(3) To 046573 for use as in paragraphs (d)(1)(xv) and (d)(1)(xvi) of this section.

* * * * *

Dated: November 12, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–32141 Filed 12–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8790]

RIN 1545–AU38

Definition of Reasonable Basis

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the accuracy-related penalty. These amendments are necessary to define reasonable basis and to make conforming changes to existing regulations. These regulations affect any taxpayer that files a tax return.

DATES: Effective date. These regulations are effective December 2, 1998.

Applicability date. For dates of applicability, see §§ 1.6662–2(d) and 1.6664–1(b)(2).

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman, 202–622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1995, the IRS issued final regulations [TD 8617 (60 FR 45661)], relating to the accuracy-related penalty under chapter 1 of the Internal Revenue Code. Those regulations provided guidance concerning the reasonable basis standard for purposes of (1) the negligence penalty under section 6662(b)(1), and (2) the disclosure exception to the penalties for disregarding rules or regulations under section 6662(b)(1) and the substantial understatement of income tax under section 6662(b)(2). In the preamble to the final regulations, the IRS and Treasury Department requested comments and suggestions on providing further guidance on the reasonable basis standard. On November 12, 1996, proposed regulations [IA–42–95 (1996–49 I.R.B. 21) (see § 601.601(d)(2)(ii)(*b*) of this chapter)] defining reasonable basis and making conforming changes to the final regulations relating to the accuracy-related penalty were published in the **Federal Register** (61 FR 58020).

Written comments responding to the notice of proposed rulemaking were received. A public hearing was held on February 25, 1997. After consideration of all the comments, the proposed regulations under section 6662 relating to the definition of reasonable basis for purposes of the accuracy-related penalty are adopted as revised by this Treasury decision.

In addition, on August 5, 1997, the Taxpayer Relief Act (TRA) of 1997, Pub. L. 105–34 (111 Stat. 788), was enacted. The Act added a restriction regarding whether or not a corporation has a reasonable basis for its tax treatment of an item for purposes of reducing the amount of the substantial understatement penalty. This restriction has been incorporated into the final regulations.

Explanation of Provisions and Summary of Comments

These final regulations provide that a return position will have a reasonable basis for purposes of the accuracy-related penalties if it is reasonably based on one or more certain authorities. Also, if the return position does not satisfy the reasonable basis standard, a reasonable cause and good faith exception may still apply.

One commentator suggested that the substantial authority standard in § 1.6662–4(d)(3)(ii) of existing regulations and the reasonable basis standard in § 1.6662–3(b)(3) of the proposed regulations be expanded to include as authority a well-reasoned construction of the applicable regulatory provisions in addition to the statutory provisions. The substantial authority standard in § 1.6662–4(d)(3)(ii) has not been expanded to reflect this comment. However, the definition of reasonable basis in § 1.6662–3(b)(3) has been clarified to include an explicit cross-reference to the nature of the analysis discussion in § 1.6662–4(d)(3)(ii) of the substantial authority regulations.

Several commentators suggested that the final regulations explain where the reasonable basis standard ranks in the hierarchy of return position standards. This suggestion was not adopted. The final regulations do not rank the standards formally because such a comparison would change the focus of the reasonable basis regulations from the taxpayer's obligation to determine his or her tax liability in accordance with the internal revenue laws to the probability of the return position prevailing in litigation.

Several commentators supported the exclusion of a numerical qualification of the reasonable basis standard in the proposed regulations because they believed that such a qualification would encourage arbitrary and mechanical application of the standards and create bad precedent outside the scope of the reasonable basis standard. The final regulations do not include a numerical qualification.

One commentator requested that the final regulations refer specifically to Rev. Rul. 59–60 (1959–1 C.B. 237) (see § 601.601(d)(2)(ii)(*b*) of this chapter), which provides guidance regarding the valuation of stock of closely held corporations for estate and gift tax purposes. The final regulations do not adopt this suggestion. It is not necessary to include a reference to a specific revenue ruling because § 1.6662–4(d)(3)(iii) of the existing regulations already lists revenue rulings as an acceptable type of authority.

One commentator requested that the final regulations clarify the effect of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (107 Stat. 312), and the reasonable cause and good faith exception under section 6664 on a taxpayer's access to prepayment litigation in Tax Court. The final regulations do not adopt this suggestion. It is not necessary to clarify that a taxpayer has access to prepayment litigation in Tax Court because under section 6665 the Tax Court has jurisdiction to redetermine additions to tax in the same manner as the underlying tax.

Pursuant to the Taxpayer Relief Act of 1997, Pub. L. 105–34 (111 Stat. 788), § 1.6662–4(e)(3) has been added to the final regulations. That section provides that for purposes of reducing the amount of the substantial understatement penalty by making an adequate disclosure, a corporation will not be treated as having a reasonable basis for its tax treatment of an item attributable to a multi-party financing transaction entered into after August 5, 1997, if the treatment does not clearly reflect the income of the corporation.

The Chief Counsel for Advocacy of the Small Business Administration requested that the preamble to the regulations explain why the IRS has concluded that this regulation is not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Chief Counsel for Advocacy submits that the regulations tighten the definition of reasonable basis and, thus, impose a de facto recordkeeping requirement because they may require small businesses to keep and maintain records (such as the documents referred to in § 1.6662–4(d)(3)(iii)) to support tax reporting decisions.

After carefully considering these comments, the IRS and Treasury have

concluded that this regulation is not subject to the Regulatory Flexibility Act, 5 U.S.C. § 603 (1994). That section requires a regulatory flexibility analysis for an interpretative rule involving the internal revenue laws only to the extent the interpretative rule imposes a collection of information requirement on small entities. A collection of information requirement is defined in 5 U.S.C. § 601(7) (1994) to mean the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either (i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States, or (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States that are to be used for general statistical purposes.

Furthermore, the phrase, recordkeeping requirement, is defined in 5 U.S.C. 601(8) (1994) as a requirement imposed by an agency on persons to maintain specified records. Ever since this term was first used in the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the IRS and Treasury have consistently interpreted the phrase as applying only when Treasury regulations directly require persons to maintain specified records. We believe this interpretation is consistent with the explicit statutory language as well as Congressional intent to apply the law only to situations in which government agencies require persons to maintain particular records.

Thus, we believe the final regulations do not impose a recordkeeping requirement or other collection of information requirement, as defined in 5 U.S.C. 601(7), (8) (1994). The regulations do not impose on taxpayers additional requirements to either report information to the IRS or to keep specified records. Because the regulations do not contain a reporting requirement or other collection of information requirement, the provisions of the Regulatory Flexibility Act do not apply.

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. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small business. The Chief Counsel for Advocacy submitted comments on these regulations, which are discussed above.

Drafting Information: The principal author of these regulations is Beverly A. Baughman, Office of the Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 1.6662–0 is amended by:

1. Adding the entry for § 1.6662–2(d)(4).
2. Removing the entries for § 1.6662–3(b)(3)(i) and (ii).
3. Adding the entry for § 1.6662–4(e)(3).
4. Revising the entry for § 1.6662–7(d).
5. Removing the entries for § 1.6662–7(d)(1) and (2).

The revision and additions read as follows:

§ 1.6662–0 Table of contents.

* * * * *

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) * * *

(4) Special rule for reasonable basis.

* * * * *

§ 1.6662–4 Substantial understatement of income tax.

* * * * *

(e) * * *

(3) Restriction for corporations.

* * * * *

§ 1.6662–7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

* * * * *

(d) Reasonable basis.

Par 3. Section 1.6662–2 is amended by:

1. Revising the second sentence in paragraph (d)(1).
2. Revising the first sentence in paragraph (d)(2).
3. Adding paragraph (d)(4).

The addition and revisions read as follows:

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) * * * (1) * * * Except as provided in the preceding sentence and in paragraphs (d)(2), (3), and (4) of this section, §§ 1.6662–1 through 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1989, but before January 1, 1994. * * *

(2) *Returns due after December 31, 1993.* Except as provided in paragraphs (d)(3) and (4) of this section and the last sentence of this paragraph (d)(2), the provisions of §§ 1.6662–1 through 1.6662–4 and § 1.6662–7 (as revised to reflect the changes made to the accuracy-related penalty by the Omnibus Budget Reconciliation Act of 1993) and of § 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1993. * * *

* * * * *

(4) *Special rules for reasonable basis.* Section 1.6662–3(b)(3) applies to returns filed on or after December 2, 1998.

Par. 4. Section § 1.6662–3 is amended by:

1. Revising the third sentence in paragraph (b)(1) introductory text.
2. Revising paragraph (b)(3).

The revisions read as follows:

§ 1.6662–3 Negligence or disregard of rules or regulations.

* * * * *

(b)* * * (1) * * * A return position that has a reasonable basis as defined in paragraph (b)(3) of this section is not attributable to negligence. * * *

* * * * *

(3) *Reasonable basis.* Reasonable basis is a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. If a return position is reasonably based on one or more of the authorities set forth in § 1.6662–4(d)(3)(iii) (taking into account the relevance and persuasiveness of the authorities, and subsequent developments), the return position will generally satisfy the reasonable basis standard even though it may not satisfy the substantial authority standard as defined in § 1.6662–4(d)(2). (See § 1.6662–4(d)(3)(ii) for rules with

respect to relevance, persuasiveness, subsequent developments, and use of a well-reasoned construction of an applicable statutory provision for purposes of the substantial understatement penalty.) In addition, the reasonable cause and good faith exception in § 1.6664–4 may provide relief from the penalty for negligence or disregard of rules or regulations, even if a return position does not satisfy the reasonable basis standard.

* * * * *

Par. 5. Section 1.6662–4 is amended by:

1. Revising the second sentence in paragraph (d)(2).

2. Adding paragraph (e)(3).

The addition and revision reads as follows:

§ 1.6662–4 Substantial understatement of income tax.

* * * * *

(d) * * *

(2) * * * The substantial authority standard is less stringent than the more likely than not standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard as defined in § 1.6662–3(b)(3). * * *

* * * * *

(e) * * *

(3) *Restriction for corporations.* For purposes of paragraph (e)(2)(i) of this section, a corporation will not be treated as having a reasonable basis for its tax treatment of an item attributable to a multi-party financing transaction entered into after August 5, 1997, if the treatment does not clearly reflect the income of the corporation.

* * * * *

Par. 6. In § 1.6662–7, paragraph (d) is revised to read as follows:

§ 1.6662–7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

* * * * *

(d) *Reasonable basis.* For purposes of §§ 1.6662–3(c) and 1.6662–4(e) and (f) (relating to methods of making adequate disclosure), the provisions of § 1.6662–3(b)(3) apply in determining whether a return position has a reasonable basis.

Par. 7. Section 1.6664–0 is amended by:

1. Revising the entry for § 1.6664–4(c)(2).

2. Removing the entries for §§ 1.6664–4(c)(1)(iii), (c)(2)(i), and (c)(2)(ii).

3. Adding the entry for § 1.6664–4(g)(3).

The revision and addition reads as follows:

§ 1.6664–0 Table of contents.

* * * * *

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(c) * * *

(2) Advice defined.

* * * * *

(g) * * *

(3) Special rules.

* * * * *

Par. 8. In § 1.6664–4, paragraph (g) is revised to read as follows:

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(g) *Valuation misstatements of charitable deduction property*—(1) *In general.* There may be reasonable cause and good faith with respect to a portion of an underpayment that is attributable to a substantial (or gross) valuation misstatement of charitable deduction property (as defined in paragraph (g)(2) of this section) only if—

(i) The claimed value of the property was based on a qualified appraisal (as defined in paragraph (g)(2) of this section) by a qualified appraiser (as defined in paragraph (g)(2) of this section); and

(ii) In addition to obtaining a qualified appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

(2) *Definitions.* For purposes of this paragraph (g):

Charitable deduction property means any property (other than money or publicly traded securities, as defined in § 1.170A–13(c)(7)(xi)) contributed by the taxpayer in a contribution for which a deduction was claimed under section 170.

Qualified appraisal means a qualified appraisal as defined in § 1.170A–13(c)(3).

Qualified appraiser means a qualified appraiser as defined in § 1.170A–13(c)(5).

(3) *Special rules.* The rules of this paragraph (g) apply regardless of whether § 1.170A–13 permits a taxpayer to claim a charitable contribution deduction for the property without obtaining a qualified appraisal. The rules of this paragraph (g) apply in addition to the generally applicable rules concerning reasonable cause and good faith.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: November 17, 1998.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 98–31985 Filed 12–1–98; 8:45 am]

BILLING CODE 4830–01–u

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300746; FRL–6038–4]

RIN 2070–AB78

Metolachlor; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide metolachlor and its metabolites in or on spinach at 0.3 parts per million (ppm) for an additional 18-month period, to May 15, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on spinach. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective December 2, 1998. Objections and requests for hearings must be received by EPA, on or before February 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300746], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300746], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk