transmits all data information associated with an entry that CBP can process in a completely electronic data interchange system to a RLF-operational CBP location from a remote location other than where the goods are being entered. (Importers filing on their own behalf may file electronically in any port, subject to ABI filing requirements.)

(b) *RLF-operational CBP location*—''RLF-operational CBP location'' means a CBP location within the customs territory of the United States that is staffed with CBP personnel who have been trained in RLF procedures and who have operational experience with the Electronic Invoice Program (EIP). EIP is defined in § 143.32 of this chapter. A list of all RLF-operational locations is available for viewing on the CBP Internet Web site located at *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/.*

§ 143.43 RLF eligibility criteria.

(a) *Automation criteria.* To be eligible for RLF, a licensed customs broker or importer of record must be:

(1) Operational on the ABI (*see* 19 CFR part 143, subpart A);

(2) Operational on the EIP prior to applying for RLF; and

(3) Operational on the ACH (or any other CBP-approved method of electronic payment), for purposes of directing the electronic payment of duties, taxes and fees (*see* 19 CFR 24.25), 30 days before transmitting a RLF entry.

(b) *Broker must have national permit.* To be eligible for RLF, a licensed customs broker must hold a valid national permit (*see* 19 CFR 111.19(f)).

(c) *Continuous bond.* A RLF entry must be secured with a continuous bond.

§ 143.44 RLF procedure.

(a) *Electronic transmission of invoice data.* For RLF transactions, a customs broker or importer of record must transmit electronically, using EIP, any invoice data required by CBP.

(b) *Electronic transmission of payment.* For RLF transactions, a customs broker or importer of record must direct the electronic payment of duties, taxes and fees through the ACH (*see* 19 CFR 24.25) or any other method of electronic payment authorized by CBP.

(c) Automation requirements. Only those entries and entry summaries that CBP processes completely in an electronic data interchange system will be accepted for RLF. For a listing of entry types that may be filed via RLF, go to *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/.*

(d) Combined electronic entry and entry summary. For RLF transactions using a combined electronic entry and entry summary, a customs broker must submit to CBP, through ABI or any other electronic interface authorized by CBP, a complete and error-free electronic data transmission constituting the entry summary that serves as both the entry and entry summary.

(e) *No line release or immediate delivery entries permitted under RLF.* Line release (*see* 19 CFR, Part 142, Subpart D) or immediate delivery procedures may not be combined with RLF transactions.

(f) *Data acceptance and release of merchandise.* Data that are complete and error free will be accepted by CBP. If electronic invoice or additional electronic documentation is required, CBP will so notify the RLF filer. If no documentation is required to be filed, CBP will so notify the RLF filer. If CBP accepts the RLF entry (including invoice data) under §§ 143.34 through 143.36 of this part, the RLF entry will be deemed to satisfy all filing requirements under this part and the merchandise may be released.

(g) *Liquidation.* The entry summary will be scheduled for liquidation once payment is made under statement processing (*see* 19 CFR 24.25).

§ 143.45 Filing of additional entry information.

When filing from a remote location, a RLF filer must electronically file all additional information required by CBP to be presented with the entry and entry summary information (including facsimile transmissions) that CBP can accept electronically. If CBP cannot accept additional information electronically, the RLF filer must file the additional information in a paper format at the CBP port of entry where the goods arrived.

Approved: December 22, 2009.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E9–30736 Filed 12–29–09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9477]

RIN 1545–BI14

Use of Controlled Corporations To Avoid the Application of Section 304

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 304 of the Internal Revenue Code (Code). The regulations apply to certain transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the application of section 304 to a corporation that is controlled by the issuing corporation in the transaction, or with a principal purpose of avoiding the application of section 304 to a corporation that controls the acquiring corporation in the transaction. The regulations affect persons treated as receiving distributions in redemption of stock by reason of section 304. The text of the temporary regulations serves as the text of the proposed regulations in the notice of proposed rulemaking on this subject published in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 30, 2009.

Applicability Date: These regulations apply to acquisitions of stock occurring on or after *December 29, 2009.*

FOR FURTHER INFORMATION CONTACT: Sean W. Mullaney, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 304 of the Code. Section 304(a)(1) provides generally that, for purposes of sections 302 and 303, if one or more persons are in control of each of two corporations and one such corporation (acquiring corporation) acquires in exchange for property stock of the other corporation (issuing corporation) from the person (or persons) so in control, then, unless section 304(a)(2) applies, the property shall be treated as received in redemption of the stock of the acquiring corporation. Section 304(a)(2) provides generally that, for purposes of sections 302 and 303, if in exchange for property the acquiring corporation acquires stock

of the issuing corporation from a shareholder of the issuing corporation and the issuing corporation controls the acquiring corporation, then the shareholder shall be treated as receiving the property in redemption of the stock of the issuing corporation. For purposes of section 304, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of voting stock or at least 50 percent of the total value of shares of all classes of stock. With certain modifications, the constructive ownership rules of section 318 apply for this purpose.

