Dated: October 23, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–21840 Filed 11–6–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ivermectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The supplemental ANADA adds claims for persistent effectiveness against various species of external and internal parasites when cattle are treated with a one percent ivermectin solution by subcutaneous injection.

DATES: This rule is effective November 7, 2007.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0169, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, filed a supplement to ANADA 200–437 that provides for use of NOROMECTIN (ivermectin) Injection for Cattle and Swine. The supplemental ANADA adds claims for persistent effectiveness against various species of external and internal parasites of cattle. The supplemental ANADA is approved as of October 5, 2007, and the regulations are amended in 21 CFR 522.1192 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 522.1192, revise paragraph (b)(2) and add paragraph (b)(3) to read as follows:

§ 522.1192 Ivermectin.

* * * * *

(b) * * *

(2) No. 055529 for use of the product described in paragraph (a)(2) of this section as in paragraphs (e)(2)(i), (e)(2)(ii)(A), (e)(2)(ii)(C), (e)(2)(iii), (e)(3), (e)(4) and (e)(5) of this section.

(3) No. 059130 for use of the product described in paragraph (a)(2) of this section as in paragraphs (e)(2)(i), (e)(2)(ii)(A), (e)(2)(ii)(B), (e)(2)(iii), (e)(3), (e)(4), and (e)(5) of this section.

* * * * *

Dated: October 26, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–21839 Filed 11–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9362]

RIN 1545–BG23

Foreign Tax Credit: Notification of Foreign Tax Redeterminations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to a United States taxpayer's obligation under section 905(c) of the Internal Revenue Code (Code) to notify the IRS of a foreign tax redetermination, which is a change in the taxpayer's foreign tax liability that may affect the taxpayer's foreign tax credit. This document also contains temporary Procedure and Administration Regulations under section 6689 relating to the civil penalty for failure to notify the IRS of a foreign tax redetermination as required under section 905(c). These temporary regulations affect taxpayers that have paid foreign taxes which have been redetermined and provide guidance needed to comply with statutory changes made to the applicable law by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. The text of the temporary regulations also serves as the text of the proposed regulations (REG–209020–86) set forth in the notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on November 7, 2007.

Applicability Dates: For dates of applicability, see §§ 1.905–3T(a), 1.905–4T(f), and 301.6689–1T(e). These regulations generally apply to foreign tax redeterminations occurring in taxable years of United States taxpayers beginning on or after November 7, 2007, where the foreign tax redetermination affects the amount of foreign taxes paid or accrued by a United States taxpayer. Where the redetermination of foreign tax paid or accrued by a foreign corporation affects the amount of foreign taxes deemed paid under section 902 or 960, this section applies to foreign tax redeterminations occurring in a taxable year of a foreign corporation which ends with or within the taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. Section 1.905–3T(b) generally applies to taxes paid or

accrued in taxable years of United States taxpayers beginning on or after November 7, 2007 and to taxes paid or accrued by a foreign corporation in its taxable year which ends with or within the taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. For foreign tax redeterminations occurring in taxable years of United States taxpayers beginning before November 7, 2007 and foreign tax redeterminations occurring in taxable years of a foreign corporation which end with or within the taxable year of the domestic corporate shareholder beginning before November 7, 2007, see § 1.905–4T(f)(2).

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes, (202) 622–3850 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public comment pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1056. Responses to this collection of information are mandatory.

The collections of information in these temporary regulations are in § 1.905–4T. This information is required in order for taxpayers to notify the IRS of a foreign tax redetermination that may require redetermination of the taxpayer's United States tax liability.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

For further information concerning these collections of information; where to submit comments on the collections of information and the accuracy of the estimated burden; and suggestions for reducing this burden, please refer to the preamble of the cross-referencing notice of proposed rulemaking published in this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Under section 905(c) and the regulations, a taxpayer that claims a foreign tax credit for taxes paid or accrued under section 901 or deemed paid under section 902 or 960 must notify the IRS when there has been a change to the amount of foreign taxes paid or accrued. In general, in the case of a foreign tax redetermination with respect to taxes claimed as a direct credit under section 901, the taxpayer's United States tax liability must be redetermined; and, in the case of a foreign tax redetermination with respect to taxes included in the computation of foreign taxes deemed paid under section 902 or 960, the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes must be adjusted (subject to exceptions described in §§ 1.905–3T(d)(3) and (f)). If the taxpayer fails to notify the IRS of a foreign tax redetermination, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, section 6689 imposes a penalty of 5 percent of the deficiency attributable to such redetermination if the failure is for not more than 1 month, with an additional 5 percent for each additional month during which the failure continues, but not to exceed 25 percent of the deficiency.

On June 23, 1988, the **Federal Register** published proposed (53 FR 23659) (INTL–061–86) and temporary (53 FR 23611) (TD 8210) amendments to the Income Tax Regulations (26 CFR part 1) under section 905(c) and to the Procedure and Administration Regulations (26 CFR part 301) under section 6689 (the 1988 proposed and temporary regulations). These amendments reflected the changes made to the Internal Revenue Code by section 2(c)(2) of the Revenue Act of December 28, 1980 (94 Stat. 3503, 3509) and section 1261(a) of the Tax Reform Act of 1986 (100 Stat. 2085, 2591). The IRS and the Treasury Department received several written comments, which are discussed in this preamble. A public hearing concerning the proposed regulations was neither requested nor held. In response to written comments, on March 16, 1990, the IRS and the Treasury Department issued Notice 90–26, 1990–1 CB 336 (see § 601.601(d)(2)(ii)(*b*)), which suspended a portion of the temporary regulations, specifically § 1.905–3T(d)(2)(ii)(A) and that part of § 1.905–3T(d)(2)(ii)(C) which refers to that regulation, which provided rules for accounting for foreign tax redeterminations that affect the calculation of foreign taxes deemed paid with respect to distributions or inclusions out of post-1986 undistributed earnings of a foreign corporation. Section 1.905–3T(d)(2)(ii)(A) required that, in the case of a foreign tax redetermination that affects the amount of foreign taxes deemed paid by a United States corporation for a taxable year, if the foreign tax redetermination occurs more than 90 days before the due date (with extensions) of the taxpayer's income tax return for such taxable year and before the taxpayer actually files that return, then that taxpayer must adjust the foreign tax credit to be claimed on that return for such taxable year to account for the effect of the foreign tax redetermination.

Alternatively, if a foreign tax redetermination occurs after the filing of the United States tax return, § 1.905–3T(d)(2)(ii)(B) provides that appropriate upward or downward adjustments are made at the time of the foreign tax redetermination to the pools of post-1986 foreign income taxes and post-1986 undistributed earnings of the foreign corporation. Section 1.905–3T(d)(2)(ii)(C) provides that, if the foreign tax redetermination occurs within 90 days of the due date of the United States tax return and before the taxpayer actually files its tax return, then the taxpayer may elect either to adjust the foreign tax credit to be claimed on that return in the manner described in § 1.905–3T(d)(2)(ii)(A) or adjust the pools of post-1986 foreign income taxes and post-1986 undistributed earnings to reflect the effect of the foreign tax redetermination in the manner described in § 1.905–3T(d)(2)(ii)(B).

Comments received by the IRS and the Treasury Department concerning the requirement in § 1.905–3T(d)(2)(ii)(A) to notify the IRS of a foreign tax redetermination by adjusting the foreign tax credit on the return for the taxable year in which the foreign tax redetermination occurred stated that this requirement did not take into account the amount of time that taxpayers, especially large multinational corporations, need to prepare their income tax returns. In cases for which a foreign tax redetermination requires a redetermination of United States tax liability, § 1.905–4T provides rules generally requiring taxpayers to file amended returns to notify the IRS of the redetermination.

Sections 1102(a)(1) and 1102(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 963–966 (1997)), amended sections 986(a) and 905(c), respectively, effective for taxes paid or accrued in taxable years beginning after December 31, 1997. Section 905(c)(1)(B) was added to provide that, if accrued taxes are not

paid before the date two years after the close of the taxable year to which such taxes relate, the taxpayer must notify the IRS and redetermine its United States tax liability for the year or years in which it claimed credit for such taxes. Section 986(a)(1)(A) was amended to provide that, for purposes of determining the amount of foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) generally will be translated into dollars using the average exchange rate for the taxable year to which such taxes relate. However, under section 986(a)(1)(B), the spot exchange rate on the date the taxes are paid is used to translate foreign income taxes that are paid before, or more than two years after, the taxable year to which the taxes relate. Section 986(a)(1)(C) provides that, as determined under regulations, the average exchange rate also will not apply to taxes denominated in inflationary currencies.

Subsequently, section 408(a) of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418, 1499 (2004)), modified section 986(a) and provided, effective for taxable years beginning after December 31, 2004, that, at the election of the taxpayer, the average exchange rate will not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency. If the taxpayer so elects, taxes will be translated into dollars using the exchange rates at the time such taxes were paid to the foreign country. See section 986(a)(1)(D)(i). Section 986(a)(1)(D)(ii) provides that this election is also applicable to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary. On May 15, 2006, the IRS and the Treasury Department issued Notice 2006–47, 2006–20 IRB 892 (see § 601.601(d)(2)(ii)(*b*)), which provides interim rules with respect to this election. The notice provides that a taxpayer may elect to use the payment date exchange rates to translate all foreign income taxes, or it may elect to use the payment date exchange rates to translate only those nonfunctional currency foreign income taxes that are attributable to qualified business units with United States dollar functional currencies. Section 408(b)(1) of the American Jobs Creation Act of 2004 also added a special rule at section 986(a)(1)(E) for taxes paid by regulated investment companies.

In light of the statutory changes to sections 905(c) and 986(a) by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004, the IRS and the Treasury Department believe it is appropriate to issue new proposed and temporary regulations. These new regulations make several significant changes to the rules of the 1988 proposed and temporary regulations to take into account statutory changes and the comments received on the 1988 proposed and temporary regulations, while leaving substantial portions of the 1988 proposed and temporary regulations unchanged. The new temporary regulations will permit the IRS to enforce properly sections 905(c) and 6689 without delay. The significant comments and revisions are described in this preamble.

Explanation of Provisions

I. Currency Translation Rules

This document contains temporary Income Tax Regulations relating to the currency translation rules that apply in determining the amount of the foreign tax credit. Section 1.905–3T(b) has been revised to reflect the statutory changes to sections 905(c) and 986(a) by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. New § 1.905–3T(b)(1)(i) provides that, in the case of a taxpayer or a member of a qualified group (as defined in section 902(b)(2)) that takes foreign income taxes into account when accrued, the amount of any foreign taxes denominated in foreign currency that have been paid or accrued, additional tax liability denominated in foreign currency, taxes withheld in foreign currency, or estimated taxes paid in foreign currency will be translated into dollars using the average exchange rate (as defined in § 1.989(b)–1) for the United States taxable year to which such taxes relate.

However, new § 1.905–3T(b)(1)(ii) provides five exceptions to the general rule that accrual basis taxpayers translate foreign taxes using the average exchange rate. First, § 1.905–3T(b)(1)(ii)(A) provides that any foreign taxes denominated in foreign currency that were paid more than two years after the close of the United States taxable year to which they relate will be translated into dollars using the exchange rate as of the date of payment of the foreign taxes.

Second, § 1.905–3T(b)(1)(ii)(B) provides that any foreign income taxes paid before the beginning of the United States taxable year to which such taxes relate will be translated into dollars using the exchange rate as of the date of payment of the foreign taxes.

Third, § 1.905–3T(b)(1)(ii)(C) provides that any foreign income taxes the liability for which is denominated in any inflationary currency will be translated into dollars using the exchange rate as of the date of payment of the foreign taxes. For this purpose, the term *inflationary currency* means the currency of a country in which there is cumulative inflation during the base period of at least 30 percent, as determined by reference to the consumer price index of the country listed in the monthly issues of International Financial Statistics, or a successor publication, of the International Monetary Fund. For purposes of § 1.905–3T(b)(1)(ii)(C), *base period* means, with respect to any taxable year, the thirty-six calendar months immediately preceding the last day of such taxable year. See § 1.985–1(b)(2)(ii)(D).

Fourth, under the provisions of § 1.905–3T(b)(1)(ii)(D), a taxpayer that is otherwise required to translate foreign income taxes that are denominated in foreign currency using the average exchange rate may elect to translate foreign income taxes into dollars using the exchange rate as of the date of payment of the foreign taxes, provided that the liability for such taxes is denominated in nonfunctional currency. This election may be made for all foreign income taxes or for only those foreign income taxes the liability for which is denominated in nonfunctional currency and that are attributable to qualified business units with United States dollar functional currencies. This election allows taxpayers to avoid a mismatch between the translated dollar amount of foreign tax credit and the translated dollar amount of the foreign income used to pay the tax. The election must be made by attaching a statement to the taxpayer's timely filed return (including extensions) for the first taxable year to which the election applies. The statement must identify whether the election is made for all foreign taxes or only for foreign taxes attributable to qualified business units with a United States dollar functional currency. Once made, the election will apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Commissioner.

Finally, in the case of a regulated investment company (as defined in section 851 and the regulations under that section) which takes into account income on an accrual basis, § 1.905–3T(b)(1)(ii)(E) provides that foreign income taxes paid or accrued with

respect to such income will be translated into dollars using the exchange rate as of the date the income accrues. This exception takes account of the special rule at section 852(b)(9) that requires a regulated investment company to take dividends into account on the ex-dividend date, rather than on the later date on which the dividends are paid (and the tax is actually withheld). The translation rule permits greater conformity between the translated dollar amount of dividends paid in foreign currency and the translated dollar amount of taxes withheld from such dividends. For a discussion of the effective dates of the currency translation provisions, see the ''Effective Date'' section of this document.

Section 1.905–3T(b)(4), concerning the allocation of refunds of foreign tax to the separate categories of income under section 904(d), is not modified by these temporary regulations. Section 1.905–3T(b)(5), which provides rules with respect to the basis of foreign currency that is refunded, is revised to reflect the 1997 and 2004 changes to the currency translation rules, as provided in § 1.905–3T(b)(3).

II. Definition of Foreign Tax Redetermination

The term ''foreign tax redetermination'' in § 1.905–3T(c) has been revised to reflect the statutory changes made to section 905(c) in the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. New § 1.905–3T(c) provides that, for purposes of §§ 1.905–3T and 1.905–4T, a foreign tax redetermination means a change in the foreign tax liability that may affect a taxpayer's foreign tax credit. A foreign tax redetermination includes: (1) Accrued taxes that when paid differ from the amounts added to post-1986 foreign income taxes or claimed as credits by the taxpayer (such as corrections to overaccruals and additional payments); (2) accrued taxes that are not paid before the date two years after the close of the taxable year to which such taxes relate; (3) any tax paid that is refunded in whole or in part; and (4) for taxes taken into account when accrued but translated into dollars on the date of payment, a difference between the dollar value of the accrued tax and the dollar value of the tax paid attributable to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment.

Section 1.905–3T(d)(1) has been revised to reflect the modified definition in new § 1.905–3T(c) of a foreign tax redetermination that results from currency fluctuations, but new § 1.905–3T(d)(1) otherwise adopts without amendment the rule in § 1.905–3T(d)(1) of the 1988 regulations that provides that no redetermination of United States tax liability is required with respect to such foreign tax redetermination if the amount of such redetermination is less than the lesser of ten thousand dollars or two percent of the total dollar amount of the foreign tax initially accrued with respect to that foreign country for the United States taxable year. Comments requested that this exception be broadened by eliminating the $10,000 limitation and by increasing the percentage ceiling from 2 percent to 5 percent, in order to increase the number of taxpayers eligible for the exception, therefore minimizing the administrative burden of filing amended returns for both taxpayers and the IRS. Since the 1988 temporary regulations were published, the administrative burdens of accounting for exchange rate fluctuations have been substantially reduced by the change in law allowing taxpayers claiming credits on the accrual basis to use annual average exchange rates rather than date of payment exchange rates to translate foreign tax. In addition, the IRS and Treasury Department believe that it is appropriate to limit the exception to a dollar threshold. Accordingly, this comment was not adopted.

III. Adjustments to Pools of Post-1986 Undistributed Earnings and Post-1986 Foreign Income Taxes

On March 16, 1990, Notice 90–26, 1990–1 CB 336 (see § 601.601(d)(2)(ii)(*b*)), suspended § 1.905–3T(d)(2)(ii)(A) and that part of § 1.905–3T(d)(2)(ii)(C) which refers to § 1.905–3T(d)(2)(ii)(A). Prior to its suspension, § 1.905–3T(d)(2)(ii)(A) required taxpayers to recompute the foreign tax credit claimed on their current year income tax return to account for foreign tax redeterminations that affect the amount of foreign tax deemed paid under section 902 or 960 and that occurred more than 90 days before the due date (with extensions) of the United States tax return for that taxable year and before the actual filing date. Section 1.905–3T(d)(2)(ii)(C) permitted taxpayers to elect to apply § 1.905–3T(d)(2)(ii)(A) to a foreign tax redetermination occurring within 90 days of the due date (with extensions) of the tax return for that taxable year and before the actual filing date.

Section 1.905–3T(d)(2)(ii)(B) of the 1988 regulations requires that, if a foreign tax redetermination occurs after the filing of the United States tax return for such taxable year, then appropriate upward or downward adjustments will be made at the time of the foreign tax redetermination to the foreign corporation's pools of post-1986 foreign taxes and post-1986 earnings and profits to reflect the effect of the foreign tax redetermination in calculating foreign taxes deemed paid with respect to distributions and inclusions (and the amount of such distributions and inclusions) that are includible in taxable years subsequent to the taxable year for which such tax return is filed. The part of § 1.905–3T(d)(2)(ii)(C) not suspended by Notice 90–26 allows a taxpayer to elect to adjust the pools of post-1986 foreign taxes and post-1986 earnings and profits to reflect the effect of the foreign tax redetermination in the manner described in § 1.905–3T(d)(2)(ii)(B). Notice 90–26 also provided that, pending the issuance of final regulations under section 905(c), redeterminations otherwise subject to § 1.905–3T(d)(2)(ii)(A) or (C) were required to be accounted for through adjustment to the appropriate pools of post-1986 earnings and profits and post-1986 foreign taxes in the manner described in § 1.905–3T(d)(3) and subject to the exceptions set forth in § 1.905–3T(d)(4).

A comment concerning § 1.905–3T(d)(2) of the 1988 regulations was received, suggesting that taxpayers be allowed to elect to adjust earnings and profits and tax pools or file an immediate claim for refund, in the case of an additional assessment of foreign tax which generates a potential refund of U.S. tax. Because the taxpayer must wait for a subsequent distribution to benefit from the additional credits, the comment stated that the taxpayer is inappropriately denied an immediate benefit, that is, making a claim for an immediate refund, provided by section 6511(d)(3)(A). Subsequently, the Taxpayer Relief Act of 1997 confirmed the Secretary's regulatory authority to prescribe appropriate adjustments to a foreign corporation's pools of post-1986 foreign income taxes and post-1986 undistributed earnings in lieu of a redetermination, and amended section 905(c)(2) explicitly to provide that no redetermination of U.S. tax shall be made by reason of additional taxes paid more than two years after the year to which they relate. In light of the statutory changes, this comment was not adopted.

Section 1.905–3T(d)(2) of the 1988 regulations has been revised to reflect the provisions of Notice 90–26. New § 1.905–3T(d)(2)(i) provides that appropriate upward or downward adjustments will be made at the time of the foreign tax redetermination to the

foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes, in accordance with § 1.905–3T(d)(2)(ii), to reflect the effect of the foreign tax redetermination in calculating foreign taxes deemed paid with respect to subsequent distributions and inclusions (and the amount of such distributions and inclusions).

Section 1.905–3T(d)(2)(iii) of the 1988 regulations, which provides rules with respect to the reporting requirements for adjustments to the appropriate pools of post-1986 undistributed earnings and post-1986 foreign income taxes has been revised. The 1988 regulations require that the domestic corporate shareholder attach notice of such adjustments to its return on a yearly basis. In the interest of reducing the reporting requirement burden, this notification requirement has been eliminated. New § 1.905–3T(d)(2)(i) refers to § 1.905–4T(b)(2), which provides that, where a redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960, and the taxpayer is required to adjust the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes under § 1.905–3T(d)(2), the taxpayer is required to notify the IRS of such redetermination by reflecting the adjustments to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes on a Form 1118 for the taxpayer's first taxable year with respect to which the redetermination affects the computation of foreign taxes deemed paid.

The 1988 regulations provide four exceptions to the general rule in § 1.905–3T(d)(2) requiring pooling adjustments in lieu of a redetermination of United States tax liability to account for the effect of a redetermination of foreign tax paid or accrued by a foreign corporation on foreign taxes deemed paid under section 902 or 960. A shareholder-level redetermination of United States tax liability is required where the foreign tax liability is denominated in a hyperinflationary currency (see § 1.905–3T(d)(4)(i)); where the foreign tax redetermination occurs with respect to foreign taxes deemed paid with respect to a subpart F inclusion or an actual distribution which has the effect of reducing the foreign corporation's pool of post-1986 foreign income taxes below zero (see § 1.905–3T(d)(4)(iv)); or where a domestic corporate shareholder of a controlled foreign corporation receives a distribution out of previously taxed earnings and profits and a foreign country imposes tax on the foreign corporation's income, which tax is subsequently reduced (see § 1.905–3T(f)). These exceptions are adopted without amendment and have been moved to § 1.905–3T(d)(3)(i), (iv), and (vi), respectively, in the new temporary regulations.

The fourth exception, at § 1.905–3T(d)(4)(ii) in the 1988 regulations, provides that if the foreign tax liability of a United States taxpayer is in a currency other than a hyperinflationary currency and the amount of foreign tax accrued for the taxable year to a foreign country, as measured in units of foreign currency, exceeds the amount of foreign tax paid to that foreign country for the taxable year by at least two percent, then the IRS, in its discretion, may require a redetermination of United States tax liability, in lieu of an adjustment of the pools of post-1986 undistributed earnings and post-1986 foreign income taxes. Section 1.905–3T(d)(2)(iii) of the 1988 regulations provides that, if a taxpayer may be required to redetermine its United States tax liability under § 1.905–3T(d)(4)(ii), the taxpayer must attach a notice of such adjustment to its return for the year with or within which ends the foreign corporation's taxable year during which the foreign tax redetermination occurs. Comments were received with respect to these provisions, requesting that the regulations set forth the factors the IRS would take into account in determining whether to exercise such discretion; the percentage limitation be increased to ten percent; the IRS not enforce this provision if the deficiency resulting from the overaccrual of foreign tax is less than $25,000; and the provision only be used in specific situations, such as consistent overaccrual of foreign taxes. Further, in order to avoid taxpayers being subject to the penalty under section 6689 for failure to notify the IRS within 180 days of the foreign tax redetermination, as required by § 1.905–4T(b)(2) of the 1988 regulations, a comment requested that, when the IRS exercises its discretion under § 1.905–3T(d)(4)(ii), the date on which such redetermination occurs should be deemed to be the date on which the IRS notifies the taxpayer that a redetermination of U.S. tax liability is required.

In lieu of the discretionary rule in the 1988 temporary regulations, § 1.905–3T(d)(3)(ii) of the new regulations requires a redetermination of United States tax liability for all affected years if a foreign tax redetermination occurs with respect to foreign taxes paid by a foreign corporation and such foreign tax redetermination, if taken into account in the taxable year of the foreign corporation to which the foreign tax redetermination relates, has the effect of reducing by ten percent or more the foreign taxes deemed paid by the domestic corporate shareholder under section 902 or 960 in the taxable year of the shareholder with or within which ends the taxable year of the foreign corporation to which the foreign tax redetermination relates or in any intervening taxable year. Thus, a redetermination of the United States taxpayer's deemed paid credit under section 902 or 960 is required by reason of a foreign tax redetermination at the foreign subsidiary level only if the overstatement of the foreign tax credit is substantial in amount, taking into account the effect of the redetermination on the entire tax pool of the foreign subsidiary and not just the tax attributable to the year to which the redetermination relates. This new rule is more consistent with the other three exceptions to pooling adjustments in § 1.905–3T(d)(4)(i) and (iv) and § 1.905–3T(f) of the 1988 temporary regulations, which are at new § 1.905–3T(d)(3)(i), (iv), and (vi). Further, § 1.905–3T(d)(3)(ii) of the new regulations provides consistent treatment among taxpayers, adds certainty as to when adjustments to prior-year section 902 or 960 credits are required, and reduces the administrative burden associated with yearly notification of such foreign tax redeterminations.

