

1 of 5 DOCUMENTS

Information Reporting for Lump-Sum Timber Sales

2007 IRB LEXIS 1075

November 28, 2007

[*1]

APPLICABLE SECTIONS:

26 CFR Part 1

RELATED-REFS:

REFERENCE: REG-155669-04

TEXT:

RIN 1545-BE73

AGENCY:

Internal Revenue Service (IRS), Treasury.

ACTION:

Notice of proposed rulemaking.

SUMMARY:

This document contains proposed regulations that provide guidance regarding the information reporting requirements contained in *section 6045 (e) of the Internal Revenue Code* (Code) on sales or exchanges of standing timber for lump-sum (outright) payments. The proposed regulations amend *§1.6045-4 of the Income Tax Regulations* to require real estate reporting persons, as defined in *section 6045 (e) (2) of the Code*, to report lump-sum payments received by sellers (landowners) for sales or exchanges of standing timber. This action is being taken to make the reporting requirements for lump-sum sales of standing timber consistent with the reporting requirements applicable to pay-as-cut timber sales. The proposed regulations do not change the information reporting requirements that currently apply to sales or exchanges of standing timber for pay-as-cut (contingent) payments under *section 6050N of the Code*.

DATES:

Written or electronic comments and requests for a public hearing must be received by February 27, 2008.

ADDRESSES:

Send submissions to: CC:PA:LPD:PR (REG-155669-04), [*2] room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-155669-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-155669-04).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulation, Julie Hanlon-Bolton of the Office of Chief Counsel (Procedure and Administration), at (202) 622-7028; for questions concerning submissions of comments, contact Kelly Banks at (202) 622-7180.

SUPPLEMENTARY INFORMATION:

Background

This document contains a proposed amendment to the Income Tax Regulations under *section 6045 (e)*. The amendment imposes information reporting requirements on sales or exchanges of standing timber for lump-sum payments, commonly referred to as lump-sum or outright timber sales. A lump-sum contract provides for a pre-set, fixed, and non-contingent payment in exchange for the right to cut and remove designated trees. In these transactions, sellers of standing timber receive fixed payments that are not based [*3] on the amount of the timber actually cut. The sellers do not retain any economic interest in the timber and bear no risk of loss upon execution of the sales contract.

Sales or exchanges of standing timber for contingent payments, commonly referred to as pay-as-cut timber sales, allow purchasers to cut designated trees in exchange for a payment that is based on a specified rate for each unit of timber actually cut and measured. In these transactions, sellers of standing timber receive payments that are contingent on the amount of timber actually cut. The sellers retain an economic interest in the timber and continue to bear economic risk associated with the sales contract until the timber is actually cut and removed.

Because the sellers of standing timber who enter into pay-as-cut transactions retain an economic interest until the timber is actually cut and removed, the payments are characterized as timber royalties reportable under *section 6050N* on Form 1099-S, "Proceeds from Real Estate Transactions." See *Announcement 90-129, 1990-48 IRB 10*.

However, currently, no information reporting obligation applies to a sale or exchange of standing timber for a lump-sum payment. The information [*4] reporting requirements of *section 6050N* do not apply to a sale or exchange of timber for a lump-sum payment because the seller retains no economic interest and bears no economic risk of loss in the timber upon execution of the sales contract.

Recognizing the disparate treatment in the reporting of timber sale and exchange transactions, the Treasury Department has reconsidered the information reporting requirements under *section 6045 (e)* as they apply to lump-sum sales or exchanges of standing timber and has decided to amend the regulations to require information reporting for these transactions.

Currently, *section 6045 (e)* requires a "real estate reporting person," as defined in *section 6045 (e) (2)*, to make an information return and furnish a statement to the transferor with respect to a real estate transaction that consists in whole or in part of the sale or exchange of "reportable real estate." *Section 1.6045-4 (b) (2)* defines "reportable real estate" as, among other things, any present or future ownership interest in land. *Section 1.6045-4 (c) (2) (i)* provides that no return of information is required with respect to a sale or exchange of an interest in timber, provided that the [*5] sale or exchange of such property is not related to the sale or exchange of reportable real estate.

The preamble to *§1.6045-4* provides background information concerning the exception for timber sales in *§1.6045-4 (c) (2) (i)*, stating in pertinent part as follows:

The proposed regulations provided an exception from the reporting requirements for transactions involving natural resources, including standing timber. *Section 6050N of the Code* requires reporting for certain royalty payments, including timber royalties, but not for other transactions involving timber. The IRS believes that the disparity in the reporting requirements for different forms of timber transactions may be inappropriate. However, this issue was not addressed in the public comments and was not considered at the public hearing. Accordingly, the final regulations contain the exception for natural resource transactions, including standing timber. The IRS will open a new regulations project to consider the expansion of the reporting requirements to include sales and exchanges of standing timber. Any requirements for the reporting of standing timber will apply only to transactions occurring after the issuance of such requirements. [*6] See *55 FR 51282, TD 8323*.

The IRS has found that some taxpayers are underreporting income from lump-sum or outright sales of timber, resulting in a loss of tax revenue. Additionally, the Treasury Department and the IRS do not think that the disparate treatment of lump-sum and pay-as-cut timber transactions for information reporting purposes is in the interests of sound tax administration. Based on considerations of tax policy and sound tax administration, the Treasury Department has de-

cided to amend the regulations under *section 6045 (e)* to require information reporting for sales or exchanges of standing timber for lump-sum payments.

This amendment provides that sales or exchanges of standing timber for lump-sum payments are "reportable real estate" transactions under *§1.6045-4 (b) (2)* and, thus, shall be reported as provided in *section 6045 (e)* and the regulations.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (*44 U.S.C. 3507 (d)*). Comments on the collection of information should be sent to the Office of Management [*7] and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 27, 2008. The Treasury Department is interested in comments on the following:

Whether the proposed collection of information is necessary for the proper performance of the function of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information affected by this proposed regulation is described in *§1.6045-4*. The [*8] collection of information is mandatory. The likely respondents are for-profit corporations and small business entities.

Estimated total annual reporting burden: 10,000 hours.

Estimated average annual burden hours per respondent: .5 hours.

Estimated number of respondents: 20,000.

Estimated frequency of responses: annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue Law. Generally, tax returns and tax return information are confidential, as required by *26 U.S.C. 6103*.

Proposed Effective Date

These amendments shall apply to sales or exchanges of standing timber for lump-sum payments completed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the Federal Register.

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, [*9] a regulatory assessment is not required. It has also been determined that *section 553 (b)* of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that collection of information in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information burden imposed by these regulations flows directly from *section 6045 (e) of the Code*. Moreover, requiring information reporting as described in the preamble with regard to sales or exchanges of standing timber for lump-sum payments imposes minimal burden in time or expense. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C.

Chapter 6) is not required. The IRS invites comments on the accuracy of this certification. Pursuant to *section 7805 (f) of the Code*, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration [*10] 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 the 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 may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Julie A. Hanlon-Bolton of the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Part 1-INCOME TAXES

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

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

Par. 2. *Section 1.6045-4* is amended by:

1. Redesignating paragraphs [*11] (b) (2) (i), (b) (2) (ii), (b) (2) (iii), and (b) (2) (iv) as paragraphs (b) (2) (i) (A), (b) (2) (i) (B), (B) (2) (i) (C), and (b) (2) (i) (D), respectively.
2. Adding paragraph (b) (2) (i) (E).
3. Redesignating paragraph (b) (2) introductory text as (b) (2) (i) introductory text.
4. Designating the undesignated text as paragraph (b) (2) (ii).
5. Adding a new last sentence at the end of newly designated paragraph (b) (2) (ii).

6. Revising paragraph (c) (2) (i) and paragraph (s).

The revisions and additions read as follows:

§1.6045-4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

* * *

(b) * * *

(2) * * * (i) * * *

(E) Any non-contingent interest in standing timber.

(ii) * * * Further, the term ownership interest includes any contractual interest in a sale or exchange of standing timber for a lump-sum payment that is fixed and not contingent.

* * *

(c) * * *

(2) * * *

(i) An interest in surface or subsurface natural resources (for example, water, ores, and other natural deposits) or crops, whether or not such natural resources or crops are severed from the land. For purposes of this section, the terms "natural resources" and "crops" do not include standing [*12] timber.

* * *

(s) Effective/applicability date. This section applies for real estate transactions with dates of closing (as determined under paragraph (h) (2) (ii) of this section) that occur on or after January 1, 1991. The amendments to paragraphs (b) (2) (i) (e), (b) (2) (ii) and (c) (2) (i) of this section shall apply to sales or exchanges of standing timber for lump-sum payments completed after the date specified in the final regulations.

Linda E. Stiff

Deputy Commissioner for Services and Enforcement.