

DATES: The public hearing is changed to Monday, September 11, 1995, beginning at 10:00 a.m.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Submit requests to speak and outlines of oral comments to the CC:DOM:CORP:T:R [IL-65-93], room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Friday, April 28, 1995 (60 FR 20922), announced that the Service would hold a public hearing on proposed regulations concerning the application of the exceptions to passive income contained in section 1296(b) for foreign banks, securities dealers and brokers on Thursday, August 31, 1995, beginning at 10:00 a.m. in the IRS Auditorium.

The date of the public hearing has changed. The hearing is scheduled for Monday, September 11, 1995, beginning at 10:00 a.m. The requests to speak and outlines of oral comments must be received by Thursday, August 10, 1995. Because of controlled access restrictions, attendees are not admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

The Service will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

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26 CFR Part 301

[PS-54-94]

RIN 1545-AT02

Environmental Settlement Funds—Classification

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the

classification of certain organizations as trusts for federal tax purposes. The proposed regulations would provide guidance to taxpayers on the proper classification of trusts formed to collect and disburse amounts for environmental remediation of an existing waste site to discharge taxpayers' liability or potential liability under applicable environmental laws.

DATES: Written comments must be received by October 5, 1995. Requests to speak (with outlines of oral comments) at a public hearing scheduled for October 26, 1995, at 10 a.m. must be submitted by October 5, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS-54-94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS-54-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing has been scheduled to be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James A. Quinn, (202) 622-3060; concerning submissions and the hearing, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is required by § 301.7701-4(e)(2). This information is required by the IRS to ensure the proper reporting of items of income and expense of an environmental remediation trust in which a portion of the trust is treated as owned by a grantor. This information will be used to ensure compliance with the proposed regulation. The likely respondents are businesses and other

for-profit institutions, including small businesses.

Estimated total annual reporting burden: 2,000 hours.

The estimated annual burden per respondent: 4 hours.

Estimated number of respondents: 500.

Estimated annual frequency of responses: 1.

Introduction

This document proposes to add § 301.7701-4(e) to the Procedure and Administration Regulations (26 CFR Part 301) relating to the classification of certain environmental remediation trusts as trusts for federal tax purposes.

Background

Unincorporated organizations may be classified as associations (which are taxable as corporations), partnerships, or trusts for federal tax purposes. The criteria for determining when an organization will be classified as a trust are set forth in § 301.7701-4. The proposed amendment to § 301.7701-4 provides that an environmental remediation trust will be classified as a trust for federal tax purposes.

A trust is an environmental remediation trust if (1) the primary purpose of the trust is collecting and disbursing amounts for environmental remediation of an existing waste site to resolve, satisfy, mitigate, address, or prevent the liability or potential liability of persons imposed by federal, state, or local environmental laws; (2) all contributors to the trust have potential liability or a reasonable expectation of liability under federal, state, or local environmental laws for environmental remediation of the waste site; and (3) the trust is not a qualified settlement fund within the meaning of § 1.468B-1(a). Environmental remediation trusts include trusts formed pursuant to an order of a governmental authority, as well as trusts formed by taxpayers to avoid future liability or potential liability under federal, state, or local environmental laws. An environmental remediation trust is classified as a trust, even though it may differ from the traditional trust in which trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts, because the purpose of an environmental remediation trust is to pay the costs of environmental remediation of an existing waste site as a result of liability or potential liability under federal, state, or local environmental laws, not to carry on a for-profit business.

The proposed regulations provide that each contributor to the trust will be treated as the owner of the portion of the trust contributed by that person, and, therefore, the trust is treated as a grantor trust under subpart E of subchapter J. The proposed regulations also require the trustee to provide information to the participants that will enable them to properly report their share of income, deductions, and credits, including information to properly determine whether a payment satisfies the economic performance rules of section 461(h).

