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PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 4. A new § 319.56–2uu is added to read as follows:

§ 319.56–2uu Administrative instructions: Conditions governing the entry of certain fruits from Thailand.

Litchi (*Litchi chinensis*), longan (*Dimocarpus longan*), mango (*Mangifera indica*), mangosteen (*Garcinia mangostana* L.), pineapple (*Ananas comosus*) and rambutan (*Nephelium lappaceum* L.) may be imported into the United States from Thailand only under the following conditions:

(a) *Growing conditions.* Litchi, longan, mango, mangosteen, pineapple, and rambutan must be grown in a production area that is registered with and monitored by the national plant protection organization of Thailand.

(b) *Treatment.* Litchi, longan, mango, mangosteen, pineapple, and rambutan must be treated for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, with irradiation in accordance with § 305.31 of this chapter. Treatment must be conducted in Thailand prior to importation of the fruits into the United States.

(c) *Phytosanitary certificates.* (1) Litchi must be accompanied by a phytosanitary certificate with an additional declaration stating that the litchi were treated with irradiation as described in paragraph (b) of this section and that the litchi have been inspected and found to be free of *Peronophythora litchi*.

(2) Longan, mango, mangosteen, pineapple, and rambutan must be accompanied by a phytosanitary certificate with an additional declaration stating that the longan, mango, mangosteen, pineapple, or rambutan were treated with irradiation as described in paragraph (b) of this section.

(d) *Labeling.* In addition to meeting the labeling requirements in § 305.31, cartons in which litchi and longan are packed must be stamped “Not for importation into or distribution in FL.”

(Approved by the Office of Management and Budget under control number 0579–0308)

Done in Washington, DC this 15th day of June 2007.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–12023 Filed 6–20–07; 8:45 am]

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 301**

[TD 9333]

RIN 1545-BG64

Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 6404(g)(2)(E) of the Internal Revenue Code on the suspension of any interest, penalty, addition to tax, or additional amount with respect to listed transactions or undisclosed reportable transactions. The temporary regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, and the Tax Relief and Health Care Act of 2006. The temporary regulations provide guidance to individual taxpayers who have participated in listed transactions or undisclosed reportable transactions. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on June 21, 2007.

Applicability Date: These regulations apply to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.

FOR FURTHER INFORMATION CONTACT:

Stuart Spielman, (202) 622–7950 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR part 301) by adding rules under section 6404(g) relating to the suspension of interest, penalties, additions to tax, or additional amounts with respect to

listed transactions or undisclosed reportable transactions. Section 3305 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685, 743) (RRA 98), added section 6404(g) to the Code, effective for taxable years ending after July 22, 1998. Section 6404(g) generally suspends interest and certain penalties if the IRS does not contact a taxpayer regarding possible adjustments to the taxpayer's liability within a specified period of time. Section 903(c) of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418, 1652) (AJCA), excepted from the general interest suspension rules any interest, penalty, addition to tax, or additional amount with respect to a listed transaction or an undisclosed reportable transaction, effective for interest accruing after October 3, 2004. Section 303 of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577, 2608–09) (GOZA), modified the effective date of the exception from the suspension rules for certain listed and reportable transactions. Section 426(b) of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922, 2975), provided a technical correction regarding the authority to exercise the “reasonably and in good faith” exception to the effective date rules. Section 8242 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28 (121 Stat. 112, 200), extended the current eighteen-month period within which the IRS can, without suspension of interest, contact a taxpayer regarding possible adjustments to the taxpayer's liability to thirty-six months, effective for notices provided after November 25, 2007.

Explanation of Provisions

If an individual taxpayer files a Federal income tax return on or before the due date for that return (including extensions), and if the IRS does not timely provide a notice to that taxpayer specifically stating the taxpayer's liability and the basis for that liability, then the IRS must suspend any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by reference to the period of time the failure continues and that is properly allocable to the suspension period. A notice is timely if provided before the close of the eighteen-month period (thirty-six month period, in the case of notices provided after November 25, 2007) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period

begins on the day after the close of the eighteen-month period (or thirty-six month period) and ends twenty-one days after the IRS provides the notice. This suspension rule applies separately with respect to each item or adjustment. If, on or after December 21, 2005, a taxpayer provides to the IRS an amended return or other signed written document showing an additional tax liability, then the eighteen-month period (or thirty-six month period) does not begin to run with respect to the items that gave rise to the additional tax liability until that return or other signed written document is provided to the IRS.

The general rule for suspension does not apply to any interest, penalty, addition to tax, or additional amount relating to any reportable transaction with respect to which the requirement of section 6664(d)(2)(A) is not met or a listed transaction as defined in section 6707A(c). This exception applies to interest accruing after October 3, 2004. With respect to interest relating to listed transactions or undisclosed reportable transactions accruing on or before October 3, 2004, the general rule for suspension applies only to (1) a participant in a settlement initiative, (2) a taxpayer acting reasonably and in good faith, or (3) a closed transaction. A *participant in a settlement initiative* is a taxpayer who, as of January 23, 2006, was participating in a settlement initiative described in IRS Announcement 2005–80, 2005–2 CB 967 (see § 601.601(d)(2)(ii)(b)); or had entered into a settlement agreement under Announcement 2005–80 or any other prior or contemporaneous settlement initiative either formally published or directly communicated to taxpayers known to have participated in a tax shelter promotion. A *taxpayer acting reasonably and in good faith* is a taxpayer who the IRS determines has acted reasonably and in good faith, taking into account all the facts and circumstances surrounding a transaction. A *transaction* is a “closed transaction” if, as of December 14, 2005, the assessment of all federal income taxes for the taxable year in which the tax liability to which the interest relates is prevented by the operation of any law or rule of law. A transaction is also a closed transaction if a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in

Executive Order 12866. A regulatory assessment is therefore 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. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be 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 regulations is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

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

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.6404–0T is added to read as follows:

§ 301.6404–0T Table of contents (temporary).

This section lists the paragraphs contained in § 301.6404–4T.

§ 301.6404–4T Listed transactions and undisclosed reportable transactions (temporary).

- (a) [Reserved].
- (b)(1) through (b)(4) [Reserved].
- (5) Listed transactions and undisclosed reportable transactions.
 - (i) In general.
 - (ii) Effective dates.
 - (iii) Special rule for certain listed or undisclosed reportable transactions.
 - (A) Participant in a settlement initiative.
 - (1) Participant in a settlement initiative who as of January 23, 2006, had not reached agreement with the IRS.
 - (2) Participant in a settlement initiative who, as of January 23, 2006, had reached agreement with the IRS.
 - (B) Taxpayer acting in good faith.
 - (1) In general.
 - (2) Presumption.
 - (3) Examples.

(C) Closed transactions.

■ **Par. 3.** Section 301.6404–4T is added to read as follows:

§ 301.6404–4T Listed transactions and undisclosed reportable transactions (temporary).

- (a) [Reserved].
- (b)(1) through (4) [Reserved].
- (5) *Listed transactions and undisclosed reportable transactions*—(i) *In general.* The general rule of suspension under section 6404(g)(1) does not apply to any interest, penalty, addition to tax, or additional amount with respect to any listed transaction as defined in section 6707A(c) or any undisclosed reportable transaction. For purposes of this section, an *undisclosed reportable transaction* is a reportable transaction described in the regulations under section 6011 that is not adequately disclosed under those regulations and that is not a listed transaction. Whether a transaction is a listed transaction or an undisclosed reportable transaction is determined as of the date the IRS provides notice to the taxpayer regarding that transaction that specifically states the taxpayer's liability and the basis for that liability.
 - (ii) *Effective/applicability dates.* (A) These regulations apply to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.
 - (B) The applicability of these regulations expires on or before June 21, 2010.
 - (iii) *Special rule for certain listed or undisclosed reportable transactions.* With respect to interest relating to listed transactions and undisclosed reportable transactions accruing on or before October 3, 2004, the exception to the general rule of interest suspension will not apply to a taxpayer who is a participant in a settlement initiative with respect to that transaction, to any transaction in which the taxpayer has acted reasonably and in good faith, or to a closed transaction. For purposes of this special rule, a “participant in a settlement initiative,” a “taxpayer acting in good faith,” and a “closed transaction” have the following meanings:
 - (A) *Participant in a settlement initiative*—(1) *Participant in a settlement initiative who, as of January 23, 2006, had not reached agreement with the IRS.* A participant in a settlement initiative includes a taxpayer who, as of January 23, 2006, was participating in a settlement initiative described in Internal Revenue Service Announcement 2005–80, 2005–2 CB 967. See § 601.601(d)(2)(ii)(b) of this

chapter. A taxpayer participates in the initiative by complying with Section 5 of the Announcement. A taxpayer is not a participant in a settlement initiative if, after January 23, 2006, the taxpayer withdraws from or terminates participation in the initiative, or the IRS determines that a settlement agreement will not be reached under the initiative within a reasonable period of time.

(2) *Participant in a settlement initiative who, as of January 23, 2006, had reached agreement with the IRS.* A participant in a settlement initiative is a taxpayer who, as of January 23, 2006, had entered into a settlement agreement under Announcement 2005–80 or any other prior or contemporaneous settlement initiative either offered through published guidance or, if the initiative was not formally published, direct contact with taxpayers known to have participated in a tax shelter promotion.

(B) *Taxpayer acting in good faith—(1) In general.* The IRS may suspend interest relating to a listed transaction or an undisclosed reportable transaction accruing on or before October 3, 2004, if the taxpayer has acted reasonably and in good faith. The IRS' determination of whether a taxpayer has acted reasonably and in good faith will take into account all the facts and circumstances surrounding the transaction. The facts and circumstances include, but are not limited to, whether the taxpayer disclosed the transaction and the taxpayer's course of conduct after being identified as participating in the transaction, including the taxpayer's response to opportunities afforded to the taxpayer to settle the transaction, and whether the taxpayer engaged in unreasonable delay at any stage of the matter.

(2) *Presumption.* If a taxpayer and the IRS promptly enter into a settlement agreement with respect to a transaction on terms proposed by the IRS or, in the event of atypical facts and circumstances, on terms more favorable to the taxpayer, and the taxpayer has complied with the terms of that agreement without unreasonable delay, the taxpayer will be presumed to have acted reasonably and in good faith except in rare and unusual circumstances. Rare and unusual circumstances must involve specific actions involving harm to tax administration. Even if a taxpayer does not qualify for the presumption described in this paragraph (b)(5)(iii)(B)(2), the taxpayer may still be granted interest suspension under the general facts and circumstances test set forth in paragraph (b)(5)(iii)(B)(1) of this section.

(3) *Examples.* The following examples illustrate the rules the IRS uses in determining whether a taxpayer has acted reasonably and in good faith.

Example 1. The taxpayer participated in a listed transaction. The IRS, in a letter sent directly to the taxpayer in July 2005, proposed a settlement of the transaction. The taxpayer informed the IRS of his interest in the settlement within the prescribed time period. The revenue agent assigned to the taxpayer's case was not able to calculate the taxpayer's liability under the settlement or tender a closing agreement to the taxpayer until March 2006. The taxpayer promptly executed the closing agreement and returned it to the IRS with a proposal for arrangements to pay the agreed-upon liability. The IRS agreed with the proposed arrangements for full payment. For purposes of the application of section 6404(g)(2)(E), the taxpayer has acted reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will be suspended.

Example 2. The facts are the same as in *Example 1*, except that the letter was sent by the IRS in February 2006, and the closing agreement was tendered to the taxpayer in April 2006. For purposes of the application of section 6404(g)(2)(E), the taxpayer has acted reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will be suspended.

Example 3. The taxpayer participated in a listed transaction. In response to an offer of settlement extended by the IRS in August 2005, the taxpayer informed the IRS of her interest in entering into a closing agreement on the terms proposed by the IRS. The revenue agent assigned to the transaction calculated the taxpayer's liability under the settlement and tendered a closing agreement to the taxpayer in November 2005. The taxpayer executed the closing agreement but failed to make any arrangement for payment of the agreed-upon liability stated in the closing agreement. Taking into account all the facts and circumstances surrounding the transaction, the taxpayer did not act reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will not be suspended.

Example 4. The taxpayer participated in a listed transaction. In a letter sent by the IRS directly to the taxpayer in July 2005, the IRS extended an offer of settlement. The July 2005 letter informed the taxpayer that, absent atypical facts and circumstances, the taxpayer should not expect resolution of the tax issues on more favorable terms than proposed in the letter. The taxpayer declined the proposed settlement terms of the letter and proceeded to Appeals to present what the taxpayer claimed were atypical facts and circumstances. The administrative file did not contain sufficient information bearing on atypical facts and circumstances, and the taxpayer failed to provide additional information when requested by Appeals to explain how the transaction originally proposed to the taxpayer differed in structure or types of tax benefits claimed, from the

transaction as implemented by the taxpayer. Appeals determined that the taxpayer's facts and circumstances were not significantly different from those of other taxpayers who participated in that listed transaction and thus, were not atypical. In September 2006, the taxpayer and Appeals entered into a closing agreement on terms consistent with those originally proposed in the July 2005 letter. The taxpayer has complied with the terms of that closing agreement. For purposes of the application of section 6404(g)(2)(E), this taxpayer is not presumed to have acted reasonably and in good faith; instead, the IRS will apply the general rule to determine whether to suspend interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated.

Example 5. The facts are the same as in *Example 4*, except that Appeals agrees that atypical facts were present that warrant additional concessions by the government. A settlement is reached on terms more favorable to the taxpayer than those proposed in the July 2005 letter. For purposes of the application of section 6404(g)(2)(E), this taxpayer is presumed to have acted reasonably and in good faith, and absent evidence of rare or unusual circumstances harmful to tax administration, is eligible for suspension of interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated.

(C) *Closed transactions.* A transaction is considered closed for purposes of this clause if, as of December 14, 2005, the assessment of all federal income taxes for the taxable year in which the tax liability to which the interest relates is prevented by the operation of any law or rule of law, or a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.

(c) [Reserved].

Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

Approved: June 15, 2007.

Eric Solomon,
Assistant Secretary of the Treasury (Tax Policy).
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