

shares. Accordingly, under paragraph (e)(3)(i) of this section, Corp G's *pro rata* share of FC8's subpart F income is \$80 for taxable year 2005.

**Example 8.** (i) *Facts.* FC9, a controlled foreign corporation within the meaning of section 957(a), has outstanding 40 shares of common stock and 60 shares of 6-percent, nonparticipating, nonvoting, preferred stock with a par value of \$100x per share. Individual J, a United States shareholder of FC9, within the meaning of section 951(b), who uses the calendar year as a taxable year, owns 30 shares of the common stock, and 15 shares of the preferred stock during tax year 2005. The remaining 10 common shares and 45 preferred shares of FC9 are owned by Foreign Individual N, a foreign individual. Individual J and Individual N are shareholders of FC9 for all of 2005. For taxable year 2005, FC9 has \$1,000x of earnings and profits, and income of \$500x with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a).

(ii) *Analysis.* The non-discretionary distribution rights of the preferred shares are not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. If the total \$1,000x of earnings and profits were distributed on December 31, 2005, \$360x (0.06 x \$100x x 60) would be distributed with respect to FC9's preferred stock and \$640x (\$1,000x minus \$360x) would be distributed with respect to its common stock. Accordingly, of the \$500x with respect to which amounts are required to be included in gross income of United States shareholders under section 951(a), \$180x (\$360x/\$1,000x x \$500x) is allocated to the outstanding preferred stock and \$320x (\$640x/\$1,000x x \$500x) is allocated to the outstanding common stock. Therefore, under paragraph (e)(3)(i) of this section, Individual J's *pro rata* share of such amounts for 2005 is \$285x [(\$180x x 15/60)+(\$320x x 30/40)].

**Example 9.** [Reserved].

(7) *Effective dates.* This paragraph (e) applies for taxable years of a controlled foreign corporation beginning on or after January 1, 2005. However, if the application of this paragraph (e) for purposes of a related Internal Revenue Code provision, such as section 1248, results in an allocation to the stock of such corporation of earnings and profits that have already been allocated to the stock for an earlier year under the prior rules of § 1.951-1(e), as contained in 26 CFR part 1 revised April 1, 2005, then the prior rules will continue to apply to

the extent necessary to avoid such duplicative allocation.

\* \* \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: August 9, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury.*

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BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 40 and 49

[TD 9221]

RIN 1545-BB75

#### Collected Excise Taxes; Duties of Collector

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

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations relating to the reporting obligations of persons that receive payments for air transportation or communications services subject to excise tax when persons liable for tax refuse to pay the tax. The final regulations affect persons that receive payments subject to tax and persons liable for those taxes.

**DATES:** *Effective Date:* These regulations are effective August 25, 2005.

*Applicability Date:* For dates of applicability, see §§ 40.6302(c)-3(g) and 49.4291-1.

#### FOR FURTHER INFORMATION CONTACT:

Taylor Cortright, (202) 622-3130 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document amends the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49). On August 10, 2004, a temporary regulation (TD 9149, 60 FR 48393) was published in the **Federal Register**. A notice of proposed rulemaking (REG-163909-02, 69 FR 48432) cross-referencing the temporary regulations was published in the **Federal Register** on the same day. A written comment was received and no public hearing was requested or held. After considering the comment, the proposed regulations are adopted by this Treasury decision with

clarifying changes. The corresponding temporary regulations are removed.

#### Special Analyses

It has been determined that these regulations are 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, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

The principal author of these regulations is Taylor Cortright of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

#### Adoption of Amendments to the Regulations

n Accordingly, 26 CFR parts 40 and 49 are amended as follows:

#### PART 40—EXCISE TAX PROCEDURAL REGULATIONS

n **Paragraph 1.** The authority citation for part 40 is amended by removing the entry for § 40.6302(c)-3T to read, in part, as follows:

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

n **Par. 2.** Section 40.6302(c)-3 is amended as follows:

n 1. Paragraph (b)(2)(ii) is revised.

n 2. Paragraph (g) is amended by removing the language "October 1, 2001" and adding the language "October 1, 2001, except that paragraph (b)(2)(ii)(B) of this section is applicable October 1, 2004" in its place.

The revision reads as follows:

**§ 40.6302(c)-3 Special rules for use of Government depositories under chapter 33.**

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*

(ii) *Separate account.* The account required under paragraph (b)(2)(i)(A) of this section (the separate account)—

(A) Must reflect for each month all items of tax that are included in amounts billed or tickets sold to customers during the month;

(B) May not reflect an item of adjustment for any month during a quarter if the adjustment results from a refusal to pay or inability to collect the tax and the uncollected tax has not been reported under § 49.4291-1 of this chapter on or before the due date of the return for that quarter; and

(C) Must reflect for each month items of adjustment (including bad debts and errors) relating to the tax for prior months within the period of limitations on credits or refunds.

\* \* \* \* \*

**§ 40.6302(c)-3T [Removed]**

<sup>n</sup> **Par. 3.** Section 40.6302(c)-3T is removed.

**PART 49—FACILITIES AND SERVICES EXCISE TAXES**

<sup>n</sup> **Par. 4.** The authority citation for part 49 continues to read, in part, as follows:

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

<sup>n</sup> **Par. 5.** Section 49.4291-1 is amended as follows:

- <sup>n</sup> 1. The fourth sentence is revised.
- <sup>n</sup> 2. The fifth sentence is amended by removing the language “this information” and adding the language “this report” in its place.
- <sup>n</sup> 3. A new sentence is added at the end of the paragraph.
- <sup>n</sup> 4. Paragraphs (a) and (b) are added.

The revisions and addition read as follows:

**§ 49.4291-1 Persons receiving payment must collect tax.**

\* \* \* Applicable October 1, 2004, this report must be made on or before the report due date. \* \* \* For purposes of this section, the report due date is—

(a) In the case of a person using the alternative method of making deposits described in § 40.6302(c)-3 of this chapter, the due date of the return on which the item of adjustment relating to the uncollected tax would be reflected if items of adjustment were determined without regard to the limitation in § 40.6302(c)-3 of this chapter; and

(b) In any other case, the due date of the return on which the tax would have been reported but for the refusal to pay or inability to collect.

**§ 49.4291-1T [Removed]**

<sup>n</sup> **Par. 6.** Section 49.4291-1T is removed.

**Mark E. Matthews,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: July 20, 2005.

**Eric Solomon,**  
*Acting Deputy Secretary of the Treasury (Tax Policy).*

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**DEPARTMENT OF JUSTICE**

**28 CFR Part 16**

[AAG/A Order No. 007-2005]

**Privacy Act of 1974; Implementation**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is exempting the Privacy Act system of records entitled, “Department of Justice Regional Data Exchange System (RDEX), DOJ-012,” from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). The information in this system of records relates to matters of criminal law enforcement, and the exemption is necessary in order to avoid interference with law enforcement responsibilities and functions and to protect criminal law enforcement information. The system of records document was published in the **Federal Register** on July 11, 2005 at 70 FR 39790. The proposed rule was published in the **Federal Register** on July 11, 2005 at 39696.

**DATES: Effective Date:** This final rule is effective August 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mary E. Cahill, (202) 307-1823.

**SUPPLEMENTARY INFORMATION:** On July 11, 2005 at 70 FR 39696 a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

**Regulatory Flexibility Act**

This rule relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that this rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 28 CFR Part 16**

Administrative Practices and Procedures, Courts, Freedom of

Information Act, Privacy Act, and Government in Sunshine Act.

<sup>n</sup> Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, amend 28 CFR part 16 as follows:

**PART 16—[AMENDED]**

**Subpart E—Exemption of Records Systems under the Privacy Act**

<sup>n</sup> 1. The authority for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

<sup>n</sup> 2. Section 16.133 is added to read as follows:

**§ 16.133 Exemption of Department of Justice Regional Data Exchange System (RDEX), DOJ-012.**

(a) The Department of Justice Regional Data Exchange System (RDEX), DOJ-012, is exempted from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) This system is exempted from the following subsections for the reasons set forth below:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures of criminal law enforcement records concerning him or her could inform that individual of the existence, nature, or scope of an investigation, or could otherwise seriously impede law enforcement efforts.

(2) From subsection (c)(4) because this system is exempt from subsections (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of criminal law enforcement information could interfere with an investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others.

(4) From subsection (d)(2) because amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent that exemption is claimed from subsections (d)(1) and (2).