

§ 1.883-3(b). The income inclusion test requires that more than 50 percent of the adjusted net foreign base company income derived by the CFC from the international operation of a ships or aircraft be includible in the gross income of one or more U.S. citizens, individual residents of the United States, or domestic corporations.

#### Need for Change

Pursuant to section 423 of the American Jobs Creation Act of 2004, (118 Stat. 1418, 2004), Public Law 108-357 (AJCA), the applicability date of the final regulations under section 883 is delayed for one year, so that they apply to taxable years of foreign corporations seeking qualified foreign corporation status beginning after September 24, 2004. This regulation makes the conforming changes to the final regulations.

#### Request for Comments

Pursuant to section 415 of AJCA, sections 954(a)(4) and 954(f), relating to foreign base company shipping income, were repealed effective for taxable years of foreign corporations beginning after December 31, 2004, and for taxable years of U.S. shareholders with or within which such taxable years of the foreign corporations end. Questions have arisen as to the proper interpretation of § 1.883-3(b) in light of the statutory amendments to section 954. Foreign corporations have expressed concern that they may no longer satisfy the CFC test if they no longer derive foreign base company income from the international operation of their ships or aircraft as a result of the statutory amendments to sections 954(a)(4) and (f).

The IRS and the Treasury Department believe the better interpretation of § 1.883-3(b) is that a CFC that satisfied the CFC test prior to the effective date of the new legislation may continue to satisfy it after the effective date of the new legislation, provided the CFC can demonstrate that had sections 954(a)(4) and (f) not been repealed, more than 50 percent of its current earnings and profits derived from its international operation of ships or aircraft would have been attributable to amounts includible in the gross income of one or more U.S. citizens, individual residents of the United States or domestic corporations (pursuant to section 951(a)(1)(A) or another provision of the Code) for the taxable years of such persons in which the taxable year of the CFC ends. Conversely, a CFC will not qualify for the exception if it cannot make such a showing.

The IRS and the Treasury Department expect to revise this section of the regulations to clarify this point. Comments are invited on the most appropriate way to accomplish this goal consistent with the principles of the existing regulations and AJCA.

#### 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) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. The collection of information referenced in this rule was previously reviewed by the Office of Management and Budget and approved under control number 1545-1677. The collection of information referenced in these regulations also was previously certified not to have a significant economic impact on a substantial number of small entities. This certification was based upon the fact that these regulations apply to foreign corporations and impose only a limited collection of information burden on shareholders of such corporations, which in some cases may include U. S. small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) was not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations (REG-208280-86; REG-136311-01; 67 FR 50510) was 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 Patricia Bray, Office of Associate Chief Counsel (International), 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.

#### Adoption of 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 \* \* \*

■ **Par. 2.** Section 1.883-5 is revised to read as follows:

#### § 1.883-5 Effective dates.

(a) *General rule.* Sections 1.883-1 through 1.883-4 apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning after September 24, 2004.

(b) *Election for retroactive application.* Taxpayers may elect to apply §§ 1.883-1 through 1.883-4 for any open taxable year of the foreign corporation beginning after December 31, 1986, except that the substantiation and reporting requirements of § 1.883-1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) or §§ 1.883-2(f), 1.883-3(d) and 1.883-4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies the stock ownership test) will not apply to any year beginning before September 25, 2004. Such election shall apply to the taxable year of the election and to all subsequent taxable years beginning before September 25, 2004.

(c) *Transitional information reporting rule.* For taxable years of the foreign corporation beginning after September 24, 2004, and until such time as the Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," or its instructions are revised to provide otherwise, the information required in § 1.883-1(c)(3) and § 1.883-2(f), § 1.883-3(d) or § 1.883-4(e), as applicable, must be included on a written statement attached to the Form 1120-F and file with the return.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 24, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9193]

**RIN 1545-BB65**

#### Section 704(c) Installment Obligations and Contributed Contracts; Correction

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document adds the text that was inadvertently omitted from the Code of Federal Regulations. The text was originally published in TD 9193, which was published in the **Federal Register** on Friday, March 22, 2005 (70 FR 14394). The final regulations relate to the tax treatment of installment obligations and property acquired pursuant to a contract.