A comment requested that the regulations be revised to address the situation where a controlled foreign corporation is sold. In a typical case, the seller of the controlled foreign corporation contracts to indemnify the buyer for any tax deficiencies arising with respect to taxable periods occurring prior to the date of the sale and will be entitled to any refunds relating to such periods. The additional assessments or refunds of tax are reflected as adjustments to the pools of the foreign corporation in the hands of the buyer but accrue economically to the seller. However, the seller derives no U.S. tax benefit or detriment from those additional payments or refunds because it no longer has an economic interest in the foreign corporation. It was suggested that the regulations should provide an additional exception to the pooling rules allowing recomputation of the seller's U.S. tax liability as if the foreign tax redetermination occurred immediately prior to the sale. The IRS and Treasury Department are continuing to study this issue and request comments on the

potential scope of an additional exception to the pooling adjustment rules in the context of various types of acquisitions.

Comments are also solicited on other changes that should be made to the 1988 temporary regulations, including changes relating to the statutory changes made by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004.

IV. Time and Manner of Notification

A. Overview of New Rules

New § 1.905–4T(a) provides that if, as a result of a foreign tax redetermination (as defined in § 1.905–3T(c)), a redetermination of United States tax liability is required under section 905(c) and § 1.905–3T(d), the taxpayer must provide notification of the foreign tax redetermination. Section 1.905–4T(b)(1) of the new temporary regulations provides rules with respect to the time and manner of notifying the IRS of a foreign tax redetermination that necessitates a redetermination of United States tax liability. New § 1.905–4T(b)(1)(i) sets forth the general rule that, where a redetermination of United States tax liability is required, the taxpayer must notify the IRS by filing an amended return, Form 1118 (Foreign Tax Credit—Corporations) or 1116 (Foreign Tax Credit), and the statement required under § 1.905–4T(c) for the taxable year with respect to which a redetermination of United States tax liability is required. However, where a foreign tax redetermination requires an individual to redetermine the individual's United States tax liability, and as a result of such foreign tax redetermination the amount of creditable taxes paid or accrued by such individual during the taxable year does not exceed the applicable dollar limitation in section 904(k) (currently $300, or $600 in the case of a joint return), the individual will not be required to file Form 1116 with the amended return for such taxable year if the individual satisfies the requirements of section 904(k).

B. Revision of 1988 Temporary Regulations in Response to Comments

The 1988 temporary regulations at § 1.905–4T(b)(2) require taxpayers to notify the IRS of a foreign tax redetermination that reduced the amount of foreign taxes paid or deemed paid by filing an amended return for the affected year or years within 180 days after the date that the foreign tax redetermination occurred. The IRS and the Treasury Department received several comments suggesting that this rule was unduly burdensome to taxpayers. The comments noted that multiple foreign tax redeterminations requiring a redetermination of United States tax liability for the same taxable year would require the filing of multiple returns for such year, and that filing an amended Federal tax return would trigger additional state tax notification and amended return filing requirements.

In light of these comments, the new temporary regulations at § 1.905–4T(b)(1)(ii) provide that, if a foreign tax redetermination reduced the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, a taxpayer must file a separate notification for each taxable year with respect to which a redetermination of United States tax liability is required by the due date (with extensions) of the original return for the taxable year in which the foreign tax redetermination occurred. With respect to a foreign tax redetermination that increased the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, new § 1.905–4T(b)(1)(iii) adopts the rule provided in the 1988 temporary regulations at § 1.905–4T(b)(2) and provides that the taxpayer must file a separate notification for each taxable year with respect to which a redetermination of United States tax liability is required within the period provided by section 6511(d)(3)(A).

C. Special Rules for Certain Redeterminations

The new temporary regulations at § 1.905–4T(b)(1)(iv) provide that, where more than one foreign tax redetermination requires a redetermination of United States tax liability for the same taxable year and those redeterminations occur within two consecutive taxable years of the taxpayer, the taxpayer may file for such taxable year one amended return, Form 1118 or 1116, and the statement required under § 1.905–4T(c) that reflect all such foreign tax redeterminations. If the taxpayer chooses to file one notification for such foreign tax redeterminations, the due date for such notification is the due date of the original return (with extensions) for the year in which the first foreign tax redetermination that reduced foreign tax liability occurred. However, because foreign tax redeterminations with respect to the taxable year for which a redetermination of United States tax liability is required may occur after the due date for providing such notification in the later of the two consecutive years, more than one amended return may be required with respect to that taxable year.

Section 1.905–4T(b)(1)(v) of the new temporary regulations provides that, where a foreign tax redetermination requires a redetermination of United States tax liability that would otherwise result in an additional amount of United States tax due, but such amount is eliminated as a result of a carryback or carryover of an unused foreign tax under section 904(c), the taxpayer may, in lieu of applying the general notification rule described in § 1.905–4T(b)(1)(i) or (ii), notify the IRS by attaching a statement to the original return for the taxable year in which the foreign tax redetermination occurs. The statement must be filed by the due date (with extensions) of such return and contain the information described in § 1.904–2(f), including the amounts carried back or over to the year with respect to which a redetermination of United States tax liability is required.

The 1988 temporary regulations at § 1.905–3T(d)(2)(iii) provide rules concerning the time, manner, and contents of the notification statement for an adjustment of a foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes due to a foreign tax redetermination. The new temporary regulations, at § 1.905–4T(b)(2), modify the reporting requirement with respect to such pooling adjustments by providing that where a redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960, and the taxpayer is required to adjust the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes under § 1.905–3T(d)(2), the taxpayer must notify the IRS of the redetermination by reflecting the adjustments to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes on a Form 1118 for the taxpayer's first taxable year with respect to which the redetermination affects the computation of foreign taxes deemed paid. New § 1.905–4T(b)(2) requires the taxpayer to file the Form 1118 by the due date (with extensions) of the original return for such taxable year. In the case of multiple redeterminations that affect the computation of foreign taxes deemed paid for the same taxable year and that are required to be reported under new § 1.905–4T(b)(2), a taxpayer may file one notification for all such redeterminations in lieu of filing a separate notification for each such redetermination.

D. Large and Mid-Size Business Taxpayers

Section 1.905–4T(b)(2) of the 1988 temporary regulations requires a taxpayer to notify the IRS of a foreign tax redetermination that reduced the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, by filing an amended return for the affected year within 180 days after the date that the foreign tax redetermination occurred. The IRS and the Treasury Department received several comments with respect to such rule suggesting that, in lieu of filing an amended return, taxpayers that are under continuous examination in a program such as the Coordinated Examination Program should be permitted to provide notice of foreign tax redeterminations to the examiner during an examination.

Taking into account these comments, the new temporary regulations at § 1.905–4T(b)(3) provide that, where a redetermination of United States tax liability is required by reason of a foreign tax redetermination that occurs while a taxpayer is under the jurisdiction of the Large and Mid-Size Business Division and that results in a reduction in the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, the taxpayer must provide notice of such redetermination as part of the examination process in lieu of filing an amended return for the affected year as otherwise required by § 1.905–4T(b)(1)(i) and (ii). If the taxpayer is required under § 1.905–4T(b)(3) to provide notice as part of the examination process, the taxpayer must satisfy the requirements of § 1.905–4T(b)(3) (in lieu of the generally applicable rules of § 1.905–4T(b)(1)(i) or (ii)) in order not to be subject to the penalty under section 6689 and the regulations under that section.

Section 1.905–4T(b)(3) of the new regulations requires a taxpayer to notify the IRS of the foreign tax redetermination by providing to the examiner a statement described in § 1.905–4T(c) during an examination of the return for the taxable year for which a redetermination of United States tax liability is required by reason of the foreign tax redetermination. The taxpayer must provide the statement to the examiner no later than 120 days after the latest of the date the foreign tax redetermination occurs, the opening conference, or the hand-delivery or postmark date of the opening letter concerning the examination. If, however, the foreign tax redetermination occurs more than 180 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter, the taxpayer may, in lieu of applying the rules of § 1.905–4T(b)(1)(i) and (ii), provide to the examiner a statement which complies with the requirements of § 1.905–4T(b)(3), and the IRS, in its discretion, may accept such statement or require the taxpayer to comply with the rules of § 1.905–4T(b)(1)(i) and (ii).

This exception in § 1.905–4T(b)(3) to the generally applicable notification requirements of § 1.905–4T(b)(1) is not permitted to extend the length of the notification period set forth in § 1.905–4T(b)(1). In addition, no notification under § 1.905–4T(b)(3) will be due before May 5, 2008.

V. Notification Contents

Section 1.905–4T(c)(1) of the new temporary regulations requires the taxpayer to furnish a statement that contains information sufficient for the IRS to redetermine the taxpayer's United States tax liability where such a redetermination is required under section 905(c). The taxpayer must provide such information in a form that enables the IRS to verify and compare the original computations of the claimed foreign tax credit, the revised computations resulting from the foreign tax redetermination, and the net changes resulting therefrom. The statement must include the taxpayer's name, address, identifying number, and the taxable year or years of the taxpayer that are affected by the foreign tax redetermination. If the written statement is submitted to the IRS under § 1.905–4T(b)(3), which provides rules with respect to taxpayers under the jurisdiction of the Large and Mid-Size Business Division, the statement must also include a declaration under penalties of perjury.

Where a redetermination of United States tax liability is required by reason of a foreign tax redetermination, new § 1.905–4T(c)(2) requires that the taxpayer provide, in addition to the information described in new § 1.905–4T(c)(1), specific information concerning the foreign tax redetermination. To take into account the amendment of section 986(a) (concerning translation rates for foreign taxes) by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004, the new temporary regulations require the taxpayer to provide the exchange rates used to translate the amount of foreign taxes paid, accrued, or refunded in accordance with § 1.905–3T(b) (as the case may be). These new temporary regulations also include the requirement of the 1988 temporary regulations that taxpayers provide information relating to the interest paid by foreign governments or owing to the United States due to a foreign tax redetermination.

If, as a result of a redetermination of foreign tax paid or accrued by a foreign corporation, adjustments to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes are required under § 1.905–3T(d)(2) of the 1988 temporary regulations in lieu of a redetermination of a domestic corporate shareholder's United States tax liability, § 1.905–3T(d)(2)(iii) of the 1988 temporary regulations requires that the taxpayer provide certain information concerning the foreign tax redetermination and the pooling adjustments. In order to reduce the notification requirement burden, the new temporary regulations modify this reporting requirement, as discussed above in section IV.C., ''Special Rules for Certain Redeterminations.'' If, as a result of a redetermination of foreign tax paid or accrued by a foreign corporation, a redetermination of United States tax liability is required under new § 1.905–3T(d)(3) in lieu of a pooling adjustment, the new temporary regulations at § 1.905–4T(c)(3) specify the information that the taxpayer must provide.

VI. Payment or Refund of United States Tax, and Application of Interest and Penalties

Section 1.905–4T(d) of the new temporary regulations adopts without amendment that portion of the 1988 temporary regulations at § 1.905–4T(b)(1) which provides that the amount of tax, if any, due upon a redetermination of United States tax liability will be paid by the taxpayer after notice and demand has been made by the IRS. The regulation also clarifies that deficiency procedures under Subchapter B of chapter 63 of the Internal Revenue Code will not apply with respect to the assessment of the amount due upon such redetermination, meaning that the IRS is not required to send a statutory notice of deficiency to a taxpayer, and the taxpayer does not have an opportunity to petition the Tax Court, prior to the IRS' assessment and collection of the amount of additional tax due. In accordance with sections 905(c) and 6501(c)(5), the statute of limitations under section 6501(a) will not apply to the assessment and collection of the amount of additional tax due. The amount of tax, if any, shown by a redetermination of United States tax liability to have been overpaid will be credited or refunded to the

taxpayer in accordance with section 6511(d)(3)(A) and the provisions of § 301.6511(d)–3. Accordingly, the taxpayer must file a claim for credit or refund within ten years from the last date (without extensions) prescribed for filing the return for the taxable year in which the foreign taxes were actually paid or accrued.

Similarly, § 1.905–4T(e) of the new temporary regulations adopts without amendment the interest and penalties provisions of the 1988 temporary regulations at § 1.905–4T(c). First, new § 1.905–4T(e)(1) provides that interest on the underpayment or overpayment resulting from a redetermination of United States tax liability will be computed in accordance with sections 6601 and 6611 and the regulations under those sections. No interest will be assessed or collected on any underpayment resulting from a refund of foreign tax for any period before the receipt of the refund, except to the extent interest was paid by the foreign country or possession of the United States on the refund for the period. In no case, however, will interest assessed and collected pursuant to the preceding sentence for any period before receipt of the refund exceed the amount that otherwise would have been assessed and collected under section 6601 and the regulations under that section for that period. Interest will be assessed from the time the taxpayer (or the foreign corporation of which the taxpayer is a shareholder) receives a foreign tax refund until the taxpayer pays the additional tax due the United States.

Second, new § 1.905–4T(e)(2) provides that, if an adjustment to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes under § 1.905–3T(d)(2) is required in lieu of a redetermination of United States tax liability, no underpayment or overpayment of United States tax liability will result from a foreign tax redetermination. Consequently, no interest will be paid by or to a taxpayer as a result of adjustments to a foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes where required under § 1.905–3T(d)(2).

Third, § 1.905–4T(e)(3) of the new temporary regulations provides that failure to comply with the provisions of § 1.905–4T of the new temporary regulations will subject the taxpayer to the penalty provisions of section 6689 and the regulations under that section.

VII. Foreign Tax Redeterminations With Respect to Pre-1987 Accumulated Profits

Section 1.905–5T of the 1988 regulations provides rules relating to foreign tax redeterminations occurring in pre-1987 taxable years, and those occurring in post-1986 taxable years with respect to pre-1987 accumulated profits. The new temporary regulations amend the cross-references to §§ 1.905–3T and 1.905–4T and clarify that these rules apply to foreign tax redeterminations with respect to pre-1987 accumulated profits that are accumulated in taxable years of a foreign corporation beginning after December 31, 1986, but before the first taxable year in which the ownership requirements of section 902 are met. See § 1.902–1(a)(10)(i).

VIII. Penalty Under Section 6689

Under section 6689, a taxpayer that fails to notify the IRS of a foreign tax redetermination in the time and manner prescribed by regulations for giving such notice is subject to a penalty unless it is shown that such failure is due to reasonable cause and not due to willful neglect. Section 6689(a) provides that the penalty is calculated by adding to the deficiency attributable to the foreign tax redetermination an amount equal to 5 percent of the deficiency if the failure is for not more than 1 month, plus an additional 5 percent of the deficiency for each month (or fraction thereof) during which the failure continues. The total amount of the penalty is not to exceed 25 percent of the deficiency.

Section 301.6689–1T(a) has been revised to clarify that deficiency proceedings under Subchapter B of chapter 63 of the Code will not apply with respect to the amount of such penalty, meaning that the IRS is not required to send a statutory notice of deficiency to a taxpayer, and the taxpayer does not have an opportunity to petition the Tax Court, prior to the IRS' assessment and collection of the amount of such penalty.

Comments were received suggesting that, in computing the amount of the penalty, an overpayment resulting from one foreign tax redetermination should offset an underpayment resulting from another foreign tax redetermination where both foreign tax redeterminations arise from the same foreign taxing jurisdiction and require a redetermination of United States tax liability for the same taxable year. Thus, the commentators suggested, where the underpayment is completely offset by one or more overpayments, the section 6689 penalty should not apply. Because the penalty is determined with respect to a deficiency attributable to such redetermination, there must be some deficiency for the penalty to apply. Where underpayments and overpayments offset each other to reduce or eliminate a deficiency, any penalty under section 6689 would also be reduced or eliminated. The IRS and Treasury Department do not believe an amendment to the regulations is necessary to clarify this rule.

Another comment was received suggesting that the section 6689 penalty generally should be inapplicable to Coordinated Exam Program taxpayers, provided that a notice of foreign tax redeterminations is submitted by the taxpayer at the commencement of the audit. Such a suggestion is generally adopted at § 1.905–4T(b)(3). A further comment requested that the definition of reasonable care under the regulations be revised. The 1988 regulations provide that, if a taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the notification within the prescribed time, then the delay will be considered to be due to reasonable cause and not willful neglect. The comment recommended instead adopting a more objective test based on substantial compliance. This comment is rejected because ordinary business care and prudence is the general standard for reasonable care that is used in the regulations for other penalties.

Effective/Applicability Date

The new temporary regulations of §§ 1.905–3T(c) and (d) and 1.905–4T are generally applicable for foreign tax redeterminations occurring in taxable years of United States taxpayers beginning on or after November 7, 2007 where the redetermination affects the amount of foreign taxes paid or accrued by a United States taxpayer. Where the redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960 with respect to post-1986 undistributed earnings (or pre-1987 accumulated profits) of the foreign corporation, the new temporary regulations of §§ 1.905–3T(c) and (d), 1.905–4T, and 1.905–5T are generally effective for foreign tax redeterminations occurring in taxable years of a foreign corporation which end with or within a taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. See § 1.905–4T(f)(1). In no case, however, will § 1.905–4T(f) operate to extend the statute of limitations provided by section 6511(d)(3)(A).

Section 1.905–3T(b), which provides rules with respect to currency translation, generally is applicable for taxes paid or accrued in taxable years of United States taxpayers beginning on or after November 7, 2007 and to taxes paid or accrued by a foreign corporation in its taxable years which end with or within a taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. For taxable years beginning after December 31, 1997, and before November 7, 2007, section 986(a), as amended by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004, shall apply. For taxable years beginning after December 31, 1986, and prior to the effective date of the Taxpayer Relief Act of 1997 (January 1, 1998), § 1.905–3T of the 1988 temporary regulations shall apply.

Section 1.905–3T(b)(1)(ii)(D), which provides taxpayers otherwise required to translate foreign income taxes using the average exchange rate an election to translate taxes using the exchange rate for the date of payment, is applicable for taxable years beginning on or after November 7, 2007. For taxable years beginning after December 31, 2004, and before November 7, 2007, the rules of Notice 2006–47, 2006–20 IRB 892 (see § 601.601(d)(2)(ii)(*b*)), shall apply.

Although all foreign tax redeterminations occurring in taxable years beginning after December 31, 1986, are subject to the requirements of section 905(c) and the regulations under that section, the 1988 temporary regulations did not specify the date by which the required notifications must be made in order to avoid a penalty under section 6689. The IRS and the Treasury Department recognize the burden associated with requiring notification by a specific date of all previously-unreported foreign tax redeterminations that require a United States tax redetermination with respect to post-1986 taxable years. Consequently, the new temporary regulations at § 1.905–4T(f)(2) provide a specific due date only for notifications of foreign tax redeterminations that occurred in a taxpayer's three taxable years preceding the first taxable year identified in § 1.905–4T(f)(1), and taxable years of foreign corporations ending with or within such taxable years of their domestic corporate shareholders. However, the unlimited statute of limitations under section 905(c) and deficiency interest provisions continue to apply to any underpayment of United States tax attributable to a foreign tax redetermination.

Section 1.905–4T(f)(2)(ii) provides notification requirements for any foreign tax redetermination which occurred in the last taxable year of a United States taxpayer beginning before November 7, 2007 and the two immediately preceding taxable years and which reduced the amount of foreign taxes paid or accrued by the taxpayer for any taxable year. This section also requires notification of any redetermination of foreign taxes paid or accrued by a foreign corporation which occurred in a taxable year of the foreign corporation which ends with or within a taxable year of a domestic corporate shareholder described in the preceding sentence and which requires a redetermination of United States tax liability under § 1.905–3T(d)(3) for any taxable year. If, as of November 7, 2007, the taxpayer has not satisfied the notice requirements described in §§ 1.905–3T and 1.905–4T of the 1988 temporary regulations with respect to such foreign tax redeterminations, the new temporary regulations at § 1.905–4T(f)(2)(ii) generally require the taxpayer to notify the IRS of such foreign tax redetermination no later than the due date (with extensions) of its original return for the taxable year following the taxable year in which these regulations are first effective.

New § 1.905–4T(f)(2)(ii) sets forth the time and manner of the notification, which must contain the previously-unreported information described in new § 1.905–4T(c). The temporary regulations do not require notification of previously-unreported foreign tax redeterminations of a foreign corporation that occurred in taxable years of the foreign corporation that ended with or within a domestic corporate shareholder's taxable year beginning before November 7, 2007, if the foreign tax redetermination does not require a redetermination of United States tax liability but is accounted for by adjusting the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes.

New § 1.905–4T(f)(2)(iii) provides that a taxpayer under the jurisdiction of the Large and Mid-Size Business Division that is otherwise required to file an amended return, Form 1118, and the statement required under § 1.905–4T(c) as required in new § 1.905–4T(f)(2)(ii) may, in lieu of applying § 1.905–4T(f)(2)(ii), notify the IRS in the course of an examination of the return for the taxable year for which a redetermination of United States tax liability is required. In such case, the notification must contain the information described in new § 1.905–4T(c) and must be provided within 120 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required or May 5, 2008, whichever is later. However, if November 7, 2007 is more than 180 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter, the IRS, in its discretion, may accept such statement or require the taxpayer to comply with the rules of paragraph (f)(2)(ii) of this section. In addition, this exception to the notification requirements of § 1.905–4T(f)(2)(ii) is not permitted to extend the length of the notification period set forth in § 1.905–4T(f)(2)(ii). Therefore, § 1.905–4T(f)(2)(iii) will not apply if the last day for providing notice of the foreign tax redetermination under § 1.905–4T(f)(2)(ii) precedes the latest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required.

Section 1.905–4T(f)(2)(iv) provides that interest will be computed in accordance with § 1.905–4T(e), and that the taxpayer must satisfy the requirements of § 1.905–4T(f)(2) in order not to be subject to the penalty provisions of section 6689 and the regulations under that section.

Special Analyses

It has been determined that this Treasury decision 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 Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble of the cross-referenced notice of proposed rulemaking published in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Teresa Burridge Hughes of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury

Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.905–3T is amended as follows:

■ 1. Revise the section heading and paragraphs (a), (b)(1), (b)(2), (b)(3), (b)(5), (c), and (d)(2)(i).

■ 2. Revise the second and third sentences in paragraph (d)(1).

■ 3. Remove paragraphs (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), the heading for paragraph (d)(3), and paragraph (d)(3)(i).

■ 4. Redesignate paragraphs (d)(3), (d)(3)(ii), (d)(3)(iii), (d)(3)(iv), and (d)(3)(v) as paragraph (d)(2)(ii), (d)(2)(ii)(A), (d)(2)(ii)(B), (d)(2)(ii)(C), and (d)(2)(ii)(D), respectively.

■ 5. Add a new paragraph heading to newly-designated paragraph (d)(2)(ii).

■ 6. Revise newly-designated paragraphs (d)(2)(ii)(A), (d)(2)(ii)(B), and (d)(2)(ii)(D).

■ 7. Remove the language ''(d)(3)(iv)'' from the second to last sentence of newly-designated paragraph (d)(2)(ii)(C) and add the language ''(d)(2)(ii)(C)'' in its place. Remove the language ''§ 1.905–3T(d)(4)(iv)'' from the last sentence of newly-designated paragraph (d)(2)(ii)(C) and add the language ''paragraph (d)(3)(iv) of this section'' in its place.

■ 8. Redesignate paragraph (d)(4) as paragraph (d)(3).

■ 9. Remove the language ''(d)(4)'' from newly-designated paragraph (d)(3) and add the language ''(d)(3)'' in its place.

■ 10. Revise newly-designated paragraphs (d)(3)(ii), (d)(3)(iii), and (d)(3)(v).

■ 11. Redesignate paragraph (f) as paragraph (d)(3)(vi).

■ 12. Add a new paragraph (f).

The revisions and additions read as follows:

§ 1.905–3T Adjustments to United States tax liability and to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes as a result of a foreign tax redetermination (temporary).

(a) *Effective/applicability dates*—(1) *Currency translation.* Except as provided in § 1.905–5T, paragraph (b) of this section applies to taxes paid or accrued in taxable years of United States taxpayers beginning on or after November 7, 2007 and to taxes paid or accrued by a foreign corporation in its taxable years which end with or within a taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. For taxable years beginning after December 31, 1997, and before November 7, 2007, section 986(a), as amended by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004, shall apply. For taxable years beginning after December 31, 1986, and before January 1, 1998, § 1.905–3T (as contained in 26 CFR part 1, revised as of April 1, 2007) shall apply.

(2) *Foreign tax redeterminations.* Paragraphs (c) and (d) of this section apply to foreign tax redeterminations occurring in taxable years of United States taxpayers beginning on or after November 7, 2007 where the foreign tax redetermination affects the amount of foreign taxes paid or accrued by a United States taxpayer. Where the redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960 with respect to post-1986 undistributed earnings of the foreign corporation, paragraphs (c) and (d) of this section apply to foreign tax redeterminations occurring in taxable years of a foreign corporation which end with or within a taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. For corresponding rules applicable to foreign tax redeterminations occurring in taxable years beginning before November 7, 2007, see §§ 1.905–3T and 1.905–5T (as contained in 26 CFR part 1, revised as of April 1, 2007).

(b) *Currency translation rules*—(1) *Translation of foreign taxes taken into account when accrued*—(i) *In general.* Except as provided in paragraph (b)(1)(ii) of this section, in the case of a taxpayer or a member of a qualified group (as defined in section 902(b)(2)) that takes foreign income taxes into account when accrued, the amount of any foreign taxes denominated in foreign currency that have been paid or accrued, additional tax liability denominated in foreign currency, taxes withheld in foreign currency, or estimated taxes paid in foreign currency shall be translated into dollars using the average exchange rate (as defined in § 1.989(b)–1) for the United States taxable year to which such taxes relate.

(ii) *Exceptions*—(A) *Taxes not paid within two years.* Any foreign income taxes denominated in foreign currency that are paid more than two years after the close of the United States taxable year to which they relate shall be translated into dollars using the exchange rate as of the date of payment of the foreign taxes. To the extent any accrued foreign income taxes denominated in foreign currency remain unpaid two years after the close of the taxable year to which they relate, see paragraph (b)(3) of this section for translation rules for the required adjustments.

(B) *Taxes paid before taxable year begins.* Any foreign income taxes paid before the beginning of the United States taxable year to which such taxes relate shall be translated into dollars using the exchange rate as of the date of payment of the foreign taxes.

(C) *Inflationary currency.* Any foreign income taxes the liability for which is denominated in any inflationary currency shall be translated into dollars using the exchange rate as of the date of payment of the foreign taxes. For this purpose, the term *inflationary currency* means the currency of a country in which there is cumulative inflation during the base period of at least 30 percent, as determined by reference to the consumer price index of the country listed in the monthly issues of International Financial Statistics, or a successor publication, of the International Monetary Fund. For purposes of this paragraph (b)(1)(ii)(C), *base period* means, with respect to any taxable year, the thirty-six calendar months immediately preceding the last day of such taxable year (see § 1.985–1(b)(2)(ii)(D)). Accrued but unpaid taxes denominated in an inflationary currency shall be translated into dollars at the exchange rate on the last day of the United States taxable year to which such taxes relate.

(D) *Election to translate taxes using exchange rate for date of payment.* A taxpayer that is otherwise required to translate foreign income taxes that are denominated in foreign currency using the average exchange rate may elect to translate foreign income taxes described in this paragraph (b)(1)(ii)(D) into dollars using the exchange rate as of the date of payment of the foreign taxes, provided that the liability for such taxes is denominated in nonfunctional currency. A taxpayer may make an election under this paragraph

(b)(1)(ii)(D) for all foreign income taxes, or for only those foreign income taxes that are denominated in nonfunctional currency and are attributable to qualified business units with United States dollar functional currencies. The election must be made by attaching a statement to the taxpayer's timely filed return (including extensions) for the first taxable year to which the election applies. The statement must identify whether the election is made for all foreign taxes or only for foreign taxes attributable to qualified business units with United States dollar functional currencies. Once made, the election shall apply for the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Commissioner. Accrued but unpaid taxes subject to an election under this paragraph (b)(1)(ii)(D) shall be translated into dollars at the exchange rate on the last day of the United States taxable year to which such taxes relate. For taxable years beginning after December 31, 2004, and before November 7, 2007, the rules of Notice 2006–47, 2006–20 IRB 892 (see § 601.601(d)(2)(ii)(*b*)), shall apply.

(E) *Regulated investment companies.* In the case of a regulated investment company (as defined in section 851 and the regulations under that section) which takes into account income on an accrual basis, foreign income taxes paid or accrued with respect to such income shall be translated into dollars using the exchange rate as of the date the income accrues.

(2) *Translation of foreign taxes taken into account when paid.* In the case of a taxpayer that takes foreign income taxes into account when paid, the amount of any foreign tax liability denominated in foreign currency, additional tax liability denominated in foreign currency, or estimated taxes paid in foreign currency shall be translated into dollars using the exchange rate as of the date of payment of such foreign taxes. Foreign taxes withheld in foreign currency shall be translated into dollars using the exchange rate as of the date on which such taxes were withheld.

(3) *Refunds or other reductions of foreign tax liability.* In the case of a taxpayer that takes foreign income taxes into account when accrued, a reduction in the amount of previously-accrued foreign taxes that is attributable to a refund of foreign taxes denominated in foreign currency, a credit allowed in lieu of a refund, the correction of an overaccrual, or an adjustment on account of accrued taxes denominated in foreign currency that were not paid by the date two years after the close of the taxable year to which such taxes relate, shall be translated into dollars using the exchange rate that was used to translate such amount when originally claimed as a credit or added to post-1986 foreign income taxes. In the case of foreign income taxes taken into account when accrued but translated into dollars on the date of payment, see paragraph (d) of this section for required adjustments to reflect a reduction in the amount of previously-accrued foreign taxes that is attributable to a difference in exchange rates between the date of accrual and date of payment. In the case of a taxpayer that takes foreign income taxes into account when paid, a refund or other reduction in the amount of foreign taxes denominated in foreign currency shall be translated into dollars using the exchange rate that was used to translate such amount when originally claimed as a credit. If a refund or other reduction of foreign taxes relates to foreign taxes paid or accrued on more than one date, then the refund or other reduction shall be deemed to be derived from, and shall reduce, the last payment of foreign taxes first, to the extent of that payment. See paragraphs (d)(1) (redetermination of United States tax liability for foreign taxes paid directly by a United States person) and (d)(2)(ii) (method of adjustment of a foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes) of this section.

* * * * *

(5) *Basis of foreign currency refunded*—(i) *In general.* A recipient of a refund of foreign tax shall determine its basis in the currency refunded under the following rules.

(ii) *United States dollar functional currency.* If the functional currency of the qualified business unit (QBU) (as defined in section 989 and the regulations under that section) that paid the tax and received the refund is the United States dollar or the person receiving the refund is not a QBU, then the recipient's basis in the foreign currency refunded shall be the dollar value of the refund determined under paragraph (b)(3) of this section by using, as appropriate, either the average exchange rate for the taxable year to which such taxes relate or the other exchange rate that was used to translate such amount when originally claimed as a credit or added to post-1986 foreign income taxes.

(iii) *Nondollar functional currency.* If the functional currency of the QBU receiving the refund is not the United States dollar and is different from the currency in which the foreign tax was paid, then the recipient's basis in the foreign currency refunded shall be equal to the functional currency value of the non-functional currency refund translated into functional currency at the exchange rate between the functional currency and the non-functional currency. Such exchange rate is determined under paragraph (b)(3) of this section by substituting the words ''functional currency'' for the word ''dollar'' and by using, as appropriate, either the average exchange rate for the taxable year to which such taxes relate or the other exchange rate that was used to translate such amount when originally claimed as a credit or added to post-1986 foreign income taxes.

(iv) *Functional currency tax liabilities.* If the functional currency of the QBU receiving the refund is the currency in which the refund was made, then the recipient's basis in the currency received shall be the amount of the functional currency received.

(v) *Foreign currency gain or loss.* For purposes of determining foreign currency gain or loss on the initial payment of accrued foreign tax in a non-functional currency, see section 988. For purposes of determining subsequent foreign currency gain or loss on the disposition of non-functional currency the basis of which is determined under this paragraph (b)(5), see section 988(c)(1)(C).

(c) *Foreign tax redetermination.* For purposes of this section and § 1.905–4T, the term *foreign tax redetermination* means a change in the foreign tax liability that may affect a taxpayer's foreign tax credit. A foreign tax redetermination includes: accrued taxes that when paid differ from the amounts added to post-1986 foreign income taxes or claimed as credits by the taxpayer (such as corrections to overaccruals and additional payments); accrued taxes that are not paid before the date two years after the close of the taxable year to which such taxes relate; any tax paid that is refunded in whole or in part; and, for taxes taken into account when accrued but translated into dollars on the date of payment, a difference between the dollar value of the accrued tax and the dollar value of the tax paid attributable to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment.

(d) * * * (1) * * * See § 1.905–4T(b) which requires notification to the IRS of a foreign tax redetermination with respect to which a redetermination of United States liability is required, and see section 905(b) and the regulations under that section which require that a taxpayer substantiate that a foreign tax was paid and provide all necessary

information establishing its entitlement to the foreign tax credit. However, a redetermination of United States tax liability is not required (and a taxpayer need not notify the IRS) if the foreign taxes are taken into account when accrued but translated into dollars as of the date of payment, the difference between the dollar value of the accrued tax and the dollar value of the tax paid is attributable to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment, and the amount of the foreign tax redetermination with respect to each foreign country is less than the lesser of ten thousand dollars or two percent of the total dollar amount of the foreign tax initially accrued with respect to that foreign country for the United States taxable year. * * *

(2) *Foreign taxes deemed paid under sections 902 or 960*—(i) *Redetermination of United States tax liability not required.* Subject to the special rule of paragraph (d)(3) of this section, a redetermination of United States tax liability is not required to account for the effect of a redetermination of foreign tax paid or accrued by a foreign corporation on the foreign taxes deemed paid by a United States corporation under section 902 or 960. Instead, appropriate upward or downward adjustments shall be made, in accordance with paragraph (d)(2)(ii) of this section, at the time of the foreign tax redetermination to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes to reflect the effect of the foreign tax redetermination in calculating foreign taxes deemed paid with respect to distributions and inclusions (and the amount of such distributions and inclusions) that are includible in the United States taxable year in which the foreign tax redetermination occurred and subsequent taxable years. See § 1.905–4T(b)(2) for notification requirements where a redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960, and the taxpayer is required to adjust the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes under this paragraph (d)(2).

(ii) *Adjustments to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes*—(A) *Reduction in foreign tax paid or accrued.* A foreign corporation's pool of post-1986 foreign income taxes in the appropriate separate category shall be reduced by the United States dollar amount of a foreign tax refund or other reduction in the amount of foreign tax paid or accrued, translated into United States dollars as provided in paragraph (b)(3) of this section. A foreign corporation's pool of post-1986 undistributed earnings in the appropriate separate category shall be increased by the functional currency amount of the foreign tax refund or other reduction in the amount of foreign tax paid or accrued. The allocation of the refund or other adjustment to the appropriate separate categories shall be made in accordance with paragraph (b)(4) of this section and § 1.904–6. If a foreign corporation receives a refund of foreign tax in a currency other than its functional currency, that refund shall be translated into its functional currency, for purposes of computing the increase to its pool of post-1986 undistributed earnings, at the exchange rate between the functional currency and the non-functional currency, as determined under paragraph (b)(3) of this section, by substituting the words ''functional currency'' for the word ''dollar'' and by using the same average or spot rate exchange rate convention that applies for purposes of translating such foreign taxes into United States dollars.

(B) *Additional foreign tax paid or accrued.* A foreign corporation's pool of post-1986 foreign income taxes in the appropriate separate category shall be increased by the United States dollar amount of the additional foreign tax paid or accrued, translated in accordance with the rules of paragraphs (b)(1) and (b)(2) of this section. A foreign corporation's pool of post-1986 undistributed earnings in the appropriate separate category shall be decreased by the functional currency amount of the additional foreign tax paid or accrued. The allocation of the additional amount of foreign tax among the separate categories shall be made in accordance with § 1.904–6. If a foreign corporation pays or accrues foreign tax in a currency other than its functional currency, that tax shall be translated into its functional currency, for purposes of computing the decrease to its pool of post-1986 undistributed earnings, at the exchange rate between the functional currency and the non-functional currency, as determined under paragraph (b)(3) of this section, by substituting the words ''functional currency'' for the word ''dollar'' and by using the same average or spot rate exchange rate convention that applies for purposes of translating such foreign taxes into United States dollars.

* * * * *

(D) *Examples.* The following examples illustrate the application of this paragraph (d)(2):

Example 1. Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P are calendar year taxpayers. CFC has a functional currency, the u, other than the dollar and its pool of post-1986 undistributed earnings is maintained in that currency. CFC and P use the average exchange rate to translate foreign taxes. In 2008, CFC accrued and paid 100u of foreign income taxes with respect to non-subpart F income. The average exchange rate for 2008 was $1:1u. In 2009, CFC received a refund of 50u of foreign taxes with respect to its non-subpart F income in 2008. CFC made no distributions to P in 2008. In accordance with paragraph (d)(2)(ii)(A) of this section and subject to paragraph (d)(3) of this section, in 2009 CFC's pool of post-1986 foreign income taxes must be reduced by $50 (because the refund must be translated into dollars using the exchange rate that was used to translate such amount when added to CFC's post-1986 foreign income taxes, that is, $1:1u, the average exchange rate for 2008) and the CFC's pool of post-1986 undistributed earnings must be increased by 50u (because the post-1986 undistributed earnings must be increased by the functional currency amount of the refund received). An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC is not required because the foreign taxes are denominated and paid in CFC's functional currency.

Example 2. The facts are the same as in *Example 1,* except that in 2008, CFC had general category post-1986 undistributed earnings attributable to non-subpart F income of 200u (net of foreign taxes), and CFC accrued and paid 160u in foreign income taxes with respect to those earnings. The average exchange rate for 2008 was $1:1u. Also in 2008, CFC made a distribution to P of 50u, and P was deemed to have paid $40 of foreign taxes with respect to that distribution (50u/200u × $160). In 2009, CFC received a refund of foreign taxes of 5u with respect to its nonsubpart F income in 2008. Also in 2009, CFC made a distribution to P of 50u. CFC had no income and paid no foreign taxes in 2009. In accordance with paragraph (d)(2)(ii) of this section, CFC's pool of general category post-1986 foreign income taxes is reduced in 2009 by $5 to $115 (because the refund must be translated into dollars using the exchange rate that was used to translate such amount when added to CFC's post-1986 foreign income taxes, that is, $1:1u, the average exchange rate for 2008), and CFC's pool of general category post-1986 undistributed earnings must be increased in 2009 by 5u to 155u (because the post-1986 undistributed earnings must be increased by the functional currency amount of the refund received). (An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC is not required because the foreign taxes are denominated and paid in CFC's functional currency.) A redetermination of P's deemed paid credit

and U.S. tax for 2008 is not required, because the 5u refund, if taken into account in 2008, would have reduced P's deemed paid taxes by less than 10% (50u/205u × $155 = $37.80). See paragraph (d)(3)(ii) of this section. P is deemed to pay $37.10 of foreign taxes with respect to the distribution in 2009 of 50u (50u/155u × $115).

Example 3. (i) CFC1 is a foreign corporation that is wholly-owned by P, a domestic corporation. CFC2 is a foreign corporation that is wholly-owned by CFC1. The functional currency of CFC1 and CFC2 is the u, and the pools of post-1986 undistributed earnings of CFC1 and CFC2 are maintained in that currency. CFC1, CFC2, and P use the average exchange rate to translate foreign income taxes. In 2008, CFC2 had post-1986 undistributed earnings attributable to non-subpart F income of 100u (net of foreign taxes) and paid 100u in foreign income taxes with respect to those earnings. The average exchange rate for 2008 was $1:1u. CFC1 had no income and no earnings and profits other than those resulting from distributions from CFC2, as provided in either Situation 1 or Situation 2. CFC1 paid no foreign taxes.

(ii) *Situation 1.* In 2009, CFC2 received a refund of foreign taxes of 25u with respect to its 2008 taxable year. As of the close of 2009, CFC2 had 125u of post-1986 undistributed earnings (100u + 25u) and $75 of post-1986 foreign income taxes ($100 − $25). In 2010, CFC2 made a distribution to CFC1 of 50u. CFC1 was deemed to have paid $30 of foreign taxes with respect to that distribution (50u/125u × $75). (An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC1 is not required because the foreign taxes are denominated and paid in CFC1's functional currency.) At the end of 2010, CFC2 had 75u of post-1986 undistributed earnings (125u − 50u) and $45 of post-1986 foreign income taxes ($75 − $30).

(iii) *Situation 2.* The facts are the same as in *Example 3(ii), Situation 1,* except that CFC2 made a distribution of 50u in 2009 and received a refund of 75u of foreign tax in 2010. In 2009, the amount of foreign taxes deemed paid by CFC1 is $50 (50u/100u × $100). In accordance with paragraph (d)(2)(ii)(C) of this section, the pools of post-1986 foreign income taxes of CFC1, as well as CFC2, must be adjusted in 2010, because the 2010 refund would otherwise have the effect of reducing below zero CFC2's pool of post-1986 foreign income taxes. Under paragraph (d)(3)(iv) of this section, the pools would have to be adjusted in 2009, and a redetermination of P's United States tax liability would be required, if P had received or accrued a distribution or inclusion from CFC1 or CFC2 in 2009 and computed an amount of foreign taxes deemed paid. CFC1's pool of post-1986 foreign income taxes must be reduced in 2010 by $42.86, determined as follows: $50 (foreign taxes deemed paid on the distribution from CFC2) minus $7.14 (the foreign taxes that would have been deemed paid had the refund occurred prior to the distribution (50u/175u × $25)). CFC2's pool of foreign taxes must be reduced in 2010 by $32.14, determined as follows: $75 (75u refund translated into dollars using the exchange rate that was used to translate such amount when originally added to post-1986 foreign income taxes, that is, $1:1u, the average exchange rate for 2008) minus $42.86 (the adjustment to CFC1's pool of post-1986 foreign income taxes). (An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC1 is not required because the foreign taxes are denominated and paid in CFC1's functional currency.) The following reflects the pools of post-1986 undistributed earnings and post-1986 foreign income taxes of CFC1 and CFC2.

	Post-1986 earnings (u)	Foreign taxes ($)
CFC2:		
2008	100	100
2009	100 − 50 = 50	100 − 50 = 50
2010	50 + 75 = 125	50 − 32.14 = 17.86
CFC1:		
2009	50	50
2010	50	50 − 42.86 = 7.14

* * * * *

(d)(3) * * *

(ii) *Deemed paid foreign tax adjustment of ten percent or more.* A redetermination of United States tax liability is required if a foreign tax redetermination occurs with respect to foreign taxes paid by a foreign corporation and such foreign tax redetermination, if taken into account in the taxable year of the foreign corporation to which the foreign tax redetermination relates, has the effect of reducing by ten percent or more the domestic corporate shareholder's foreign taxes deemed paid under section 902 or 960 with respect to a distribution or inclusion from the foreign corporation in any taxable year of the domestic corporate shareholder. If a redetermination of United States tax is required under the preceding sentence for any taxable year, a redetermination of United States tax is also required for all subsequent taxable years in which the domestic corporate shareholder received or accrued a distribution or inclusion from the foreign corporation.

(iii) *Example.* The following example illustrates the application of paragraph (d)(3)(ii) of this section:

Example. (i) *Facts.* Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P use the calendar year as their taxable year. CFC has a functional currency, the u, other than the dollar, and its pool of post-1986 undistributed earnings is maintained in that currency. CFC and P use the average exchange rate to translate foreign income taxes. As of January 1, 2008, CFC had 500u of general category post-1986 undistributed earnings and $200 of general category post-1986 foreign income taxes. In 2008, when the average exchange rate for the year was $1:1u, CFC earned general category income of 600u, accrued 100u of foreign income tax with respect to that income, and made a distribution to P of 100u, 10% of CFC's post-1986 undistributed earnings of 1,000u. P was deemed to have paid $30 of foreign income taxes in 2008 with respect to that distribution (100u/1,000u × $300). In 2009, CFC paid its actual foreign tax liability for 2007 of 80u. Also in 2009, for which the average exchange rate was $1:1.5u, CFC earned 500u of general category income, accrued 150u of tax with respect to that income, and distributed 100u to P. In 2010, CFC incurred a general category loss of (500u) and accrued no foreign tax. The loss was carried back to 2008 for foreign tax purposes, and CFC received a refund in 2011 of all 80u of foreign taxes paid for its 2008 taxable year.

(ii) *Result in 2009.* If the 20u overaccrual of tax for 2007 were taken into account in 2008, CFC's general category post-1986 undistributed earnings would be 1,020u, CFC's general category post-1986 foreign income taxes would be $280, and P would be deemed to pay $27.45 of tax with respect to the 2008 distribution of 100u (100u/1020u × $280 = $27.45). Because $2.55 is less than 10% of the $30 of foreign taxes deemed paid as originally calculated in 2008, P is not required to redetermine its deemed paid credit and U.S. tax liability for 2008 in 2009. Instead, CFC's general category post-1986 foreign income taxes are reduced by $20 in 2009 (because the overaccrual for 2008 is translated into dollars using the exchange rate that was used to translate such amount when originally added to post-1986 foreign income taxes, that is, $1:1u, the average exchange rate for 2008), and the corresponding pool of general category post-1986 undistributed earnings is increased by 20u in 2009 (because the post-1986 undistributed earnings pool is increased by the functional currency amount of the overaccrual). CFC's general category post-1986 undistributed earnings are also

increased in 2009 to 1270u by the 350u earned in 2009 (900u + 20u + 350u = 1270u), and CFC's general category post-1986 foreign income taxes are increased by $100 to $350 ($270 − $20 + $100). P is deemed to pay $27.56 of foreign income taxes in 2009 with respect to the 100u distribution from CFC in that year (100u/1270u × $350).

(iii) *Result in 2011.* If the 80u refund of tax for 2008 were taken into account in 2008, CFC's general category post-1986 undistributed earnings would be 1,100u, CFC's general category post-1986 foreign income taxes would be $200, and P would be deemed to pay $18.18 of tax with respect to the 2008 distribution of 100u (100u/1,100u × $200 = $18.18). Because $11.82 is more than 10% of the $30 of foreign taxes deemed paid as originally calculated in 2008, under paragraph (d)(3)(ii) of this section, P is required to redetermine its deemed paid credit and U.S. tax liability for 2008 and 2009 in 2011. As redetermined in 2011, CFC's post-1986 undistributed earnings for 2009 are 1350u (1,100u as revised for 2008, less 100u distributed in 2008, plus 350u earned in 2009), and its post-1986 foreign income taxes for 2009 are $381.82 ($200 as revised for 2008, less $18.18 deemed paid in 2008, plus $100 accrued for 2009). As redetermined in 2011, P's deemed paid credit with respect to the 100u distribution from CFC in 2009 is $24.28 (100u/1350u × $381.82).

* * * * *

(v) *Example.* The following example illustrates the application of paragraph (d)(3)(iv) of this section:

Example. Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P are calendar year taxpayers. CFC has a functional currency, the u, other than the dollar, and its pool of post-1986 undistributed earnings is maintained in that currency. CFC and P use the average exchange rate to translate foreign taxes. The average exchange rate for both 2008 and 2009 was $1:1u. In 2008, CFC earned 200u of general category income, accrued and paid 100u of foreign taxes with respect to that income, and made a distribution to P of 50u, half of CFC's post-1986 undistributed earnings of 100u. P is deemed to have paid $50 of foreign taxes with respect to that distribution (50u/100u × $100). In 2009, CFC received a refund of all 100u of foreign taxes related to the general category income for 2008. In 2009, CFC earned an additional 290u of income, 200u of which was passive category income and 90u of which was general category income, and accrued and paid 95u of foreign tax, 40u of which was with respect to the passive category income and 45u of which was with respect to the general category income. In accordance with paragraph (d)(3)(iv) of this section, P is required to redetermine its United States tax liability for 2008 to account for the foreign tax redetermination occurring in 2009 because, if an adjustment to CFC's pool of post-1986 foreign income taxes in the general category were made, the pool would be ($5). A deficit is not permitted to be carried in CFC's pool of post-1986 foreign income taxes in any separate category.

* * * * *

(f) *Expiration date.* The applicability of this section expires on or before November 5, 2010.

■ **Par. 3.** Section 1.905–4T is revised to read as follows:

§ 1.905–4T Notification of foreign tax redetermination (temporary).

(a) *Application of this section.* The rules of this section apply if, as a result of a foreign tax redetermination (as defined in § 1.905–3T(c)), a redetermination of United States tax liability is required under section 905(c) and § 1.905–3T(d).

(b) *Time and manner of notification*—(1) *Redetermination of United States tax liability*—(i) *In general.* Except as provided in paragraphs (b)(1)(iv), (v), and (b)(3) of this section, any taxpayer for which a redetermination of United States tax liability is required must notify the Internal Revenue Service (IRS) of the foreign tax redetermination by filing an amended return, Form 1118 (Foreign Tax Credit—Corporations) or Form 1116 (Foreign Tax Credit), and the statement required under paragraph (c) of this section for the taxable year with respect to which a redetermination of United States tax liability is required. Such notification must be filed within the time prescribed by this paragraph (b) and contain the information described in paragraph (c) of this section. Where a foreign tax redetermination requires an individual to redetermine the individual's United States tax liability, and as a result of such foreign tax redetermination the amount of creditable taxes paid or accrued by such individual during the taxable year does not exceed the applicable dollar limitation in section 904(k), the individual shall not be required to file Form 1116 with the amended return for such taxable year if the individual satisfies the requirements of section 904(k).

(ii) *Reduction in amount of foreign tax liability.* Except as provided in paragraphs (b)(1)(iv), (v), and (b)(3) of this section, for each taxable year of the taxpayer with respect to which a redetermination of United States tax liability is required by reason of a foreign tax redetermination that reduces the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, the taxpayer must file a separate notification for each such taxable year by the due date (with extensions) of the original return for the taxpayer's taxable year in which the foreign tax redetermination occurred.

(iii) *Increase in amount of foreign tax liability.* Except as provided in paragraphs (b)(1)(iv), (v), and (b)(3) of this section, for each taxable year of the taxpayer with respect to which a redetermination of United States tax liability is required by reason of a foreign tax redetermination that increases the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, the taxpayer must notify the Internal Revenue Service within the period provided by section 6511(d)(3)(A). Filing of such notification within the prescribed period shall constitute a claim for refund of United States tax.

(iv) *Multiple redeterminations of United States tax liability for same taxable year.* Where more than one foreign tax redetermination requires a redetermination of United States tax liability for the same taxable year of the taxpayer and those redeterminations occur within two consecutive taxable years of the taxpayer, the taxpayer may file for such taxable year one amended return, Form 1118 or 1116, and the statement required under paragraph (c) of this section that reflect all such foreign tax redeterminations. If the taxpayer chooses to file one notification for such redeterminations, the taxpayer must file such notification by the due date (with extensions) of the original return for the taxpayer's taxable year in which the first foreign tax redetermination that reduces foreign tax liability occurred. Where a foreign tax redetermination with respect to the taxable year for which a redetermination of United States tax liability is required occurs after the date for providing such notification, more than one amended return may be required with respect to that taxable year.

(v) *Carryback and carryover of unused foreign tax.* Where a foreign tax redetermination requires a redetermination of United States tax liability that would otherwise result in an additional amount of United States tax due, but such amount is eliminated as a result of a carryback or carryover of an unused foreign tax under section 904(c), the taxpayer may, in lieu of applying the rules of paragraphs (b)(1)(i) and (ii) of this section, notify the IRS of such redetermination by attaching a statement to the original return for the taxpayer's taxable year in which the foreign tax redetermination occurs. Such statement must be filed by the due date (with extensions) of the original return for the taxpayer's taxable year in which the foreign tax redetermination occurred and contain the information described in § 1.904–2(f).

(vi) *Example.* The following example illustrates the application of this paragraph (b)(1):

Example. (i) X, a domestic corporation, is an accrual basis taxpayer and uses the calendar year as its United States taxable year. X conducts business through a branch in Country M, the currency of which is the m, and also conducts business through a branch in Country N, the currency of which is the n. X uses the average exchange rate to translate foreign income taxes. Assume that X is able to claim a credit under section 901 for all foreign taxes paid or accrued.

(ii) In 2008, X accrued and paid 100m of Country M taxes with respect to 400m of foreign source general category income. The average exchange rate for 2008 was $1:1m. Also in 2008, X accrued and paid 50n of Country N taxes with respect to 150n of foreign source general category income. The average exchange rate for 2008 was $1:1n. X claimed a foreign tax credit of $150 ($100 (100m at $1:1m) + $50 (50n at $1:1n)) with respect to its foreign source general category income on its United States tax return for 2008.

(iii) In 2009, X accrued and paid 100n of Country N taxes with respect to 300n of foreign source general category income. The average exchange rate for 2009 was $1.50:1n. X claimed a foreign tax credit of $150 (100n at $1.5:1n) with respect to its foreign source general category income on its United States tax return for 2009.

(iv) On June 15, 2012, when the spot exchange rate was $1.40:1n, X received a refund of 10n from Country N, and, on March 15, 2013, when the spot exchange rate was $1.20:1m, X was assessed by and paid Country M an additional 20m of tax. Both payments were with respect to X's foreign source general category income in 2008. On May 15, 2013, when the spot exchange rate was $1.45:1n, X received a refund of 5n from Country N with respect to its foreign source general category income in 2009.

(v) X must redetermine its United States tax liability for both 2008 and 2009. With respect to 2008, X must notify the IRS of the June 15, 2012, refund of 10n from Country N that reduced X's foreign tax liability by filing an amended return, Form 1118, and the statement required in paragraph (c) of this section for 2008 by the due date of the original return (with extensions) for 2012. The amended return and Form 1118 must reduce the amount of foreign taxes claimed as a credit under section 901 by $10 (10n refund translated at the average exchange rate for 2008, or $1:1n (see § 1.905–3T(b)(3)). X will recognize foreign currency gain or loss under section 988 in or after 2012 on the conversion of the 10n refund into dollars. With respect to the March 15, 2013, additional assessment of 20m by Country M, X must notify the IRS within the time period provided by section 6511(d)(3)(A), increasing the foreign taxes available as a credit by $24 (20m translated at the exchange rate on the date of payment, or $1.20:1m). See sections 986(a)(1)(B)(i) and 986(a)(2)(A) and § 1.905–3T(b)(1)(ii)(A). X may so notify the IRS by filing a second amended return, Form 1118, and the statement required in paragraph (c) of this section for 2008, within the time period provided by section 6511(d)(3)(A). Alternatively, when X redetermines its United States tax liability for 2008 to take into account the 10n refund from Country N which occurred in 2012, X may also take into account the 20m additional assessment by Country M which occurred on March 15, 2013. See § 1.905–4T(b)(1)(iv). Where X reflects both foreign tax redeterminations on the same amended return, Form 1118, and in the statement required in paragraph (c) of this section for 2008, the amount of X's foreign taxes available as a credit would be:

(A) Reduced by $10 (10n refund translated at $1:1n) and

(B) Increased by $24 (20m additional assessment translated at the exchange rate on the date of payment, March 15, 2013, or $1.20:1m). The foreign taxes available as a credit therefore would be increased by $14 ($24 (additional assessment) − $10 (refund)). The due date of the 2008 amended return, Form 1118, and the statement required in paragraph (c) of this section reflecting foreign tax redeterminations in both years would be the due date (with extensions) of X's original return for 2012.

(vi) With respect to 2009, X must notify the IRS by filing an amended return, Form 1118, and the statement required in paragraph (c) of this section for 2009 that is separate from that filed for 2008. The amended return, Form 1118, and the statement required in paragraph (c) of this section for 2009 must be filed by the due date (with extensions) of X's original return for 2013. The amended return and Form 1118 must reduce the amount of foreign taxes claimed as a credit under section 901 by $7.50 (5n refund translated at the average exchange rate for 2009, or $1.50:1n). X will recognize foreign currency gain or loss under section 988 in or after 2013 on the conversion of the 5n refund into dollars.

(2) *Pooling adjustment in lieu of redetermination of United States tax liability.* Where a redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960, and the taxpayer is required to adjust the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes under § 1.905–3T(d)(2), the taxpayer is required to notify the IRS of such redetermination by reflecting the adjustments to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes on a Form 1118 for the taxpayer's first taxable year with respect to which the redetermination affects the computation of foreign taxes deemed paid. Such Form 1118 must be filed by the due date (with extensions) of the original return for such taxable year. In the case of multiple redeterminations that affect the computation of foreign taxes deemed paid for the same taxable year and that are required to be reported under this paragraph (b)(2), a taxpayer may file one notification for all such redeterminations in lieu of filing a separate notification for each such redetermination. See section 905(b) and the regulations under that section which require that a taxpayer substantiate that a foreign tax was paid and provide all necessary information establishing its entitlement to the foreign tax credit.

(3) *Taxpayers under the jurisdiction of the Large and Mid-Size Business Division.* The rules of this paragraph (b)(3) apply where a redetermination of United States tax liability is required by reason of a foreign tax redetermination that results in a reduction in the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, and such foreign tax redetermination occurs while a taxpayer is under the jurisdiction of the Large and Mid-Size Business Division (or similar program). The taxpayer must, in lieu of applying the rules of paragraphs (b)(1)(i) and (ii) of this section (requiring the filing of an amended return, Form 1118, and a statement described in paragraph (c) of this section by the due date (with extensions) of the original return for the taxpayer's taxable year in which the foreign tax redetermination occurred), notify the IRS of such redetermination by providing to the examiner the statement described in paragraph (c) of this section during an examination of the return for the taxable year for which a redetermination of United States tax liability is required by reason of such foreign tax redetermination. The taxpayer must provide the statement to the examiner no later than 120 days after the latest of the date the foreign tax redetermination occurs, the opening conference of the examination, or the hand-delivery or postmark date of the opening letter concerning the examination. If, however, the foreign tax redetermination occurs more than 180 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter, the taxpayer may, in lieu of applying the rules of paragraphs (b)(1)(i) and (ii) of this section, provide the statement to the examiner within 120 days after the date the foreign tax redetermination occurs, and the IRS, in its discretion, may accept such statement or require the taxpayer to comply with the rules of paragraphs (b)(1)(i) and (ii) of this section. A taxpayer subject to the rules of this paragraph (b)(3) must satisfy the rules of this paragraph (b)(3) (in lieu of the rules of paragraphs (b)(1)(i) and (ii) of this section) in order not to be subject to the penalty relating to the failure to file notice of a foreign tax

redetermination under section 6689 and the regulations under that section. This paragraph (b)(3) shall not apply where the due date specified in paragraph (b)(1)(ii) of this section for providing notice of the foreign tax redetermination precedes the latest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required by reason of such foreign tax redetermination. In addition, any statement that would otherwise be required to be provided under this paragraph (b)(3) on or before May 5, 2008 will be considered timely if provided on or before May 5, 2008.

(4) *Example.* The following example illustrates the application of paragraph (b)(3) of this section:

Example. X, a taxpayer under the jurisdiction of the Large and Mid-Size Business Division, uses the calendar year as its United States taxable year. On October 15, 2009, X receives a refund of foreign tax that constitutes a foreign tax redetermination that necessitates a redetermination of United States tax liability for X's 2008 taxable year. Under paragraph (b)(1)(ii) of this section, X is required to notify the IRS of the foreign tax redetermination by filing an amended return, Form 1118, and the statement required in paragraph (c) of this section for its 2008 taxable year by September 15, 2010 (the due date (with extensions) of the original return for X's 2009 taxable year). On December 15, 2010, the IRS hand delivers an opening letter concerning the examination of the return for X's 2008 taxable year, and the opening conference for such examination is scheduled for January 15, 2011. Because the date for notifying the IRS of the foreign tax redetermination under paragraph (b)(1)(ii) of this section precedes the date of the opening conference concerning the examination of the return for X's 2008 taxable year, paragraph (b)(3) of this section does not apply, and X must notify the IRS of the foreign tax redetermination by filing an amended return, Form 1118, and the statement required in paragraph (c) of this section for the 2007 taxable year by September 15, 2010.

(c) *Notification contents*—(1) *In general.* In addition to satisfying the requirements of paragraph (b) of this section, the taxpayer must furnish a statement that contains information sufficient for the IRS to redetermine the taxpayer's United States tax liability where such a redetermination is required under section 905(c), and to verify adjustments to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes where such adjustments are required under § 1.905–3T(d)(2). The information must be in a form that enables the IRS to verify and compare the original computations with respect to a claimed foreign tax credit, the revised computations resulting from the foreign tax redetermination, and the net changes resulting therefrom. The statement must include the taxpayer's name, address, identifying number, and the taxable year or years of the taxpayer that are affected by the foreign tax redetermination. In addition, the taxpayer must provide the information described in paragraph (c)(2) or (c)(3) of this section, as appropriate. If the statement is submitted to the IRS under paragraph (b)(3) of this section, which provides requirements with respect to reporting by taxpayers under the jurisdiction of the Large and Mid-Size Business Division, the statement must also include the following declaration signed by a person authorized to sign the return of the taxpayer: ''Under penalties of perjury, I declare that I have examined this written statement, and to the best of my knowledge and belief, this written statement is true, correct, and complete.''

(2) *Foreign taxes paid or accrued.* Where a redetermination of United States tax liability is required by reason of a foreign tax redetermination as defined in § 1.905–3T(c), in addition to the information described in paragraph (c)(1) of this section, the taxpayer must provide the following: the date or dates the foreign taxes were accrued, if applicable; the date or dates the foreign taxes were paid; the amount of foreign taxes paid or accrued on each date (in foreign currency) and the exchange rate used to translate each such amount, as provided in § 1.905–3T(b)(1) or (b)(2); and information sufficient to determine any interest due from or owing to the taxpayer, including the amount of any interest paid by the foreign government to the taxpayer and the dates received. In addition, in the case of any foreign tax that is refunded in whole or in part, the taxpayer must provide the date of each such refund; the amount of such refund (in foreign currency); and the exchange rate that was used to translate such amount when originally claimed as a credit (as provided in § 1.905–3T(b)(3)) and the exchange rate for the date the refund was received (for purposes of computing foreign currency gain or loss under section 988). In addition, in the case of any foreign taxes that were not paid before the date two years after the close of the taxable year to which such taxes relate, the taxpayer must provide the amount of such taxes in foreign currency, and the exchange rate that was used to translate such amount when originally added to post-1986 foreign income taxes or claimed as a credit. Where a redetermination of United States tax liability results in an amount of additional tax due, but the carryback or carryover of an unused foreign tax under section 904(c) only partially eliminates such amount, the taxpayer must also provide the information required in § 1.904–2(f).

(3) *Foreign taxes deemed paid.* Where a redetermination of United States tax liability is required under § 1.905–3T(d)(3) to account for the effect of a redetermination of foreign tax paid or accrued by a foreign corporation on foreign taxes deemed paid under section 902 or 960, in addition to the information described in paragraphs (c)(1) and (c)(2) of this section, the taxpayer must provide the balances of the pools of post-1986 undistributed earnings and post-1986 foreign income taxes before and after adjusting the pools in accordance with the rules of § 1.905–3T(d)(2), the dates and amounts of any dividend distributions or other inclusions made out of earnings and profits for the affected year or years, and the amount of earnings and profits from which such dividends were paid for the affected year or years.

(d) *Payment or refund of United States tax.* The amount of tax, if any, due upon a redetermination of United States tax liability shall be paid by the taxpayer after notice and demand has been made by the IRS. Subchapter B of chapter 63 of the Internal Revenue Code (relating to deficiency procedures) shall not apply with respect to the assessment of the amount due upon such redetermination. In accordance with sections 905(c) and 6501(c)(5), the amount of additional tax due shall be assessed and collected without regard to the provisions of section 6501(a) (relating to limitations on assessment and collection). The amount of tax, if any, shown by a redetermination of United States tax liability to have been overpaid shall be credited or refunded to the taxpayer in accordance with the provisions of section 6511(d)(3)(A) and § 301.6511(d)–3 of this chapter.

(e) *Interest and penalties*—(1) *In general.* If a redetermination of United States tax liability is required by reason of a foreign tax redetermination, interest shall be computed on the underpayment or overpayment in accordance with sections 6601 and 6611 and the regulations under these sections. No interest shall be assessed or collected on any underpayment resulting from a refund of foreign tax for any period before the receipt of the refund, except to the extent interest was paid by the foreign country or possession of the United States on the refund for the period. In no case, however, shall interest assessed and collected pursuant to the preceding sentence for any period

before receipt of the foreign tax refund exceed the amount that otherwise would have been assessed and collected under section 6601 and the regulations under this section for that period. Interest shall be assessed from the time the taxpayer (or the foreign corporation of which the taxpayer is a shareholder) receives a refund until the taxpayer pays the additional tax due the United States.

(2) *Adjustments to pools of foreign taxes.* No underpayment or overpayment of United States tax liability results from a redetermination of foreign tax unless a redetermination of United States tax liability is required. Consequently, no interest shall be paid by or to a taxpayer as a result of adjustments to a foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes made in accordance with § 1.905–3T(d)(2).

(3) *Imposition of penalty.* Failure to comply with the provisions of this section shall subject the taxpayer to the penalty provisions of section 6689 and the regulations under that section.

(f) *Effective/applicability date*—(1) *In general.* This section applies to foreign tax redeterminations (defined in § 1.905–3T(c)) occurring in taxable years of United States taxpayers beginning on or after November 7, 2007, where the foreign tax redetermination affects the amount of foreign taxes paid or accrued by a United States taxpayer. Where the redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960 with respect to pre-1987 accumulated profits or post-1986 undistributed earnings of the foreign corporation, this section applies to foreign tax redeterminations occurring in a taxable year of the foreign corporation which ends with or within a taxable year of its domestic corporate shareholder beginning on or after November 7, 2007. In no case, however, shall this paragraph (f)(1) operate to extend the statute of limitations provided by section 6511(d)(3)(A).

(2) *Foreign tax redeterminations occurring in taxable years beginning before November 7, 2007*—(i) *Scope.* This paragraph (f)(2) applies to any foreign tax redetermination (as defined in § 1.905–3T(c)) which occurred in any of the three taxable years of a United States taxpayer immediately preceding the taxpayer's first taxable year beginning on or after November 7, 2007; reduced the amount of foreign taxes paid or accrued by the taxpayer; and requires a redetermination of United States tax liability for any taxable year. This paragraph (f)(2) also applies to any redetermination of foreign tax paid or accrued by a foreign corporation which occurred in a taxable year of the foreign corporation which ends with or within any of the three taxable years of a domestic corporate shareholder immediately preceding such shareholder's first taxable year beginning on or after November 7, 2007; reduced foreign taxes included in the computation of foreign taxes deemed paid by such shareholder under section 902 or 960; and requires a redetermination of United States tax liability under § 1.905–3T(d)(3) for any taxable year. For corresponding rules applicable to foreign tax redeterminations occurring in taxable years beginning before the third taxable year immediately preceding the taxable year beginning on or after November 7, 2007, see 26 CFR 1.905–4T and 1.905–5T (as contained in 26 CFR part 1, revised as of April 1, 2007).

(ii) *Notification required.* If, as of November 7, 2007, the taxpayer has not satisfied the notification requirements described in § 1.905–3T and this section (as contained in 26 CFR part 1, revised as of April 1, 2007, as modified by Notice 90–26, 1990–1 CB 336, see § 601.601(d)(2)(ii)(*b*) of this chapter), with respect to a foreign tax redetermination described in paragraph (f)(2)(i) of this section, the taxpayer must notify the IRS of the foreign tax redetermination by filing an amended return, Form 1118 or 1116, and the statement required in paragraph (c) of this section for the taxable year with respect to which a redetermination of United States tax liability is required. Such notification must be filed no later than the due date (with extensions) of the original return for the taxpayer's first taxable year following the taxable year in which these regulations are first effective. Where the foreign tax redetermination requires an individual to redetermine the individual's United States tax liability, and as a result of such foreign tax redetermination the amount of creditable taxes paid or accrued by such individual during the taxable year does not exceed the applicable dollar limitation in section 904(k), the individual shall not be required to file Form 1116 with the amended return for such taxable year if the individual satisfies the requirements of section 904(k). The rules of paragraphs (b)(1)(iv) and (v) of this section (concerning multiple redeterminations of United States tax liability for the same taxable year, and the carryback and carryover of unused foreign tax) shall apply.

(iii) *Taxpayers under the jurisdiction of the Large and Mid-Size Business Division.* If a taxpayer under the jurisdiction of the Large and Mid-Size Business Division is otherwise required under paragraph (f)(2)(ii) of this section to notify the IRS of a foreign tax redetermination described in paragraph (f)(2)(ii) of this section by filing an amended return, Form 1118, and the statement required in paragraph (c) of this section, such taxpayer may, in lieu of applying the rules of paragraph (f)(2)(ii) of this section, provide to the examiner the information described in paragraph (c) of this section during an examination of the return for the taxable year for which a redetermination of United States tax liability is required by reason of such foreign tax redetermination. The taxpayer must provide the information to the examiner on or before the date that is the later of May 5, 2008 or 120 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required. However, if November 7, 2007 is more than 180 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter, the IRS, in its discretion, may accept such statement or require the taxpayer to comply with the rules of paragraph (f)(2)(ii) of this section. This paragraph (f)(2)(iii) shall not apply where the due date specified in paragraph (f)(2)(ii) of this section for providing notice of the foreign tax redetermination precedes the latest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required.

(iv) *Interest and penalties.* Interest shall be computed in accordance with paragraph (e) of this section. Failure to comply with the provisions of this paragraph (f)(2) shall subject the taxpayer to the penalty provisions of section 6689 and the regulations under that section.

(3) *Expiration date.* The applicability of this section expires on or before November 5, 2010.

■ **Par. 4.** Section 1.905–5T is amended as follows:

■ 1. Remove the language ''earnings and profits accumulated in taxable years of a foreign corporation beginning prior to January 1, 1987'' from the second sentence of paragraph (a) and add the language ''pre-1987 accumulated profits (as defined in § 1.902–1(a)(10)(i)'' in its place.

■ 2. Remove the language ''§ 1.905–4(b)(3)'' from the second sentence of

paragraph (d)(1) and add the language ''§ 1.905–4T(c)'' in its place.

■ 3. Remove the language ''§ 1.905–4T(b)(3)(ii)(A)'' from paragraph (d)(2) and add the language ''§ 1.905–4T(c)(2)'' in its place.

■ 4. Remove the language ''paragraph (b)(3)(iii)'' from paragraph (d)(3) and add the language ''§ 1.905–4T(c)(3)'' in its place.

■ 5. Remove the language ''§ 1.905–4T(b)(3)(iii) in lieu of the exchange rate for the date of the accrual'' from paragraph (d)(4) and add the language ''§ 1.905–4T(c)(3)'' in its place.

■ 6. Revise the heading and first sentence of paragraph (f).

■ 7. Add a new paragraph (g).

The revision and addition read as follows:

§ 1.905–5T Foreign tax redeterminations and currency translation rules for foreign tax redeterminations occurring in taxable years beginning prior to January 1, 1987 (temporary).

* * * * *

(f) *Special effective/applicability date.* See § 1.905–4T(f) for the applicability date of notification requirements relating to foreign tax redeterminations that affect foreign taxes deemed paid under section 902 or section 960 with respect to pre-1987 accumulated profits accumulated in taxable years of a foreign corporation beginning on or after January 1, 1987. * * *

(g) *Expiration date.* The applicability of this section expires on or before November 5, 2010.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 5.** The authority citation for part 301 continues to read as follows:

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

■ **Par. 6.** Section 301.6689–1T is amended as follows:

■ 1. Add a new sentence at the end of paragraph (a).

■ 2. Revise paragraph (e).

The addition and revision read as follows:

§ 301.6689–1T Failure to file notice of redetermination of foreign tax (temporary).

(a) * * * Subchapter B of chapter 63 of the Internal Revenue Code (relating to deficiency proceedings) shall not apply with respect to the assessment of the amount of the penalty.

* * * * *

(e) *Effective/applicability date*—(1) *In general.* This section applies to foreign tax redeterminations (as defined in § 1.905–3T(c) of this chapter) occurring in taxable years of United States taxpayers beginning on or after November 7, 2007, and in the three immediately preceding taxable years. For corresponding rules applicable to foreign tax redeterminations occurring in earlier taxable years of United States taxpayers, see 26 CFR 301.6689–1T (as contained in 26 CFR part 301, revised as of April 1, 2007).

(2) *Expiration date.* The applicability of this section expires on or before November 5, 2010.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: August 9, 2007.

Karen A. Sowell,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–21766 Filed 11–6–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R03-OAR–2007–0448; FRL–8493–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to approve a SIP revision submitted by West Virginia pertaining to its abbreviated SIP for the Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Annual and NO_X Ozone Season trading programs. In the direct final rule published on September 13, 2007 (72 FR 52289), we stated that if we received adverse comment by October 15, 2007, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on September 13, 2007 (72 FR 52325). EPA will not institute a second comment period on this action.

DATES: *Effective Date:* The Direct final rule is withdrawn as of November 7, 2007.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: October 29, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ Accordingly, the addition of entries for 45 CSR 39 and 40 to the table in paragraph (c) and the addition of an entry for Article 3, Chapter 64 of the Code of West Virginia to the table in paragraph (e) of § 52.2520 are withdrawn as of November 7, 2007.

[FR Doc. E7–21863 Filed 11–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0524; FRL–8153–7]

Oxytetracycline; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of oxytetracycline in or on apples. Interregional Research Project #4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 7, 2007. Objections and requests for hearings must be received on or before January 7, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0524. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All