

income equivalent to interest or gains from property that does not give rise to income);

- How investments in such contracts should be treated under section 956;
- Whether there are other issues that should be considered with respect to these transactions (for example, whether short term transactions should be subject to the accrual regime);
- Identifying arrangements similar to prepaid forward contracts that should be accorded tax treatment similar to that of prepaid forward contracts; and
- Appropriate transition rules and effective dates.

SECTION 3. REQUEST FOR COMMENTS

The Internal Revenue Service and the Treasury Department request public comments with respect to the issues described in Section 2 of this notice. Comments must be submitted by May 13, 2008. All materials submitted will be available for public inspection and copying. Comments may be submitted to Internal Revenue Service, CC:PA:LPD:RU (Notice 2008-2), Room 5203, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to the Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:PA:LPD:RU (Notice 2008-2), Room 5203. Submissions may also be sent electronically via the internet to the following email address: Notice.Comments@irsounsel.treas.gov. Include the notice number (Notice 2008-2) in the subject line.

DRAFTING INFORMATION

The principal author of this notice is John W. Rogers III of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Mr. Rogers at (202) 622-3950 (not a toll-free call).

Creditability of Mexican Single Rate Business Tax

Notice 2008-3

The Internal Revenue Service (IRS) and the Treasury Department are evaluating the *impuesto empresarial a tasa única* (IETU), a single rate business tax recently adopted by Mexico effective January 1, 2008, to determine whether it is a creditable income tax under Article 24(1) (Relief from Double Taxation) of the Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Treaty).

Article 24(1) of the Treaty generally provides that the United States will allow a credit for income tax paid to Mexico by or on behalf of a U.S. resident. The taxes in paragraphs 3 and 4 of Article 2 (Taxes Covered by the Convention) of the Treaty are treated as income taxes for purposes of Article 24(1) and are therefore eligible for a credit. In the case of Mexico, these taxes are the income tax imposed by Mexico's Income Tax Law and any substantially similar taxes imposed in addition to, or in place of, the taxes listed in paragraph 3 of Article 2 after September 18, 1992, the date the Treaty was signed.

The IRS and the Treasury Department believe that the provisions, design, and full operation of the IETU, including its interaction with Mexico's regular income tax, require study to determine whether the IETU is a creditable income tax. In view of the responsibility of the IRS to administer U.S. tax laws and treaties, pending the conclusion of this study, the IRS will not challenge a taxpayer's position that the IETU is an income tax that is eligible for a credit under Article 24(1) of the Treaty. This notice is effective for the IETU paid or accrued on or after January 1, 2008. Any change in the foreign tax credit treatment of the IETU as a result of the study will be prospective, and apply solely to the IETU paid or accrued in taxable years beginning after the date that further guidance is issued.

DRAFTING INFORMATION

Various personnel from the IRS and the Treasury Department participated in the development of this notice. For further information regarding this notice, contact Nina E. Chowdhry of the Office of Associate Chief Counsel (International) at (202) 622-3880 (not a toll-free call).

Claims Submitted to the IRS Whistleblower Office Under Section 7623

Notice 2008-4

SECTION 1. PURPOSE

This notice provides guidance to the public on how to file claims under Internal Revenue Code section 7623 as amended by the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432 (120 Stat. 2958) (the Act) enacted on December 20, 2006.

SECTION 2. BACKGROUND

Section 406 of the Act amended section 7623 of the Internal Revenue Code concerning the payment of awards to certain persons who detect underpayments of tax. Prior statutory authority to pay awards at the discretion of the Secretary was re-designated as section 7623(a), and a new section 7623(b) was added to the Code. Additional provisions in section 406 of the Act establish a Whistleblower Office within the IRS and address reward program administration issues. These provisions were not incorporated into the Code.

The award program authorized by section 7623(a) has been previously implemented through regulations appearing at section 301.7623-1 of the Procedure and Administration Regulations, the substance of which is reprinted as IRS Publication 733, with additional administrative guidance appearing in the Internal Revenue Manual. Those regulations and Internal Revenue Manual provisions will continue to be followed for award claims within the scope of section 7623(a), except to the extent Sections 3.02 and 3.03 of this notice provides interim guidance regarding

submissions of information under section 7623(a).

