because the primary reporting burden is on individual PFIC shareholders who make the section 1295 election. Therefore, the collection of information will not have a substantial economic impact. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act 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 the final regulations is Margaret A. Fung, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects****26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**26 CFR Part 602**

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

**PART 1—INCOME TAXES**

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

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

Sec. 1.1291-1 also issued under 26 U.S.C. 1291. \* \* \*

Sec. 1.1293-1 also issued under 26 U.S.C. 1293. \* \* \*

Sec. 1.1295-3 also issued under 26 U.S.C. 1295. \* \* \*

**§ 1.1291-1T [Redesignated as § 1.1291-1]**

Par. 2. Section 1.1291-1T is redesignated as § 1.1291-1 and the section heading is revised to read as follows:

**§ 1.1291-1 Taxation of U.S. persons that are shareholders of PFICs that are not pedigreed QEFs.**  
\* \* \* \* \*

**§ 1.1293-1T [Redesignated as § 1.1293-1]**

Par. 3. Section 1.1293-1T is redesignated as § 1.1293-1 and the newly designated section is amended by revising the section heading and the first sentence of paragraph (c)(1) to read as follows:

**§ 1.1293-1 Current taxation of income from qualified electing funds.**  
\* \* \* \* \*

(c) Application of rules of inclusion with respect to stock held by a pass through entity—(1) *In general.* If a domestic pass through entity makes a section 1295 election, as provided in paragraph (d)(2) of this section, with respect to the PFIC shares that it owns, directly or indirectly, the domestic pass through entity takes into account its pro rata share of the ordinary earnings and net capital gain attributable to the QEF shares held by the pass through entity.  
\* \* \* \* \*

Par. 4. Section 1.1295-0 is amended by:

- Revising the introductory text of the section.
  - Removing the entry for the heading of § 1.1295-1T, and adding an entry for the heading of § 1.1295-1 in its place.
  - Revising the entries for § 1.1295-1(d)(3) through (d)(5).
  - Adding entries for § 1.1295-1 (d)(6) and (e) (1) and (2).
  - Removing the entry for the heading of § 1.1295-3T, and adding an entry for the heading of § 1.1295-3 in its place.
- The revisions and additions read as follows:

**§ 1.1295-0 Table of contents.**

This section contains a listing of the headings for §§ 1.1295-1 and 1.1295-3.

**§ 1.1295-1 Qualified electing funds.**  
\* \* \* \* \*

- Indirect ownership of a PFIC through other PFICs.
- Member of consolidated return group as shareholder.
- Option holder.

(6) Exempt organization.

(e) \* \* \*

(1) General rule.

(2) Examples.

\* \* \* \* \*

**§ 1.1295-3 Retroactive elections.**  
\* \* \* \* \***§ 1.1295-1T [Redesignated as § 1.1295-1]**

Par. 5. Section § 1.1295-1T is redesignated as § 1.1295-1 and the newly designated section is amended by:

- Revising the section heading.
  - Revising paragraph (b)(3)(iv)(B).
  - Adding paragraph (b)(3)(v).
  - Adding a sentence to the end of paragraph (b)(4).
  - Revising paragraphs (c)(2)(ii) and (iii).
  - Revising the third sentence in paragraph (c)(2)(v) *Example 3*.
  - Redesignating paragraphs (d)(3), (d)(4) and (d)(5) as paragraphs (d)(4), (d)(5) and (d)(6), respectively.
  - Adding a new paragraph (d)(3).
  - Revising paragraph (e).
  - In the last sentence of paragraph (f)(1)(iii), the language "capital gain; and" is removed and the language "capital gain." is added in its place.
    - Adding the word "and" at the end of paragraph (f)(1)(ii).
    - Removing paragraph (f)(1)(iv).
    - Adding the word "and" at the end of paragraph (f)(2)(i)(B).
    - In the last sentence of paragraph (f)(2)(i)(C), the language "capital gain; and" is removed and the language "capital gain." is added in its place.
    - Removing paragraph (f)(2)(i)(D).
    - Adding a new paragraph (f)(3).
    - Revising the introductory language of paragraph (g)(3).
    - Adding paragraph (g)(5).
    - Revising the first sentence of paragraph (h).
    - Revising paragraph (k).
- The revisions and additions read as follows:

**§ 1.1295-1 Qualified electing funds.**  
\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iv) \* \* \*

(B) In the case of PFIC stock transferred by an interest holder or beneficiary to a pass through entity in a transaction in which gain is not fully recognized (including pursuant to regulations under section 1291(f)), the pass through entity makes the section 1295 election with respect to the PFIC stock transferred for the taxable year in which the transfer was made. The PFIC stock transferred will be treated as stock of a pedigreed QEF by the pass through

entity, however, only if that stock was treated as stock of a pedigreed QEF with respect to the interest holder or beneficiary at the time of the transfer, and the PFIC has been a QEF with respect to the pass through entity for all taxable years of the PFIC that are included wholly or partly in the pass through entity's holding period of the PFIC stock during which the foreign corporation was a PFIC within the meaning of § 1.1291-9(j).

(v) *Characterization of stock distributed by a partnership.* In the case of PFIC stock distributed by a partnership to a partner in a transaction in which gain is not fully recognized, the PFIC stock will be treated as stock of a pedigreed QEF by the partners only if that stock was treated as stock of a pedigreed QEF with respect to the partnership for all taxable years of the PFIC that are included wholly or partly in the partnership's holding period of the PFIC stock during which the foreign corporation was a PFIC within the meaning of § 1.1291-9(j), and the partner has a section 1295 election in effect with respect to the distributed PFIC stock for the partner's taxable year in which the distribution was made. If the partner does not have a section 1295 election in effect, the stock shall be treated as stock in a section 1291 fund. See paragraph (k) of this section for special applicability date of paragraph (b)(3)(v) of this section.

(4) \* \* \* See paragraph (k) of this section for special applicability date of paragraph (b)(4) of this section.

(c) \* \* \*

(2) \* \* \*

(ii) *Effect of PFIC status on election.*

A foreign corporation will not be treated as a QEF for any taxable year of the foreign corporation that the foreign corporation is not a PFIC under section 1297(a) and is not treated as a PFIC under section 1298(b)(1). Therefore, a shareholder shall not be required to include pursuant to section 1293 the shareholder's pro rata share of ordinary earnings and net capital gain for such year and shall not be required to satisfy the section 1295 annual reporting requirement of paragraph (j)(2) of this section for such year. Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1295 election. Thus, if the foreign corporation is a PFIC in any taxable year after a year in which it is not treated as a PFIC, the shareholder's original election under section 1295 continues to apply and the shareholder must take into account its pro rata share of ordinary earnings and net capital gain for such year and comply with the

section 1295 annual reporting requirement.

(iii) *Effect on election of complete termination of a shareholder's interest in the PFIC.* Complete termination of a shareholder's direct and indirect interest in stock of a foreign corporation will not terminate a shareholder's section 1295 election with respect to the foreign corporation. Therefore, if a shareholder reacquires a direct or indirect interest in any stock of the foreign corporation, that stock is considered to be stock for which an election under section 1295 has been made and the shareholder is subject to the income inclusion and reporting rules required of a shareholder of a QEF.

\* \* \* \* \*

(v) \* \* \*

*Example 3.* \* \* \* If P does not make the section 1295 election with respect to the FC stock, C will continue to be subject, in C's capacity as an indirect shareholder of FC, to the income inclusion and reporting rules required of shareholders of QEFs in 1999 and subsequent years for that portion of the FC stock C is treated as owning indirectly through the partnership. \* \* \*

(d) \* \* \*

(3) *Indirect ownership of a PFIC through other PFICs—(i) In general.* An election under section 1295 shall apply only to the foreign corporation for which an election is made. Therefore, if a shareholder makes an election under section 1295 to treat a PFIC as a QEF, that election applies only to stock in that foreign corporation and not to the stock in any other corporation which the shareholder is treated as owning by virtue of its ownership of stock in the QEF.

(ii) *Example.* The following example illustrates the rules of paragraph (d)(3)(i) of this section:

*Example.* In 1988, T, a U.S. person, purchased stock of FC, a foreign corporation that is a PFIC. FC also owns the stock of SC, a foreign corporation that is a PFIC. T makes an election under section 1295 to treat FC as a QEF. T's section 1295 election applies only to the stock T owns in FC, and does not apply to the stock T indirectly owns in SC.

\* \* \* \* \*

(e) *Time for making a section 1295 election—(1) In general.* Except as provided in § 1.1295-3, a shareholder making the section 1295 election must make the election on or before the due date, as extended under section 6081 (election due date), for filing the shareholder's income tax return for the first taxable year to which the election will apply. The section 1295 election must be made in the original return for that year, or in an amended return, provided the amended return is filed on or before the election due date.

(2) *Examples.* The following examples illustrate the rules of paragraph (e)(1) of this section:

*Example 1.* In 1998, C, a domestic corporation, purchased stock of FC, a foreign corporation that is a PFIC. Both C and FC are calendar year taxpayers. C wishes to make the section 1295 election for its taxable year ended December 31, 1998. The section 1295 election must be made on or before March 15, 1999, the due date of C's 1998 income tax return as provided by section 6072(b). On March 14, 1999, C files a request for a three-month extension of time to file its 1998 income tax return under section 6081(b). C's time to file its 1998 income tax return and to make the section 1295 election is thereby extended to June 15, 1999.

*Example 2.* The facts are the same as in *Example 1* except that on May 1, 1999, C filed its 1998 income tax return and failed to include the section 1295 election. C may file an amended income tax return for 1998 to make the section 1295 election provided the amended return is filed on or before the extended due date of June 15, 1999.

\* \* \* \* \*

(f) \* \* \*

(3) *Effective date.* See paragraph (k) of this section for special applicability date of paragraph (f) of this section.

(g) \* \* \*

(3) *Annual Intermediary Statement.* In the case of a U.S. person that is an indirect shareholder of a PFIC that is owned through an intermediary, as defined in paragraph (j) of this section, an Annual Intermediary Statement issued by an intermediary containing the information described in paragraph (g)(1) of this section and reporting the indirect shareholder's pro rata share of the ordinary earnings and net capital gain of the QEF as described in paragraph (g)(1)(ii)(A) of this section, may be provided to the indirect shareholder in lieu of the PFIC Annual Information Statement if the following conditions are satisfied—

\* \* \* \* \*

(5) *Effective date.* See paragraph (k) of this section for special applicability date of paragraph (g) of this section.

(h) *Transition rules.* Taxpayers may rely on Notice 88-125 (1988-2 C.B. 535) (see § 601.601(d)(2) of this chapter), for rules on making and maintaining elections for shareholder election years (as defined in paragraph (j) of this section) beginning after December 31, 1986, and before January 1, 1998. \* \* \*

\* \* \* \* \*

(k) *Effective dates.* Paragraphs (b)(2)(iii), (b)(3), (b)(4) and (c) through (j) of this section are applicable to taxable years of shareholders beginning after December 31, 1997. However, taxpayers may apply the rules under paragraphs (b)(4), (f) and (g) of this section to a taxable year beginning before January 1,

1998, provided the statute of limitations on the assessment of tax has not expired as of April 27, 1998 and, in the case of paragraph (b)(4) of this section, the taxpayers who filed the joint return have consistently applied the rules of that section to all taxable years following the year the election was made. Paragraph (b)(3)(v) of this section is applicable as of February 7, 2000, however a taxpayer may apply the rules to a taxable year prior to the applicable date provided the statute of limitations on the assessment of tax for that taxable year has not expired.

**§ 1.1295-3T [Redesignated as § 1.1295-3]**

Par. 6. Section § 1.1295-3T is redesignated as § 1.1295-3 and the

newly designated section is amended by revising the section heading and paragraphs (b)(1) and (c)(5)(i) to read as follows:

**§ 1.1295-3 Retroactive elections.**

\* \* \* \* \*

(b) \* \* \*

(1) Reasonably believed, within the meaning of paragraph (d) of this section, that as of the election due date, as defined in § 1.1295-1(e), the foreign corporation was not a PFIC for its taxable year that ended during the retroactive election year;

\* \* \* \* \*

(c) \* \* \*

(5) *Time of and manner for filing a Protective Statement—(i) In general.*

Except as provided in paragraph (c)(5)(ii) of this section, a Protective Statement must be attached to the shareholder's federal income tax return for the shareholder's first taxable year to which the Protective Statement will apply. The shareholder must file its return and the copy of the Protective Statement by the due date, as extended under section 6081, for the return.

\* \* \* \* \*

Par. 7. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column.

Affected Section	Remove	Add
1.1293-1(c)(1), last sentence	§ 1.295-1T(j)	§ 1.1295-1(j).
1.1293-1(c)(2)(i), first sentence	§ 1.1295-1T(D)(2)	§ 1.1295-1(d)(2).
1.1295-1(b)(3)(iv)(A)	stock), and	stock) and
1.1295-1(c)(2)(ii), first sentence	1296(a)	1297(a)
1.1295-1(c)(2)(ii), first sentence	1297(b)(1).	1298(b)(1).
1.1295-1(c)(2)(iv), last sentence	§ 1.1293-1T(c).	§ 1.1293-1(c).
1.1295-1(d)(1), last sentence	(d)(5)	(d)(6)
1.1295-1(d)(2)(i)(A), last sentence	§ 1.1293-1T(c)(1),	§ 1.1293-1(c)(1),
1.1295-1(d)(2)(ii), last sentence	§ 1.1293-1T(c)(1),	§ 1.1293-1(c)(1),
1.1295-1(d)(2)(iii), last sentence	§ 1.1293-1T(c)(1),	§ 1.1293-1(c)(1),
1.1295-1(d)(6), first sentence	§ 1.1291-1T(e).	§ 1.1291-1(e).
1.1295-1(f)(1)(iii), last sentence	QEF calculated the QEF's	PFIC calculated the PFIC's
1.1295-1(g)(1) introductory text, second sentence, last word.	representation—	representations—
1.1295-1(g)(1)(ii)(A)	§ 1.1293-1T(a)(2)	§ 1.1293-1(a)(2)
1.1295-1(h), second sentence	§ 1.1295-1T	§ 1.1295-1
1.1295-1(i)(1)(iii), last sentence	never was made.	was never made.
1.1295-1(i)(3)(iii)	through 1297	through 1298
1.1295-3(a), first sentence	§ 1.1295-1T(j),	§ 1.1295-1(j).
1.1295-3(a), first sentence	§ 1.1295-1T(e)	§ 1.1295-1(e)
1.1295-3(b)(2)	and 1297	and 1298
1.1295-3(c)(3)	§ 1.1295-1T(d).	§ 1.1295-1(d).
1.1295-3(c)(4)(i)(A), third sentence	assessment of taxes	assessment of all PFIC related taxes
1.1295-3(c)(6)(i), last sentence	see § 1.1295-1T(c)(2)(iii).	see § 1.1295-1(c)(2)(iii).
1.1295-3(d)(1), first sentence	section 1296(a)	section 1297(a)
1.1295-3(d)(1), second sentence	section 1296(a)	section 1297(a)
1.1295-3(f)(2)(i) introductory text, second sentence	PFIC and the availability	PFIC and of the availability
1.1295-3(f)(4)(vi), first sentence	§ 1.1295-1T(d).	§ 1.1295-1(d).
1.1295-3(g)(3), first sentence	§ 1.1295-1T(d).	§ 1.1295-1(d).

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 28 U.S.C. 7805.

Par. 9. In 602.101, paragraph (b) is amended by removing the entries for § 1.1295-1T and 1.1295-3T and adding entries in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where identified and described	Current OMB control no.
1.1295-1	1545-1555
1.1295-3	1545-1555

\* \* \* \* \*

Robert E. Wenzel,  
Deputy Commissioner of Internal Revenue.  
Approved: January 14, 2000.

Jonathan Talisman,  
Acting Assistant Secretary of the Treasury.  
[FR Doc. 00-1892 Filed 2-4-00; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF THE INTERIOR**

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA-114-FOR]

**Virginia Regulatory Program**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Virginia permanent

## Interest on Tax Deferral

## ● ● CCH Explanation

treated in the same manner as foreign currency gain, which is attributable to a Code Sec. 988 transaction.—CCH.

**.40 Regulated investment companies.**—The IRS has provided guidance for regulated investment companies that may wish to elect to market their stock in passive foreign investment companies as provided in Proposed Reg. § 1.1291-8. According to the IRS, the final regulations will provide that eligible RICs may apply Proposed Reg. § 1.1291-8 for tax years ending after March 31, 1992 and before April 1, 1993.

Notice 92-53, 1992-2 CB 384.

**.50 Multi-tier qualified electing funds.**—Provided certain requirements were met, no gain or

loss would be recognized to a foreign parent corporation and its first-tier and second-tier foreign subsidiaries by reason of the complete liquidation of the second-tier subsidiary. If the three corporations were qualified electing funds with respect to a QEF shareholder, for all their tax years as passive foreign investment companies, all of which years were wholly or partly included in the QEF shareholder's holding period, the QEF shareholder would not be taxed on the indirect disposition of the second-tier subsidiary.

IRS Letter Ruling 9007014, November 16, 1989

[1 33,060]

## CURRENT TAXATION OF INCOME FROM QUALIFIED ELECTING FUNDS

Sec. 1293 (1986 Code). (a) INCLUSION.—

(1) IN GENERAL.—Every United States person who owns (or is treated under section 1297(a) as owning) stock of a qualified electing fund at any time during the taxable year of such fund shall include in gross income—

(A) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such year, and

(B) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such year.

(2) YEAR OF INCLUSION.—The inclusion under paragraph (1) shall be for the taxable year of the shareholder in which or with which the taxable year of the fund ends.

(b) PRO RATA SHARE.—The pro rata share referred to in subsection (a) in the case of a shareholder is the amount which would have been distributed with respect to the shareholder's stock if, on each day during the taxable year of the fund, the fund had distributed to each shareholder a pro rata share of that day's ratable share of the fund's ordinary earnings and net capital gain for such year. To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period.

(c) PREVIOUSLY TAXED AMOUNTS DISTRIBUTED TAX FREE.—If the taxpayer establishes to the satisfaction of the Secretary that any amount distributed by a passive foreign investment company is paid out of earnings and profits of the company which were included under subsection (a) in the income of any United States person, such amount shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distribution shall immediately reduce earnings and profits. If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).

(d) BASIS ADJUSTMENTS.—The basis of the taxpayer's stock in a passive foreign investment company shall be—

(1) increased by any amount which is included in the income of the taxpayer under subsection (a) with respect to such stock, and

(2) decreased by any amount distributed with respect to such stock which is not includible in the income of the taxpayer by reason of subsection (c).

A similar rule shall apply also in the case of any property if by reason of holding such property the taxpayer is treated under section 1297(a) as owning stock in a qualified electing fund.

[1 33,043.40 Code § 1293(a)(1)(A)

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(e) ORDINARY EARNINGS.—For purposes of this section—

- (1) ORDINARY EARNINGS.—The term "ordinary earnings" means the excess of the earnings and profits of the qualified electing fund for the taxable year over its net capital gain for such taxable year.
- (2) LIMITATION ON NET CAPITAL GAIN.—A qualified electing fund's net capital gain for any taxable year shall not exceed its earnings and profits for such taxable year.
- (3) DETERMINATION OF EARNINGS AND PROFITS.—The earnings and profits of any qualified electing fund shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the qualified electing fund.

(f) FOREIGN TAX CREDIT ALLOWED IN THE CASE OF 10-PERCENT CORPORATE SHAREHOLDER.—For purposes of section 960—

- (1) any amount included in the gross income under subsection (a) shall be treated as if it were included under section 951(a), and
- (2) any amount excluded from gross income under subsection (c) shall be treated in the same manner as amounts excluded from gross income under section 959.

(g) OTHER SPECIAL RULES.—

(1) EXCEPTION FOR CERTAIN INCOME.—For purposes of determining the amount included in the gross income of any person under this section, the ordinary earnings and net capital gain of a qualified electing fund shall not include any item of income received by such fund if—

(A) such fund is a controlled foreign corporation (as defined in section 957(a)) and such person is a United States shareholder (as defined in section 951(b)) in such fund, and

(B) such person establishes to the satisfaction of the Secretary that—

(i) such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11, or

(ii) such income is—

(I) from sources within the United States,

(II) effectively connected with the conduct by the qualified electing fund of a trade or business in the United States, and

(III) not exempt from taxation (or subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(2) PREVENTION OF DOUBLE INCLUSION.—The Secretary shall prescribe such adjustment to the provisions of this section as may be necessary to prevent the same item of income of a qualified electing fund from being included in the gross income of a United States person more than once.

.01 Added by P.L. 99-514. Amended by P.L. 103-66 and P.L. 100-647. For details, see the Code Volumes.

**Committee Reports on P.L. 103-66 (Omnibus Budget Reconciliation Act of 1993)**

**23 Earnings of controlled foreign corporations.**—The bill limits the availability of deferral of U.S. tax on certain earnings of controlled foreign corporations. As explained in detail below, the bill generally requires current inclusions in the income of U.S. shareholders of a controlled foreign corporation to the extent of the corporation's accumulated earnings invested in excess passive assets. The bill also conforms the treatment of earnings of controlled foreign corporations invested in U.S. property to the new rules for earnings invested in excess passive assets, and makes related modifications to other rules applicable to controlled foreign corporations and PFICs.

*Modification of certain PFIC rules in the case of U.S. shareholders of controlled foreign corporations.—*

The bill modifies the present-law rules for applying the PFIC asset test in the case of U.S. shareholders of controlled foreign corporations. In testing a controlled foreign corporation for PFIC status with respect to its "U.S. shareholders," under the bill, assets generally are measured by adjusted basis as determined for purposes of calculating earnings and profits, with no option to use fair market value.

Adjusted basis for this purpose is modified to take into account certain research and experimental expenditures and certain payments for the use of intangible property that is licensed to the controlled foreign corporation. First, the aggregate adjusted basis of the total assets of the controlled foreign corporation is increased by the total amount of research and development expenditures made by the controlled foreign corporation, for qualified research or experimental expenditures (as defined for purposes of Code section 174 and the Treasury regula-

Payment Extension Election

● ● CCH Explanation

(without extensions) for the tax year in which such disposition or cessation occurs. Events causing the termination of an extension are: (1) any distribution of previously taxed earnings not includible in the shareholder's income under Code Sec. 1293(c); (2) a transfer of PFIC stock; (3) the discontinuance of a PFIC as a qualified electing fund; and (4) any direct or indirect loans to the shareholder (Code Sec. 1294(c); Temporary Reg. § 1.1294-1T(e)). For this purpose, a distribution is treated as made from the most recently accumulated earnings and profits (Code Sec. 1294(c)(1)(B)). Events (2) and (3), above, will cause all unexpired payment extensions to terminate as indicated above.

.03 Election procedures.—The election to defer payment of tax on undistributed earnings of a qualified electing fund (QEF) must be made not later than the time for filing a return (including extensions) for the tax year (Code Sec. 1294(d)). The election must be made on Form 8621 (Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund), or equivalent, for any tax year in which the shareholder reports income under Code Sec. 1293. The election must be made by the due date, as extended, of the shareholder's tax return for the year (except where the shareholder receives late notification from the QEF) (Temporary Reg. § 1.1294-1T(c)).—CCH.

¶ 33,100

QUALIFIED ELECTING FUND

Sec. 1295 (1986 Code). (a) GENERAL RULE.—For purposes of this part, any passive foreign investment company shall be treated as a qualified electing fund with respect to the taxpayer if—

- (1) an election by the taxpayer under subsection (b) applies to such company for the taxable year, and
- (2) such company complies with such requirements as the Secretary may prescribe for purposes of—
  - (A) determining the ordinary earnings and net capital gain of such company, and
  - (B) otherwise carrying out the purposes of this subpart.

(b) ELECTION.—

(1) IN GENERAL.—A taxpayer may make an election under this subsection with respect to any passive foreign investment company for any taxable year of the taxpayer. Such an election, once made with respect to any company, shall apply to all subsequent taxable years of the taxpayer with respect to such company unless revoked by the taxpayer with the consent of the Secretary.

(2) WHEN MADE.—An election under this subsection may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believed that the company was not a passive foreign investment company.

.01 Added by P.L. 99-514. Amended by P.L. 100-647. For details, see the Code Volumes.

Committee Reports on P.L. 100-647  
(Technical and Miscellaneous Revenue Act of  
1988)

.24 [Election to treat PFIC stock as stock in a  
qualified electing fund].—The bill provides that the

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election to be a qualified electing fund is to be made at the U.S. investor level, rather than at the company level. The investor-level election is available, however, only where the PFIC complies with appropriate requirements (as prescribed by regulation) to determine the income of the company and other information necessary to carry out the PFIC provisions. The effect of the election is to treat a PFIC as a qualified electing fund with respect to each electing investor so that, for example, an electing investor will not be subject to the deferred tax and

Code § 1295(b)(2) ¶ 33,100