Under section 304(b)(2), the determination of the amount of the property distribution that is a dividend (and the source thereof) is made as if the property were distributed by the acquiring corporation to the extent of its earnings and profits, and then by the issuing corporation to the extent of its earnings and profits. If the acquiring corporation is foreign, section 304(b)(5) limits the amount of earnings and profits of the acquiring corporation that are taken into account for this purpose.

As part of a broad set of anti-avoidance rules published in the **Federal Register** on June 14, 1988 (TD 8209) the IRS and the Treasury Department promulgated § 1.304–4T to address transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the application of section 304 to certain corporations. Specifically, for purposes of determining the amount of a property distribution constituting a dividend (and the source thereof) under section 304(b)(2), the District Director (now known as the Director of Field Operations) is permitted to consider a corporation (deemed acquiring corporation) as having acquired for property the stock of the issuing corporation that is in fact acquired for property by the acquiring corporation, if the deemed acquiring corporation controls the acquiring corporation and if one of the principal purposes for creating, organizing, or funding the acquiring corporation (through capital contributions or debt) is to avoid the application of section 304 to the deemed acquiring corporation.

Explanation of the Provisions

A. Transactions at Issue

The IRS and Treasury Department have become aware of certain transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the treatment of a corporation as the issuing corporation. In one such transaction, for example, a domestic corporation (USP) wholly owns two foreign corporations (F1 and F2). The basis and fair market value of the F1 stock is $100×. F1 does not have positive earnings and profits (or its earnings and profits for purposes of section 304(b)(2) are limited by section 304(b)(5)) but has at least $100× cash. The basis and fair market value of the F2 stock is $100× and F2 has earnings and profits of at least $100×. USP forms a new foreign corporation (F3) and contributes the stock of F2 to F3 in exchange for F3 stock. In a transaction subject to section 304(a)(1), USP then transfers the stock of F3 to F1 in exchange for $100× cash. Because neither F1 (the acquiring corporation) nor F3 (the issuing corporation) has positive earnings and profits, USP reports the $100x cash received in redemption of the shares deemed issued by F1 under section 304(a)(1) as a return of basis under section 301(c)(2).

B. Anti-Avoidance Rule Applicable to Deemed Issuing Corporations

The IRS and Treasury Department believe that an anti-avoidance rule similar to § 1.304–4T, but that applies in the case of a transaction entered into with a principal purpose of avoiding the treatment of a corporation as the issuing corporation is appropriate for transactions such as the one described above. Accordingly, the regulations amend § 1.304–4T to provide that for purposes of determining the amount of a property distribution that is a dividend (and the source thereof) under section 304(b)(2), the acquiring corporation shall be treated as acquiring for property the stock of a corporation (deemed issuing corporation) that is controlled by the issuing corporation, if, in connection with the acquisition for property of stock of the issuing corporation by the acquiring corporation, the issuing corporation acquired stock of the deemed issuing corporation with a principal purpose of avoiding the application of section 304 to the deemed issuing corporation.

C. Modifications to Current § 1.304–4T

Current § 1.304–4T applies at the discretion of the District Director. The IRS and the Treasury Department believe the anti-avoidance rule of current § 1.304–4T should be self-executing. Thus, current § 1.304–4T is amended accordingly.

Current § 1.304–4T applies when ''one of the principal purposes'' for the transaction is to avoid the application of section 304. The regulations included in this document apply when ''a principal purpose'' for the transaction is to avoid the application of section 304. The IRS and the Treasury Department do not view this modification as a substantive change.

Finally, and as noted above, current § 1.304–4T applies if one of the principal purposes for creating, organizing, or funding the acquiring corporation, through capital contributions or debt, is to avoid the application of section 304 to the deemed acquiring corporation. The regulations included in this document clarify that this rule may apply in cases where the funding is from an unrelated party. For example, the regulations may apply when the deemed acquiring corporation facilitates the repayment of an obligation incurred by the acquiring corporation (even if such obligation is with respect to a borrowing from an unrelated party) to acquire the stock of the issuing corporation.

D. Effective/Applicability Dates

The regulations apply to acquisitions occurring on or after December 29, 2009. No inference is intended as to the potential applicability of other Code or regulatory provisions or judicial doctrines (including step transaction or substance over form) to transactions described in the regulations.

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 has also been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble and to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the 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 the regulations is Sean W. Mullaney of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, 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 is amended by adding an entry in numerical order to read in part as follows:

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

■ **Par. 2.** Section 1.304–4 is added to read as follows:

§ 1.304–4 Special rule for the use of related corporations to avoid the application of section 304.

[Reserved]. For further guidance, see § 1.304–4T(a) through (d).

■ **Par. 3.** Section 1.304–4T is revised to read as follows:

§ 1.304–4T Special rule for the use of related corporations to avoid the application of section 304 (temporary).

(a) *Scope and purpose.* This section applies to determine the amount of a property distribution constituting a dividend (and the source thereof) under section 304(b)(2), for certain transactions involving controlled corporations. The purpose of this section is to prevent the avoidance of the application of section 304 to a controlled corporation.

(b) *Amount and source of dividend.* For purposes of determining the amount constituting a dividend (and source thereof) under section 304(b)(2), the following rules shall apply:

(1) *Deemed acquiring corporation.* A corporation (deemed acquiring corporation) shall be treated as acquiring for property the stock of a corporation (issuing corporation) acquired for property by another corporation (acquiring corporation) that is controlled by the deemed acquiring corporation, if a principal purpose for creating, organizing, or funding the acquiring corporation by any means (including, through capital contributions or debt) is to avoid the application of section 304 to the deemed acquiring corporation. See paragraph (c) *Example 1* of this section for an illustration of this paragraph.

(2) *Deemed issuing corporation.* The acquiring corporation shall be treated as acquiring for property the stock of a corporation (deemed issuing corporation) controlled by the issuing corporation if, in connection with the acquisition for property of stock of the issuing corporation by the acquiring corporation, the issuing corporation acquired stock of the deemed issuing corporation with a principal purpose of avoiding the application of section 304 to the deemed issuing corporation. See paragraph (c) Example 2 of this section for an illustration of this paragraph.

(c) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) *Facts.* P, a domestic corporation, wholly owns CFC1, a controlled foreign corporation with substantial accumulated earnings and profits. CFC1 is organized in Country X, which imposes a high rate of tax on the income of CFC1. P also wholly owns CFC2, a controlled foreign corporation with accumulated earnings and profits of $200×. CFC2 is organized in Country Y, which imposes a low rate of tax on the income of CFC2. P wishes to own all of its foreign corporations in a direct chain and to repatriate the cash of CFC2. In order to avoid having to obtain Country X approval for the acquisition of CFC1 (a Country X corporation) by CFC2 (a Country Y corporation) and to avoid the dividend distribution from CFC2 to P that would result if CFC2 were the acquiring corporation, P causes CFC2 to form CFC3 in Country X and to contribute $100x to CFC3. CFC3 then acquires all of the stock of CFC1 from P for $100×.

(ii) *Result.* Because a principal purpose for creating, organizing or funding CFC3 (acquiring corporation) is to avoid the application of section 304 to CFC2 (deemed acquiring corporation), under paragraph (b)(1) of this section, for purposes of determining the amount of the $100× distribution constituting a dividend (and source thereof) under section 304(b)(2), CFC2 shall be treated as acquiring the stock of CFC1 (issuing corporation) from P for $100×. As a result, P receives a $100× distribution, out of the earnings and profits of CFC2, to which section 301(c)(1) applies.

Example 2. (i) *Facts.* P, a domestic corporation, wholly owns CFC1, a controlled foreign corporation with substantial accumulated earnings and profits. The CFC1 stock has a basis of $100×. CFC1 is organized in Country X. P also wholly owns CFC2, a controlled foreign corporation with zero accumulated earnings and profits. CFC2 is organized in Country Y. P wishes to own all of its foreign corporations in a direct chain and to repatriate the cash of CFC2. In order to avoid having to obtain Country X approval for the acquisition of CFC1 (a Country X corporation) by CFC2 (a Country Y corporation) and to avoid a dividend distribution from CFC1 to P, P forms a new corporation (CFC3) in Country X and transfers the stock of CFC1 to CFC3 in exchange for CFC3 stock. P then transfers the stock of CFC3 to CFC2 in exchange for $100×.

(ii) *Result.* Because a principal purpose for the transfer of the stock of CFC1 (deemed issuing corporation) by P to CFC3 (issuing corporation) is to avoid the application of section 304 to CFC1, under paragraph (b)(2) of this section, for purposes of determining the amount of the $100x distribution constituting a dividend (and source thereof) under section 304(b)(2), CFC2 (acquiring corporation) shall be treated as acquiring the stock of CFC1 from P for $100× . As a result, P receives a $100× distribution, out of the earnings and profits of CFC1, to which section 301(c)(1) applies.

(d) *Effective/applicability date.* This section applies to acquisitions of stock occurring on or after December 29, 2009. See § 1.304–4T, as contained in 26 CFR part 1 revised as of April 1, 2008, for acquisitions of stock occurring on or after June 14, 1988, and before December 29, 2009.

(e) *Expiration date.* This section expires on or before December 31, 2012.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2009.

Michael F. Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–30861 Filed 12–29–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1215–AB75

Trust Annual Reports

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Final rule; extending filing due date.

SUMMARY: This rule extends the filing due date of Form T–1 Trust Annual Reports required to be filed during calendar year 2010. The Form T–1 is an annual financial disclosure report required to be filed, pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA), by labor unions with total annual receipts of $250,000 or more about certain trusts in which they are interested. Labor unions are required to use the Form T–1 to disclose financial information about these trusts, such as assets, liabilities, receipts, and disbursements. The Department established the Form T–1 in a final rule published October 2, 2008, with an effective date of January 1, 2009. Subsequently, the Department announced its intention to propose withdrawal of the Form T–1 (Spring 2009 Regulatory Agenda, Fall 2009 Regulatory Agenda). The Department also held a public meeting on July 21, 2009, and received comments from interested parties concerning provisions of the Form T–1 and its proposed rescission. On December 3, 2009, the Department published a Notice of Proposed Rulemaking proposing to