**DATES:** This correction is effective on March 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** Christopher L. Trump, (202) 622-3070 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document adds §§ 1.704-3(a)(8)(ii) and (iii) and 1.737-2(d)(3)(ii) and (iii) to the Code of Federal Regulations. The final regulations that are the subject of this correction are under sections 704 and 737 of the Internal Revenue Code.

**Need for Correction**

As published, §§ 1.704-3(a)(8)(ii) and (iii) and 1.737-2(d)(3)(ii) and (iii) were omitted from the Code of Federal Regulations as published in TD 9193.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

**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.** Section 1.704-3 is amended by adding paragraphs (a)(8)(ii) and (a)(8)(iii) to read as follows:

**§ 1.704-3 Contributed property.**

(a) \* \* \*  
(8) \* \* \* (i) \* \* \*

(ii) *Disposition in an installment sale.*

If a partnership disposes of section 704(c) property in an installment sale as defined in section 453(b), the installment obligation received by the partnership is treated as the section 704(c) property with the same amount of built-in gain as the section 704(c) property disposed of by the partnership (with appropriate adjustments for any gain recognized on the installment sale). The allocation method for the installment obligation must be consistent with the allocation method chosen for the original property.

(iii) *Contributed contracts.* If a partner contributes to a partnership a contract that is section 704(c) property, and the partnership subsequently acquires property pursuant to the contract in a transaction in which less than all of the gain or loss is recognized, then the acquired property is treated as the section 704(c) property with the same amount of built-in gain or loss as the contract (with appropriate adjustments for any gain or loss recognized on the acquisition). For this purpose, the term contract includes, but is not limited to, options, forward contracts, and futures contracts. The allocation method for the acquired property must be consistent with the allocation method chosen for the contributed contract.

\* \* \* \* \*

■ **Par. 3.** Section 1.737-2 is amended by adding paragraphs (d)(3)(ii) and (d)(3)(iii) to read as follows:

**§ 1.737-2 Exceptions and special rules.**

(d) \* \* \*

(3) \* \* \* (i) \* \* \*

(ii) *Installment sales.* An installment obligation received by the partnership in an installment sale (as defined in section 453(b)) of section 704(c) property is treated as the contributed property with regard to the contributing partner for purposes of section 737 to the extent that the installment obligation received is treated as section 704(c) property under § 1.704-3(a)(8). See § 1.704-4(d)(1) for a similar rule in the context of section 704(c)(1)(B).

(iii) *Contributed contracts.* Property acquired by a partnership pursuant to a contract that is section 704(c) property is treated as the contributed property with regard to the contributing partner for purposes of section 737 to the extent that the acquired property is treated as section 704(c) property under § 1.704-3(a)(8). See § 1.704-4(d)(1) for a similar rule in the context of section 704(c)(1)(B).

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**Guy Traynor,**

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

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 100 and 165**

[USCG-2005-22002]

**Quarterly Listings; Special Local Regulations, Safety Zones and Security Zones**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary rules issued.

**SUMMARY:** This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between April 1, 2005 and June 30, 2005, that were not published in the **Federal Register**. This quarterly notice lists special local regulations, safety zones and security zones, all of limited duration and for which timely publication in the **Federal Register** was not possible.

**DATES:** This document lists temporary Coast Guard rules that became effective and were terminated between April 1, 2005, and June 30, 2005.

**ADDRESSES:** The Department of Transportation Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20593-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at <http://dms.dot.gov>. The public docket contains a scanned copy of each original regulation listed in this notice.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice contact Erin McMunigal, Office of Regulations and Administrative Law, telephone (202) 267-0131. For questions on viewing, or on submitting material to the docket, contact Renee Z. Wright, Acting Program Manager, Docket Operations, telephone 202-493-0402.

**SUPPLEMENTARY INFORMATION:** Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be