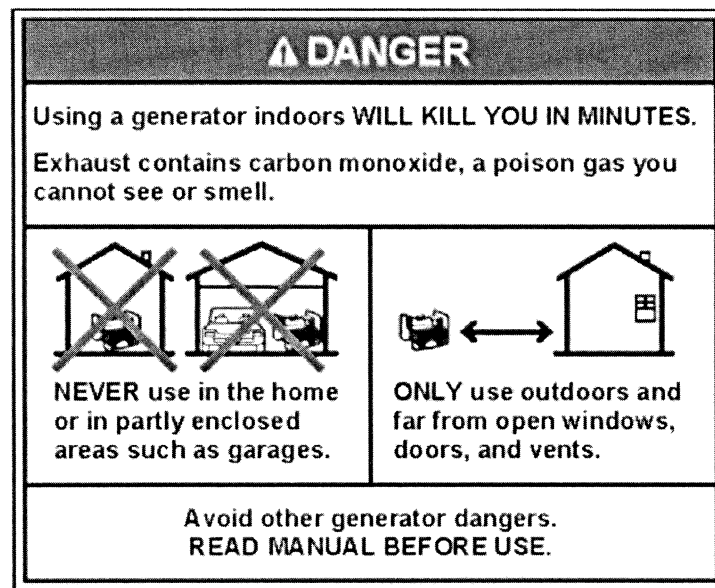


Figure 3 Carbon monoxide poisoning hazard label for package



Dated: August 17, 2006.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 06-7069 Filed 8-23-06; 8:45 am]

BILLING CODE 6355-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-109367-06]

RIN 1545-BF52

#### Section 1221(a)(4) Capital Asset Exclusion for Accounts and Notes Receivable

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction notice.

**SUMMARY:** This document corrects a notice of proposed rulemaking (REG-109367-06) that was published in the **Federal Register** on Monday, August 7, 2006 (71 FR 44600) clarifying the circumstances in which accounts or notes receivable are “acquired \* \* \* for services rendered” within the meaning of section 1221(a)(4) of the Internal Revenue Code.

**FOR FURTHER INFORMATION CONTACT:** K. Scott Brown (202) 622-7454 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The notice of proposed rulemaking (REG-109367-06) that is the subject of this correction is under section 1221 of the Internal Revenue Code.

### Need for Correction

As published, REG-109367-06 contains an error that may prove to be misleading and is in need of clarification.

### Correction of Publication

Accordingly, the publication of the proposed regulations (REG-109367-06) which was the subject of FR Doc. E6-12789, is corrected as follows:

1. On page 44600, column 1, in the preamble, under the caption **FOR FURTHER INFORMATION CONTACT**, line 2, the language “Scott Brown (202) 622-3920 (not a toll-” is corrected to read “Scott Brown (202) 622-7454 (not a toll-”.

**Guy Traynor,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E6-14003 Filed 8-23-06; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-158677-05]

RIN 1545-BF24

#### Effect of Election on Corporation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Proposed regulations and notice of public hearing.

**SUMMARY:** These proposed regulations clarify that if a bank is an S corporation within the meaning of section 1361(a)(1), its status as an S corporation does not affect the applicability of the special rules for banks under the Internal Revenue Code.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 22, 2006.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-158677-05), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-158677-05). If a public hearing is requested, the public hearing will be held in the Auditorium, New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD.

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Laura Fields at (202) 622-3050; concerning submissions and requests for a hearing,

*Richard.A.Hurst@irs.counsel.treas.gov*, (202) 622-7180 (not toll free numbers).

**SUPPLEMENTARY INFORMATION:****Background**

Section 1361(b)(2) describes corporations that are ineligible to be S corporations (ineligible corporations). Until 1996, section 1361(b)(2)(A) treated as ineligible corporations financial institutions to which section 585 applied (without regard to section 585(c)), which included primarily all banks within the meaning of section 581 (section 581 banks). In 1996, Congress revised section 1361(b)(2)(A) to allow certain banks to be S corporations. Under current section 1361(b)(2)(A), a section 581 bank is eligible to be an S corporation only if it does not use the reserve method of accounting for bad debts described in section 585, which is otherwise available to certain banks.

The proposed regulations address issues regarding the application, to S corporation banks, of the special rules applicable to banks under the Internal Revenue Code (Code) (the special bank rules).

First, questions have arisen regarding whether certain language in section 1363(b), enacted in 1982, may prevent S corporation banks from being subject to the special bank rules. Subject to certain exceptions, the general rule of section 1363(b) requires that “[t]he taxable income of an S corporation shall be computed in the same manner as in the case of an individual \* \* \*.” The special bank rules, however, apply only to corporations, because section 581 banks must be corporations for Federal tax purposes.

Second, questions have also arisen regarding the impact of section 1363(b)(4), which also pre-dates the 1996 legislation allowing banks to be S corporations. Section 1363(b)(4) applies section 291 to certain S corporations even if they would not otherwise be subject to it. Specifically, section 1363(b)(4) provides, “Section 291 shall apply if the S corporation (or any predecessor) was a C corporation for any of the 3 immediately preceding taxable years.” Section 291(a)(3) and (e)(1)(B) is a special bank rule that reduces by 20 percent the amount allowable as a deduction with respect to the portion of a bank’s interest expense that is allocable to qualified tax-exempt obligations as defined in section 265(b)(3)(B). This portion of a bank’s interest expense is the amount that

bears the same ratio to the taxpayer’s interest expense as the taxpayer’s average adjusted bases of those tax-exempt obligations bears to the taxpayer’s average adjusted bases of all its assets.

**Explanation of Provisions**

The proposed regulations clarify that neither the general rule of section 1363(b), nor paragraph (4) of that section, prevents the special bank rules from applying to banks that are S corporations. When Congress allowed banks to become S corporations, it did not intend to deny them the benefits, or shield them from the burdens, ordinarily applicable to banks. This is reflected in the existing regulations under section 1361. See § 1.1361-4(a)(3) (“If an S corporation is a bank, or if an S corporation makes a valid QSub election for a subsidiary that is a bank, any special rules applicable to banks under the Internal Revenue Code continue to apply separately to the bank parent or bank subsidiary \* \* \* (except as other published guidance may apply section 265(b) and section 291(a)(3) and (e)(1)(B) not only to the bank parent or bank subsidiary but also to any QSub \* \* \*).”).

The only special bank rule that Congress made inapplicable to S corporation banks was the section 585 reserve method for bad debts. The restriction in section 1361(b)(2)(A) regarding use of that method would be superfluous if the special bank rules were rendered inapplicable by section 1363(b). The section 585 reserve method is available only to banks, and those banks must be corporations. In amending section 1361(b)(2)(A), therefore, Congress did not expect the pre-existing general rule of section 1363(b) to prevent the special bank rules from applying to S corporation banks. The section 585 reserve method is a special bank rule, and it would have been unnecessary for Congress to make that rule inapplicable to S corporation banks if the special bank rules did not apply to them generally because of section 1363(b).

Section 1363(b)(4) historically subjected certain nonbank S corporations to section 291 if the S corporation (or any predecessor) was a C corporation for any of the 3 immediately preceding taxable years, even if section 291 would not otherwise apply. Section 1363(b)(4) does not provide that section 291 shall not apply in any other circumstance. When Congress enacted section 1363(b)(4) in 1984, banks could not yet be S corporations, and thus section 1363(b)(4) had no applicability to

section 291(a)(3) and (e)(1)(B) (which applies only to banks). After the 1996 amendments to subchapter S, the general rule of section 1363(b) does not prevent the special bank rules from applying to S corporations. Thus, if section 291(a)(3) and (e)(1)(B) applies to an S corporation bank in the absence of section 1363(b)(4), section 1363(b)(4) does not affect the continuing application to that bank of section 291(a)(3) and (e)(1)(B).

**Effective Date**

These regulations are proposed to apply to taxable years of corporations beginning on or after August 24, 2006. No inference should be drawn from this effective date regarding prior taxable years.

**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 regulation does 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, these proposed regulations 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 comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS 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 that 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 author of these proposed regulations is Laura Fields, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the

IRS and 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 \* \* \*.

**Par. 2.** Paragraph (b) of § 1.1363–1 is amended as follows:

1. Paragraph (b) is revised.

2. Paragraph (d) is amended by removing the language “This section applies” and adding the language “This section (except for paragraph (b)(2) of this section) applies” in its place.

3. The paragraph heading for (d) is revised.

4. A sentence is added at the end of paragraph (d).

The revision and additions read as follows:

#### § 1.1363–1 Effect of election on corporation.

\* \* \* \* \*

(b) *Computation of corporate taxable income*—(1) *In general.* The taxable income of an S corporation is computed as described in section 1363(b).

(2) *Treatment of banks.* Section 1363(b) (concerning computation of an S corporation’s taxable income) does not affect an S corporation’s status as a bank within the meaning of section 581, and it does not prevent the application to such an S corporation bank of any special rule applicable to banks under the Internal Revenue Code, such as sections 582(c) and 291(a)(3) and (e)(1)(B). See § 1.1361–4(a)(3) regarding application under subchapter S of the special rules applicable to banks. Further, section 1363(b)(4) causes section 291 to apply to an S corporation if the S corporation (or any predecessor) was a C corporation for any of the three immediately preceding taxable years, but section 1363(b)(4) does not prevent section 291 from applying to an S corporation to which section 291 otherwise applies.

(3) *Example.* The following example illustrates the application of this paragraph (b)(2):

*Example.* (i) *Facts.* X is described in section 581 and is an S corporation. Neither X nor any of X’s predecessors was a C corporation for any of the three immediately

preceding taxable years. During the current taxable year, X sold debt instrument DI at a loss. At the time of the sale, X’s holding period in DI was more than one year and, but for section 582(c), the loss on the sale of DI would be capital. During the same taxable year, X held debt instrument QD, which it acquired after August 7, 1986. QD is a qualified tax-exempt obligation within the meaning of section 265(b)(3)(B).

(ii) X is described in section 581, and section 1363(b) does not affect X’s status under section 581. Accordingly, X qualifies as a bank within the meaning of section 581. Also, section 1363(b) does not prevent any special rule applicable to banks under the Internal Revenue Code from applying to X. Thus, section 582(c), which is a special rule applicable to banks, imposes ordinary character on the loss that X recognized from the sale of debt instrument DI.

(iii) Because QD is a qualified tax-exempt obligation that was acquired after August 7, 1986, section 265(b)(3)(A) causes QD to be treated for purposes of section 291(e)(1)(B) as having been acquired on that date. For that reason, if section 291(e)(1)(B) applies to X, a portion of the interest expense that X incurs during the taxable year is interest on indebtedness incurred or continued to purchase or carry qualified tax-exempt obligations and thus is a financial institution preference item. Section 291(a)(3) and (e)(1)(B) is a special rule applicable to banks, and thus section 1363(b) does not prevent section 291(a)(3) and (e)(1)(B) from applying to X unless some other authority prevents that result.

(iv) Section 1363(b)(4) does not prevent section 291 from applying in situations in which section 291 otherwise applies. Therefore, section 1363(b)(4) does not prevent section 291(a)(3) and (e)(1)(B) from applying to X. It is irrelevant that neither X nor any predecessor of X was a C corporation for any of the three immediately preceding taxable years. X’s status as a bank under section 581 causes section 291(a)(3) and (e)(1)(B) to apply.

\* \* \* \* \*

(d) *Effective dates.* \* \* \* Paragraph (b)(2) of this section applies to taxable years of corporations beginning on or after August 24, 2006.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E6–14004 Filed 8–23–06; 8:45 am]

**BILLING CODE 4830–01–P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[CCGD05–06–079]

RIN 1625–AA00

#### Safety Zone; Yorktown Day Celebration Evening Fireworks, York River, Yorktown, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a 1200 foot safety zone in the vicinity of National Park Service Beach at Yorktown, VA on October 19, 2006 in support of the Yorktown Day Celebration Evening Fireworks. This action is intended to restrict vessel traffic on York River as necessary to protect mariners from the hazards associated with fireworks displays.

**DATES:** Comments and related material must reach the Coast Guard on or before September 24, 2006.

**ADDRESSES:** You may mail comments and related material to Commander, Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor, Attn: Lieutenant Bill Clark, Norfolk, VA 23510. Sector Hampton Roads maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Norfolk Federal Building between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Bill Clark, Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580.

#### SUPPLEMENTARY INFORMATION:

#### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–079), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider