

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG-209020-86]

RIN 1545- AC09

Foreign Tax Credit: Notification of Foreign Tax Redeterminations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations relating to a taxpayer's obligation under section 905(c) of the Internal Revenue Code (Code) to notify the IRS of a foreign tax redetermination. The IRS and the Treasury Department are also issuing temporary Regulations on Procedure and Administration under Code section 6689 relating to the civil penalty for failure to notify the IRS of a foreign tax redetermination as required under Code section 905(c). These temporary regulations affect taxpayers that have paid foreign taxes which have been redetermined and provide guidance needed to comply with statutory changes made to the applicable law by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions and requests for a hearing to: CC:PA:LPD:PR (REG-209020-86), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-208246-90), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC or sent electronically, via the IRS internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-209020-86).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Teresa Burridge Hughes, (202) 622-3850 (not a toll-free number); concerning the submission of comments, Treena Garrett, (202) 622-3401 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with

copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 90 DAYS AFTER THE DATE THESE REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**.

Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this notice of proposed rulemaking are in §1.905-4. This information is required to enable the IRS to verify the amounts of the foreign tax redeterminations and to determine the amount of the penalty under Code section 6689, if a taxpayer fails to notify the IRS of a foreign tax redetermination. This information will be used by the IRS for examination

purposes. The collections of information are mandatory. The likely respondents are individuals and business or other for-profit institutions.

Estimated total annual reporting: 54,000 hours.

The estimated annual burden per respondent varies from 3 hours to 8 hours, depending on individual circumstances, with an estimated average of 4.2 hours.

Estimated number of respondents: 13,000

Estimated frequency of responses: Annually.

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 OMB control number.

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 and Explanation of Provisions**

Temporary regulations in this issue of the **Federal Register** amend 26 CFR part 1 relating to Code section 905 of the Internal Revenue Code (Code) and part 301 relating to Code section 6689. The temporary regulations contain rules relating to a taxpayer's obligation under Code section 905(c) to notify the IRS of a foreign tax redetermination and relating to the civil penalty under Code section 6689 for failure to notify the IRS of a foreign tax redetermination as required under Code section 905(c). The text of those temporary regulations

also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

The collections of information in these proposed regulations are in §1.905-4. Section 1.905-4(a) provides that if, as a result of a foreign tax redetermination, a redetermination of United States tax liability is required under Code section 905(c) or adjustments to the pools of post-1986 undistributed earnings and foreign income taxes are required under §1.905-3(d)(2), the taxpayer must notify the IRS of the foreign tax redetermination in accordance with the rules of §1.905-4. Generally, §1.905-4(b)(1) provides that in the case of a foreign tax redetermination that requires a redetermination of United States tax liability, the taxpayer must file an amended return and Form 1118 or 1116 for the taxable year with respect to which a redetermination of United States tax liability is required. Section §1.905-4(b)(3) provides an exception whereby a taxpayer that is under the jurisdiction of the Large and Mid-Size Business Division may provide notice of certain foreign tax redeterminations to the examiner in lieu of filing an amended return. In the case of a foreign tax redetermination that requires an adjustment to a foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes, §1.905-4(b)(2) provides that the taxpayer must attach notice of such adjustment to the original return for the taxpayer's taxable year with or within which ends the foreign corporation's taxable year during which the foreign tax redetermination occurs. Section 1.905-4(c) describes the information that the taxpayer must furnish to the IRS.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that Code section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the following regulations, §§1.905-3, 1.905-4, and 301.6689-1. With respect to §1.905-4, it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information requirement under §1.905-4 that is imposed on small entities flows directly from Code section 905(c), which states that, “[T]he taxpayer shall notify the Secretary,” of a foreign tax redetermination that may result in a redetermination of the taxpayer’s United States tax liability. In order for the taxpayer to satisfy this notification requirement, information with respect to all foreign tax redeterminations must be collected. Therefore, a regulatory flexibility analysis is not required. Pursuant to Code section 7805(f), these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be

scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of this document is Teresa Burrige Hughes, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in its development.

### **List of Subjects**

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Procedure and Administration

### **Withdrawal of a Notice of Proposed Rulemaking**

Under the authority of 26 U.S.C. 7805, §§1.905-3T(d)(2)(iii), 1.905-4T, and 301.6689-1T(e) of the notice of proposed rulemaking (REG-209020-86) published in the **Federal Register** on June 23, 1988 (53 FR 23659) are withdrawn.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1 – INCOME TAXES**

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

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

Par. 2. In 1.905-3, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§1.905-3 Adjustments to United States tax liability and to the pools of post-1986 undistributed earnings and foreign income taxes as a result of a foreign tax redetermination.

[The text of the proposed amendments to §1.905-3(a), (b), (c), and (d) is the same as the text of §1.905-3T(a), (b), (c), and (d) published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.905-4 is revised to read as follows:

§1.905-4 Notification of foreign tax redetermination.

[The text of proposed §1.905-4 is the same as the text of §1.905-4T published elsewhere in this issue of the **Federal Register**.]

#### PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority for Part 301 is amended in part to read as follows:

Authority: 26 U.S.C. 7805 \* \* \* Section 301.6689-1 is also issued under 26 U.S.C. 6689(a).

Par. 5. In §301.6689-1, paragraphs (a) and (e) are revised to read as follows:

§301.6689-1 Failure to file notice of redetermination of foreign tax.

[The text of the proposed amendments to §301.6689-1(a) and (e) is the same as



the text of §301.6689-1T(a) and (e) published elsewhere in this issue of the  
**Federal Register.]**

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*/s/ Kevin M. Brown*

Deputy Commissioner for Services and Enforcement

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD ]

RIN 1545-BG23

Foreign Tax Credit: Notification of Foreign Tax Redeterminations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to a taxpayer's obligation under section 905(c) of the Internal Revenue Code (Code) to notify the IRS of a foreign tax redetermination, which is a change in the taxpayer's foreign tax that may affect a United States taxpayer's foreign tax credit. This document also contains temporary Procedure and Administration Regulations under Code section 6689 relating to the civil penalty for failure to notify the IRS of a foreign tax redetermination as required under Code section 905(c). These temporary regulations affect taxpayers that have paid foreign taxes which have been redetermined and provide guidance needed to comply with statutory changes made to the applicable law by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. The text of the temporary regulations also serves as the text of the proposed regulations (REG-209020-86) set forth in the notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

**DATES: Effective Date:** These regulations are effective **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. For

dates of applicability, see §1.905-3T(a), 1.905-4T(f), and 301.6689-1T(e).

**Applicability Dates:** These regulations generally apply to foreign tax redeterminations occurring in taxable years of United States taxpayers beginning on or after January 1, 2007. Section 1.905-3T(b) (except §1.905-3T(b)(1)(ii)(D)) applies to taxes paid or accrued in taxable years of United States taxpayers beginning after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN**

**THE FEDERAL REGISTER]**. Section 1.905-3T(b)(1)(ii)(D) applies to taxes paid in taxable years of United States taxpayers beginning after December 31, 2004.

For foreign tax redeterminations occurring in taxable years of United States taxpayers beginning before January 1, 2007, see §1.905-4T(f)(2).

**FOR FURTHER INFORMATION CONTACT:** Teresa Burridge Hughes, (202) 622-3850 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

These temporary regulations are being issued without prior notice and public comment pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1056.

The collections of information in these temporary regulations are in §1.905-4T. This information is required in order for taxpayers to notify the IRS of a foreign tax redetermination that may require redetermination of the taxpayer's United States tax liability.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

For further information concerning these collections of information; where to submit comments on the collections of information and the accuracy of the estimated burden; and suggestions for reducing this burden, please refer to the preamble of the cross-referencing notice of proposed rulemaking published in this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents might 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**

Under Code section 905(c) and the regulations, a taxpayer that claims a foreign tax credit for taxes paid or accrued under Code section 901 or deemed paid under Code section 902 or 960 must notify the IRS when there has been a change to the amount of foreign taxes paid or accrued. In general, in the case of a foreign tax redetermination with respect to taxes claimed as a direct credit under Code section 901, the taxpayer's United States tax liability must be redetermined; and, in the case of a foreign tax redetermination with respect to

taxes included in the computation of foreign taxes deemed paid under Code section 902 or 960, the foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes must be adjusted (subject to exceptions described in §§1.905-3T(d)(3) and (f)). If the taxpayer fails to notify the IRS of a foreign tax redetermination, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, Code section 6689 imposes a penalty of 5 percent of the deficiency attributable to such redetermination if the failure is for not more than 1 month, with an additional 5 percent for each additional month during which the failure continues, but not to exceed 25 percent of the deficiency.

On June 23, 1988, the **Federal Register** published proposed (53 FR 23659) (INTL-061-86) and temporary (53 FR 23611) (TD 8210) amendments to the Income Tax Regulations (26 CFR Part 1) under Code section 905(c) and to the Procedure and Administration Regulations (26 CFR Part 301) under Code section 6689 (the 1988 proposed and temporary regulations). These amendments reflected the changes made to the Code by section 2(c)(2) of the Revenue Act of December 28, 1980 (94 Stat. 3503, 3509) and section 1261(a) of the Tax Reform Act of 1986 (100 Stat. 2085, 2591). The IRS and the Treasury Department received several written comments, which are discussed in this preamble. A public hearing concerning the proposed regulations was neither requested nor held. In response to written comments, on March 16, 1990, the IRS and the Treasury Department issued Notice 90-26, 1990-1 C.B. 336, see §601.601(d)(2)(ii)(b), which suspended a portion of the temporary regulations,

specifically §1.905-3T(d)(2)(ii)(A) and that part of §1.905-3T(d)(2)(ii)(C) which refers to that regulation, effective for foreign tax redeterminations of foreign income taxes deemed paid or accrued with respect to post-1986 undistributed earnings of a foreign corporation accumulated in taxable years of the foreign corporation beginning after December 31, 1986. Section 1.905-3T(d)(2)(ii)(A) required that, in the case of a foreign tax redetermination that affects the amount of foreign taxes deemed paid by a United States corporation for a taxable year, if the foreign tax redetermination occurs more than 90 days before the due date (with extensions) of the taxpayer's income tax return for such taxable year and before the taxpayer actually files that return, then that taxpayer must adjust the foreign tax credit to be claimed on that return for such taxable year to account for the effect of the foreign tax redetermination. Comments received by the IRS and the Treasury Department suggested that this requirement did not take into account the amount of time that taxpayers, especially large multinational corporations, need to prepare their income tax returns. In cases for which a foreign tax redetermination requires a redetermination of United States tax liability, §1.905-4T provides rules generally requiring taxpayers to file amended returns to notify the IRS of the redetermination.

Section 1102(a)(1) and 1102(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788, 971 (1997)), amended Code sections 905(c) and 986(a), respectively, effective for taxes which relate to taxable years beginning after December 31, 1997. Code section 905(c)(1)(B) was added to provide that, if accrued taxes are not paid before the date two years after the

close of the taxable year to which such taxes relate, the taxpayer must notify the IRS and redetermine its United States tax liability for the year or years in which it claimed credit for such taxes. Code section 986(a)(1)(A) was amended to provide that, for purposes of determining the amount of foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) generally will be translated into dollars using the average exchange rate for the taxable year to which such taxes relate. However, under section 986(a)(1)(B), the spot exchange rate on the date the taxes are paid is used to translate foreign income taxes that are paid before, or more than two years after, the taxable year to which the taxes relate. Section 986(a)(1)(C) provides that, as determined under regulations, the average exchange rate also will not apply to taxes denominated in inflationary currencies. Section 986(a)(1)(D) added a special rule for taxes paid by regulated investment companies.

Subsequently, section 480(a) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418 (2004)), modified Code section 986(a) and provided, effective for taxable years beginning after December 31, 2004, that, at the election of the taxpayer, the average exchange rate will not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency. If the taxpayer so elects, taxes will be translated into dollars using the exchange rates at the time such taxes were paid to the foreign country. See Code section 986(a)(1)(D)(i). Code section 986(a)(1)(D)(ii) provides that this election is also applicable to foreign income

taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary. On May 15, 2006, the IRS and the Treasury Department issued Notice 2006-47, 2006-20 IRB. 892 (§601.601(d)(2)(ii)(b)), which provides interim rules with respect to this election. The notice provides that a taxpayer may elect to use the payment date exchange rates to translate all foreign income taxes, or it may elect to use the payment date exchange rates to translate only those nonfunctional currency foreign income taxes that are attributable to qualified business units with United States dollar functional currencies.

In light of the statutory changes to Code sections 905(c) and 986(a) by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004, the IRS and the Treasury Department believe it is appropriate to issue new proposed and temporary regulations. These new regulations make several significant changes to the rules of the 1988 proposed and temporary regulations to take into account statutory changes and the comments received on the 1988 proposed and temporary regulations, while leaving substantial portions of the 1988 proposed and temporary regulations unchanged. The new temporary regulations will permit the IRS to enforce properly Code sections 905(c) and 6689 without delay. The significant comments and revisions are described in this preamble.

## **Summary of Comments and Explanation of Revisions**

### **I. Currency Translation Rules**



This document contains temporary Income Tax Regulations relating to the currency translation rules that apply in determining the amount of the foreign tax credit. Section 1.905-3T(b) has been revised to reflect the statutory changes to Code sections 905(c) and 986(a) by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. New §1.905-3T(b)(1)(i) provides that, in the case of a taxpayer or a member of a qualified group (as defined in section 902(b)(2)(i)) that takes foreign income taxes into account when accrued, the amount of any foreign taxes denominated in foreign currency that have been paid or accrued, additional tax liability denominated in foreign currency, taxes withheld in foreign currency, or estimated taxes paid in foreign currency will be translated into dollars using the average exchange rate (as defined in §1.989(b)-1) for the United States taxable year to which such taxes relate.

However, new §1.905-3T(b)(1)(ii) provides five exceptions to the general rule that accrual basis taxpayers translate foreign taxes using the average exchange rate. First, §1.905-3T(b)(1)(ii)(A) provides that any foreign taxes denominated in foreign currency that were paid more than two years after the close of the United States taxable year to which they relate will be translated into dollars using the exchange rate for the date of payment of the foreign taxes.

Second, §1.905-3T(b)(1)(ii)(B) provides that any foreign income taxes paid before the beginning of the United States taxable year to which such taxes relate will be translated into dollars using the exchange rate for the date of payment of the foreign taxes.

Third, §1.905-3T(b)(1)(ii)(C) provides that any foreign income taxes the liability for which is denominated in any inflationary currency will be translated into dollars using the exchange rate on the date of payment of the foreign taxes. For this purpose, the term inflationary currency means the currency of a country in which there is cumulative inflation during the base period of at least 30 percent, as determined by reference to the consumer price index of the country listed in the monthly issues of International Financial Statistics, or a successor publication, of the International Monetary Fund. For purposes of §1.905-3T(b)(1)(ii)(C), "base period" means, with respect to any taxable year, the thirty-six calendar months immediately preceding the last day of such taxable year. See §1.985-1(b)(2)(ii)(D).

Fourth, for taxable years beginning after December 31, 2004, under the provisions of §1.905-3T(b)(1)(ii)(D), a taxpayer that is otherwise required to translate foreign income taxes that are denominated in foreign currency using the average exchange rate may elect to translate foreign income taxes into dollars using the exchange rate for the date of payment of the foreign taxes, provided that the liability for such taxes is denominated in nonfunctional currency. This election may be made for all foreign income taxes or for only those foreign income taxes the liability for which is denominated in nonfunctional currency and that are attributable to qualified business units with United States dollar functional currencies. This election allows taxpayers to avoid a mismatch between the translated dollar amount of foreign tax credit and the translated dollar amount of the foreign income used to pay the tax. The election must be made by attaching

a statement to the taxpayer's timely filed return (including extensions) for the first taxable year to which the election applies. The statement must identify whether the election is made for all foreign taxes or only for foreign taxes attributable to qualified business units with a United States dollar functional currency. Once made, the election will apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Commissioner.

Finally, in the case of a regulated investment company (as defined in section 851 and the regulations under that section) which takes into account income on an accrual basis, §1.905-3T(b)(1)(ii)(E) provides that foreign income taxes paid or accrued with respect to such income will be translated into dollars using the exchange rate as of the date the income accrues. This exception takes account of the special rule at section 852(b)(9) that requires a regulated investment company to take dividends into account on the ex-dividend date, rather than on the later date on which the dividends are paid (and the tax is actually withheld). The translation rule permits greater conformity between the translated dollar amount of dividends paid in foreign currency and the translated dollar amount of taxes withheld from such dividends.

With the exception of the election by an accrual basis taxpayer to translate taxes on the date paid, these currency translation provisions are effective for taxes paid or accrued in taxable years beginning after **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**.

Section 1.905-3T(b)(4), concerning the allocation of refunds of foreign tax to the separate categories under section 904(c), is not modified by these

temporary regulations. Section 1.905-3T(b)(5), which provides rules with respect to the basis of foreign currency that is refunded, is revised to reflect the 1997 and 2004 changes to the currency translation rules, as provided in §1.905-3T(b)(3).

## II. Definition of Foreign Tax Redetermination

The definition of the term foreign tax redetermination in §1.905-3T(c) has been revised to reflect the statutory changes made to section 905(c) in the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. New §1.905-3T(c) provides that, for purposes of §§1.905-3T and 1.905-4T, a foreign tax redetermination means a change in the foreign tax liability that may affect a taxpayer's foreign tax credit. A foreign tax redetermination includes: (1) accrued taxes that when paid differ from the amounts claimed as credits by the taxpayer (such as overaccruals and additional payments); (2) accrued taxes that are not paid before the date two years after the close of the taxable year to which such taxes relate; (3) any tax paid that is refunded in whole or in part; and (4) for taxes taken into account when accrued but translated into dollars on the date of payment, a difference between the dollar value of the accrued tax and the dollar value of the tax paid attributable to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment.

Section 1.905-3T(d)(1) is revised to reflect the modified definition in new §1.905-3T(c) of a foreign tax redetermination that results from currency fluctuations, but new §1.905-3T(d)(1) otherwise adopts without amendment the

rule in §1.905-3T(d)(1) of the 1988 regulations that provides that no redetermination of United States tax liability is required with respect to such redetermination if the amount of such foreign tax redetermination is less than the lesser of ten thousand dollars or two percent of the total dollar amount of the foreign tax initially accrued with respect to that foreign country for the United States taxable year.

### III. Adjustments to Pools of Post-1986 Undistributed Earnings and Foreign Income Taxes

On March 16, 1990, Notice 90-26, 1990-1 C.B. 336, suspended §1.905-3T(d)(2)(ii)(A) and that part of §1.905-3T(d)(2)(ii)(C) which refers to §1.905-3T(d)(2)(ii)(A). Prior to its suspension, §1.905-3T(d)(2)(ii)(A) required taxpayers to recompute the foreign tax credit claimed on their current year income tax return to account for foreign tax redeterminations that affect the amount of foreign tax deemed paid under section 902 or 960 and that occurred more than 90 days before the due date (with extensions) of the United States tax return for that taxable year and before the actual filing date. Section 1.905-3T(d)(2)(ii)(C) permitted taxpayers to elect to apply §1.905-3T(d)(2)(ii)(A) to a foreign tax redetermination occurring within 90 days of the due date (with extensions) of the tax return for that taxable year and before the actual filing date.

Section 1.905-3T(d)(2)(ii)(B) of the 1988 regulations requires that, if a foreign tax redetermination occurs after the filing of the United States tax return for such taxable year, then appropriate upward or downward adjustments will be

made at the time of the foreign tax redetermination to the foreign corporation's pools of foreign taxes and earnings and profits to reflect the effect of the foreign tax redetermination in calculating foreign taxes deemed paid with respect to distributions and inclusions (and the amount of such distributions and inclusions) that are includible in taxable years subsequent to the taxable year for which such tax return is filed. The part of §1.905-3T(d)(2)(ii)(C) not suspended by Notice 90-26 allows a taxpayer to elect to adjust the pools of foreign taxes and earnings and profits to reflect the effect of the foreign tax redetermination in the manner described in §1.905-3T(d)(2)(ii)(B). Notice 90-26 also provided that, pending the issuance of final regulations under section 905(c), redeterminations otherwise subject to §1.905-3T(d)(2)(ii)(A) or (C) were required to be accounted for through adjustment to the appropriate pools of earnings and profits and foreign taxes in the manner described in §1.905-3T(d)(3) and subject to the exceptions set forth in §1.905-3T(d)(4).

Section 1.905-3T(d)(2) of the 1988 regulations has been revised to reflect Notice 90-26. New §1.905-3T(d)(2)(i) provides that appropriate upward or downward adjustments will be made at the time of the foreign tax redetermination to the foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes, in accordance with §1.905-3T(d)(2)(ii), to reflect the effect of the foreign tax redetermination in calculating foreign taxes deemed paid with respect to distributions and inclusions (and the amount of such distributions and inclusions).

Section 1.905-3T(d)(2)(iii) of the 1988 regulations, which provides rules with respect to the reporting requirements for adjustments to the appropriate pools of foreign taxes and earnings and profits, has been revised. New §1.905-3T(d)(2)(i) refers to §1.905-4T(b)(2) for the time and manner of notifying the IRS of an adjustment to the pools of post-1986 undistributed earnings and foreign income taxes and to §1.905-4T(c)(3) for rules with respect to the contents of the notification statement with respect to an adjustment to the pools, a redetermination of United States tax liability, or an overaccrual of foreign taxes by two percent or more.

Comments are solicited on other conforming changes that should be made to the 1988 temporary regulations in light of the statutory changes made by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004.

#### IV. Time and Manner of Notification

##### A. Overview of New Rules

New §1.905-4T(a) provides that if, as a result of a foreign tax redetermination (as defined in §1.905-3T(c)), a redetermination of United States tax liability is required under Code section 905(c) or adjustments to the pools of post-1986 undistributed earnings and foreign income taxes are required under §1.905-3T(d)(2), the taxpayer must provide notification of the foreign tax redetermination. Section 1.905-4T(b)(1) of the new temporary regulations provides rules with respect to the time and manner of notifying the IRS of a foreign tax redetermination that necessitates a redetermination of United States

tax liability. New §1.905-4T(b)(1)(i) sets forth the general rule that, where a redetermination of United States tax liability is required, the taxpayer must notify the IRS by filing an amended return and Form 1118 (Foreign Tax Credit – Corporations) or 1116 (Foreign Tax Credit) for the taxable year with respect to which a redetermination of United States tax liability is required. However, where a foreign tax redetermination requires an individual to redetermine the individual's United States tax liability, and as a result of such foreign tax redetermination the amount of creditable taxes paid or accrued by such individual during the taxable year does not exceed the applicable dollar limitation in Code section 904(k) (currently \$300, or \$600 in the case of a joint return), the individual will not be required to file Form 1116 with the amended return for such taxable year if the individual satisfies the requirements of Code section 904(k).

#### B. Revision of 1988 Temporary Regulations in Response to Comments

The 1988 temporary regulations at §1.905-4T(b)(2) require taxpayers to notify the IRS of a foreign tax redetermination that reduced the amount of foreign taxes paid or deemed paid by filing an amended return for the affected year or years within 180 days after the date that the foreign tax redetermination occurred. The IRS and the Treasury Department received several comments suggesting that this rule was unduly burdensome to taxpayers. The comments noted that multiple foreign tax redeterminations requiring a redetermination of United States tax liability for the same taxable year would require the filing of multiple returns for such year, and that filing an amended Federal tax return



would trigger additional state tax notification and amended return filing requirements.

In light of these comments, the new temporary regulations at §1.905-4T(b)(1)(ii) provide that, if a foreign tax redetermination reduced the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, a taxpayer must file a separate notification for each taxable year with respect to which a redetermination of United States tax liability is required by the due date (with extensions) of the original return for the taxable year in which the foreign tax redetermination occurred. With respect to a foreign tax redetermination that increased the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, new §1.905-4T(b)(1)(iii) adopts the rule provided in the 1988 temporary regulations at §1.905-4T(b)(2) and provides that the taxpayer must file a separate notification for each taxable year with respect to which a redetermination of United States tax liability is required within the period provided by Code section 6511(d)(3)(A).

#### C. Special Rules for Certain Redeterminations

The new temporary regulations at §1.905-4T(b)(1)(iv) provide that, where more than one foreign tax redetermination requires a redetermination of United States tax liability for the same taxable year, the taxpayer may file for such taxable year one amended return and Form 1118 or 1116 that reflect all such foreign tax redeterminations. If the taxpayer chooses to file one notification for such foreign tax redeterminations, the due date for such notification is the due

date of the original return (with extensions) for the year in which the first foreign tax redetermination that reduced foreign tax liability occurred.

Section 1.905-4T(b)(1)(v) of the new temporary regulations provides that, where a foreign tax redetermination requires a redetermination of United States tax liability that would otherwise result in an additional amount of United States tax due, but such amount is eliminated as a result of a carryback or carryover of an unused foreign tax under Code section 904(c), the taxpayer may, in lieu of applying the general notification rule described in §1.905-4T(b)(1)(i), notify the IRS by attaching a statement to the original return for the taxable year in which the foreign tax redetermination occurs. The statement must be filed by the due date (with extensions) of such return and contain the information described in §1.904-2(f), including the amounts carried back or over to the year with respect to which a redetermination of United States tax liability is required.

The 1988 temporary regulations at §1.905-3T(d)(2)(iii) provide rules concerning the time, manner, and contents of the notification statement for an adjustment of a foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes due to a foreign tax redetermination. The rules in the 1988 temporary regulations concerning the time and manner of notification have been moved to new §1.905-4T(b)(2), and the rules in the 1988 temporary regulations concerning notification contents have been moved to new §1.905-4T(c)(3).

#### D. Large and Mid-Size Business Taxpayers

Section 1.905-4T(b)(2) of the 1988 temporary regulations requires a taxpayer to notify the IRS of a foreign tax redetermination that reduced the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, by filing an amended return for the affected year within 180 days after the date that the foreign tax redetermination occurred. The IRS and the Treasury Department received several comments with respect to such rule suggesting that, in lieu of filing an amended return, taxpayers that are under continuous examination in a program such as the Coordinated Examination Program should be permitted to provide notice of foreign tax redeterminations to the examiner during an examination.

Taking into account these comments, the new temporary regulations at §1.905-4T(b)(3) provide that, where a taxpayer is under the jurisdiction of the Large and Mid-Size Business Division and a redetermination of United States tax liability is required by reason of a foreign tax redetermination resulting in a reduction in the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, and such foreign tax redetermination occurs within the period specified in §1.905-4T(b)(3)(iii) or (iv)(B), the taxpayer must provide notice of such redetermination as part of the examination process in lieu of filing an amended return for the affected year as otherwise required by §1.905-4T(b)(1)(i) and (ii). If the taxpayer is required under §1.905-4T(b)(3) to provide notice as part of the examination process, the taxpayer must satisfy the requirements of §1.905-4T(b)(3)(iii) or (iv)(B) (in lieu of the generally applicable

rules of §1.905-4T(b)(1)(i) or (ii)) in order not to be subject to the penalty under section 6689 and the regulations under that section.

Where a taxpayer is under the jurisdiction of the Large and Mid-Size Business Division and a redetermination of United States tax liability is required by reason of a foreign tax redetermination resulting in a reduction in the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, and such foreign tax redetermination occurs within the period specified in §1.905-4T(b)(3)(ii) or (iv)(A), the taxpayer may provide notice of such redetermination as part of the examination process in lieu of filing an amended return for the affected year as otherwise required by §1.905-4T(b)(1)(i) and (ii).

In the case of a foreign tax redetermination occurring within the periods specified in §1.905-4T(b)(3)(ii), (iii), or (iv) that results in an increase in the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, a taxpayer may, in lieu of applying the rules of §1.905-4T(b)(1)(i) (that is, filing an amended return and Form 1118 for the affected year), notify the IRS of such redetermination as part of the examination process by applying the rules of §1.905-4T(b)(3)(ii), (iii), or (iv).

The time for notification as provided by §1.905-4T(b)(3) of the new temporary regulations depends on when the foreign tax redetermination occurs in relation to the examination. First, if a foreign tax redetermination occurs prior to the earliest of the opening conference or the hand-delivery or postmark date of the opening letter concerning the examination of the return for the taxable year for which a redetermination of United States tax liability is required, the taxpayer

may notify the IRS of the foreign tax redetermination under the rules of §1.905-4T(b)(3)(ii) in lieu of the generally applicable rules of §1.905-4T(b)(1)(i) and (ii). In such case, the taxpayer must notify the IRS no later than 60 days after the earliest of the opening conference or the hand-delivery or postmark date of the opening letter, and provide to the examiner the information described in new §1.905-4T(c). See §1.905-4T(b)(3)(ii). However, this exception to the generally applicable notification requirements of §1.905-4T(b)(1) is not permitted to extend the length of the notification period set forth in §1.905-4T(b)(1). Thus, if the due date for notification under the generally applicable rules coincides with the earliest of the opening conference or the hand-delivery or postmark date of the opening letter, or coincides with any day within the 60-day notification period following the earliest of those three dates, the taxpayer must notify the IRS of the foreign tax redetermination no later than the due date under the generally applicable rules. Also, §1.905-4T(b)(3)(ii) will not apply if the last day for providing notice of the foreign tax redetermination under §1.905-4T(b)(1) precedes the earliest of the opening conference or the hand-delivery or postmark date of the opening letter.

Second, when the foreign tax redetermination occurs within 180 days after the earliest of the opening conference or the hand-delivery or postmark date of the opening letter concerning the examination of the return for the taxable year for which a redetermination of United States tax liability is required, the taxpayer must notify the IRS of the foreign tax redetermination no later than 60 days after the date the foreign tax redetermination occurred. The taxpayer must provide to

the examiner the information required in new §1.905-4T(c). The IRS and Treasury believe this rule should not apply to any foreign tax redetermination occurring more than 180 days after the earliest of the opening conference or the hand-delivery or postmark date of the opening letter in order to avoid unduly delaying completion of the examination. Accordingly, in the case of a foreign tax redetermination that occurs more than 180 days after the earliest of the opening conference or the hand-delivery or postmark date of the opening letter, the generally applicable notification requirements under §1.905-4T(b)(1)(i) and (ii) apply.

These temporary regulations also provide a transition rule for taxpayers under the jurisdiction of the Large and Mid-Size Business Division that are otherwise required to notify the IRS under the rules of §1.905-4T(b)(3)(iii) of a redetermination of United States tax liability by reason of a foreign tax redetermination that occurred on or after January 1, 2007, but before **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**. Section 1.905-4T(b)(3)(iv)(B) provides that, if the foreign tax redetermination occurs during an examination of the taxable year for which a redetermination of United States tax liability is required, the taxpayer must notify the IRS of such redetermination no later than 60 days after **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER** in lieu of the notification period described in §1.905-4T(b)(3)(iii). Similarly, where a taxpayer under the jurisdiction of the Large and Mid-Size Business Division is eligible to notify the IRS under the rules of §1.905-4T(b)(3)(ii) of a

redetermination of United States tax liability by reason of a foreign tax redetermination that occurred on or after January 1, 2007, but before **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**, §1.904-4T(b)(3)(iv)(B) provides that such taxpayer may notify the IRS no later than 60 days after **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER** in lieu of the notification period described in §1.905-4T(b)(3)(ii).

#### V. Notification Contents

Section 1.905-4T(c)(1) of the new temporary regulations requires the taxpayer to furnish a statement that contains information sufficient for the IRS to redetermine the taxpayer's United States tax liability where such a redetermination is required under Code section 905(c), and to verify adjustments to the pools of post-1986 undistributed earnings and foreign income taxes where such adjustments are required under §1.905-3T(d)(2). The taxpayer must provide such information in a form that enables the IRS to verify and compare the original computations of the claimed foreign tax credit, the revised computations resulting from the foreign tax redetermination, and the net changes. The statement must include the taxpayer's name, address, identifying number, and the taxable year or years of the taxpayer that are affected by the foreign tax redetermination. If the written statement is submitted to the IRS under §1.905-4T(b)(3), the statement must also include a declaration under penalties of perjury.

Where a redetermination of United States tax liability is required by reason of a foreign tax redetermination, new §1.905-4T(c)(2) requires that the taxpayer provide, in addition to the information described in new §1.905-4T(c)(1), specific information concerning the foreign tax redetermination. To take into account the amendment of Code section 986(a) (concerning translation rates for foreign taxes) by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004, the new temporary regulations require the taxpayer to provide the exchange rates used to translate the amount of foreign taxes paid, accrued, or refunded in accordance with §1.905-3T(b) (as the case may be). These new temporary regulations also include the requirement of the 1988 temporary regulations that taxpayers provide information relating to the interest paid by foreign governments or owing to the United States due to a foreign tax redetermination.

If, as a result of a redetermination of foreign tax paid or accrued by a foreign corporation, adjustments to the pools of post-1986 undistributed earnings and foreign income taxes are required under §1.905-3T(d)(2) of the 1988 temporary regulations in lieu of a redetermination of a domestic corporate shareholder's United States tax liability, §1.905-3T(d)(2)(iii) of the 1988 temporary regulations requires that the taxpayer provide certain information concerning the foreign tax redetermination and the pooling adjustments. The new temporary regulations adopt this rule in substantial part with some modifications. New §1.905-4T(c)(3)(ii) requires that the taxpayer provide, in addition to the information described in new §1.905-4T(c)(1) and (c)(2), specific



information concerning the balances of the pools of post-1986 undistributed earnings and foreign income taxes. If, as a result of a redetermination of foreign tax paid or accrued by a foreign corporation, a redetermination of United States tax liability is required under the new §§1.905-3T(d)(3) and (f), the new temporary regulations at §1.905-4T(c)(3)(iii) specify the information that the taxpayer is required to provide.

If, under new §1.904-3T(d)(3)(ii), the foreign tax liability of a taxpayer is denominated in a non-hyperinflationary currency and the amount of foreign tax accrued for the taxable year to a foreign country, as measured in units of foreign currency, exceeds the amount of foreign tax paid to that foreign country for the taxable year (as measured in units of foreign currency) by at least two percent, the taxpayer must notify the IRS of each such foreign tax redetermination. See §1.905-4T(c)(3)(iv). If the IRS, in its discretion, requires a redetermination of United States tax liability, the taxpayer will be subject to the interest provisions of Code section 6601 and the regulations under that section. If the taxpayer fails to attach the required notice, provide the necessary information, or make the required adjustments, the taxpayer must provide a complete explanation of the reasons for such failure or make the required adjustments. If the taxpayer fails to satisfy the notification requirements, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the taxpayer will be subject to the penalty provisions of Code section 6689 and the regulations under that section.

VI. Payment or Refund of United States Tax, and Application of Interest and Penalties

Section 1.905-4T(d) of the new temporary regulations adopts without amendment that portion of the 1988 temporary regulations at §1.905-4T(b)(1) which provides that the amount of tax, if any, due upon a redetermination of United States tax liability will be paid by the taxpayer after notice and demand has been made by the IRS. The regulation also clarifies that deficiency procedures under Subchapter B of chapter 63 of the Internal Revenue Code will not apply with respect to the assessment of the amount due upon such redetermination, meaning that the IRS is not required to send a statutory notice of deficiency to a taxpayer, and the taxpayer does not have an opportunity to petition the Tax Court, prior to the IRS' assessment and collection of the amount of additional tax due. In accordance with Code sections 905(c) and 6501(c)(5), the statute of limitations under Code section 6501(a) will not apply to the assessment and collection of the amount of additional tax due. The amount of tax, if any, shown by a redetermination of United States tax liability to have been overpaid will be credited or refunded to the taxpayer in accordance with Code section 6511(d)(3)(A) and the provisions of §301.6511(d)-3. Accordingly, the taxpayer must file a claim for credit or refund within 10 years from the last date (without extensions) prescribed for filing the return for the taxable year in which such taxes were actually paid or accrued.

Similarly, §1.905-4T(e) of the new temporary regulations adopts without amendment the interest and penalties provisions of the 1988 temporary

regulations at §1.905-4T(c). First, new §1.905-4T(e)(1) provides that interest on the underpayment or overpayment resulting from a redetermination of United States tax liability will be computed in accordance with Code sections 6601 and 6611 and the regulations under those sections. No interest will be assessed or collected on any underpayment resulting from a refund of foreign tax for any period before the receipt of the refund, except to the extent interest was paid by the foreign country or possession of the United States on the refund for the period. In no case, however, will interest assessed and collected pursuant to the preceding sentence for any period before receipt of the refund exceed the amount that otherwise would have been assessed and collected under Code section 6601 and the regulations under that section for that period. Interest will be assessed from the time the taxpayer (or the foreign corporation of which the taxpayer is a shareholder) receives a foreign tax refund until the taxpayer pays the additional tax due the United States.

Second, new §1.905-4T(e)(2) provides that if an adjustment to the foreign corporation's pools of post-1986 undistributed earnings and foreign taxes under §1.905-3T(d)(2) is required in lieu of a redetermination of United States tax liability, no underpayment or overpayment of United States tax liability will result from a foreign tax redetermination. Consequently, no interest will be paid by or to a taxpayer as a result of adjustments to a foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes where required under §1.905-3T(d)(2).

Third, §1.905-4T(e)(3) of the new temporary regulations provides that failure to comply with the provisions of §1.905-4T of the new temporary regulations will subject the taxpayer to the penalty provisions of Code section 6689 and the regulations under that section.

#### VII. Penalty under Code Section 6689

Under Code section 6689, a taxpayer that fails to notify the IRS of a foreign tax redetermination in the time and manner prescribed by regulations for giving such notice is subject to a penalty unless it is shown that such failure is due to reasonable cause and not due to willful neglect. Code section 6689(a) provides that the penalty is calculated by adding to the deficiency attributable to the foreign tax redetermination an amount equal to 5 percent of the deficiency if the failure is for not more than 1 month, plus an additional 5 percent of the deficiency for each month (or fraction thereof) during which the failure continues. The total amount of the penalty is not to exceed 25 percent of the deficiency.

Section 301.6689-1T(a) has been revised to clarify that deficiency proceedings under Subchapter B of chapter 63 of the Code will not apply with respect to the amount of such penalty, meaning that the IRS is not required to send a statutory notice of deficiency to a taxpayer, and the taxpayer does not have an opportunity to petition the Tax Court, prior to the IRS' assessment and collection of the amount of such penalty.

Comments were received suggesting that, in computing the amount of the penalty, an overpayment resulting from one foreign tax redetermination should offset an underpayment resulting from another foreign tax redetermination where

both foreign tax redeterminations arise from the same foreign taxing jurisdiction and require a redetermination of United States tax liability for the same taxable year. Thus, the commentators suggested, where the underpayment is completely offset by one or more overpayments, the section 6689 penalty should not apply. The new temporary regulations do not adopt this comment. The statutory language of Code section 6689 indicates that the amount of the penalty is computed based on each foreign tax redetermination to which such section applies. Code section 6689(a) provides that, where a taxpayer fails to notify the IRS of a foreign tax redetermination, the amount of the penalty is added to “the deficiency attributable to such redetermination.” (emphasis added)

#### **Effective date**

The new temporary regulations of §1.905-4T are generally effective for foreign tax redeterminations occurring in taxable years of United States taxpayers beginning on or after January 1, 2007. See §1.905-4T(f)(1). In no case, however, will §1.905-4T(f) operate to extend the statute of limitations provided by Code section 6511(d)(3)(A). Sections 1.905-3T(c) and (d) are also effective for foreign tax redeterminations occurring in taxable years of United States taxpayers beginning on or after January 1, 2007. Except as provided in §§1.905-3T(b)(1)(ii)(D), §1.905-3T(b), which provides rules with respect to currency translation, is effective for taxes paid or accrued in taxable years beginning after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Section 1.905-3T(b)(1)(ii)(D), which provides taxpayers otherwise required to translate foreign income taxes using the average

exchange rate an election to translate taxes using the exchange rate for the date of payment, is effective for taxable years beginning after December 31, 2004.

If a foreign tax redetermination resulting in a reduction of foreign tax liability occurred in a taxable year of a United States taxpayer beginning before January 1, 2007, and, as of **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**, the taxpayer has not satisfied the notice requirements described in §§1.905-3T and 1.905-4T of the 1988 temporary regulations, the new temporary regulations at §1.905-4T(f)(2) generally require the taxpayer to notify the IRS of such foreign tax redetermination no later than the due date (with extensions) of its original return for the taxable year following the taxable year in which these regulations are first effective. New §1.905-4T(f)(2)(ii) sets forth the time and manner of the notification, which depends on whether the foreign tax redetermination requires a redetermination of United States tax liability or an adjustment to a foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes. In either case, the notification must contain the information described in new §1.905-4T(c).

New §1.905-4T(f)(2)(iii) provides that a taxpayer under the jurisdiction of the Large and Mid-Size Business Division that is otherwise required to file an amended return and Form 1118 as required in new §1.905-4T(f)(2)(ii) may, in lieu of applying §1.905-4T(f)(2)(ii), provide notice in the course of an examination of the return for the taxable year for which a redetermination of United States tax liability is required. In such case, the notification must contain the information

described in new §1.905-4T(c) and must be provided no later than 90 days after the earliest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required, or if the earliest of these dates precedes **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**, no later than 90 days after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. However, this exception to the notification requirements of §1.905-4T(f)(2)(ii) is not permitted to extend the length of the notification period set forth in §1.905-4T(f)(2)(ii). Thus, if the due date specified in §1.905-4T(f)(2)(ii) coincides with the earliest of the opening conference or the hand-delivery date or postmark date of the opening letter, or it coincides with any day within the 90-day notification period following the earliest of those three dates, the taxpayer must notify the IRS no later than the due date under §1.905-4T(f)(2)(ii). Also, §1.905-4T(f)(iii) will not apply if the last day for providing notice of the foreign tax redetermination under §1.905-4T(f)(2)(ii) precedes the earliest of the opening conference or the hand-delivery or postmark date of the opening letter.

Section 1.905-4T(f)(2)(iv) provides that interest will be computed in accordance with §1.905-4T(e), and that the taxpayer must satisfy the requirements of §1.905-4T(f)(2) in order not to be subject to the penalty provisions of Code section 6689 and the regulations under that section.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble of the cross-referenced notice of proposed rulemaking published in this issue of the **Federal Register**. Pursuant to Code section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

#### **Drafting Information**

The principal author of these regulations is Teresa Burridge Hughes of the 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 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income Taxes, Penalties, Reporting and Recordkeeping Requirements

##### 26 CFR Part 602

Reporting and Recordkeeping requirements.

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



Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

**PART 1 – INCOME TAXES**

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

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

Par. 2. Section 1.905-3T is amended as follows:

1. Revise the section heading of §1.905-3T.
2. Revise paragraphs (a), (b)(1) through (3), (b)(5), and (c).
3. Revise the second and third sentences of paragraph (d)(1).
4. Revise the second sentence of paragraph (d)(2)(i) and add a new last sentence.
5. Revise the heading of paragraph (d)(2)(ii).
6. Remove paragraph (d)(3)(i), redesignate paragraphs (d)(3)(ii) through (v) as paragraphs (d)(2)(ii)(A) through (D), and revise newly designated paragraphs (d)(2)(ii)(A), (B), and (D).
7. Remove from newly designated paragraph (d)(2)(ii)(C) the language “(d)(3)(iv)” and add the language “this paragraph (d)(2)(ii)(C)” in its place. Also remove the language “§1.905-3T(d)(4)(iv)” and add the language “(d)(3)(iv)” in its place.
8. Remove paragraphs (d)(2)(iii) and (iv).
9. Redesignate paragraph (d)(4) as paragraph (d)(3), redesignate newly designated paragraphs (d)(3)(i) through (v) as paragraphs (d)(3)(ii) through (vi), redesignate the flush language of newly designated

paragraph (d)(3) as (d)(3)(i), and add a heading to newly designated paragraph (d)(3)(i).

10. Revise newly designated paragraphs (d)(3)(iv) and (vi).

The revisions read as follows:

§1.905-3T Adjustments to United States tax liability and to the pools of post-1986 undistributed earnings and foreign income taxes as a result of a foreign tax redetermination (Temporary).

(a) Effective dates—(1) Currency translation. Except as provided in paragraph (b)(1)(ii)(D) of this section, paragraph (b) of this section is effective for taxes paid or accrued in taxable years beginning after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. For corresponding rules applicable to taxes paid or accrued in taxable years beginning on or before **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**, see CFR §1.905-3T (revised as of April 1, 2006).

(2) Foreign tax redetermination. Paragraphs (c) and (d) of this section are effective for foreign tax redeterminations occurring in taxable years of United States taxpayers beginning on or after January 1, 2007. For corresponding rules applicable to foreign tax redeterminations occurring in taxable years beginning before January 1, 2007, see 26 CFR §1.905-3T (revised as of April 1, 2006).

(b) \* \* \* (1) Translation of foreign taxes when accrued--(i) In general. Except as provided in paragraph (b)(1)(ii) of this section, in the case of a taxpayer or a member of a qualified group (as defined in section 902(b)(2)) that

takes foreign income taxes into account when accrued, the amount of any foreign taxes denominated in foreign currency that have been paid or accrued, additional tax liability denominated in foreign currency, taxes withheld in foreign currency, or estimated taxes paid in foreign currency shall be translated into dollars using the average exchange rate (as defined in §1.989(b)-1) for the United States taxable year to which such taxes relate.

(ii) Exceptions—(A) Taxes not paid within two years. Any foreign income taxes denominated in foreign currency that have been paid more than two years after the close of the United States taxable year to which they relate shall be translated into dollars using the exchange rate as of the date of payment of the foreign taxes. To the extent any foreign income taxes denominated in foreign currency were not paid more than two years after the close of the taxable year to which they relate, see paragraph (b)(3) of this section.

(B) Taxes paid before taxable year begins. Any foreign income taxes paid before the beginning of the United States taxable year to which such taxes relate shall be translated into dollars using the exchange rate as of the date of payment of the foreign taxes.

(C) Inflationary currency. Any foreign income taxes the liability for which is denominated in any inflationary currency shall be translated into dollars using the exchange rate as of the date of payment of the foreign taxes. For this purpose, the term inflationary currency means the currency of a country in which there is cumulative inflation during the base period of at least 30 percent, as determined by reference to the consumer price index of the country listed in the monthly

issues of International Financial Statistics, or a successor publication, of the International Monetary Fund. For purposes of this paragraph (b)(ii)(C), "base period" means, with respect to any taxable year, the thirty-six calendar months immediately preceding the last day of such taxable year (see §1.985-1(b)(2)(ii)(D)).

(D) Election to translate taxes using exchange rate for date of payment.

For taxable years beginning after December 31, 2004, a taxpayer that is otherwise required to translate foreign income taxes that are denominated in foreign currency using the average exchange rate may elect to translate foreign income taxes described in this paragraph (b)(1)(ii)(D) into dollars using the exchange rate as of the date of payment of the foreign taxes, provided that the liability for such taxes is denominated in nonfunctional currency. A taxpayer may make an election under this paragraph (b)(1)(ii)(D) for all foreign income taxes, or for only those foreign income taxes that are denominated in nonfunctional currency and are attributable to qualified business units with United States dollar functional currencies. The election must be made by attaching a statement to the taxpayer's timely filed return (including extensions) for the first taxable year to which the election applies. The statement must identify whether the election is made for all foreign taxes or only for foreign taxes attributable to qualified business units with United States dollar functional currencies. Once made, the election shall apply for the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Commissioner.

(E) Regulated investment companies. In the case of a regulated investment company (as defined in section 851 and the regulations under that section) which takes into account income on an accrual basis, foreign income taxes paid or accrued with respect to such income shall be translated into dollars using the exchange rate as of the date the income accrues.

(2) Translation of foreign taxes when paid. In the case of a taxpayer that takes foreign income taxes into account when paid, the amount of any foreign tax liability denominated in foreign currency, additional tax liability denominated in foreign currency, or estimated taxes paid in foreign currency shall be translated into dollars using the exchange rate as of the date of payment of such foreign taxes. Foreign taxes withheld in foreign currency shall be translated into dollars using the exchange rate as of the date on which such taxes were withheld.

(3) Refunds or credits of foreign tax. In the case of a taxpayer that takes foreign income taxes into account when accrued, a refund or credit of foreign taxes denominated in foreign currency, or accrued taxes denominated in foreign currency that were not paid by the date two years after the close of the taxable year to which such taxes relate, shall be translated into dollars using the exchange rate that was used to translate such amount when originally claimed as a credit. In the case of a taxpayer that takes foreign income taxes into account when paid, a refund or credit of foreign taxes denominated in foreign currency shall be translated into dollars using the exchange rate that was used to translate such amount when originally claimed as a credit. If a refund or credit of foreign taxes relates to foreign taxes paid or accrued on more than one date, then the

refund or credit shall be deemed to be derived from, and shall reduce, the last payment of foreign taxes first, to the extent of the first payment. See paragraphs (d)(1) (redetermination of United States tax liability for foreign taxes paid directly by a United States person) and (d)(2)(ii) (method of adjustment of a foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes) of this section.

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(5) \*\*\* (i) In general. A recipient of a refund of foreign tax shall determine its basis in the currency refunded under the following rules.

(ii) If the functional currency of the qualified business unit (QBU) (as defined in section 989 and the regulations under that section) that paid the tax and received the refund is the United States dollar or the person receiving the refund is not a QBU, then the recipient's basis in the foreign currency refunded shall be the dollar value of the refund determined under paragraph (b)(3) of this section by using, as appropriate, either the average exchange rate for the taxable year to which such taxes relate or the other exchange rate that was used to translate such amount when originally claimed as a credit.

(iii) If the functional currency of the QBU receiving the refund is not the United States dollar and is different from the currency in which the foreign tax was paid, then the recipient's basis in the foreign currency refunded shall be equal to the functional currency value of the non-functional currency refund translated into functional currency at the exchange rate between the functional currency and the non-functional currency. Such exchange rate is determined

under paragraph (b)(3) by substituting the words "functional currency" for the word "dollar" and by using, as appropriate, either the average exchange rate for the taxable year to which such taxes relate or the other exchange rate that was used to translate such amount when originally claimed as a credit.

(iv) If the functional currency of the QBU receiving the refund is the currency in which the refund was made, then the recipient's basis in the currency received shall be the amount of the functional currency received.

(v) For purposes of determining exchange gain or loss on the initial payment of foreign tax in a non-functional currency, see section 988. For purposes of determining subsequent exchange gain or loss on the disposition of non-functional currency the basis of which is determined under this rule, see section 988(c)(1)(C).

(c)\*\*\* For purposes of this section and §1.905-4T, a foreign tax redetermination means a change in the foreign tax liability that may affect a taxpayer's foreign tax credit. A foreign tax redetermination includes: accrued taxes that when paid differ from the amounts claimed as credits by the taxpayer (such as overaccruals and additional payments); accrued taxes that are not paid before the date two years after the close of the taxable year to which such taxes relate; any tax paid that is refunded in whole or in part; and, for taxes taken into account when accrued but translated into dollars on the date of payment, a difference between the dollar value of the accrued tax and the dollar value of the tax paid attributable to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment.

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(d) \* \* \* (1) \* \* \* See §1.905-4T(b) which requires notification to the IRS of a foreign tax redetermination with respect to which a redetermination of United States liability is required and see section 905(b) and the regulations under that section which require that a taxpayer substantiate that a foreign tax was paid and provide all necessary information establishing its entitlement to the foreign tax credit. However, a redetermination of United States tax liability is not required (and a taxpayer need not notify the IRS) if the foreign taxes are taken into account when accrued but translated into dollars on the date of payment, the foreign tax redetermination is described in paragraph (c) of this section (that is, the difference between the dollar value of the accrued tax and the dollar value of the tax paid is attributable to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment), and the amount of the foreign tax redetermination with respect to the foreign country is less than the lesser of ten thousand dollars or two percent of the total dollar amount of the foreign tax initially accrued with respect to that foreign country for the United States taxable year. \* \* \*

(2) \* \* \* (i) \* \* \* Instead, appropriate upward or downward adjustments shall be made, in accordance with paragraph (d)(2)(ii) of this section, at the time of the foreign tax redetermination to the foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes to reflect the effect of the foreign tax redetermination in calculating foreign taxes deemed paid with respect to distributions and inclusions (and the amount of such distributions and inclusions) that are includible in the United States taxable year in which the foreign tax



redetermination occurred. For rules with respect to the notification of such an adjustment, see §1.905-4T(b)(2) and for rules with respect to the contents of the notification statement with respect to an adjustment to the foreign corporation's pools, see §1.905-4T(c)(3). See also section 905(b) and the regulations under that section which require that a taxpayer substantiate that a foreign tax was paid and provide all necessary information establishing its entitlement to the foreign tax credit.

(ii) Adjustments to the pools of post-1986 undistributed earnings and foreign income taxes.—(A) Refunds of foreign taxes. A foreign corporation's pool of foreign income taxes in the appropriate separate category shall be reduced by the United States dollar amount of a foreign tax refund, translated into United States dollars as provided in paragraph (b)(3) of this section. A foreign corporation's pool of post-1986 undistributed earnings in the appropriate category shall be increased by the functional currency amount of the foreign tax refund. The allocation of the refund to the appropriate separate categories shall be made in accordance with paragraph (b)(4) of this section and §1.904-6. If a foreign corporation receives a refund of foreign tax in a currency other than its functional currency, that refund shall be translated into its functional currency, for purposes of computing the increase to its pool of post-1986 undistributed earnings, at the exchange rate between the functional currency and the non-functional currency, as determined under paragraph (b)(3) of this section by substituting the words "functional currency" for the word "dollar" and by using the

same average or spot rate exchange rate convention that applies for purposes of translating such foreign taxes into United States dollars.

(B) Additional assessments of foreign tax. A foreign corporation's pool of foreign income taxes in the appropriate separate category shall be increased by the United States dollar amount of the additional foreign tax paid or accrued, translated in accordance with the rules of paragraphs (b)(1) and (2) of this section. A foreign corporation's pool of post-1986 undistributed earnings in the appropriate separate category shall be decreased by the functional currency amount of the additional foreign tax paid or accrued. The allocation of the additional amount of foreign tax among the separate categories shall be made in accordance with §1.904-6.

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(D) Examples. The following examples illustrate the application of this paragraph (d)(2).

Example 1. Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P are calendar year taxpayers. CFC has a functional currency, the u, other than the dollar and its pool of post-1986 undistributed earnings is maintained in that currency. CFC and P use the average exchange rate to translate foreign taxes. In 2007, CFC accrued and paid 100u of foreign taxes with respect to non-subpart F income when the average exchange rate for the year was \$1:1u. In 2008, after P filed its United States return for 2007, CFC received a refund of 50u of foreign taxes with respect to its non-subpart F income in 2007. CFC made no distributions to P in 2007. In accordance with paragraph (d)(2)(ii)(B) of this section and subject to paragraph (d)(3) of this section, the CFC's pool of foreign income taxes must be reduced by \$50 (because the refund must be translated into dollars using the exchange rate that was used to translate such amount when originally claimed as a credit, that is, \$1:1u, the average exchange rate for 2007) and the CFC's pool of post-1986 undistributed earnings must be increased by 50u (because the post-1986 undistributed earnings must be increased by the functional currency amount of the refund received). An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign

taxes received by CFC is not required because the foreign taxes are in the CFC's functional currency.

Example 2. The facts are the same as Example 1, except that in 2007, CFC earned 400u of general limitation income and 200u of passive income and accrued 200u of foreign taxes, 100u with respect to general limitation income and 100u with respect to passive income, when the average exchange rate for the year was \$1:1u. CFC paid 200u of foreign taxes in 2008, and in 2010, CFC received a refund of 75u, 25u of which was related to the general limitation income and 50u of which was related to the passive income. In accordance with paragraph (d)(2)(ii)(B) of this section and subject to paragraph (d)(3) of this section, the CFC's pools of foreign income taxes related to general limitation income and passive income must be reduced by \$25 and \$50, respectively (because the refund must be translated into dollars using the exchange rate that was used to translate such amount when originally claimed as a credit, that is, \$1:1u, the average exchange rate for 2007), and the CFC's pools of post-1986 undistributed earnings must be increased by 25u and 50u, respectively (because the post-1986 undistributed earnings must be increased by the functional currency amount of the refund received). If the refund received by CFC was not specifically related to any separate category of income, CFC, pursuant to §1.904-6, is required to allocate that refund in accordance with the provisions of that section. An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC is not required because the foreign taxes are in the CFC's functional currency.

Example 3. CFC1 is a foreign corporation that is wholly-owned by P, a domestic corporation. CFC2 is a foreign corporation that is wholly-owned by CFC1. The functional currency of CFC1 and CFC2 is the u, and the pools of post-1986 undistributed earnings of CFC1 and CFC2 are maintained in that currency. CFC1, CFC2, and P use the average exchange rate to translate foreign taxes. In 2007, CFC2 had post-1986 undistributed earnings of 100u (net of foreign taxes) and paid 100u in foreign income taxes with respect to those earnings, when the average exchange rate for the year was \$1.1u. In 2008 and 2009, CFC1 had no income and no earnings and profits other than those resulting from distributions from CFC2. CFC1 paid no foreign taxes in 2008 or 2009.

Situation (i). In 2008, after P filed its United States return for 2007, CFC2 received a refund of foreign taxes of 25u. In 2009, CFC2 made a distribution to CFC1 of 50u. CFC1 was deemed to have paid \$30 of foreign taxes with respect to that distribution ( $50u/125u \times \$75$ ). (An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC is not required because the foreign taxes are in the CFC's functional currency.) At the end of 2009, the following reflects the pools of post-1986 undistributed earnings and foreign income taxes of CFC1 and CFC2.

	Earnings and profits (u)	Foreign taxes (dollars)
CFC2:		
2007.....	100	100
2008.....	$100 + 25 = 125$	$100 - 25 = 75$
2009.....	$125 - 50 = 75$	$75 - 30 = 45$
CFC1:		
2009.....	50	30

Situation (ii). The facts are the same as situation (i), except that CFC2 made a distribution of 50u in 2008 and received a refund of 75u in 2009. In 2008, the amount of foreign taxes deemed paid by CFC1 would be \$50 ( $50u/100u \times \$100$ ). In accordance with §1.905-3T(d)(2)(ii)(C), the pools of foreign income taxes of CFC1 and CFC2 must be adjusted in 2009 because the 2009 refund would have the effect of reducing below zero CFC2's pool of foreign income taxes. CFC1's pool of foreign income taxes must be reduced by \$42.86, determined as follows: \$50 (foreign taxes deemed paid on the distribution from CFC2) minus \$7.14 (the foreign taxes that would have been deemed paid had the refund occurred prior to the distribution ( $50u/175u \times \$25$ )). CFC2's pool of foreign taxes must be reduced by \$32.14, determined as follows: \$75 (75u refund translated into dollars using the exchange rate that was used to translate such amount when originally claimed as a credit, that is, \$1:1u, the average exchange rate for 2007) minus \$42.86 (the adjustment to CFC1's pool of foreign income taxes). (An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC is not required because the foreign taxes are in the CFC's functional currency.) At the end of 2009, the following reflects the pools of post-1986 undistributed earnings and foreign income taxes of CFC1 and CFC2.

	Earnings and profits (u)	Foreign taxes (dollars)
CFC2:		
2007.....	100	100
2008.....	$100 - 50 = 50$	$100 - 50 = 50$
2009.....	$50 + 75 = 125$	$50 - 32.14 = 17.86$
CFC1:		
2008.....	50	50
2009.....	50	$50 - 42.86 = 7.14$

(3) \*\*\* In general. \*\*\*

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(iv) Example. The following example illustrates the application of paragraph (d)(3)(iii) of this section.

Example. Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P are calendar year taxpayers. CFC has a functional currency, the u, other than the dollar, and its pool of post-1986 undistributed earnings is maintained in that currency. CFC and P use the average exchange rate to translate foreign taxes. In 2007, when the average exchange rate for the year was \$1:1u, CFC earned general limitation income of 200u, accrued 100u of foreign taxes with respect to that income, and made a distribution to P of 50u, half of CFC's earnings and profits of 100u. P was deemed to have paid \$50 of foreign tax with respect to that distribution (50u/100u x \$100). In 2008, after P filed its United States return for 2007, CFC paid its actual foreign tax liability for 2007 of 98.50u. Subject to paragraph (d)(3) of this section, CFC's pool of foreign income taxes must be reduced by \$1.50 and the corresponding pool of post-1986 undistributed earnings must be increased by 1.50u. (The refund must be translated into dollars using the exchange rate that was used to translate such amount when originally claimed as a credit, that is, \$1:1u, the average exchange rate for 2007, and the adjustment to the pool of post-1986 undistributed earnings must be made in CFC's functional currency, the u.) In 2008, CFC earned 200u of general limitation income, accrued 120u of tax, and distributed 100u to P. P was deemed to have paid \$128 of foreign tax (( $\$48.50 + \$120$ ) x 100u/(51.50u + 80u)). In 2009, after P filed its United States return for 2008, CFC paid its actual tax liability for 2008 of 100u. The IRS may require P to redetermine its United States tax liability for 2008 to account for the effect of the overaccrual of foreign tax pursuant to paragraph (d)(3)(ii) of this section.

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(vi) Example. The following example illustrates the application of paragraph (d)(3)(v) of this section.

Example. Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P are calendar year taxpayers. CFC has a functional currency, the u, other than the dollar, and its pool of post-1986 undistributed earnings is maintained in that currency. CFC and P use the average exchange rate to translate foreign taxes. In 2007, when the average exchange rate for the year was \$1:1u, CFC earned 200u of general limitation income, accrued and paid 100u of foreign taxes with respect to that income, and made a distribution to P of 50u, half of CFC's earnings and profits of 100u. P is deemed to have paid \$50 of foreign taxes with respect to that distribution (50u/100u x \$100). In 2008, after P filed its United States return for

2007, CFC received a refund of 100u of foreign taxes related to the general limitation income. In 2008, CFC earned an additional 290u of income, 200u of which was passive income and 90u of which was general limitation income, and accrued and paid 95u of foreign tax, 40u of which was with respect to the passive income and 45u of which was with respect to the general limitation income, when the average exchange rate for the year was \$1:1u. In accordance with paragraph (d)(3)(iv) of this section, P is required to redetermine its United States tax liability for 2007 to account for the foreign tax redetermination occurring in 2008 because, if an adjustment to CFC's pool of foreign income taxes in the general limitation category were made, the pool would be (\$5). A deficit is not permitted to be carried in CFC's pool of foreign income taxes in any separate category.

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Par. 3. Section 1.905-4T is amended as follows:

1. Revise the section heading.
2. Revise paragraphs (a) through (d).
3. Add new paragraphs (e) and (f).

The revisions and additions read as follows:

§1.905-4T Notification of foreign tax redetermination (Temporary).

(a) Application of this section. The rules of this section apply if, as a result of a foreign tax redetermination (as defined in §1.905-3T(c)), a redetermination of United States tax liability is required under section 905(c) or adjustments to the pools of post-1986 undistributed earnings and foreign income taxes are required under §1.905-3T(d)(2).

(b) Time and manner of notification--(1) Redetermination of United States tax liability--(i) In general. Except as provided in paragraph (b)(1)(iv) and (v) and (b)(3) of this section, any taxpayer for which a redetermination of United States tax liability is required must notify the Internal Revenue Service (IRS) of the foreign tax redetermination by filing an amended return, and Form 1118 (Foreign

Tax Credit - Corporations) or Form 1116 (Foreign Tax Credit) for the taxable year with respect to which a redetermination of United States tax liability is required. Such notification must be filed within the time prescribed by this paragraph (b) and contain the information described in paragraph (c) of this section. Where a foreign tax redetermination requires an individual to redetermine the individual's United States tax liability, and as a result of such foreign tax redetermination the amount of creditable taxes paid or accrued by such individual during the taxable year does not exceed the applicable dollar limitation in section 904(k), the individual shall not be required to file Form 1116 with the amended return for such taxable year if the individual satisfies the requirements of section 904(k).

(ii) Reduction in amount of foreign tax liability. Except as provided in paragraphs (b)(1)(iv) and (v) and (b)(3) of this section, for each taxable year of the taxpayer with respect to which a redetermination of United States tax liability is required by reason of a foreign tax redetermination that reduces the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, the taxpayer must file a separate notification for each such taxable year by the due date (with extensions) of the original return for the taxpayer's taxable year in which the foreign tax redetermination occurred.

(iii) Increase in amount of foreign tax liability. Except as provided in paragraph (b)(1)(iv) and (v) and (b)(3) of this section, for each taxable year of the taxpayer with respect to which a redetermination of United States tax liability is required by reason of a foreign tax redetermination that increases the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes

deemed paid, the taxpayer must notify the IRS within the period provided by section 6511(d)(3)(A). Filing of such notification within the prescribed period shall constitute a claim for refund of United States tax.

(iv) Multiple redeterminations of United States tax liability for same taxable year. Where more than one foreign tax redetermination requires a redetermination of United States tax liability for the same taxable year of the taxpayer, the taxpayer may file for such taxable year one amended return and Form 1118 or 1116 that reflect all such foreign tax redeterminations. If the taxpayer chooses to file one notification for such redeterminations, the taxpayer must file such notification by the due date (with extensions) of the original return for the taxpayer's taxable year in which the first foreign tax redetermination that reduces foreign tax liability occurred.

(v) Carryback and carryover of unused foreign tax. Where a foreign tax redetermination requires a redetermination of United States tax liability that would otherwise result in an additional amount of United States tax due, but such amount is eliminated as a result of a carryback or carryover of an unused foreign tax under section 904(c), the taxpayer may, in lieu of applying the rules of paragraph (b)(1)(ii) of this section, notify the IRS of such redetermination by attaching a statement to the original return for the taxpayer's taxable year in which the foreign tax redetermination occurs. Such statement must be filed by the due date (with extensions) of the original return for the taxpayer's taxable year in which the foreign tax redetermination occurred and contain the information described in §1.904-2(f).



