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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9094]

RIN 1545-BC01

Return of Partnership Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that authorize the Commissioner to provide exceptions to the requirements of section 6031(a) of the Internal Revenue Code for certain partnerships by guidance published in the Internal Revenue Bulletin. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective November 5, 2003.

Applicability Date: For dates of applicability, see §§ 1.6031(a)-1(f)(2) and 1.6031(a)-1T(f)(2).

FOR FURTHER INFORMATION CONTACT: David A. Shulman, (202) 622-3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A partnership may be used to create the economic equivalent of a variable-rate tax-exempt bond. The partnership acquires a tax-exempt obligation and issues both interests that are entitled to preferred returns based on current short-term yields on tax-exempt obligations (variable-rate interests) and interests that are entitled to the rest of the partnership's income (inverse interests). As a consequence of this structure, the partner that holds a variable-rate

interest in the partnership receives a return that is equivalent to the return on a variable-rate tax-exempt bond. Under section 702(b), income received by a partnership generally retains its character when allocated to a partner.

Section 6031(a) requires every partnership to make a return for each taxable year stating specifically the items of its gross income and the deductions allowable by subtitle A of the Internal Revenue Code, as well as other specified information. Section 6031(b) requires every partnership that is required to file a return under section 6031(a) to provide each person who is a partner with such information as may be required by regulations. Section 1.6031(b)-1T(a)(3) provides that the partner must be provided such information as is required by any form or instructions that may be required. Generally, a Schedule K-1 (Form 1065) must be provided to each partner.

Section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248; 96 Stat. 324, 669) (TEFRA) authorizes regulations that provide exceptions to the filing requirement of section 6031. Current § 1.6031(a)-1(a)(3) and (c) provides exceptions for partnerships that have no income, deductions, or credits for a taxable year and for eligible partnerships that elect to be excluded from the application of subchapter K in the manner specified by § 1.761-2(b)(2)(i) or are deemed to have so elected under § 1.761-2(b)(2)(ii).

The Treasury Department and the IRS believe that it is in the interest of sound and efficient administration of the tax laws to permit the Commissioner to provide in a timely and flexible manner for an additional exception to the requirements of section 6031(a) in situations in which all or substantially all of the partnership's income is derived from the holding or disposition of tax-exempt obligations or shares in a regulated investment company (as defined in section 851(a))(RIC) that pays exempt-interest dividends (as defined in section 852(b)(5)).

Explanation of Provisions

Under temporary regulations, the Commissioner may, in guidance published in the Internal Revenue Bulletin, provide an exception to the reporting requirements of section 6031(a) for partnerships in situations in which all or substantially all of the partnership's income is derived from

the holding or disposition of tax-exempt obligations (as defined in section 1275(a)(3) and § 1.1275-1(e)) or shares in a RIC that pays exempt-interest dividends (as defined in section 852(b)(5)). The exception may be conditioned on substitute reporting and eligibility and other requirements. In conjunction with issuance of this temporary regulation, the Commissioner is publishing Rev. Proc. 2003-84, I.R.B. 2003-48, which provides for an exception to section 6031 for specified eligible partnerships.

Effective Date

These regulations are effective November 5, 2003.

Special Analyses

These temporary regulations are necessary to allow the publication of guidance in the Internal Revenue Bulletin to reduce the burden on certain partnerships. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3). 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. Because no preceding notice of proposed rulemaking is required for this temporary regulation, the provisions of the Regulatory Flexibility Act do not apply. Pursuant to section 7805(f) of the Code, these temporary 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 David A. Shulman of the Office of the Associate Chief Counsel (Passthroughs & 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.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows: