



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
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MEMORANDUM FOR MARY TSENG KLAASEN
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FROM: W. Edward Williams
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SUBJECT: Treas. Reg. § 46.4371-4 (Records required with respect to foreign insurance policies.)

This memorandum responds to your request for assistance dated January 18, 2002 concerning the validity of Treas. Reg. § 46.6001-4 (Records required with respect to foreign insurance policies.).

Issue

Whether Treas. Reg. § 46.6001-4 (Records required with respect to foreign insurance policies.) remains a valid regulation under current law.

Conclusion

Treas. Reg. § 46.6001-4 (Records required with respect to foreign insurance policies) was redesignated as Treas. Reg. § 46.4371-4 by temporary regulations under T.D. 8328, 1991-1 C.B. 216. The redesignation was made final by T.D. 8442, 1992-2 C.B. 292. The final regulation did not substantively alter the proposed regulation. Although Treas. Reg. § 46.4371-4 has not been reprinted by a federal tax service, it is found in part 26 of the Code of Federal Regulations ("CFR"). Therefore, although Treas. Reg. § 46.6001-4 no longer exists, its record keeping requirements are currently valid under Treas. Reg. § 46.4371-4 regardless of reprinting inconsistencies in secondary sources.

Analysis

In 1970, final regulations were adopted under I.R.C. § 4374 in which persons required to pay the insurance excise tax were to keep certain records with respect to foreign insurance policies, as follows:

Sec. 46.6001-4 Records required with respect to foreign insurance policies.

- (a) Each person required under the provisions of § 46.4374-1 to remit the tax imposed by section 4371 shall keep or cause to be kept accurate records of all policies or other instruments subject to such tax upon which premiums have been paid. Such records must identify each such policy or

other instrument in such a manner as to clearly establish the following: (1) the gross premium paid; (2) whether such policy or other instrument is (i) a policy of casualty insurance or an indemnity bond subject to tax under section 4371(1), (ii) a policy of life, sickness, or accident insurance or an annuity contract subject to tax under section 4371(2), or (iii) a policy of reinsurance subject to tax under section 4371(3); (3) the identity of the insured (as defined in section 4372(a)); and (5) the total premium charged and, if the premium is to be paid in installments, the amount and anniversary date of each such installment.

(b) The records required under the provisions of this section must be kept on file at the place of business or at some other convenient location, for a period of at least 3 years from the date any part of the tax became due or the date any part of the tax is paid, whichever is later, in such manner as to be readily accessible to authorized internal revenue officers or employees. The person having control or possession of a policy or other instrument subject to tax under section 4371 shall retain such policy or other instrument for at least 3 years from the date any part of the tax with respect to such policy was paid.

T.D. 7023, 1970-1 C.B. 233, 236.

In T.D. 8328, 1991-1 C.B. 216, the Internal Revenue Service promulgated temporary regulations to consolidate in 26 CFR Part 40, the procedural regulations that were found in 26 CFR Parts 43, 46, 48, 49, 52 and 154. It also removed various obsolete excise tax regulations. Part 5 of T.D. 8328 states that 26 CFR § 46.6001-4 was redesignated as § 46.4371-4. These temporary regulations were cross-referenced by a notice of proposed rulemaking, PS-65-90, 1991-1 C.B. 995.

The regulations were finalized via T.D. 8442, 1992-2 C.B. 292. The preamble states in relevant part:

After consideration of all the comments, the regulations proposed by ... PS-65-90 are adopted as revised by this Treasury decision and the corresponding temporary regulations are withdrawn.

T.D. 8442, 1992-2 C.B. 292, 293. The only modification to § 46.4371-4 in the final regulation was to remove its authority citation. T.D. 8442, 1992-2 C.B. 292, 304. None of the substantive requirements for record keeping were altered in the final regulation.

Confusion in this area may have arisen due to a reprinting inconsistency. Although a federal tax service did not reprint § 46.4371-4, part 26 of the CFR contains this

regulation. Therefore, although Treas. Reg. § 46.6001-4 no longer exists, its record keeping requirements are currently valid under Treas. Reg. §46.4371-4.

If you have any questions, please contact

or myself at

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