

Section 6071.—Time for Filing Returns and Other Documents

26 CFR 53.6071-1T: Time for filing returns (temporary).

T.D. 8705

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 53

Requirement of Return and Time for Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing that disqualified persons and organization managers liable for Internal Revenue Code section 4958 excise taxes are required to file Form 4720. The regulations also specify the filing date for returns for the period to which the new

excise taxes applied retroactively. These excise taxes are imposed on excess benefit transactions between disqualified persons, as statutorily defined, and sections 501(c)(3) and (4) organizations, except for private foundations.

DATES: These regulations are effective January 2, 1997.

For dates of applicability, see § 53.6071-1T(f) of these regulations.

FOR FURTHER INFORMATION CONTACT: Phyllis Haney, (202) 622-4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Foundation and Similar Excise Taxes regulations (26 CFR part 53) under sections 6011 and 6071. These regulations provide guidance relating to the requirement of a return to accompany payment of section 4958 excise taxes and the time for filing that return. These rules were first published in Notice 96-46 (1996-39 I.R.B. 7) (September 23, 1996).

Taxpayer Bill of Rights 2, Public Law 104-168, 110 Stat. 1452 (TBOR2), enacted July 30, 1996, added section 4958 to the Code. As described more fully below, section 4958 imposes excise taxes on excess benefit transactions. Section 4958 taxes apply retroactively to excess benefit transactions occurring on or after September 14, 1995. The taxes do not, however, apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.

An “excess benefit transaction” subject to tax under section 4958 is any transaction in which an economic benefit is provided by an organization described in section 501(c)(3) (except for a private foundation) or 501(c)(4) directly or indirectly to, or for the use of, any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing the benefit. A “disqualified person” is any person who was, at any time during the 5-year period ending on the date of the excess benefit transaction, in a position to exercise substantial influence over the affairs of the organization. Disqualified persons also include family members and certain entities in which at least 35 percent of

the control or beneficial interest are held by persons described in the preceding sentence. An “organization manager” is any officer, director, trustee, or any individual having powers or responsibilities similar to those of any officer, director, or trustee.

Section 4958 imposes three taxes. The first tax is equal to 25 percent of the excess benefit amount, and is to be paid by any disqualified person who engages in an excess benefit transaction. The second tax is equal to 200 percent of the excess benefit amount, and is to be paid by any disqualified person if the excess benefit transaction is not corrected within the taxable period. The third tax is equal to 10 percent of the excess benefit amount, and is to be paid by any organization manager who knowingly participates in an excess benefit transaction. The maximum amount of this third tax with respect to any one excess benefit transaction may not exceed \$10,000. These regulations prescribe Form 4720 for calculating and paying the first and third taxes described above.

TBOR2 also amended section 6033(b) to require section 501(c)(3) organizations to report the amounts of the taxes paid under section 4958 with respect to excess benefit transactions involving the organization, as well as any other information the Secretary may require concerning those transactions. Section 6033(f) also was amended to impose the same reporting requirements on section 501(c)(4) organizations. Those amendments to section 6033 only apply to organizations’ returns for taxable years beginning after July 30, 1996. These and other TBOR2 amendments to the reporting requirements for section 501(c)(3) and (4) organizations are reflected on IRS Forms 990 and 990-EZ beginning with the 1996 versions.

Explanation of Provisions

The regulations provide that disqualified persons and organization managers, as defined in sections 4958(f)(1) and (2), who are liable for section 4958 excise taxes on excess benefit transactions, as defined in section 4958(c)(1), are required to file a return on Form 4720. The general rule is that returns will be due on or before the 15th day of the fifth month following the close of the disqualified person’s or organization manager’s taxable year. The regulations also provide that returns on Form 4720 for taxable years ending after September 13, 1995, and on or before July 30, 1996, will be due on or before Decem-

ber 15, 1996. See Notice 96-46 (1996-39 I.R.B. 7) (September 23, 1996).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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 the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Phyllis Haney, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read as follows: Authority: 26 U.S.C. 7805.

Par. 2. In § 53.6011-1, paragraph (b) is amended by:

1. Removing from the first sentence, the language “or 4955(a),” and adding “, 4955(a), or 4958(a),” in its place.

2. Removing from the last sentence, the language “or 4955(a),” and adding “, 4955(a), or 4958(a),” in its place.

Par. 3. Section 53.6071-1T is added to read as follows:

§ 53.6071-1T *Time for filing returns (temporary).*

(a) through (e) [Reserved]. For further guidance see § 53.6071-1(a) through (e).

(f) *Taxes imposed on excess benefit transactions engaged in by organizations described in sections 501(c)(3)*

(except private foundations) and 501(c)(4)—(1) *General rule.* A Form 4720 required by § 53.6011-1(b) for a disqualified person or organization manager liable for tax imposed by section 4958(a) shall be filed by that person on or before the 15th day of the fifth month following the close of such person's taxable year.

(2) *Special rule for taxable years ending after September 13, 1995, and on or before July 30, 1996.* A Form 4720 required by § 53.6011-1(b) for a disqualified person or organization manager liable for tax imposed by section 4958(a) on an excess benefit transaction occurring in such person's taxable year ending after September 13, 1995, and on or before July 30, 1996, is due on or before December 15, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved December 10, 1996.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 31, 1996, 8:45 a.m., and published in the issue of the Federal Register for January 2, 1997, 62 F.R. 25)