

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 301

[REG-136565-09]

RIN 1545-BJ06

Extending Religious and Family Member FICA and FUTA Exceptions to
Disregard Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary
regulations

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations to extend the exceptions from taxes under the Federal Insurance Contributions Act (“FICA”) and the Federal Unemployment Tax Act (“FUTA”) under sections 3121(b)(3), 3127, and 3306(c)(5) to entities that are disregarded as separate from their owners for federal tax purposes. The temporary regulations also clarify the existing rule that the owners of disregarded entities, except for qualified subchapter S subsidiaries, are responsible for backup withholding and related information reporting requirements under section 3406. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by [**INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOUCMENT IN THE FEDERAL REGISTER**].

ADRESSES: Send submissions to CC:PA:LPD:PR (REG-136565-09), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. to 4 p.m. to CC:PA:LPD:PR (REG-136565-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, DC. Alternatively, taxpayers may submit electronic comments via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-136565-09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Joseph Perera, at (202) 622-6040; concerning submissions of comments or requests for a hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to Employment Tax Regulations (26 CFR Part 31) and the Procedure and Administration Regulations (26 CFR Part 301). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. Generally, the

regulations allow certain disregarded entities under §301.7701-2 that are treated as corporations for employment tax purposes, to qualify for the FICA and FUTA exceptions of sections 3121(b)(3), 3127, and 3306(c)(5) by treating the owner of the disregarded entity as the employer for purposes of applying those sections. Additionally, the regulations clarify the existing rule that the owners of disregarded entities, other than qualified subchapter S subsidiaries are responsible for backup withholding and related information reporting requirements on reportable payments.

Proposed Effective/ Applicability Date:

The regulations, as proposed, apply to wages paid on or after **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**.

However, the rules in these proposed regulations may be relied on by taxpayers for wages paid after December 31, 2008.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed

rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying.

Drafting Information

The principal author of these regulations is Joseph Perera, Office of Associate Chief Counsel (Tax Exempt & Government Entities).

List of Subjects in 26 CFR Part 31

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

List of Subjects in 26 CFR Part 301

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE.

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

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

Par. 2. Section 31.3121(b)(3)-1 is amended by:

1. Revising paragraph (c).
2. Adding paragraphs (d) and (e).

The revision and addition read as follows:

§31.3121(b)(3)-1 Family Employment

* * * * *

(c) [The text of the proposed amendment to §31.3121(b)(3)-1(c) is the same as the text of §31.3121(b)(3)-1T(c) published elsewhere in this issue of the **Federal Register**].

(d) [The text of the proposed amendment to §31.3121(b)(3)-1(d) is the same as the text of §31.3121(b)(3)-1T(d) published elsewhere in this issue of the **Federal Register**].

(e) [The text of the proposed amendment to §31.3121(b)(3)-1(e) is the same as the text of §31.3121(b)(3)-1T(e) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 31.3127-1 is added to read as follows:

§31.3127-1 Exceptions for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs.

[The text of the proposed §31.3127-1 is the same as the text of §31.3127-1T published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 31.3306(c)(5)-1 is amended by:

1. Revising paragraph (c).
2. Adding paragraphs (d) and (e).

The revision and addition read as follows:

§31.3306(c)(5)-1 Family Employment

* * * * *

(c) [The text of the proposed amendment to §31.3306(c)(5)-1(c) is the same as the text of §31.3306(c)(5)-1T(c) published elsewhere in this issue of the **Federal Register**].

(d) [The text of the proposed amendment to §31.3306(c)(5)-1(d) is the same as the text of §31.3306(c)(5)-1T(d) published elsewhere in this issue of the **Federal Register**].

(e) [The text of the proposed amendment to §31.3306(c)(5)-1(e) is the same as the text of §31.3306(c)(5)-1T(e) published elsewhere in this issue of the **Federal Register**].

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 6. Section 301.7701-2 is amended by:

1. Revising paragraph (c)(2)(iv)(A).

2. Redesignating paragraph (c)(2)(iv)(C) as paragraph (c)(2)(iv)(D) and adding new paragraph (c)(2)(iv)(C).

3. Adding a sentence at the end of paragraph (e)(5).

The additions and revisions read as follows:

§ 301.7701-2 Business entities; definitions

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(A) [The text of the proposed amendment to §301.7701-2(c)(2)(iv)(A) is the same as the text of §301.7701-2T(c)(2)(iv)(A) published elsewhere in this issue of the **Federal Register**].

(B) * * *

(C) [The text of the proposed amendment to §301.7701-2(c)(2)(iv)(C) is the same as the text of §301.7701-2T(c)(2)(iv)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) * * *

(5) * * * [The text of the proposed amendment to §301.7701-2(e)(5) is the same as the text of §301.7701-2T(e)(5) published elsewhere in this issue of the **Federal Register**].

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Steven T. Miller
Deputy Commissioner for Services and
Enforcement

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