

# Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

## Clarification of Definitions

### REG-124872-04

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** This issue of the Bulletin contains temporary regulations (T.D. 9153) that provide clarification of the definitions of a corporation and a domestic entity in circumstances where the business entity is considered to be created or organized in more than one jurisdiction. These regulations will affect business entities that are created or organized under the laws of more than one jurisdiction. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments and must be received by November 10, 2004. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 3, 2004, must be received by October 15, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-124872-04), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday (excluding Federal holidays) between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-124872-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via either the IRS internet site at [www.irs.gov/reg](http://www.irs.gov/reg) or the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS and REG-124872-04). The public hearing will be held in the Auditorium,

Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Thomas Beem, (202) 622-3860; concerning submissions of comments or the public hearing, Sonya Cruse, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend 26 CFR part 301 relating to section 7701 of the Internal Revenue Code of 1986 (Code). The temporary regulations provide guidance as to the definitions of a corporation and of domestic and foreign entities in circumstances in which an entity is created or organized under the laws of more than one jurisdiction (a dually chartered entity). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains both the temporary regulations and these proposed regulations.

#### Special Analyses

It has been determined that this notice of proposed rulemaking 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 the regulations do 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 7806(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request

comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 3, 2004, at 10:00 a.m. in the Auditorium of the Internal Revenue building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area earlier than 30 minutes prior to the start of the hearing. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time devoted to each topic (signed original and eight (8) copies) by October 15, 2004. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Proposed Effective Date

The regulations proposed in this document would apply on August 12, 2004, to all business entities existing on or after that date.

#### Drafting Information

The principal author of these proposed regulations is Thomas Beem of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be 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. In §301.7701-1, paragraph (d) is revised to read as follows:

*§301.7701-1 Classification of organizations for federal tax purposes.*

\* \* \* \* \*

(d) [The text of the proposed amendment revising §301.7701-1(d) is the same as the text of §301.7701-1T(d) published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

Par. 3. In §301.7701-2 paragraph (b)(9) is added to read as follows:

*§301.7701-2 Business entities; definitions.*

\* \* \* \* \*

(b) \* \* \*

(9) [The text of the proposed amendment adding §301.7701-2(b)(9) is the same as the text of §301.7701-2T(b)(9) published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

Par. 4. Section 301.7701-5 is revised to read as follows:

*§301.7701-5 Domestic and foreign business entities.*

[The text of the proposed amendment revising §301.7701-5 is the same as the text of §301.7701-5T published elsewhere in this issue of the Bulletin.]

Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*