

other than natural rubber latex, including natural membrane (skin) or synthetic.

(2) Class II (special controls) for natural rubber latex condoms. The guidance document entitled "Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300" will serve as the special control. See § 884.1(e) for the availability of this guidance document.

Dated: October 28, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9430]

RIN 1545-BH99

Information Reporting for Discharges of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to information returns for cancellation of indebtedness by certain entities. The temporary regulations will avoid premature information reporting from certain businesses that are currently required to report and will reduce the number of information returns required to be filed. The temporary regulations will impact certain lenders who are currently required to file information returns under the existing regulations. The text of these temporary regulations also serves as the text of the proposed regulations as set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on November 10, 2008.

Applicability Date: For dates of applicability, see § 1.6050P-1T(h).

FOR FURTHER INFORMATION CONTACT: Barbara Pettoni at (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6050P relating to

information reporting for cancellation of indebtedness by certain entities. The amendments will reduce the number of information reports required to be filed under section 6050P.

In general, section 6050P requires certain entities to file information returns with the IRS, and to furnish information statements to debtors, reporting discharges of indebtedness of \$600 or more. As originally enacted by the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66 (107 Stat. 312, 531-532 (1993)), section 6050P applied solely to "applicable financial entities," which was then defined to include only financial institutions, credit unions, and Federal executive agencies.

In 1996, final regulations were published implementing section 6050P. See TD 8654, 61 FR 262 (January 4, 1996) (the 1996 regulations). The 1996 regulations required applicable financial entities, as then defined, to issue Forms 1099-C, "Cancellation of Debt," upon the occurrence of one of several "identifiable events" as provided in § 1.6050P-1(b)(2)(i)(A) through (H). One of these identifiable events requiring the issuance of a Form 1099-C was the expiration of a "non-payment testing period" pursuant to § 1.6050P-1(b)(2)(i)(H). The 1996 regulations created a rebuttable presumption (the "36-month rule") under § 1.6050P-1(b)(2)(iv) that this period expired if a creditor had not received a payment for 36 months. Section 1.6050P-1(b)(2)(iv) provides that the presumption that an identifiable event occurred can be rebutted by a creditor if the creditor had engaged in significant, bona fide collection activity.

After the issuance of the 1996 regulations, the Debt Collection Improvement Act of 1996, Public Law 104-134 (110 Stat. 1321, 368-369 (1996)) (the 1996 Act), expanded section 6050P to cover any executive, judicial, or legislative agency (as defined in 31 U.S.C. 3701(a)(4)) as well as any applicable financial entity. The 1996 Act was effective April 26, 1996. The Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170 (113 Stat. 1860, 1931 (1999)) (the 1999 Act), further expanded section 6050P by expanding the definition of "applicable financial entity" to include any organization "a significant trade or business of which is the lending of money." The 1999 Act was effective for discharges of indebtedness occurring after December 31, 1999.

In 2002, the IRS and the Treasury Department published proposed regulations to reflect the changes to section 6050P. See REG-107524-00, 67

FR 40629 (June 13, 2002). The IRS received written (including electronic) comments on the proposed regulations and a public hearing was held on October 8, 2002. After consideration of the comments received, the IRS adopted the proposed regulations with amendments. See TD 9160, 69 FR 62181 (October 25, 2004) (the 2004 regulations). Section 1.6050P-2 of the 2004 regulations describes the circumstances in which an organization has a significant trade or business of lending money, thereby triggering an information reporting requirement when it cancels debt.

Reasons for Change

The 36-month rule of § 1.6050P-1(b)(2)(iv) was drafted at a time when section 6050P applied only to financial institutions, credit unions, and Federal executive agencies and did not extend to any executive, judicial, or legislative agency or any organization "a significant trade or business of which is the lending of money." Since the publication of the 2004 regulations, commenters have raised the concern that the application of the 36-month rule to entities with a significant trade or business of lending money might trigger a reporting requirement even when the entity has not legally or practically discharged the debt. The IRS and the Treasury Department agree that it is appropriate to limit the application of the 36-month rule to the entities for which it was originally intended in order to avoid premature information reporting of cancellation of indebtedness income. Doing so will reduce the information reporting burden on entities that were not originally within the scope of the 36-month rule and will protect debtors from receiving information returns that prematurely report cancellation of indebtedness income from such entities.

The Treasury Department and IRS are still considering other comments received since the publication of the 2004 regulations, including a request to clarify the meaning of "stated principal" in § 1.6050P-1(c) and (d)(3) when it is applied to those who acquire a loan from a person other than the debtor. Section 1.6050P-1(c) provides that "indebtedness" for purposes of section 6050P means any amount owed to an applicable entity, including stated principal, fees, stated interest, penalties, administrative costs, and fines. Section 1.6050P-1(d)(3) further provides that, in the case of a lending transaction, the discharge of an amount other than stated principal is not required to be reported under section 6050P. Commenters have stated that it is

unclear whether the simplifying rule limiting an information report to the amount of stated principal can be applied to loan acquirers. Commenters have asserted that loan acquirers might know only the aggregate amount due on the loans they are purchasing, not the breakdown of that amount into principal and accrued interest or fees. Therefore, if loan acquirers discharge an aggregate amount, it is difficult for them to determine how much is required to be reported under section 6050P. The Treasury Department and IRS is considering issuing future guidance under section 6050P to address these concerns.

Explanation of Provisions

The temporary regulations and amendments to existing regulations limit the application of the 36-month rule to the entities described in the 1993 Act. The temporary regulations avoid premature information reporting from certain entities that are currently required to report under section 6050P. Notwithstanding this limitation, the temporary regulations provide that, in the case of an entity previously subject to the 36-month rule that was required to file information returns in a tax year prior to 2008 due to application of the 36-month rule, and who failed to so file, the date of discharge is the first identifiable event, if any, described in § 1.6050P-1(b)(2)(i)(A) through (G) that occurs after 2007. Thus, any entity previously subject to the 36-month rule that has never filed an information return remains subject to the information reporting requirement upon the occurrence of any of the other identifiable events.

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 to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these temporary regulations is Barbara Pettoni, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects 26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6050P-0 is amended as follows:

- 1. The introductory text is revised.
- 2. A new entry for § 1.6050P-1(b)(2)(v) is added.
- 3. The entry for § 1.6050P-1(h) is revised.
- 4. A new entry for § 1.6050P-1T is added.

The revisions and additions read as follows:

§ 1.6050P-0. Table of contents.

This section lists the major captions that appear in § 1.6050P-1, § 1.6050P-1T, and § 1.6050P-2.

* * * * *

§ 1.6050P-1 Information reporting for discharges of indebtedness by certain entities.

(b) * * *

(2) * * *

(v) [Reserved] For further guidance, see the entry for § 1.6050P-1T(b)(2)(v).

* * * * *

(h) *Effective/applicability date.*

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§ 1.6050P-1T Information reporting for discharges of indebtedness by certain entities (temporary).

(b) * * *

(2) * * *

(v) Special rule for certain entities required to file in a year prior to 2008.

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■ **Par. 3.** Section 1.6050P-1 is amended as follows:

- 1. Paragraph (b)(2)(i)(H) and the heading for paragraph (h) are revised.
- 2. A new entry for (b)(2)(v) is added.

The addition and revisions read as follows:

§ 1.6050P-1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(H) [Reserved]. For further guidance, see § 1.6050P-1T(b)(2)(i)(H).

* * * * *

(v) [Reserved]. For further guidance, see § 1.6050P-1T(b)(2)(v).

* * * * *

(h) *Effective/applicability date.* * * *

■ **Par. 4.** Section 1.6050P-1T is added to read as follows:

§ 1.6050P-1T Information reporting for discharges of indebtedness by certain entities (temporary).

(a) through (b)(2)(i)(G) [Reserved]. For further guidance, see 1.6050P-1(a) through (b)(2)(i)(G).

(H) In the case of an entity described in section 6050P(c)(2)(A) through (C), the expiration of the non-payment testing period, as described in § 1.6050P-1(b)(2)(iv).

(b)(2)(ii) through (iv) [Reserved]. For further guidance, see § 1.6050P-1(b)(2)(ii) through (iv).

(v) *Special rule for certain entities required to file in a year prior to 2008.* In the case of an entity described in section 6050P(c)(1)(A) or (c)(2)(D) required to file an information return in a tax year prior to 2008 due to an identifiable event described in paragraph (b)(2)(i)(H), and who failed to so file, the date of discharge is the first event, if any, described in paragraphs (b)(2)(i)(A) through (G) of this section that occurs after 2007.

(b)(3) through (g) [Reserved]. For further guidance see § 1.6050P-1(b)(3) through (g).

(h) *Effective/applicability date—(1) In general.* The rules in this section apply to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (e)(3) of this section, which apply to discharges of indebtedness after December 31, 1994, except paragraph (e)(5) of this section, which applies to discharges of indebtedness occurring after December 31, 2004, and except paragraphs (b)(2)(i)(H) and (b)(2)(v) of this section, which apply to discharges of indebtedness occurring after November 10, 2008.

