

adjustment that remain to be resolved after the court ruling. The final regulations further provide, however, that rulings relating to discovery, admissibility of evidence, and burden of proof are not treated as rulings that substantially resolve adjustments covered by a qualified offer. These changes have been made in response to the Tax Court's opinion in *Gladden v. Commissioner*, 120 T.C. 446 (2003). The Department of Treasury and the IRS will give further consideration to this issue and may issue additional guidance regarding the matter in the future.

7. Spousal Defenses

The proposed regulations do not address specifically how spousal defenses affect the qualified offer rule. The preamble to the temporary regulations stated that the qualified offer rule applies in multiple taxpayer situations, such as those involving joint returns, but did not address the potential aggregation or segregation of the qualified offer or liability in situations that may present special circumstances, such as claims for innocent spouse relief. Commentators requested more specific rules addressing multiple taxpayer situations. The Treasury Department and the IRS have decided not to include additional rules involving multiple taxpayer situations in the final regulations. As the law in this area continues to evolve, the Treasury Department and the IRS may give further consideration to the issues raised and may issue additional guidance regarding how the qualified offer rule applies in these situations.

8. Recovery of Fees Relating to Settled Issues

The proposed regulations provided that a prevailing party may not recover fees under the qualified offer rule for any issue that is settled. Recovery is limited to issues that are actually determined by a court. One commentator recommended that the final regulations permit the recovery of fees attributable to adjustments that are settled. The final regulations do not adopt this comment. Section 7430(c)(4)(E)(ii)(I) provides that any case resolved pursuant to a settlement is not eligible for recovery of fees under the qualified offer rule. The qualified offer rule was enacted to encourage settlements. Requiring the government to pay administrative and litigation costs with respect to issues resolved exclusively pursuant to a settlement would be contrary to that goal.

9. Delivery of Qualified Offer to the Proper Party

The proposed regulations specify where an offer must be delivered in order to be treated as a qualified offer. One commentator requested further clarification of these provisions and greater flexibility with respect to delivery locations. The Treasury Department and the IRS have considered this comment but no change has been made to the regulations because the regulations already provide specific instructions for the delivery of an offer under a variety of circumstances, as well as a default location for all other situations. Thus, the provision is sufficiently comprehensive. With respect to the request for greater flexibility, the comment was not adopted because it is important that a qualified offer be received by the office with jurisdiction over the case at the time the qualified offer is made in order that the government may act expeditiously on the offer. The locations specified in the regulations are designed to achieve that objective.

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 also has 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 these regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.7430-7 is added to read as follows:

§ 301.7430-7 Qualified offers.

(a) *In general.* Section 7430(c)(4)(E) (the qualified offer rule) provides that a party to a court proceeding satisfying the timely filing and net worth requirements of section 7430(c)(4)(A)(ii) shall be treated as the prevailing party if the liability of the taxpayer pursuant to the judgment in the proceeding (determined without regard to interest) is equal to or less than the liability of the taxpayer which would have been so determined if the United States had accepted the last qualified offer of the party as defined in section 7430(g). For purposes of this section, the term *judgment* means the cumulative determinations of the court concerning the adjustments at issue and litigated to a determination in the court proceeding. In making the comparison between the liability under the qualified offer and the liability under the judgment, the taxpayer's liability under the judgment is further modified by the provisions of paragraph (b)(3) of this section. The provisions of the qualified offer rule do not apply if the taxpayer's liability under the judgment, as modified by the provisions of paragraph (b)(3) of this section, is determined exclusively pursuant to a settlement, or to any proceeding in which the amount of tax liability is not in issue, including any declaratory judgment proceeding, any proceeding to enforce or quash any summons issued pursuant to the Internal Revenue Code (Code), and any action to restrain disclosure under section 6110(f). If the qualified offer rule applies to the court proceeding, the determination of whether the liability under the qualified offer would have equaled or exceeded the liability pursuant to the judgment is made by reference to the last qualified offer made with respect to the tax liability at issue in the administrative or court proceeding. An award of reasonable administrative and litigation costs under the qualified offer rule only includes those costs incurred on or after the date of the last qualified offer and is limited