(vi) Example. The following example illustrates the provisions of this paragraph (b)(1):

Example. (A) X, a domestic corporation, is an accrual basis taxpayer and uses the calendar year as its United States taxable year. X conducts business through a branch in Country M, the currency of which is the m, and also conducts business through a branch in Country N, the currency of which is the n. X uses the average exchange rate to translate foreign taxes. Assume that X is able to claim a credit under section 901 for all foreign taxes paid or accrued.

(B) In 2007, X accrued and paid 100m of Country M taxes with respect to 400m of foreign source general limitation income, when the average exchange rate for the year was \$1:1m. In the same year, X also accrued and paid 50n of Country N taxes with respect to 150n of foreign source general limitation income, when the average exchange rate for the year was \$1:1n. X claimed a foreign tax credit of \$150 ( $\$100$  (100m at \$1:1m) +  $\$50$  (50n at \$1:1n)) with respect to its foreign source general limitation income on its United States tax return for 2007.

(C) In 2008, X accrued and paid 100n of Country N taxes with respect to 300n of foreign source general limitation income, when the average exchange rate for the year was \$1.5:1n. X claimed a foreign tax credit of \$150 (100n at \$1.5:1n) with respect to its foreign source general limitation income on its United States tax return for 2008.

(D) On June 15, 2011, when the spot exchange rate was \$1.40:1n, X received a refund of 10n from Country N, and, on March 15, 2012, when the spot exchange rate was \$1.20:1m, X was assessed by and paid Country M an additional 20m of tax. Both payments were with respect to X's foreign source general limitation income in 2007. On May 15, 2012, when the spot exchange rate was \$1.45:1n, X received a refund of 5n from Country N with respect to its foreign source general limitation income in 2008.

(E) X must redetermine its United States tax liability for both 2007 and 2008. With respect to 2007, X must notify the IRS of the June 15, 2011 refund of 10n from Country N that reduced X's foreign tax liability by filing an amended return for 2007 by the due date of the original return (with extensions) for 2011. The amended return must reduce the amount of foreign taxes claimed as a credit under section 901 by \$10 (10n refund translated at the average exchange rate for 2007, or \$1:1n (see §1.905-3T(b)(3))) and reflect foreign currency gain or loss under section 988 on the conversion of the 10n refund into dollars. With respect to the March 15, 2012, additional assessment of 20m by Country M, X must notify the IRS within the time period provided by section 6511(d)(3)(A), increasing the foreign taxes available as a credit by \$24 (20m translated at the exchange rate on the date of payment, or \$1.20:1m). See sections 986(a)(1)(B)(i), 986(a)(2)(A) and §1.905-3T(b)(1)(ii)(A). X may so notify the IRS by filing a second amended return for 2007 within the time period provided by

section 6511(d)(3)(A). Alternatively, when X redetermines its United States tax liability for 2007 to take into account the 10n refund from Country N which occurred in 2011 (and the foreign currency gain or loss on conversion of the refund into dollars), X may also take into account the 20m additional assessment by Country M which occurred on March 15, 2012. See §1.905-4T(b)(1)(iv). Where X reflects both foreign tax redeterminations on the same amended return for 2007, the amount of X's foreign taxes available as a credit would be as follows: (1) Reduced by \$10 (10n refund translated at \$1:1n) and (2) Increased by \$24 (20m additional assessment translated at the exchange rate on the date of payment, March 15, 2012, or \$1.20:1m). The foreign taxes available as a credit therefore would be increased by \$14 (\$24 (additional assessment) – \$10 (refund) = \$14). The due date of the 2007 amended return reflecting foreign tax redeterminations in both years would be the due date (with extensions) of X's original return for 2011.

(F) With respect to 2008, X must notify the IRS by filing an amended return for 2008 that is separate from that filed for 2007. The amended return for 2008 must be filed by the due date (with extensions) of X's original return for 2012. The amended return must reduce the amount of foreign taxes claimed as a credit under section 901 by \$7.50 (5n refund translated at the average exchange rate for 2008, or \$1.50:1n) and reflect foreign currency gain or loss under section 988 on the conversion of the 5n refund into dollars.

(2) Pooling adjustment in lieu of redetermination of United States tax liability. Where a redetermination of foreign tax paid or accrued by a foreign corporation affects the amount of foreign taxes deemed paid under section 902 or 960, and the taxpayer is required to adjust the foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes under §1.905-3T(d)(2), the taxpayer must notify the IRS of such adjustment by attaching notice of such adjustment to the original return for the taxpayer's taxable year with or within which ends the foreign corporation's taxable year during which the foreign tax redetermination occurs. Such notification must be filed by the due date (with extensions) of such tax return and contain the information described in paragraph (c) of this section.

(3) Taxpayers under the jurisdiction of the Large and Mid-Size Business Division--(i) In general. Where a redetermination of United States tax liability is required by reason of a foreign tax redetermination that occurs while a taxpayer is under the jurisdiction of the Large and Mid-Size Business Division (or similar program), the rules of paragraph (b)(1) of this section generally apply. However, where such foreign tax redetermination results in a reduction in the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, and such redetermination occurs within the periods specified in paragraph (b)(3)(iii) or (iv)(B) of this section, the rules of paragraph (b)(3)(iii) and (iv)(B) of this section shall apply in lieu of the rules of paragraph (b)(1)(i) and (ii) of this section. A taxpayer subject to the rules of paragraph (b)(3)(iii) or (iv)(B) of this section must satisfy the requirements of paragraph (b)(3)(iii) or (iv)(B) of this section (in lieu of the rules of paragraph (b)(1)(i) and (ii) of this section) in order not to be subject to the penalty relating to the failure to file notice of a foreign tax redetermination under section 6689 and the regulations under that section.

Where the foreign tax redetermination results in a reduction in the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, and such redetermination occurs within the periods specified in paragraph (b)(3)(ii) or (iv)(A) of this section, a taxpayer may apply the rules of paragraph (b)(3)(ii) or (iv)(A) of this section in lieu of the rules of paragraph (b)(1)(i) and (ii) of this section, in which case the taxpayer must satisfy the requirements of paragraph (b)(3)(ii) or (iv)(A) of this section (in lieu of the rules of paragraph (b)(1)(i) and (ii) of this section) in order not to be subject to the penalty

relating to the failure to file notice of a foreign tax redetermination under section 6689 and the regulations under that section. Where a foreign tax redetermination occurring within the periods specified in paragraph (b)(3)(ii), (iii), (iv)(A) or (iv)(B) of this section results in an increase in the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, a taxpayer may, in lieu of applying the rules of paragraph (b)(1)(i) and (iii), notify the IRS of such redetermination by applying the rules of paragraph (b)(3)(ii), (iii), (iv)(A) or (iv)(B) of this section.

(ii) Foreign tax redetermination prior to examination. Except as provided in paragraph (b)(3)(iv)(A) of this section, when a foreign tax redetermination occurs prior to the earliest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required, the taxpayer may, in lieu of applying the rules of paragraph (b)(1)(i) and (ii) or this section, notify the IRS of such redetermination no later than 60 days after the earliest of the opening conference or the hand-delivery or postmark date of the opening letter, in which case the taxpayer must provide to the examiner the information described in paragraph (c) of this section. If, however, the date specified in paragraph (b)(1) of this section for providing notice of the foreign tax redetermination coincides with the earliest of the opening conference or the hand-delivery or postmark date of the opening letter, or it coincides with any day within the 60-day notification period beginning after the earliest of the opening conference or the hand-delivery or postmark date of the opening letter, the

taxpayer must notify the IRS of such redetermination no later than the date specified in paragraph (b)(1) of this section, and provide to the examiner the information described in paragraph (c) of this section. This paragraph shall not apply where the due date specified in paragraph (b)(1) of this section for providing notice of the foreign tax redetermination precedes the earliest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required..

(iii) Foreign tax redetermination during examination. Except as provided in paragraph (b)(3)(iv)(B) of this section, when a foreign tax redetermination occurs within 180 days after the earliest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the taxable year for which a redetermination of United States tax liability is required, the taxpayer must notify the IRS of the redetermination of United States tax liability no later than 60 days after the date the foreign tax redetermination occurs. The taxpayer must provide to the examiner the information described in paragraph (c) of this section.

(iv) Transition rule for foreign tax redeterminations occurring between January 1, 2007 and **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. (A) Foreign tax redetermination prior to examination. If a taxpayer is eligible to notify the IRS of a redetermination of United States tax liability by reason of a foreign tax redetermination that occurred on or after January 1, 2007, but before **[INSERT DATE OF PUBLICATION OF**

**THIS DOCUMENT IN THE FEDERAL REGISTER** under the rules of paragraph (b)(3)(ii) of this section (in lieu of the rules of paragraph (b)(1)(i) and (ii) of this section), the taxpayer may notify the IRS no later than 60 days after **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER** in lieu of the notification period described in paragraph (b)(3)(ii) of this section. The taxpayer must provide to the examiner the information described in paragraph (c) of this section.

(B) Foreign tax redetermination during examination. If a taxpayer would, but for this paragraph, be required under the rules of paragraph (b)(3)(iii) of this section to notify the IRS of a redetermination of United States tax liability by reason of a foreign tax redetermination that occurred on or after January 1, 2007, but before **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**, the taxpayer must notify the IRS no later than 60 days after **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER** in lieu of the notification period described in paragraph (b)(3)(iii) of this section and provide to the examiner the information described in paragraph (c) of this section.

(v) Example. The following example illustrates the application of paragraph (b)(3)(ii) of this section.

Example. On June 10, 2008, X, a taxpayer under the jurisdiction of the Large and Mid-Size Business Division, receives a refund of foreign tax that constitutes a foreign tax redetermination that necessitates a redetermination of United States tax liability for X's 2007 taxable year. Assume that X uses the calendar year as its United States taxable year and that the due date (with extensions) of X's return for its 2007 taxable year is September 15, 2009. Assume also that the IRS hand delivers an opening letter concerning the

examination of X's 2007 taxable year on December 15, 2009 and the opening conference for such examination is scheduled for January 15, 2010. Because under §1.905-4T(b)(1)(ii), X would be required to file an amended return for its 2007 taxable year by September 15, 2009 (the due date with extensions for filing X's original return for the 2007 taxable year), and such date precedes the date the IRS hand delivers the opening letter concerning the examination of X's 2007 taxable year, §1.905-4T(b)(3)(ii) does not apply, and X must notify the IRS of the foreign tax redetermination by filing an amended return for the 2007 taxable year by September 15, 2009.

(c) Notification contents--(1) In general. In addition to satisfying the requirements of paragraph (b) of this section, the taxpayer must furnish a statement that contains information sufficient for the IRS to redetermine the taxpayer's United States tax liability where such a redetermination is required under section 905(c), and to verify adjustments to the pools of post-1986 undistributed earnings and foreign income taxes where such adjustments are required under §1.905-3T(d)(2). The information must be in a form that enables the IRS to verify and compare the original computations with respect to a claimed foreign tax credit, the revised computations resulting from the foreign tax redetermination, and the net changes resulting therefrom. The statement must include the taxpayer's name, address, identifying number, and the taxable year or years of the taxpayer that are affected by the foreign tax redetermination. In addition, the taxpayer must provide the information described in paragraph (c)(2) or (3) of this section, as appropriate. If the statement is submitted to the IRS under paragraph (b)(3)(ii), (iii), or (iv) of this section, the statement must also include the following declaration signed by a person authorized to sign the return of the taxpayer: "Under penalties of perjury, I declare that I have examined this

written statement, and to the best of my knowledge and belief, this written statement is true, correct, and complete.”

(2) Foreign taxes paid or accrued. Where a redetermination of United States tax liability is required by reason of a foreign tax redetermination as defined in §1.905-3T(c), in addition to the information described in paragraph (c)(1) of this section, the taxpayer must provide the following: the date or dates the foreign taxes were accrued, if applicable; the date or dates the foreign taxes were paid; the amount of foreign taxes paid or accrued on each date (in foreign currency) and the exchange rate used to translate each such amount, as provided in §1.905-3T(b)(1) or (2); and information sufficient to determine any interest due from or owing to the taxpayer, including the amount of any interest paid by the foreign government to the taxpayer and the dates received. In addition, in the case of any foreign tax that is refunded in whole or in part, the taxpayer must provide the date of each such refund; the amount of such refund (in foreign currency); and the exchange rate that was used to translate such amount when originally claimed as a credit (as provided in §1.905-3T(b)(3)) and the exchange rate for the date the refund was received (for purposes of computing foreign currency gain or loss under section 988). In addition, in the case of any foreign taxes that were not paid before the date two years after the close of the taxable year to which such taxes relate, the taxpayer must provide the amount of such taxes; the exchange rate that was used to translate such amount; and, if such rate is different from the exchange rate that was used to translate such amount when originally claimed as a credit, the latter rate. Where



a redetermination of United States tax liability results in an amount of additional tax due, but the carryback or carryover of an unused foreign tax under section 904(c) only partially eliminates such amount, the taxpayer must also provide the information required in §1.904-2(f).

(3) Foreign taxes deemed paid. (i) In general. The rules of this paragraph (c)(3) apply if a redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960.

(ii) Pooling adjustment in lieu of redetermination. If, as a result of a foreign tax redetermination, adjustments to the pools of post-1986 undistributed earnings and foreign income taxes are required under §1.905-3T(d)(2) in lieu of a redetermination of a domestic corporate shareholder's United States tax liability, in addition to the information described in paragraphs (c)(1) and (c)(2) of this section, the taxpayer must provide the balances of the pools of post-1986 undistributed earnings and foreign income taxes before and after adjusting the pools in accordance with the rules of §1.905-3T(d)(2).

(iii) Redetermination of United States tax liability required. Where a redetermination of United States tax liability is required by reason of a foreign tax redetermination under §§1.905-3T(d)(3) and (f), in addition to the information described in paragraphs (c)(1), (c)(2), and (c)(3)(ii) of this section, the taxpayer must provide the dates and amounts of any dividend distributions or other inclusions made out of earnings and profits for the affected year or years and the

amount of earnings and profits from which such dividends were paid for the affected year or years.

(iv) Foreign tax overaccrual of two percent or more. If the foreign tax liability of a taxpayer is denominated in a currency other than a hyperinflationary currency and the amount of foreign tax accrued for the taxable year to a foreign country, as measured in units of foreign currency, exceeds the amount of foreign tax paid to that foreign country for the taxable year (as measured in units of foreign currency) by at least two percent, the taxpayer must identify each such foreign tax redetermination and provide a complete description of facts justifying the reasons for the overaccrual of foreign tax, in addition to providing the information described in paragraphs (c)(1) and (c)(3)(ii) of this section. If the IRS, in its discretion, requires a redetermination of United States tax liability (see §1.905-3T(d)(3)(ii)), the taxpayer shall be subject to the interest provisions of section 6601 and the regulations under that section. If the taxpayer fails to attach the required notice, provide the necessary information, or make the required adjustments, the taxpayer must provide a complete description of facts justifying such failure or make the required adjustments. A taxpayer must satisfy the requirements of this paragraph (c)(3)(iv) of this section in order not to be subject to the penalty relating to the failure to file notice of a foreign tax redetermination under section 6689 and the regulations under this section if the IRS, in its discretion, requires a redetermination of United States tax liability.

(d) Payment or refund of United States tax. The amount of tax, if any, due upon a redetermination of United States tax liability shall be paid by the taxpayer

after notice and demand has been made by the IRS. Subchapter B of chapter 63 of the Internal Revenue Code (relating to deficiency procedures) shall not apply with respect to the assessment of the amount due upon such redetermination. In accordance with sections 905(c) and 6501(c)(5), the amount of additional tax due shall be assessed and collected without regard to the provisions of section 6501(a) (relating to limitations on assessment and collection). The amount of tax, if any, shown by a redetermination of United States tax liability to have been overpaid shall be credited or refunded to the taxpayer in accordance with the provisions of section 6511(d)(3)(A) and §301.6511(d)-3 of this chapter.

(e) Interest and penalties--(1) In general. If a redetermination of United States tax liability is required by reason of a foreign tax redetermination, interest shall be computed on the underpayment or overpayment in accordance with sections 6601 and 6611 and the regulations under these sections. No interest shall be assessed or collected on any underpayment resulting from a refund of foreign tax for any period before the receipt of the refund, except to the extent interest was paid by the foreign country or possession of the United States on the refund for the period. In no case, however, shall interest assessed and collected pursuant to the preceding sentence for any period before receipt of the foreign tax refund exceed the amount that otherwise would have been assessed and collected under section 6601 and the regulations under this section for that period. Interest shall be assessed from the time the taxpayer (or the foreign corporation of which the taxpayer is a shareholder) receives a refund until the taxpayer pays the additional tax due the United States.

(2) No interest on adjustments to pools of foreign taxes. No underpayment or overpayment of United States tax liability shall result from a redetermination of foreign tax unless a redetermination of United States tax liability is required. Consequently, no interest shall be paid by or to a taxpayer as a result of adjustments to a foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes where required under §1.905-3T(d)(2).

(3) Imposition of penalty. Failure to comply with the provisions of this section shall subject the taxpayer to the penalty provisions of section 6689 and the regulations under that section.

(f) Effective date—(1) In general. This section applies to foreign tax redeterminations (defined in §1.905-3T(c)) occurring in taxable years of United States taxpayers beginning on or after January 1, 2007. In no case, however, shall this paragraph operate to extend the statute of limitations provided by section 6511(d)(3)(A).

(2) Foreign tax redeterminations occurring in taxable years beginning before January 1, 2007.—(i) Scope. This paragraph (f)(2) applies to foreign tax redeterminations (as defined in §1.905-3T(c)) occurring in taxable years of United States taxpayers beginning before January 1, 2007, which reduced the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid.

(ii) Notification required. If, as of **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**, the taxpayer has not satisfied the notification requirements described in §§1.905-3T and 1.905-4T (26

CFR §§1.905-3T and 1.905-4T (revised as of April 1, 2006), as modified by Notice 90-26, 1990-1 C.B. 336), with respect to a foreign tax redetermination that requires a redetermination of United States tax liability, the taxpayer must notify the IRS of the foreign tax redetermination by filing an amended return and Form 1118 or 1116 for the taxable year with respect to which a redetermination of United States tax liability is required. Such notification must contain the information described in paragraph (c) of this section and be filed no later than the due date (with extensions) of the original return for the taxpayer's first taxable year following the taxable year in which these regulations are first effective.

Where the foreign tax redetermination requires an individual to redetermine the individual's United States tax liability, and as a result of such foreign tax redetermination the amount of creditable taxes paid or accrued by such individual during the taxable year does not exceed the applicable dollar limitation in section 904(k), the individual shall not be required to file Form 1116 with the amended return for such taxable year if the individual satisfies the requirements of section 904(k). The rules of paragraph (b)(1)(iv) and (v) of this section (concerning multiple redeterminations of United States tax liability for the same taxable year, and the carryback and carryover of unused foreign tax) shall apply. With respect to a foreign tax redetermination requiring the taxpayer to adjust the foreign corporation's pools of post-1986 undistributed earnings and foreign income taxes under §1.905-3T(d)(2) (in lieu of a redetermination of United States tax liability), the taxpayer must notify the IRS of such adjustment by attaching notice of such adjustment to the original return for the taxpayer's first taxable year following the

taxable year in which these regulations are first effective. Such notice must contain the information described in paragraph (c) of this section.

(iii) Taxpayers under the jurisdiction of the Large and Mid-Size Business Division. If a foreign tax redetermination requires a redetermination of United States tax liability by a taxpayer under the jurisdiction of the Large and Mid-Size Business Division that is otherwise required to notify the IRS of such redetermination by filing an amended return and Form 1118 as required by paragraph (f)(2)(ii) of this section, such taxpayer may, in lieu of applying the rules of paragraph (f)(2)(ii), provide to the examiner the information described in paragraph (c) of this section no later than 90 days after the earliest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required, or, if the earliest of such dates precedes **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**, no later than 90 days after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. If, however, the date specified in paragraph (f)(2)(ii) of this section coincides with the earliest of the opening conference or the hand-delivery or postmark date of the opening letter, or it coincides with any day within the 90-day notification period beginning after the earliest of such dates, the taxpayer (if it chooses to apply the rules of this paragraph in lieu of the rules of paragraph (f)(2)(ii) of this section) must notify the IRS of such redetermination no later than the date specified in paragraph (f)(2)(ii) of this section. This paragraph shall not apply

where the due date specified in paragraph (f)(2)(ii) of this section precedes the earliest of the opening conference or the hand-delivery or postmark date of the opening letter.

(iv) Interest and penalties. Interest shall be computed in accordance with paragraph (e) of this section. Failure to comply with the provisions of this paragraph (f)(2) shall subject the taxpayer to the penalty provisions of section 6689 and the regulations under that section.

#### PART 301 – PROCEDURE AND ADMINISTRATION

Par. 4. The authority for Part 301 is amended to read in part:

Authority: 26 U.S.C. 7805 \* \* \* Section 301.6689-1T also issued under 26 U.S.C. 6689(a).

Par. 5. Section 301.6689-1T is amended as follows:

1. Add one new sentence at the end of paragraph (a).
2. Revise paragraph (e).

The addition and revision read as follows:

#### §301.6689-1T Failure to file notice of redetermination of foreign tax (temporary).

(a) \* \* \* Subchapter B of chapter 68 of the Internal Revenue Code (relating to deficiency proceedings) shall not apply with respect to the assessment of the amount of the penalty.

\* \* \* \* \*

(e) Effective date. This section applies to foreign tax redeterminations (as defined in §1.905-3T(c)) occurring in taxable years of United States taxpayers beginning on or after January 1, 2007. For corresponding rules applicable to foreign tax redeterminations occurring in taxable years of United States taxpayers beginning before January 1, 2007, see 26 CFR §301.6689-1T (revised as of April 1, 2006).

Deputy Commissioner for Services and Enforcement  
Kevin M. Brown

Approved:

Assistant Secretary for Tax Policy