

# Part III. Administrative, Procedural, and Miscellaneous

26 CFR 1.1441-5: Withholding on payments to partnerships, trusts and estates.

## Amendment to Final Agreement for Withholding Foreign Partnerships and Withholding Foreign Trusts and Additional Guidance for Qualified Intermediaries under Rev. Proc. 2003-64

### Rev. Proc. 2004-21

#### SECTION 1. PURPOSE AND SCOPE

This revenue procedure modifies the final withholding foreign partnership (“WP”) and withholding foreign trust (“WT”) agreements, contained in Rev. Proc. 2003-64, 2003-32 I.R.B. 306, by expanding the availability of certain simplified documentation, reporting, and withholding procedures. This revenue procedure also makes a conforming change to the portion of the Qualified Intermediary (“QI”) withholding agreement (the “QI agreement”) contained in Rev. Proc. 2003-64.

#### SECTION 2. BACKGROUND

Rev. Proc. 2003-64 contains the WP and WT agreements described in Treasury Regulation § 1.1441-5(c)(2)(ii) and (e)(5)(v) and sets forth the application procedures for entering into such agreements. Rev. Proc. 2003-64 also amends the QI agreement, contained in Rev. Proc. 2000-12, 2000-1 C.B. 387, to add new Section 4A.

Section 10.01 of the WP and WT agreements and new Section 4A.01 of the QI agreement provide generally that a QI, WP, or WT may apply simplified documentation, reporting, and withholding procedures to a foreign trust or foreign partnership if certain conditions are met (the “Joint Account Provision”). Currently a QI, WP, or WT may apply the Joint Account Provision only if, among other things, the foreign partnership or trust receives from the QI, WP, or WT less than \$200,000 of reportable amounts for a calendar year (the “\$200,000 cap”).

The IRS and Treasury have received comments seeking an expansion of the Joint Account Provision. The comments indicated that expanding the availability of the Joint Account Provision by eliminating the \$200,000 cap would facilitate compliance by QIs, WPs, and WTs with their documentation, reporting, and withholding obligations with respect to foreign partnerships and foreign simple and grantor trusts. After considering these comments, the IRS and Treasury have concluded that expanding the availability of the Joint Account Provision by eliminating the \$200,000 cap would be consistent with the objectives of the underlying reporting and withholding regimes.

#### SECTION 3. EXPANSION OF JOINT ACCOUNT PROVISION

Appendices 1, 2, and 3 of Rev. Proc. 2003-64, containing the WP and WT agreements and new Section 4A of the QI agreement, respectively, are amended as follows. In Appendices 1 and 2, the first paragraph of Section 10.01 of the WP and WT agreements are amended by inserting “and” before “(iii)” and by deleting “and (iv) the total reportable amounts distributed to, and included in the distributive share of, the partnership or trust for the calendar year do not exceed \$200,000.” In Appendix 3, the first paragraph of Section 4A.01 of the QI agreement is amended by inserting “and” before “(iii)” and by deleting “and (iv) the total reportable amounts that QI has paid to accounts of the partnership or trust that are covered by the QI agreement do not exceed \$200,000 for the calendar year.”

#### SECTION 4. EFFECTIVE DATE

The modifications to Rev. Proc. 2003-64 made by this revenue procedure are effective as of July 10, 2003, the effective date of Rev. Proc. 2003-64. Pursuant to Section 12.02 of the QI agreement, and Section 11.02 of the WP and WT agreements, these amendments apply to all existing QI, WP, and WT agreements. These amendments will be incorporated into the text of all QI, WP, and WT agreements entered into on or after the date this revenue procedure is released.

As described in section 1.01 of Rev. Proc. 2003-64, a WP or WT agreement entered into during a calendar year may be made effective as of the first day of that calendar year. With the changes made by this revenue procedure, some foreign partnerships and trusts may wish to act as WPs or WTs beginning in 2003. Therefore, upon request, the IRS will execute WP and WT agreements with terms beginning on January 1, 2003, even if the application to enter into a WP or WT agreement was or is received after December 31, 2003, provided that the IRS receives the completed application on or before June 30, 2004.

#### SECTION 5. REQUEST FOR COMMENTS

Section 4A.02 of the QI agreement and Section 10.02 of the WP and WT agreements allow the QI, WP, or WT to use simplified documentation, reporting, and withholding procedures if, among other things, the QI, WP, or WT is a general partner of the partnership or a trustee of the trust (the “related-party requirement”). The IRS and Treasury are reviewing the related-party requirement and solicit comments as to whether it presents difficulties for taxpayers considering participation in the QI, WP, or WT programs, and, if so, the reasons for such difficulties. Comments also are requested regarding the possibility of eliminating the requirement or modifying it to address any such difficulties, while ensuring consistency with the objectives of the underlying reporting and withholding regimes.

More generally, the IRS and Treasury remain committed to the QI, WP, and WT programs and are continuing to review them to ensure their optimal effectiveness. Therefore, comments are requested regarding additional ways the programs’ current rules and forms of agreement could be improved in a manner that is consistent with the objectives of the underlying reporting and withholding regimes.

#### SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2003-64, 2003-32 I.R.B. 306, is modified.

**SECTION 7. CONTACT  
INFORMATION**

For further information regarding this revenue procedure, contact Ethan Atticks, Carl Cooper, or Valerie Mark Lippe at (202) 622-3840 (not a toll-free call).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking; Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations; Notice of Public Hearing; and Partial Withdrawal of Proposed Regulations

### Depreciation of MACRS Property That is Acquired in a Like-Kind Exchange or As a Result of an Involuntary Conversion

#### REG-106590-00, REG-138499-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of proposed rule making by cross-reference to temporary regulations; notice of public hearing; and partial withdrawal of proposed regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9115) relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property). Specifically, the temporary regulations provide guidance on how to depreciate MACRS property acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033 when both the acquired and relinquished property are subject to MACRS in the hands of the acquiring taxpayer. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations and a partial withdrawal of proposed regulations (REG-138499-02, 2003-37 I.R.B. 541) published July 21, 2003.

DATES: Written or electronic comments must be received by May 30, 2004. Outlines of topics to be discussed at the public hearing scheduled for June 3, 2004, at 10 a.m. must be received by May 13, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-106590-00), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-106590-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs>. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Charles J. Magee, (202) 622-3110; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Temporary regulations in this issue of the Bulletin amend 26 CFR part 1 relating to section 168 of the Internal Revenue Code (Code). The temporary regulations provide guidance under section 168 on how to depreciate MACRS property acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033 when both the acquired and relinquished property are subject to MACRS in the hands of the acquiring taxpayer. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

##### 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 section 553(b) of the Ad-

ministrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

##### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 3, 2004, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 13, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has