The proposed regulations provide certain rules relating to participants (cash-out grantors) that contribute a fixed amount to the trust and are relieved from making further contributions to the trust, even though the participant still is liable or potentially liable under applicable environmental laws. Under the proposed regulations, all amounts contributed to an environmental remediation trust by a cash-out grantor are considered amounts contributed for remediation. In addition, the trust agreement may direct the trustee to expend amounts contributed by a cash-out grantor (and the earnings thereon) before expending amounts contributed by other grantors (and the earnings thereon). The proposed regulations also provide that a cash-out grantor will cease to be treated as an owner of a portion of the trust when the grantor's portion is treated as fully expended.

Effective Date

The regulations are proposed to apply to trusts that meet the requirements of paragraph (e)(1) of the regulations that are formed on or after the date of publication of these proposed regulations as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedures 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, 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) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 26, 1995, at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by October 5, 1995, and 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 October 5, 1995.

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 passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information. The principal author of these regulations is James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7701-4(e) is added to read as follows:

§ 301.7701-4 Trusts.

* * * * *

(e) *Environmental remediation trusts.*
(1) An environmental remediation trust is considered a trust for purposes of the

Internal Revenue Code. For purposes of this paragraph (e), an organization is an environmental remediation trust if the organization is organized under state law as a trust; the primary purpose of the trust is collecting and disbursing amounts for environmental remediation of an existing waste site to resolve, satisfy, mitigate, address, or prevent the liability or potential liability of persons imposed by federal, state, or local environmental laws; all contributors to the trust have potential liability or a reasonable expectation of liability under federal, state, or local environmental laws for environmental remediation of the waste site; and the trust is not a qualified settlement fund within the meaning of § 1.468B-1(a) of this chapter. An environmental remediation trust is classified as a trust because its primary purpose is environmental remediation of a waste site and not the carrying on of a profit-making business which normally would be conducted through business organizations classified as corporations or partnerships. However, if the remedial purpose is altered or becomes so obscured by business or investment activities that the declared remedial purpose is no longer controlling, the organization will no longer be classified as a trust. For purposes of this paragraph (e), environmental remediation includes the costs of assessing environmental conditions, remediating environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, and collecting amounts from persons liable or potentially liable for the costs of these activities. For purposes of this paragraph (e), persons have potential liability or a reasonable expectation of liability under federal, state, or local environmental laws for environmental remediation of the waste site if there is authority under a federal, state, or local law that requires such persons to satisfy all or a portion of the costs of the environmental remediation.

(2) Each contributor (grantor) to the trust will be treated as the owner of the portion of the trust contributed by that grantor. See section 677 and § 1.677(a)-1(d) of this chapter for rules regarding the treatment of a grantor as the owner of a portion of a trust applied in discharge of the grantor's legal obligation. Items of income, deduction, and credit attributable to any portion of an environmental remediation trust treated as owned by the grantor should not be reported by the trust on Form 1041, but should be shown on a separate statement to be attached to that form.

See § 1.671-4(a) of this chapter. The trustee must also furnish to each grantor a statement that shows all items of income, deduction, and credit of the trust for the taxable year attributable to the portion of the trust treated as owned by the grantor. The statement must provide the grantor with the information necessary to take the items into account in computing the grantor's taxable income, including information necessary to properly take into account items under the economic performance rules of section 461(h) and the regulations thereunder. See § 1.461-4 of this chapter for rules relating to economic performance.

(3) All amounts contributed to an environmental remediation trust by a grantor (cash-out grantor) who, pursuant to an agreement with the other grantors, contributes a fixed amount to the trust and is relieved of any further obligation to make contributions to the trust, but remains liable or potentially liable under the applicable environmental laws, will be considered amounts contributed for remediation. An environmental remediation trust agreement may direct the trustee to expend amounts contributed by a cash-out grantor (and the earnings thereon) before expending amounts contributed by other grantors (and the earnings thereon). A cash-out grantor will cease to be treated as an owner of a portion of the trust when the grantor's portion is fully expended by the trust.

(4) The provisions of this paragraph (e) may be illustrated by the following example:

Example. (a) X, Y, and Z are calendar year corporations that are liable for the remediation of an existing waste site under applicable federal environmental laws. On June 1, 1996, pursuant to an agreement with the governing federal agency, X, Y, and Z create an environmental remediation trust within the meaning of paragraph (e)(1) to collect funds contributed to the trust by X, Y, and Z and to carry out the remediation of the waste site to the satisfaction of the federal agency. X, Y, and Z are jointly and severally liable under the federal environmental laws for the remediation of the waste site, and the federal agency will not release X, Y, or Z from liability until the waste site is remediated to the satisfaction of the agency.

(b) The estimated cost of the remediation is \$20,000,000. X, Y, and Z agree that, if Z contributes \$1,000,000 to the trust, Z will not be required to make any additional contributions to the trust, and X and Y will complete the remediation of the waste site and make additional contributions if necessary.

(c) On June 1, 1996, X, Y, and Z each contribute \$1,000,000 to the trust. The trust agreement directs the trustee to spend Z's contributions to the trust and the income allocable to Z's portion before spending X's

and Y's portions. On November 30, 1996, the trustee pays \$2,000,000 for remediation work performed from June 1, 1996, through September 30, 1996. As of November 30, 1996, the trust had \$75,000 of interest income, which is allocated in equal shares of \$25,000 to X, Y, and Z's portions of the trust.

(d) Pursuant to the agreement between X, Y, and Z, Z made no further contributions to the trust. Pursuant to the trust agreement, the trustee expended Z's portion of the trust before expending X's and Y's portion. Therefore, Z's share of the remediation payment made in 1996 is \$1,025,000 (\$1,000,000 contribution by Z plus \$25,000 of income allocated to Z's portion of the trust). Z must take the \$1,025,000 payment into account under the appropriate federal tax accounting rules. In addition, X's share of the remediation payment made in 1996 is \$487,500, and Y's share of the remediation payment made in 1996 is \$487,500. X and Y must take their respective shares of the payment into account under the appropriate federal tax accounting rules.

(e) The trustee made no further remediation payments in 1996, and X and Y made no further contributions in 1996. From December 1, 1996, to December 31, 1996, the trust had \$5,000 of interest income, which is allocated \$2,500 to X's portion and \$2,500 to Y's portion. Accordingly, for 1996, X and Y each had income of \$27,500 from the trust.

(5) This paragraph (e) is applicable to trusts meeting the requirements of paragraph (e)(1) of this section that are formed on or after the date of publication of these proposed regulations as final regulations in the **Federal Register**.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

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ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1415

Rules Implementing the Privacy Act

AGENCY: Assassination Records Review Board.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Each Federal agency is required by the Privacy Act of 1974 to promulgate rules that set forth procedures by which individuals can examine and request correction of agency records containing personal information. In this notice the Review Board proposes a rule to satisfy that requirement.

DATES: To be considered, comments must be mailed, delivered in person or faxed to the address listed below by 5 p.m. on September 5, 1995.

ADDRESSES: Comments on these proposed regulations should be mailed, faxed, or delivered to T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530, FAX (202) 724-0457 (Attention: Privacy Act NPRM). All comments will be placed in the Board's public files and will be available for inspection between 10 a.m. and 4:30 p.m., Mondays through Fridays (except legal holidays), in the Board's Public Reading Room at the same address.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: Section (f) of the Privacy Act of 1974, U.S.C. 552a(f), requires each Federal agency to promulgate rules that set forth procedures by which individuals can examine and request correction of agency records containing personal information. The Review Board, established by the President John F. Kennedy Assassination Records Collection Act of 1992, is therefore obligated to publish such regulations.

Because Privacy Act regulations are intended for use by the general public, the Review Board has tried to keep its proposed rule simple and straightforward. Some aspects of the Privacy Act dealing solely with the Review Board's internal procedures and safeguards may be dealt with by directive to the Review Board's staff rather than by rule.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-12, the Review Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared, 5 U.S.C. 605(b).

List of Subjects in 36 CFR Part 1415

Privacy Act.

The Proposed Regulations

Accordingly, the Review Board proposes to amend chapter XIV in title 36 of the Code of Federal Regulations by