

tariff rate for its share of the in-quota quantity, using export certificates provides an effective and expeditious means of assuring an exporting country that only those exports that it intends for the United States market are counted against its in-quota allocation, which helps ensure that such exports do not disrupt the orderly marketing of beef in the United States.

An exporting country using export certificates in this regard must notify the USTR and provide the necessary supporting information. Customs will then be responsible for ensuring that no imports of beef from that country are counted against the country's in-quota allocation unless such beef is covered by a proper export certificate.

Accordingly, the USTR has undertaken interim rulemaking in this matter (15 CFR part 2012) (60 FR 15229, March 23, 1995). In addition, along with the interim rulemaking of the USTR, Customs is issuing this interim rule in order to set forth the form and manner by which an importer declares that a valid export certificate exists, including a unique number therefor which must be referenced on the entry, or withdrawal from warehouse, for consumption. This interim rule also sets forth the record retention period for the certificate and requires the submission of such certificate to Customs upon request.

#### Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., Washington, DC.

#### Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this interim rule because it is within the foreign affairs function of the United States. Furthermore, for the above reason, pursuant to 5 U.S.C. 553 (d)(1) and (d)(3), there is no need for a delayed effective date.

#### Executive Order 12866

Because this document involves a foreign affairs function of the United

States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

#### Drafting Information

The principal author of this document was Russell Berger, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects in 19 CFR Part 132

Customs duties and inspection, Imports, Postal service, Quotas.

#### Amendment to the Regulations

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR ch. I), is amended as set forth below.

#### PART 132—QUOTAS

1. The general authority citation for part 132 continues to read as follows, and specific sectional authority for § 132.15 is added, to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.  
§ 132.15 also issued under 19 U.S.C. 1484, 1508, and Schedule XX, HTSUS.

2. Part 132 is amended by adding a new § 132.15 to read as follows:

#### § 132.15 Export certificate for beef subject to tariff-rate quota.

(a) *Requirement.* In order to claim the in-quota tariff rate of duty on beef, defined in 15 CFR 2012.2(a), that is the product of a participating country, defined in 15 CFR 2012.2(e), the importer must possess a valid export certificate at the time that such beef is entered, or withdrawn from warehouse for consumption. The importer shall record the unique identifying number of the export certificate on the entry summary or the warehouse withdrawal (CF 7501, column 34).

(b) *Validity of certificate.* The export certificate, to be valid, must meet the requirements of 15 CFR 2012.3(b), and with respect to the requirement of 15 CFR 2012.3(b)(3) that the certificate be distinct and uniquely identifiable, the certificate must have a distinct and unique identifying number composed of three elements set forth in the following order:

- (1) The last digit of the year for which the export certificate is in effect;
- (2) The 2-digit ISO country of origin code from Annex B of the HTSUS which

identifies the participating country (see § 142.42(d) of this chapter); and

(3) Any 6-digit number issued by the participating country with respect to the export certificate.

(c) *Retention and submission of certificate to Customs.*

(1) *Retention.* The export certificate must be retained by the importer for a period of at least 5 years from the date of entry, or withdrawal from warehouse, for consumption (see § 162.1c of this chapter).

(2) *Submission to Customs.* The importer shall submit a copy of the export certificate to Customs upon request.

Approved: July 25, 1995.

**George J. Weise,**

*Commissioner of Customs.*

**Dennis M. O'Connell,**

*Acting Deputy Assistant Secretary of the Treasury.*

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#### Internal Revenue Service

#### 26 CFR Part 31

[TD 8604]

RIN 1545-AS22

#### Liability of Third Parties Paying or Providing for Wages: Suit Period and Its Extension and Maximum Amount Recoverable

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations regarding the liability of lenders, sureties, or other third persons for withholding taxes when those persons have supplied funds, either directly to employees or to or for the account of an employer, for the specific purpose of paying wages of the employees of that employer. The final regulations affect third parties paying or providing for wages.

**EFFECTIVE DATE:** August 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Walker, (202) 622-3640 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

These final regulations contain changes to § 31.3505-1. Section 3505 of the Internal Revenue Code (Code) was added by section 105(a) of the Federal Tax Lien Act of 1966, Public Law 89-719 (1966). Treasury regulations were issued with an effective date of August

19, 1976 (TD 7430). Neither the Code section nor the regulations has been amended since enactment or issuance, respectively. The IRS published a notice of proposed rulemaking in the **Federal Register** on November 22, 1994, (59 FR 60099) providing proposed rules under section 3505 of the Code. No public comments were received and accordingly, the final regulations are identical to the proposed regulations.

**Explanation of Provisions**

Under section 3505(b), if a lender, surety, or other person (the lender) supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of that employer, and the lender has actual notice or knowledge (within the meaning of section 6323(i)(1)) that the employer does not intend or will not be able to make timely payment or deposit of the required withholding taxes, the lender shall be liable to the United States in a sum equal to the taxes (together with interest) that are not paid over to the United States by the employer with respect to those wages. The lender's liability for withholding taxes, in lieu of the employer, is limited to an amount equal to 25 percent of the amount of wages so supplied to or for the account of the employer. See section 3505(b) (final sentence).

Existing regulations provide that the 25-percent limitation applies only to the tax, and not the interest on that tax, with the result that the lender could be held liable for more than 25 percent of the amount of funds it supplied. The courts that have addressed this issue, however, have held that the 25-percent limitation on the amount of wages supplied by a third party is an absolute cap with respect to the recovery of withholding taxes and prejudgment interest. *United States v. Metro Constr. Co., Inc.*, 602 F.2d 879 (9th Cir. 1979); *United States v. Intercontinental Ind., Inc.*, 635 F.2d 1215 (6th Cir. 1980); *United States v. Hannan Co.*, 639 F.2d 284 (5th Cir. 1981); *Taubman v. United States*, 449 F. Supp. 520 (E.D. Mich. 1978). See also *O'Hare v. United States*, 878 F.2d 953 (6th Cir. 1989); *United States v. Security Pacific Business Credit, Inc.*, 956 F.2d 703 (7th Cir. 1992); *United States v. Vaccarella*, 735 F. Supp. 1421 (S.D. Ind. 1990).

These final regulations conform to judicial interpretation and clarify that interest will continue to be computed in addition to any withholding tax liability, but only to an overall maximum of 25 percent of the amount of the funds supplied by the lender.

The final regulations also change the period of limitations for collection of

the withholding taxes and interest from six years to ten years. This revision will conform the period of limitations for the purposes of section 3505 with the general rule on limitations on collection. See section 6502, amended by the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, section 11317(a)(1) (1990).

Finally, § 31.3505-1(d)(3) has been added to provide for extensions of the period of limitation for collection because, on occasion, the IRS or the lender requires additional time for compliance with the regulation.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these final regulations is Robert Walker, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 31**

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 31 is amended as follows:

**PART 31—EMPLOYMENT TAXES**

**Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

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

**§ 31.3505-1 [Amended]**

**Par. 2.** Section 31.3505-1 is amended by:

1. Removing the phrase "for such taxes" from the second sentence of paragraph (b)(1).

2. Removing the phrase "plus interest thereon" from the final sentence of paragraph (b)(2), *Example (1)*.

3. Removing the phrase "for withholding taxes" from the fifth sentence of paragraph (b)(2), *Example (2)*.

4. Removing the phrase "plus interest thereon" from the final sentence of paragraph (b)(2), *Example (2)*.

5. Revising the final sentence of paragraph (d)(1).

6. Revising the final sentence of paragraph (d)(2)(iii).

7. Adding paragraphs (d)(3) and (g).

The additions and revisions read as follows:

**§ 31.3505-1 Liability of third parties paying or providing for wages.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* In the event that the lender, surety, or other person does not satisfy the liability imposed by section 3505, the United States may collect the liability by appropriate civil proceedings commenced within 10 years after assessment of the tax against the employer.

\* \* \* \* \*

(2) \* \* \*

(iii) \* \* \* Thus, after the second payment by the employer, the lender's liability under section 3505(b) is \$75 (\$250 less \$175), plus interest due on the underpayment for the period of underpayment, to a maximum of \$250, 25 percent of the funds supplied.

(3) *Extensions of the period for collection.* Prior to the expiration of the 10-year period for collection after assessment against the employer, the lender, surety, or other third party may agree in writing with the district director, service center director, or compliance center director to extend the 10-year period for collection. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. If any timely proceeding in court for the collection of the tax and any applicable interest is commenced, the period during which such tax and interest may be collected shall be extended and shall not expire until the liability for the tax (or a judgment against the lender, surety, or other third party arising from such liability) is satisfied or becomes unenforceable.

\* \* \* \* \*

(g) *Effective date.* These regulations are effective on August 1, 1995.

**Margaret Milner Richardson,**  
*Commissioner of Internal Revenue.*

Approved: June 21, 1995.

**Leslie Samuels,**

*Assistant Secretary of the Treasury.*

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**POSTAL SERVICE**

**39 CFR Part 111**

**Changes in Preferred Postage Rates—  
Second-Class Mail, Third-Class Mail,  
and Fourth-Class Library Rate Mail**

**AGENCY:** Postal Service.

**ACTION:** Postage rate changes;  
Corrections.

**SUMMARY:** This document contains  
postage rate corrections to three of the

several rate tables published in the **Federal Register** on July 5, 1995 (60 FR 34854-34856). As a customer convenience, the corrected tables are reprinted in this document along with the remaining tables published on that date.

**EFFECTIVE DATE:** The Board of Governors has directed that the changes pertaining to postage rates be implemented effective 12:01 a.m., Sunday, October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:**  
Ernest Collins, (202) 268-5316.

In the rules beginning on page 34854 in the issue of Wednesday, July 5, 1995, make the following corrections:

On page 34855 in table 7.0, Special Bulk Third-Class Nonletter-Size Minimum Per-Piece Rates—Pieces 0.2149 Lb. (3.4383 Oz.) or Less, in the eleventh column titled 3/5-Digit Barcoded, the second row shown in the

table was “0.130.” This row should read “0.131.”

On page 34856 in table 8.0, Special Bulk Third-Class Piece/Pound Rates—Pieces More Than 0.2149 Lb. (3.4383 Oz.), in the fourth column titled Carrier route, the second row shown in that table (continued from page 34855) was “0.38.” This row should read “0.386.”

On page 34856 in table 6.0, Library Rates, in the second column titled Single-piece rate, the ninth row through the seventieth row shown in the table began with “3.99” and ended with “16.19.” These should read “4.00” and “16.81,” respectively. All rates shown from 9 pounds through 70 pounds were incorrectly calculated with the accumulative addend of 20 cents. The correct accumulative addend is 21 cents.

Dated: July 27, 1995.

**Stanley Mires,**  
*Chief Counsel, Legislative.*

BILLING CODE 7710-12-P