(2) [Reserved]. For further guidance, see § 1.6050P-1(h)(2).

(i) *Expiration date.* The applicability of this section will expire on or before November 7, 2011.

Approved: October 28, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") is amending the Iranian Transactions Regulations, to narrow the scope of existing section by revoking an authorization previously granted to U.S. depository institutions to process "U-turn" transfers, and to make certain other conforming and technical changes.

DATES: *Effective Date:* November 10, 2008.

FOR FURTHER INFORMATION CONTACT:

Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622-2490, Assistant Director for Licensing, tel.: 202/622-2480, Assistant Director for Policy, tel.: 202/622-4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning the Office of Foreign Assets Control ("OFAC") are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax on-demand service, tel.: 202/622-0077.

Background

The Iranian Transactions Regulations, 31 CFR part 560 (the "ITR"), implement a series of Executive Orders that began with Executive Order 12613 of October 30, 1987, issued pursuant to authorities including the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa-9). In that order, after finding, *inter alia*, that the Government of Iran was actively supporting

terrorism as an instrument of state policy, the President prohibited the importation of Iranian-origin goods and services. Subsequently, in Executive Order 12957, issued on March 15, 1995, under the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), the President declared a national emergency with respect to the actions and policies of the Government of Iran, including its support for international terrorism, its efforts to undermine the Middle East peace process, and its efforts to acquire weapons of mass destruction and the means to deliver them. To deal with that threat, Executive Order 12957 imposed prohibitions on certain transactions with respect to the development of Iranian petroleum resources. On May 6, 1995, to further respond to this threat, the President issued Executive Order 12959, which imposed comprehensive trade and financial sanctions on Iran. Finally, on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Section § 560.516 of the ITR contains authorizations with respect to certain transactions that are processed by U.S. depository institutions, as well as by U.S. registered brokers or dealers in securities. OFAC now is amending § 560.516 to narrow the scope of authority provided in paragraph (a) of this section. As amended, paragraph (a) of § 560.516 authorizes U.S. depository institutions to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, only if the transfer meets one of the conditions set forth in the sub-paragraphs to paragraph (a) and does not involve debiting or crediting an Iranian account, as defined in § 560.320 of the ITR. Prior to this amendment, sub-paragraph (a)(1) authorized such transactions when the transfer was by order of a non-Iranian foreign bank from its own account in a domestic bank to an account held by a domestic bank for a non-Iranian foreign bank. This is commonly referred to as the "U-turn" authorization. It is so termed because it is initiated offshore as a dollar-denominated transaction by order of a foreign bank's customer; it then becomes a transfer from a correspondent account held by a domestic bank for the foreign bank to a correspondent account held by a domestic bank for another foreign bank; and it ends up offshore as a transfer to a dollar-denominated account of the second foreign bank's customer. OFAC now is narrowing the scope of authority provided by

paragraph (a) of § 560.516 by deleting sub-paragraph (a)(1) and, thereby, revoking the authorization for "U-turn" transfers.

The reasons OFAC is revoking this authorization include the need to further protect the U.S. financial system from the threat of illicit finance posed by Iran and its banks. This threat was highlighted in March of 2008 when the United Nations Security Council adopted Resolution 1803, which calls upon all states "to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran...in order to avoid such activities contributing to the proliferation [of] sensitive nuclear activities, or to the development of nuclear weapon delivery systems * * *." Moreover, on October 16, 2008, the Financial Action Task Force ("FATF"), the world's premier standard-setting body for anti-money laundering and counter-terrorist financing ("AML/CFT"), warned for the fourth time about the risks posed to the international financial system by continuing deficiencies in Iran's AML/CFT regime, and in particular emphasized Iran's lack of effort in addressing the risk of terrorist financing. The FATF called on all countries to strengthen preventive measures to protect their financial systems from the risk.

As a result of this amendment, effective November 10, 2008, U.S. depository institutions no longer will be allowed to process "U-turn" transfers involving Iran, thereby precluding transfers designed to dollarize transactions through the U.S. financial system for the direct or indirect benefit of Iranian banks or other persons in Iran or the Government of Iran. OFAC is revising and republishing § 560.516 of the ITR in its entirety because, in addition to removing sub-paragraph (a)(1), OFAC also is amending this section to delete references to outdated provisions and make other minor technical changes. OFAC also is revising § 560.405 and § 560.532 of the ITR to make certain conforming changes by deleting references to outdated provisions.

Public Participation

Because the amendment of the ITR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory