

qualified offer under section 7430(g) and the requirements that a taxpayer must satisfy to qualify as a prevailing party by reason of having made a qualified offer. The regulations implement certain changes made by section 3101(e) of the Internal Revenue Service Restructuring and Reform Act of 1998. The final regulations affect taxpayers seeking attorney's fees and costs.

**DATES:** *Effective Date:* These regulations are effective December 24, 2003.

*Applicability Date:* These regulations apply to qualified offers postmarked or delivered after December 24, 2003, in administrative or court proceedings described in section 7430.

**FOR FURTHER INFORMATION CONTACT:** Tami C. Belouin (202) 622-7950 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

These final regulations contain amendments to the Procedure and Administration Regulations (26 CFR part 301) reflecting changes to section 7430 made by section 3101(e) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 686), to recover reasonable administrative and litigation costs in a court proceeding with respect to the determination or refund of any tax, interest or penalty. Proposed and temporary regulations under sections 7430(c)(4)(E) and 7430(g) were contemporaneously issued on January 3, 2001 (REG-121928-98, TD 8922, C.B. 2001-1 [66 FR 725]). Written comments were submitted in response to the proposed regulations and are discussed in more detail below. The proposed regulations are adopted as revised by this Treasury decision.

**Explanation of Revisions and Summary of Comments**

These final regulations generally adopt the provisions of the proposed regulations. The changes to the proposed regulations reflected in these final regulations, as well as the comments received, are discussed below.

**1. Adjustments Affected by the Outcome of Another Proceeding**

A taxpayer's tax liability may be affected by the outcome of a separate court or administrative proceeding. The proposed regulations stated that the portion of the liability to be fully resolved, by stipulation of the parties, through another proceeding is ignored for purposes of applying the qualified offer rule. One commentator requested

clarification regarding this rule. The final regulations clarify this rule and state that the types of proceeding contemplated include, but are not limited to, state or Federal court proceedings. For example, a taxpayer's tax liability may be affected by the outcome of a separate court proceeding, such as a probate, tort liability, or trademark action.

**2. Specified Amount of Offer**

The proposed regulations provided that a qualified offer must state a specific dollar amount. Commentators noted that there are instances in which it would be difficult to calculate the taxpayer's tax liability and offer a specific dollar amount. To address those situations, the final regulations provide that a qualified offer may specify either a dollar amount of liability or a percentage of the adjustments at issue.

**3. Requirement To Disclose All Relevant Information**

In order for an offer to be treated as a qualified offer, the proposed regulations required a taxpayer to disclose all relevant information concerning any issue raised by the taxpayer subsequent to the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals that remained unresolved at the time the qualified offer was made. This disclosure had to occur contemporaneously with or prior to the making of the qualified offer. One commentator requested that this requirement be modified to lower the standard. The final regulations do not adopt this comment because the proposed regulations reflected the standard set out in Treas. Reg. § 301.7430-1 for exhaustion of administrative remedies.

**4. End of Qualified Offer Period**

One commentator suggested that if a case is removed from the trial calendar within 30 days of the trial date, the period for making a qualified offer should be reopened. The final regulations do not adopt this comment. The Treasury Department and the IRS do not believe that the purpose of the statute would be furthered if a taxpayer were permitted to submit a qualified offer after the period for doing so has expired, even if the case subsequently is continued. Like the statute of limitations, once the qualified offer period has expired, it should not be revived.

**5. Multiple Tax Years**

The proposed regulations do not specifically address the requirements for making a valid qualified offer when multiple tax years are at issue in a court or administrative proceeding. One commentator requested clarification of the application of the qualified offer rule in these situations. The final regulations provide that if adjustments in different tax years arise from separate and distinct issues such that the resolution of issues in one or more tax years will not affect the taxpayer's liability in one or more of the other years at issue in the proceeding, then a qualified offer may be made for less than all of the tax years involved in the proceeding. A qualified offer, however, must resolve all of the issues for the tax years covered by the offer and also must cover all tax years in the proceeding affected by those issues. A tax year (affected year) is affected by an issue if the treatment of the issue in another tax year involved in the proceeding necessarily affects the treatment of the issue in the affected year. The final regulations include three new examples illustrating the operation of the qualified offer rule in cases involving multiple tax years.

**6. Settlement After Certain Court Rulings**

A federal tax case may be settled after a court has ruled on a motion relating to the merits of one or more of the adjustments covered by a qualified offer, even if the ruling does not fully resolve those adjustments. For example, a court's granting of a motion for partial summary judgment may resolve the underlying legal issue for an adjustment covered by a qualified offer but still leave open issues of substantiation or valuation. The parties at that time may resolve the adjustment based on the court's ruling and the parties' evaluation of the remaining issues not addressed by the court's ruling that affect that adjustment. The final regulations provide that if one or more adjustments covered by a qualified offer are settled following a ruling by the court that substantially resolves those adjustments, then those adjustments will not be treated as having been settled prior to the entry of the judgment by the court and instead will be treated as amounts included in the judgment as a result of the court's determinations. Whether an adjustment covered by a qualified offer is substantially resolved by a court ruling will depend on the facts and circumstances, including the scope of the ruling and the nature and importance of the issues affecting the