New section 7623(b) requires that awards be made for submissions meeting certain criteria. Individuals are eligible for section 7623(b) awards based on the amount collected as a result of any administrative or judicial action resulting from the information provided. Because new section 7623(b) includes several requirements that are inconsistent with existing regulations and administrative guidance applicable to award claims under section 7623(a), the regulations which appear at section 301.7623-1 will not apply to the new award program authorized by section 7623(b). This notice provides interim guidance applicable to award claims submitted under the authority of section 7623(b). In addition, this notice seeks public comment on the topics covered herein.

SECTION 3. INTERIM GUIDANCE

3.01 Eligibility Requirements to Submit Claims Under Section 7623(b)

To be eligible for an award under section 7623(b), the tax, penalties, interest, additions to tax, and additional amounts in dispute must exceed in the aggregate \$2,000,000 and, if the allegedly noncompliant person is an individual, the individual's gross income must exceed \$200,000 for any taxable year at issue in a claim. If the thresholds in section 7623(b) are not met, section 7623(a) authorizes, but does not require, the Service to pay for information relating to violations of the internal revenue laws that result in the government's recovery of tax. Submissions that do not qualify under section 7623(b) will be processed under section 7623(a). Unlike payments made on claims under section 7623(b), there is no requirement that payments made on claims under section 7623(a) be subject to the statutory award percentages. The United States Tax Court appeal provisions added by the Act and codified in section 7623(b)(4) are applicable exclusively to award claims under section 7623(b). Accordingly, there is no right to appeal to the Tax Court for claims under section 7623(a).

3.02. Submission of Information for Award under Sections 7623(a) or (b)

(1) Individuals submitting information under section 7623(a) or (b) must complete IRS Form 211, *Application for Award for Original Information*, (available on www.irs.gov) and send the completed Form 211 to:

Internal Revenue Service
Whistleblower Office
SE:WO
1111 Constitution Ave., NW
Washington, D.C. 20224

(2) All claims for awards must be submitted under penalty of perjury in accordance with section 3.03(9) below.

Until further guidance is issued, claims for awards may not be submitted electronically or by fax.

3.03 Information to be Included with IRS Form 211

The Form 211 must be completed in its entirety and should include the following information:

(1) The date the claimant submits the claim;

(2) Claimant's name;

(3) Name of claimant's spouse (if applicable);

(4) Claimant's contact information, including address with zip code and telephone number;

(5) Claimant's date of birth;

(6) Claimant's Taxpayer Identification Number (e.g., Social Security Number or Individual Taxpayer Identification Number) and Taxpayer Identification Number of claimant's spouse, if applicable.

(7) Specific and credible information concerning the person(s) that the claimant believes have failed to comply with tax laws and which will lead to the collection of unpaid taxes. This information should include the following:

(i) The legal name of the person(s) (e.g., individual or entity), and any related person(s), that committed the violation of tax laws;

(ii) The person's aliases, if any;

(iii) The person's address;

(iv) The person's Taxpayer Identification Number(s);

(v) A description of the amount(s) and tax year(s) of Federal tax claimed to be owed, and facts supporting the basis for the amount(s) claimed to be owed;

(vi) Documentation to substantiate the claim (e.g., financial data; the location of bank accounts, assets, books, and records; transaction documents or analyses relevant to the claim); and

(vii) Any and all other facts and information pertaining to the claim.

If available information is not provided by the claimant, the claimant bears the risk that such information may not be considered by the Whistleblower Office in making any award determination. If documents or supporting evidence are known to the claimant but are not in his or her possession or control, the claimant should describe these documents and identify their location to the best of his or her ability.

(8) Explanation of how the information that forms the basis of the claim came to the attention of the claimant, including the date(s) on which this information was acquired, and a complete description of the claimant's present or former relationship (if any) to the person that is the subject of the claim (e.g., family member, acquaintance, client, employee, accountant, lawyer, bookkeeper, customer). If the claimant identifies multiple person(s) as the subject of a claim, describe his or her relationship to each person.

(9) Information submitted under section 7623 must be accompanied by an original signed declaration under penalty of perjury, as follows:

I declare, under penalty of perjury, that I have examined this application and my accompanying statement and supporting documentation and aver that such application is true, correct and complete, to the best of my knowledge.

The requirement to submit information under penalty of perjury precludes submissions by: (1) a person serving as a representative of the claimant, or (2) an entity other than a natural person. With respect to claims under section 7623(b), the requirement to submit information under penalty of perjury precludes submissions made anonymously or under an alias.

(10) Joint claims must be signed by each claimant and each claimant must sign the claim under penalty of perjury as described in 3.03(8).

3.04 *Examples of Grounds for not Processing Claims Under Section 7623(b)*

Examples of claims that will not be processed under section 7623(b) include:

(1) Claims submitted by an individual who is an employee of the Department of Treasury, or who is acting within the scope of his/her duties as an employee of any Federal, State, or local Government.

(2) Claims submitted by an individual who is required by Federal law or regulation to disclose the information, or by an individual who is precluded by Federal law or regulation from making the disclosure.

(3) Claims submitted by an individual who obtained or was furnished the information while acting in an official capacity as a member of a State body or commission having access to such materials as Federal returns, copies or abstracts.

(4) Claims submitted by an individual who had access to taxpayer information arising out of a contract with the Federal government that forms the basis of the claim.

(5) Claims that upon initial review have no merit or that lack sufficient specific and credible information.

(6) Claims submitted anonymously or under an alias.

(7) Claims filed by a person other than a natural person (such as a corporation or a partnership).

(8) The alleged noncompliant person is an individual whose gross income is below \$200,000 for all taxable years at issue in a claim.

3.05 *Acknowledgment of Claim by Whistleblower Office*

The Whistleblower Office will acknowledge receipt of a claim in writing. If required information has not been submitted on a Form 211, the Whistleblower Office may return a Form 211 to the claimant for completion and submission. Following submission of the claim, the Whistleblower Office may, in its sole discretion, offer the opportunity to confer with the claimant to discuss the claim to ensure that the Service fully understands the information submitted with the claim. The Whistleblower Office, in its sole discretion, may ask for additional assistance from the claimant or any legal representative of such individual. Any assistance

shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter. The submission of a claim does not create an agency relationship between the claimant and the Federal Government, nor does the claimant act in any way on behalf of the Federal Government.

3.06 *Confidentiality of Claimant's Identity*

The Service will protect the identity of the claimant to the fullest extent permitted by law. Under some circumstances, such as when the claimant is needed as a witness in a judicial proceeding, it may not be possible to pursue the investigation or examination without revealing the claimant's identity. The Service will make every effort to inform the claimant before proceeding in such a case.

3.07 *IRS Process for Evaluating Claim*

The process for evaluating a claim is initiated by Service consideration of the information provided by the claimant in light of the facts developed by the Service in investigating the claim. This process will also consider whether the information submitted by the claimant resulted in administrative action taken by the Service or judicial action. For example, in the case of large entities where the entities' tax returns are subject to annual examination by the Service, an administrative action can mean the creation of a new issue under the Audit Plan or a change in the way information about an issue is collected or analyzed, which would not otherwise have occurred without the information provided by the claimant. In other cases, an administrative action may include initiating an examination of the person which would not otherwise have occurred without information provided by the claimant. Alternatively, a claimant's description of information when the alleged noncompliant person is already under investigation and when the information results in no change in the manner regarding how the issue is approached or resolved would not generally be regarded as resulting in administrative or judicial action and therefore would not be eligible for an award.

3.08 *Duration of Process from Submitted Claim to Award Determination.*

The process, from submission of complete information to the Service until the proceeds that serve as the basis for any award determination are collected, may take several years. Accordingly, the Service is unable to make any commitment to the claimant concerning the expected duration of the process.

Payment of awards will not be made until there is a final determination of the tax liability (including taxes, penalties, interest, additions to tax and additional amounts) owed to the Service and such amounts have been collected by the Service. Examples of when a final determination of tax liability can be made include, but are not limited to: (1) at the administrative level, when the Service and person that is the subject of the claimant's allegations enter into a closing agreement which conclusively waives the right to appeal or otherwise challenge a deficiency or additional tax liability determined by the Service; (2) if the person that is the subject of the claimant's allegations petitions the United States Tax Court for a redetermination of a deficiency, when the decision in that case becomes final within the meaning of section 7481; and (3) after the expiration of the statutory period for a taxpayer to file a claim for refund and to file a refund suit based on that claim against the United States or, if a refund suit is filed, when the judgment in that suit becomes final. In a case in which litigation is commenced, any award consideration will be delayed until that litigation has been concluded with finality.

3.09 *Percentages Applied to Awards Under 7623(b)*

The Whistleblower Office will make the final determination whether an award will be paid and the amount of the award for claims which it processes. Awards will be paid in proportion to the value of information furnished voluntarily with respect to proceeds collected, including penalties, interest, additions to tax and additional amounts. The amount of the award will be at least 15% but no more than 30% of the collected proceeds in cases in which the Service determines that the information submitted by the claimant substan-

tially contributed to the Service's detection and recovery of tax. If the claimant planned and initiated the actions that led to the underpayment of tax, or to the violation of the internal revenue laws, the Whistleblower Office may reduce the award. If the claimant is convicted of criminal conduct arising from his or her role in planning and initiating the action, the Whistleblower Office will deny the claim.

If an action is based principally on allegations resulting from judicial or administrative proceedings, government reports, hearing, audit, or investigation, or the media, an award of a lesser amount, subject to the discretion of the Whistleblower Office, may be provided; such an award, however, may not exceed 10% of the collected proceeds, including penalties, interest, additions to tax, and additional amounts resulting from the action. This reduction in award percentage does not apply if the Service determines that the claimant was the initial source of the information that resulted in the judicial or administrative proceedings, government reports, hearing, audit, or investigation, or the media's report on the allegations.

3.10 Tax Treatment of Awards

All awards will be subject to current federal tax reporting and withholding requirements. Award recipients will receive a Form 1099 or such other form as may be prescribed by law, regulation or publication.

3.11 Appeal Rights

When the Whistleblower Office has made a final determination regarding a claim, the Whistleblower Office will send correspondence to the claimant regarding its final award determination. Final Whistleblower Office determinations regarding awards under section 7623(b) may, within 30 days of such determination, be appealed to the United States Tax Court. In accordance with section 7623(b)(4), decisions under section 7623(a) may not be appealed to the Tax Court.

3.12 Claims Submitted Prior to Date of Enactment of the Act

Information provided prior to December 20, 2006 (the date of enactment of the

Act) is covered by the law and policies in place at the time the information was submitted. Supplemental information provided on or after December 20, 2006, will not be considered a new claim unless its receipt prompts the Service to take an administrative or judicial action that would not otherwise have been taken on the basis of the earlier-supplied information alone.

3.13 Additional Questions

An electronic mailbox for email inquiries has been set up and may be accessed at WO@IRS.gov.

SECTION 4. REQUEST FOR COMMENTS

Interested parties are invited to submit comments on or before February 13, 2008. Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2008-4), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20224. Alternatively, comments may be hand delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to: CC:PA:LPD:PR (Notice 2008-4), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. Comments may also be submitted electronically via the following email address: Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2008-4" in the subject line of any electronic submissions.

SECTION 5. EFFECTIVE DATE

This notice is effective as of January 14, 2008.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Holly Styles of the Office of Associate Chief Counsel, General Legal Services. For further information regarding this notice, contact Holly Styles at (202) 927-0900 (not a toll-free call).

Qualifying Relative for Purposes of Section 152(d)(1)

Notice 2008-5

PURPOSE

This notice provides guidance under section 152(d) of the Internal Revenue Code for determining whether an individual is a qualifying relative for whom the taxpayer may claim a dependency exemption deduction under section 151(c). Section 152(d)(1)(D) provides that an individual is not a qualifying relative of the taxpayer if the individual is a qualifying child of any other taxpayer. This notice clarifies that an individual is not a qualifying child of "any other taxpayer" if the individual's parent (or other person with respect to whom the individual is defined as a qualifying child) is not required by section 6012 to file an income tax return and (i) does not file an income tax return, or (ii) files an income tax return solely to obtain a refund of withheld income taxes.

BACKGROUND

Section 151 allows a taxpayer a deduction for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year. Section 152(a) provides that the term "dependent" means a "qualifying child" (as defined in section 152(c)) or a "qualifying relative" (as defined in section 152(d)). The terms "qualifying child" and "qualifying relative" were added to section 152 by section 201 of the Working Families Tax Relief Act of 2004 (WFTRA), Pub. L. No. 108-311, 118 Stat. 1169, effective for taxable years beginning after December 31, 2004. WFTRA established a uniform definition of a "qualifying child" pursuant to section 152(c) for determining whether a taxpayer may claim certain child-related tax benefits, namely head of household filing status, the earned income credit, child tax credit, the child and dependent care credit, and the dependency exemption deduction. See §§ 2(b), 32, 24, 21, 152. WFTRA also established the term "qualifying relative" to identify individuals (other than a qualifying child) for whom a dependency exemption deduction may be allowed.