

capacity relating to a loan. When a shareholder makes a payment on bona fide indebtedness for which the shareholder has acted as guarantor or in a similar capacity, based on the facts and circumstances, the shareholder may increase its basis of indebtedness to the extent of that payment.

(iii) *Examples.* The following examples illustrate the provisions of paragraph (a)(2)(i) and (ii) of this section:

Example 1. Shareholder loan transaction. A is the sole shareholder of S, an S corporation. S received a loan from A. Whether the loan from A to S constitutes bona fide indebtedness from S to A is determined under general Federal tax principles and depends upon all of the facts and circumstances. See paragraph (a)(2)(i) of this section. If the loan constitutes bona fide indebtedness from S to A, A's loan to S increases A's basis of indebtedness under paragraph (a)(2)(i) of this section. The result is the same if A made the loan to S through an entity that is disregarded as an entity separate from A under § 301.7701-3.

Example 2. Guarantee. A is a shareholder of S, an S corporation. In 2013, S received a loan from Bank. Bank required A's guarantee as a condition of making the loan to S. Beginning in 2014, S could no longer make payments on the loan and A made payments directly to Bank from A's personal funds until the loan obligation was satisfied. For each payment A made on the note, A obtains basis of indebtedness under paragraph (a)(2)(ii) of this section. Thus, A's basis of indebtedness is increased during 2014 under paragraph (a)(2)(ii) of this section to the extent of A's payments to Bank pursuant to the guarantee agreement.

Example 3. Back-to-back loan transaction. A is the sole shareholder of two S corporations, S1 and S2. S1 loaned \$200,000 to A. A then loaned \$200,000 to S2. Whether the loan from A to S2 constitutes bona fide indebtedness from S2 to A is determined under general Federal tax principles and depends upon all of the facts and circumstances. See paragraph (a)(2)(i) of this section. If A's loan to S2 constitutes bona fide indebtedness from S2 to A, A's back-to-back loan increases A's basis of indebtedness in S2 under paragraph (a)(2)(i) of this section.

Example 4. Loan restructuring through distributions. A is the sole shareholder of two S corporations, S1 and S2. In March 2013, S1 made a loan to S2. In December 2013, S1 assigned its creditor position in the note to A by making a distribution to A of the note. Under local law, after S1 distributed the note to A, S2 was relieved of its liability to S1 and was directly liable to A. Whether S2 is indebted to A rather than S1 is determined under general Federal tax principles and depends upon all of the facts and circumstances. See paragraph (a)(2)(i) of this section. If the note constitutes bona fide indebtedness from S2 to A, the note increases A's basis of indebtedness in S2 under paragraph (a)(2)(i) of this section.

* * * * *

§ 1.1366-5 [Amended]

Par. 5. Section 1.1366-5 is amended by:

1. Removing the language “Sections 1.1366-2(a)(5)(i), (ii) and (iii)”, and adding the language “Sections 1.1366-2(a)(6)(i), (ii) and (iii)” in its place.

2. Adding two sentences to the end of the paragraph.

The additions read as follows:

§ 1.1366-5 Effective/Applicability date.

* * * Upon the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, § 1.1366-2(a)(2) will apply to transactions entered into on or after the date these proposed regulations are published as final in the **Federal Register**. In addition, the revisions to §§ 1.1366-0, 1.1366-2, and this section are applicable on and after the date these proposed regulations are published as final in the **Federal Register**.

§ 1.1367-1 [Amended]

Par. 6. Section 1.1367-1(h) *Example 5(iii)* is amended by removing the language “§ 1.1366-2(a)(2)” in the third and fourth sentences and adding the language “§ 1.1366-2(a)(3)” in its place.

§ 1.1367-3 [Amended]

Par. 7. Section 1.1367-3 is amended by adding one sentence to the end of the paragraph to read as follows:

§ 1.1367-3 Effective/Applicability date.

* * * The revisions to citations to § 1.1366-2(a) in § 1.1367-1(h) *Example 5(iii)* are applicable on and after the date these proposed regulations are published as final in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012-14188 Filed 6-11-12; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG 107889-12]

RIN 1545-BK85

Substantial Business Activities

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 and the Treasury Department are issuing temporary regulations regarding whether a foreign corporation has substantial business activities in a foreign country. These regulations affect certain domestic corporations and partnerships (and certain parties related thereto), and foreign corporations that acquire substantially all of the properties of such domestic corporations or partnerships. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 10, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-107889-12), 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. and 4 p.m. to CC:PA:LPD:PR (REG-107889-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS and REG-107889-12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mary W. Lyons, (202) 622-3860 and David A. Levine, (202) 622-3860; concerning submissions of comments or requests for a public hearing, Oluwafunmilayo (Funmi) Taylor, (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** amend the Income Tax Regulations (26 CFR part 1) relating to section 7874 of the Code. The temporary regulations provide guidance regarding whether a foreign corporation has substantial business activities in a foreign country for purposes of whether a foreign corporation is treated as a surrogate foreign corporation under section 7874(a)(2)(B). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these amendments.

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 5 U.S.C. 553(b) does not apply to these regulations. These regulations do not impose a collection of information. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The complexity and cost of a transaction to which section 7874 may apply make it unlikely that a substantial number of small entities will engage in such a transaction. In addition, any economic impact to entities affected by section 7874, large or small, is derived from the operation of the statute or its intended application, and not from the temporary regulations. 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.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Mary W. Lyons and David A. Levine 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.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 * * *
Section 1.7874–3 is also issued under 26 U.S.C. 7874(c)(6) and (g). * * *

Par. 2. Section 1.7874–3 is added to read as follows:

§ 1.7874–3 Substantial business activities.

[The text of proposed § 1.7874–3 is the same as the text of § 1.7874–3T published elsewhere in this issue of the **Federal Register**.]

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–14238 Filed 6–7–12; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–255–FOR; OSM–2012–0004]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We are announcing receipt of a proposed amendment to the Kentucky Regulatory Program (hereinafter, the “Kentucky program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On January 30, 2012, Kentucky submitted to OSM a proposed Kentucky Administrative Regulations (KAR) that authorizes electronic notification of enforcement documents.

DATES: We will accept written comments until 4:00 p.m., e.s.t., July 12, 2012. If requested, we will hold a public hearing on July 9, 2012. We will accept requests to speak until 4:00 p.m., e.s.t., on June 27, 2012.

ADDRESSES: You may submit comments, identified by “Docket Number OSM–2012–0004” by either of the following two methods:

Federal eRulemaking Portal:
www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2012–0004. If you would like to submit comments through the Federal eRulemaking Portal, go to

www.regulations.gov and follow the instructions; or

Mail/Hand Delivery/Courier: Joseph L. Blackburn, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section in this document.

Docket: In addition to obtaining copies of documents at *www.regulations.gov*, you may also obtain information at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM’s Lexington Field Office.

Joseph L. Blackburn, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, (859) 260–3900.

Steve Hohmann, Commissioner, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT:
Joseph L. Blackburn, Telephone: (859) 260–3900. Email: *jblackburn@osmre.gov*.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary’s findings, the disposition of comments, and conditions of approval