ACTION: Final rule; technical amendment.

SUMMARY: The ''FAA Modernization and Reform Act of 2012,'' enacted on February 14, 2012, in Section 305 of the Act, removed the line check performance evaluation requirements for pilots over 60 years of age that applied to air carriers engaged in part 121 operations. This technical amendment conforms to the FAA's regulations as a result of the Act.

DATES: Effective June 12, 2012.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule contact Nancy Lauck Claussen, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8166, email *nancy.l.claussen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 2007, Congress enacted the ''Fair Treatment for Experienced Pilots Act'' which became effective December 13, 2007. This legislation raised the upper age limit for pilots in part 121 from age 60 to age 65. It also required that air carriers engaged in part 121 operations evaluate the performance of 60 years old pilots, through a line check, every 6 months.

On February 14, 2012, Congress enacted the ''FAA Modernization and Reform Act of 2012'' (the ''Act''). Section 305 of the Act removed the line check evaluation performance requirements contained in the Fair Treatment for Experienced Pilots Act.

Upon enactment of the Act, § 121.440 (d) through (f) of the Code of Federal Regulations (CFR) ceased to be effective. Section 121.440(d) requires that no certificate holder may use the services of any person as a pilot unless the certificate holder evaluates every 6 months the performance, through a line check, of each pilot who has attained 60 years of age.

Section 121.440(e) requires that no pilot who has attained 60 years of age may serve as a pilot in operations, under this part, unless the certificate holder has evaluated the pilot's performance every 6 months, through a line check.

Section 121.440(f) establishes limitations regarding the requirements in (d) and (e) that apply to the line check requirements for pilots over age 60.

The requirement that the performance of each pilot of the air carrier who has attained 60 years of age be evaluated, through a line check, every 6 months, is more restrictive than line check requirements that apply to other pilots in part 121 operations. These provisions only require that pilots-in command be evaluated, through a line check, every 12 months. With Section 305 of the Act, it was Congress' objective to impact rules governing the age limitation requirements of pilots over age 60 engaged in operations under part 121. This technical amendment aligns FAA regulations to statutory requirements which will establish the same line check requirements for all pilots in part 121 operations, regardless of age.

Discussion of Dates

The Act was effective on February 14, 2012. Pending publication of this rule, the FAA has not enforced the line check requirements for pilots who have attained 60 years of age. This technical amendment conforms to the FAA's regulations as a result of the Act and is effective upon publication in the **Federal Register**.

Technical Amendment

A legislative mandate of this nature makes it unnecessary to provide an opportunity for notice and comment. Further, we find that good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective upon publication to minimize any possible confusion. If we do not correct the language in the CFR, we are likely to receive numerous petitions for exemption, because the published language is not consistent with the statute. Since the FAA would not have safety or policy reasons to deny the exemptions, we have included these amendments in this final rule to remove the requirements that each pilot of the air carrier who has attained 60 years of age be evaluated, through a line check, every 6 months.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14 Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

§ 121.440 [Amended]

■ 2. Amend § 121.440 by removing paragraphs (d) through (f).

Issued in Washington, DC, on June 5, 2012.

Lirio Liu,

Acting Director, Office of Rulemaking.

[FR Doc. 2012–14280 Filed 6–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9592]

RIN 1545–BK86

Substantial Business Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary Regulations.

SUMMARY: This document contains 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 these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject also published in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on June 12, 2012.

Applicability Date: For date of applicability, see § 1.7874–3T(f).

FOR FURTHER INFORMATION CONTACT: Mary W. Lyons, (202) 622–3860 and David A. Levine, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2006, temporary regulations under section 7874 (TD 9265, 2006–2 CB 1) were published in the **Federal Register** (71 FR 32437) concerning the treatment of a foreign corporation as a surrogate foreign corporation (2006 temporary regulations). A notice of proposed rulemaking (REG–112994–06) cross-referencing the 2006 temporary regulations was published in the same issue of the **Federal Register** (71 FR

32495, 2006–2 CB 47). On July 28, 2006, Notice 2006–70 (2006–2 CB 252) was published, announcing a modification to the effective date contained in the 2006 temporary regulations. See § 601.601(d)(2)(ii)(*b*). On June 12, 2009, the 2006 temporary regulations and the related notice of proposed rulemaking were withdrawn and replaced with new temporary regulations (2009 temporary regulations), which generally applied to acquisitions completed on or after June 9, 2009. TD 9453 (74 FR 27920, 2009–2 CB 114). A notice of proposed rulemaking (REG–112994–06) cross-referencing the 2009 temporary regulations was published in the same issue of the **Federal Register** (74 FR 27947, 2009–2 CB 144). No public hearing was requested or held; however, comments were received. All comments are available at www.regulations.gov or upon request. After consideration of the comments received regarding whether a foreign corporation has substantial business activities in a foreign country, the Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) have decided to issue new temporary regulations under § 1.7874–3T (2012 temporary regulations) and a new notice of proposed rulemaking that provide guidance regarding this determination. The other portions of the 2009 temporary regulations are finalized in a separate Treasury Decision published elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

A. General Approach

A foreign corporation is generally treated as a surrogate foreign corporation under section 7874(a)(2)(B) if pursuant to a plan (or a series of related transactions): (i) The foreign corporation completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation; (ii) after the acquisition at least 60 percent of the stock (by vote or value) of the foreign corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; and (iii) after the acquisition, the expanded affiliated group that includes the foreign corporation does not have substantial business activities in the foreign country (relevant foreign country) in which, or under the law of which, the foreign corporation is created or organized, when compared to the total business activities of the expanded affiliated group. Similar provisions apply if a foreign corporation acquires substantially all of the properties constituting a trade or business of a domestic partnership.

The 2006 temporary regulations provided that the determination of whether the expanded affiliated group has substantial business activities in the relevant foreign country is based on all the facts and circumstances. The 2006 temporary regulations also provided a safe harbor, which generally was satisfied if at least ten percent of the employees, assets, and sales of the expanded affiliated group were in the relevant foreign country. The 2009 temporary regulations retained the facts and circumstances general rule provided in the 2006 temporary regulations, with certain modifications, but removed the safe harbor.

The IRS and the Treasury Department received comments requesting additional guidance on the level of business activities necessary for an expanded affiliated group to have substantial business activities in the relevant foreign country. One comment suggested providing a new safe harbor, which would require a higher percentage of business activities in the relevant foreign country than was required under the safe harbor included in the 2006 temporary regulations. The comment also recommended different safe harbors depending on the extent of the expanded affiliated group's business activities in the United States.

After consideration of the comments and the underlying policies of section 7874, the IRS and the Treasury Department believe the facts and circumstances test of the 2009 temporary regulations should be replaced with a bright-line rule describing the threshold of activities required for an expanded affiliated group to have substantial business activities in the relevant foreign country. The IRS and the Treasury Department believe that such a rule will provide more certainty in applying section 7874 to particular transactions than the 2009 temporary regulations and will improve the administrability of this provision.

B. Threshold of Business Activities

The 2012 temporary regulations provide that an expanded affiliated group will have substantial business activities in the relevant foreign country only if at least 25 percent of the group employees, group assets, and group income are located or derived in the relevant foreign country, determined as follows:

1. Group Employees

The 2012 temporary regulations set forth two tests, each of which must be satisfied, based on employees of members of the expanded affiliated group (group employees). The first test is calculated as the number of group employees based in the relevant foreign country divided by the total number of group employees determined on the applicable date discussed in section B.4. of this preamble. The second test is calculated as employee compensation with respect to group employees based in the relevant foreign country divided by the total employee compensation with respect to all group employees determined during the one-year testing period.

2. Group Assets

The group assets test is calculated as the value of the group assets located in the relevant foreign country divided by the total value of all group assets determined on the applicable date. The term group assets generally means tangible personal property or real property used or held for use in the active conduct of a trade or business by members of the expanded affiliated group. For this purpose, group assets include certain property rented by members of the expanded affiliated group, with the value of such rented property being deemed to be eight times the net annual rent paid or accrued with respect to such property. The IRS and the Treasury Department believe that using an eight-times multiple for this purpose is administrable and consistent with the treatment of rented property for other purposes. See, for example, Uniform Division of Income for Tax Purposes Act, §§ 10 and 11. In order to constitute group assets, such rented property must satisfy the other applicable requirements for group assets, including that the property is used or held for use in the active conduct of a trade or business.

3. Group Income

The group income test is calculated as the group income derived in the relevant foreign country divided by the total group income determined during the one-year testing period. The term group income means gross income of members of the expanded affiliated group from transactions occurring in the ordinary course of business with customers that are not related persons. Group income is considered to be derived in a foreign country only if the customer is located in such country.

4. Applicable Date

Section 7874(a)(2)(B)(iii) provides that the determination of whether the expanded affiliated group has substantial business activities is made after the acquisition. However, the IRS and the Treasury Department believe that when the acquisition occurs other than at the end of a month the factors used to determine whether the substantial business activities test is satisfied may not be readily determinable in some cases. Accordingly, the 2012 temporary regulations provide that the number of group employees and the value of group assets can be measured as of the applicable date, which is either the date on which the acquisition is completed or the last day of the month immediately preceding the month in which the acquisition is completed. The applicable date is also used to determine the testing period, which is used in computing group income and employee compensation. When the applicable date is the last day of the month immediately preceding the month in which the acquisition is completed, group employees, employee compensation, group assets, and group income consist of those items or amounts of members that comprise the expanded affiliated group determined at the close of the acquisition date.

C. Attribution From a Partnership

The 2009 temporary regulations provided that for purposes of the substantial business activities test, a member of an expanded affiliated group that holds at least a ten-percent capital and profits interest in a partnership takes into account its proportionate share of all items of the partnership. The IRS and the Treasury Department believe that the policies of section 7874 are better advanced if the treatment of partnerships is made consistent with that of corporations for purposes of applying the substantial business activities test on a group basis. Accordingly, the 2012 temporary regulations provide that the items of a partnership should be taken into account for this purpose only if one or more members of the expanded affiliated group holds, in the aggregate, more than 50 percent (by value) of the interests in the partnership. The IRS and the Treasury Department further believe that, consistent with the treatment of corporations, if this ownership requirement is satisfied, then all the items of the partnership should be taken into account for this purpose.

D. Effective Date

Subject to a transition rule, the 2012 temporary regulations apply to acquisitions completed on or after June 7, 2012.

Special Analyses

It has been determined that that these temporary regulations are 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 the 2012 temporary regulations and because the regulations do not impose a collection of information on small entities, the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the 2012 temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Requests for Comments

The IRS and the Treasury Department are considering to what extent partners of a partnership should be treated as if they were employees solely for purposes of the two tests based on group employees, and specifically request comments on these issues. For information on how to submit comments or request a public hearing, see the section ''Comments and Requests for a Public Hearing'' set forth in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal authors of the 2012 temporary 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.

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 * * *

Section 1.7874–3T is also issued under 26 U.S.C. 7874(c)(6) and (g).* * *

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

§ 1.7874–3T Substantial business activities (temporary).

(a) *Scope.* This section provides rules regarding whether a foreign corporation has substantial business activities in the relevant foreign country when compared to the total business activities of the expanded affiliated group for purposes of section 7874(a)(2)(B)(iii). Paragraph (b) of this section sets forth the threshold of business activities that constitute substantial business activities. Paragraph (c) of this section describes certain items not to be taken into account as located or derived in the relevant foreign country. Paragraph (d) of this section provides definitions and certain rules of application. Paragraph (e) of this section provides rules regarding the treatment of a partnership in which one or more members of an expanded affiliated group own an interest. Paragraph (f) of this section provides the dates of applicability and expiration.

(b) *Threshold of business activities.* The expanded affiliated group will have substantial business activities in the relevant foreign country after the acquisition when compared to the total business activities of the expanded affiliated group only if, subject to paragraph (c) of this section, each of the tests described in paragraphs (b)(1) through (b)(3) of this section is satisfied.

(1) *Group employees*—(i) *Number of employees.* The number of group employees based in the relevant foreign country is at least 25 percent of the total number of group employees on the applicable date.

(ii) *Employee compensation.* The employee compensation incurred with respect to group employees based in the relevant foreign country is at least 25 percent of the total employee compensation incurred with respect to all group employees during the testing period.

(2) *Group assets.* The value of the group assets located in the relevant foreign country is at least 25 percent of the total value of all group assets on the applicable date.

(3) *Group income.* The group income derived in the relevant foreign country is at least 25 percent of the total group income during the testing period.

(c) *Items not to be considered.* The following items are not taken into account in the numerator, but are taken into account in the denominator, for each of the tests described in paragraphs (b)(1) through (b)(3) of this section:

(1) Any group assets, group employees, or group income attributable to business activities that are associated with properties or liabilities the transfer of which is disregarded under section 7874(c)(4).

(2) Any group assets or group employees located in, or group income derived in, the relevant foreign country as part of a plan with a principal purpose of avoiding the purposes of section 7874.

(3) Any group assets or group employees located in, or group income derived in, the relevant foreign country if such group assets or group employees, or the business activities to which such group income is attributable, are subsequently transferred to another country in connection with a plan that existed at the time of the acquisition described in section 7874(a)(2)(B)(i).

(d) *Definitions and application of rules.* The following definitions and rules apply for purposes of this section:

(1) The term *acquisition date* means the date on which the acquisition described in section 7874(a)(2)(B)(i) is completed.

(2) The term *applicable date* means either of the following dates, applied consistently for all purposes of this section:

(i) The acquisition date; or

(ii) The last day of the month immediately preceding the month in which the acquisition described in section 7874(a)(2)(B)(i) is completed.

(3) The term *employee compensation* means all amounts incurred by members of the expanded affiliated group that directly relate to services performed by group employees (including, for example, wages, salaries, deferred compensation, employee benefits, and employer payroll taxes). Employee compensation is determined in U.S. dollars translated, if necessary, using the weighted average exchange rate (as defined in § 1.989(b)-1) for the testing period.

(4) The term *expanded affiliated group* means the affiliated group defined in section 7874(c)(1) determined at the close of the acquisition date. The term *member of the expanded affiliated group* means an entity included in the expanded affiliated group. A reference to a member of the expanded affiliated group includes a predecessor with respect to such member.

(5) The term *group assets* means tangible personal property or real property used or held for use in the active conduct of a trade or business by members of the expanded affiliated group, provided such property is owned by members of the expanded affiliated group at the close of the acquisition date. A group asset is considered to be located in the relevant foreign country only if the asset was physically present in such country at the close of the acquisition date and for more time than in any other country during the testing period. All group assets must be valued consistently and on a gross basis (that is, not reduced by liabilities) using either the adjusted tax basis or fair market value determined in U.S. dollars translated, if necessary, at the spot rate determined under the principles of § 1.988–1(d)(1), (2), and (4). Tangible personal property or real property that is rented by members of the expanded affiliated group from a person other than a member of the expanded affiliated group is also treated as a group asset, provided such property is used in the active conduct of a trade or business and is being rented by members of the expanded affiliated group at the close of the acquisition date. For purposes of this section, a group asset that is rented is valued at eight times the net annual rent paid or accrued with respect to the property by members of the expanded affiliated group.

(6) The term *group employees* means employees of members of the expanded affiliated group. A group employee is considered to be based in the relevant foreign country only if the employee spent more time providing services in such country than in any other single country during the testing period.

(7) The term *group income* means gross income of members of the expanded affiliated group from transactions occurring in the ordinary course of business with customers that are not related persons. Group income is translated into U.S. dollars, if necessary, using the weighted average exchange rate (as defined in § 1.989(b)-1) for the testing period. Group income is considered derived in the relevant foreign country only if it is derived from a transaction with a customer located in such country.

(8) The term *net annual rent* means the annual rent paid or accrued with respect to property, less any payments received or accrued from subleasing such property (or other similar arrangement).

(9) The term *related person* has the meaning specified in section 954(d)(3), except that section 954(d)(3) is applied by substituting ''one or more members of the expanded affiliated group'' for ''a controlled foreign corporation'' and ''the controlled foreign corporation'' each place they appear.

(10) The term *relevant foreign country* means the foreign country in which, or under the law of which, the foreign corporation was created or organized.

(11) The term *testing period* means the one-year period ending on the applicable date.

(e) *Treatment of partnerships.* For purposes of this section, if one or more members of the expanded affiliated group own, in the aggregate, more than 50 percent (by value) of the interests in a partnership, such partnership will be treated as a corporation that is a member of the expanded affiliated group. Thus, all items of such a partnership are taken into account for purposes of this section. No items of a partnership are taken into account for purposes of this section unless the partnership is treated as a member of the expanded affiliated group pursuant to this paragraph.

(f) *Effective/applicability and expiration dates.* Except as otherwise provided in this paragraph, this section shall apply to acquisitions that are completed on or after June 7, 2012. For acquisitions completed on or after June 7, 2012 that were either described in a filing with the Securities and Exchange Commission on or before June 7, 2012, or that were subject to a written agreement that was binding on June 7, 2012, and at all times thereafter, taxpayers may apply either the rules in § 1.7874–2T(g), as contained in 26 CFR part 1 revised as of April 12, 2012, or the rules set forth in this section. The applicability of this section expires on June 5, 2015.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: June 4, 2012.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–14226 Filed 6–7–12; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9591]

RIN 1545–BF47

Surrogate Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding whether a foreign corporation is treated as a surrogate foreign corporation. The final