DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 25, 31, 53, 55, 156, 301, and 602

[TD 9163]

RIN 1545–BB29

Automatic Extension of Time To File Certain Information Returns and Exempt Organization Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the automatic extension of time to file certain information returns and exempt organization returns. The final regulations adopt temporary rules that removed the requirement for a signature and an explanation to obtain an automatic extension of time to file these returns. The final regulations also remove the requirement for a signature to obtain an automatic extension of time to file corporation income tax returns. The final regulations affect taxpayers who need an extension of time to file certain information returns, exempt organization returns, and/or corporation income tax returns.

DATES: *Effective Date:* These regulations are effective on December 7, 2004.

Applicability Date: For dates of applicability, see §§ 1.6081–3(e), 1.6081–8(g), 1.6081–9(f), and 31.6081(a)–1(d).

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

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR parts 1, 25, 31, 53, 55, 156, 301, and 602 under section 6081 of the Internal Revenue Code, relating to extensions of time to file Federal tax returns.

On June 11, 2003, the IRS published final and temporary regulations (TD 9061) in the **Federal Register** (68 FR 34797). A cross-reference notice of proposed rulemaking (REG–107618–02) was published in the **Federal Register** (68 FR 34875) on the same day. Subsequently, the IRS published a correction to the final and temporary regulations dated September 18, 2003 (68 FR 54660).

The temporary regulations provide an automatic extension of time to file certain information returns and exempt organization returns. The temporary regulations also removed the previously applicable rules requiring a signature and an explanation to obtain an automatic extension of time to file these returns. In addition, the temporary regulations made other minor changes to conform the regulations under section 6081 to current law and practice.

No comments were received from the public in response to the notice of proposed rulemaking and no public hearing was requested or held.

Explanation of Provisions

This Treasury decision removes the temporary regulations and adopts the proposed regulations as final regulations with the changes explained below.

The first change relates to the automatic extension of time to file exempt organization returns. Section 1.6081–9(a) of the proposed regulations provides that exempt organizations may automatically extend the time for filing Form 990 (series) returns for three months. This language inadvertently included exempt organizations organized in corporate form (corporate filers) that file Forms 990–T, ''Exempt Organization Business Income Tax Return'' (and proxy tax under section 6033(e)), who previously could obtain a six-month extension of time to file each year. The IRS and the Treasury Department did not intend to make any changes regarding the extension period for corporate filers of the Form 990–T. Therefore, these final regulations clarify that corporate filers of the Form 990–T may obtain a six-month automatic extension of time to file by properly filing Form 8868.

Furthermore, in reviewing the regulations under section 6081, the IRS and the Treasury Department determined that it was appropriate to amend § 1.6081–3 to eliminate the requirement for corporations to provide a signature on Form 7004, ''Application for Automatic Extension of Time To File Corporation Income Tax Return,'' to obtain a six-month automatic extension of time to file a corporation income tax return. Section 1.6081–3, like all other regulations providing for automatic extensions of time to file, does not require the taxpayer to explain why the extension is needed. Section 1.6081–3, however, unlike the other automatic extensions of time to file, does require a signature on the Form 7004. This signature requirement is an impediment to filing the Form 7004 electronically. The IRS and the Treasury Department have determined that there is no need for a signature requirement for the automatic corporation income tax return extension. Thus, to promote consistency and to remove barriers to electronic filing, this Treasury decision removes the signature requirement from § 1.6081–3.

In addition to removing the signature requirement, this Treasury decision revises § 1.6081–3 to reflect the repeal of section 6152, which allowed corporations to pay tax in installments. A similar revision is made to § 301.6651–1, relating to the addition to tax for failure to file return or pay tax. For a corporation that obtains an automatic extension of time to file under § 1.6081–3, the existing rules in § 301.6651–1(c)(4) provide that there is reasonable cause (and therefore no addition to tax) for failure to pay tax for the period of the extension if the corporation made payments on a schedule consistent with the installment payment schedule in section 6152, paid at least 90% of its tax due on or before the due date for the return, and paid any balance due on or before the extended due date. This Treasury decision removes the requirement that the corporation make payments on a schedule consistent with section 6152.

Section 1.6081–8 allows filers and transmitters of information returns on Form 1099 (series), 1098 (series), 5498 (series), W–2 (series), W–2G, 1042–S, and 8027 to request an automatic 30-day extension of time to file without having to sign Form 8809 and provide an explanation. An explanation and a signature are required if filers and transmitters need additional time to file after receiving the automatic 30-day extension. These regulations also permit employers to obtain an extension of time to file the Social Security Administration copy of Forms W–2 and W–3 without providing a statement of the reasons for requesting the extension.

The final regulations clarify that filers and transmitters are eligible for only one automatic extension of time to file. Filers and transmitters filing Forms W–2 on an expedited basis under § 31.6071(a)–1(a)(3)(ii) may receive an automatic extension of time to file Forms W–2 under Rev. Proc. 96–57, 1996–2 C.B. 389. These filers and transmitters are not eligible to obtain the 30-day automatic extension under § 1.6081–8(b). If these filers and transmitters need additional time, they may request an extension under the generally applicable procedures for obtaining additional extensions of time to file Form W–2.

Special Analyses

It has been determined that this Treasury decision 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, therefore, notice of the amendments to §§ 1.6081–3 and 301.6651–1 and public procedure thereon is not required. Because these amendments merely remove a restriction (signature requirement) and otherwise make only nonsubstantive changes to remove references to prior law, a delayed effective date pursuant to 5 U.S.C. 553(d) is also not required.

In addition, 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, the notice of proposed rulemaking preceding this regulation and the amendments to §§ 1.6081–3 and 301.6651–1 have been 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 Charles A. Hall of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 55

Excise taxes, Investments, Reporting and recordkeeping requirements.

26 CFR Part 156

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 25, 31, 53, 55, 156, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for § 1.6081–8T and § 1.6081–9T and adding entries in numerical order to read in part as follows:

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

Section 1.6081–8 also issued under 26 U.S.C. 6081(a).

Section 1.6081–9 also issued under 26 U.S.C. 6081(a). * * *

■ **Par. 2.** Section 1.6081–1 is amended by revising paragraph (a) to read as follows:

§ 1.6081–1 Extension of time for filing returns.

(a) *In general.* The Commissioner is authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document which relates to any tax imposed by subtitle A of the Code and which is required under the provisions of subtitle A or F of the Code or the regulations thereunder. However, other than in the case of taxpayers who are abroad, such extensions of time shall not be granted for more than 6 months, and the extension of time for filing the return of a DISC (as defined in section 992(a)), as specified in section 6072(b), shall not be granted. Except in the case of an extension of time pursuant to § 1.6081–5, an extension of time for filing an income tax return shall not operate to extend the time for the payment of the tax unless specified to the contrary in the extension. For rules relating to extensions of time for paying tax, see § 1.6161–1.

* * * * *

■ **Par. 3.** Section 1.6081–3 is revised to read as follows:

§ 1.6081–3 Automatic extension of time for filing corporation income tax returns.

(a) *In general.* A corporation or an affiliated group of corporations filing a consolidated return will be allowed an automatic 6-month extension of time to file its income tax return after the date prescribed for filing the return if the following requirements are met:

(1) An application must be submitted on Form 7004, ''Application for Automatic Extension of Time To File Corporation Income Tax Return,'' or in any other manner as may be prescribed by the Commissioner.

(2) The application must be filed on or before the date prescribed for the filing of the return of the corporation (or the consolidated return of the affiliated group of corporations) with the Internal Revenue Service office designated in the application's instructions.

(3) The corporation (or affiliated group of corporations filing a consolidated return) must remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(4) The application must include a statement listing the name and address of each member of the affiliated group if the affiliated group will file a consolidated return.

(b) *No extension of time for the payment of tax.* Any automatic extension of time for filing a corporation income tax return granted under paragraph (a) of this section shall not operate to extend the time for payment of any tax due on such return.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing a notice of termination to the corporation (parent corporation in the case of an affiliated group of corporations filing a consolidated return). The notice shall be mailed at least 10 days prior to the termination date designated in such notice. The notice of termination shall be sufficient for all purposes when mailed to the corporation at the address shown on Form 7004 or to the corporation's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *No extension for DISCs.* Paragraphs (a) through (c) of this section shall not apply to returns filed by a DISC pursuant to section 6011(c)(2).

(e) *Effective date.* This section applies to requests for extension of time to file corporation income tax returns due after December 7, 2004.

■ **Par. 4.** Section 1.6081–8 is added to read as follows:

§ 1.6081–8 Automatic extension of time to file certain information returns.

(a) *In general.* Except as provided in paragraph (f) of this section, a person required to file an information return (the filer) on Form W–2 series, W–2G, 1042–S, 1098 series, 1099 series, 5498

series, or 8027 will be allowed one automatic 30-day extension of time to file the return after the date prescribed for filing the return if the filer or the person transmitting the return for the filer (the transmitter) files an application in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), an application must—

(1) Be submitted on Form 8809, ''Request for Extension of Time To File Information Returns,'' or in any other manner as may be prescribed by the Commissioner; and

(2) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the information return.

(c) *Penalties.* See sections 6652, 6693, 6721, 6722, and 6723 for failure to file an information return.

(d) *Additional 30-day extension of time to file*—(1) *In general.* This paragraph (d) provides procedures for obtaining an additional extension of time for filing an information return on a form listed in paragraph (a) of this section. No extension of time will be granted under this paragraph (d) unless the filer or transmitter has first obtained an automatic extension under this section.

(2) *Procedures.* In the case of an information return on a form listed in paragraph (a) of this section, one additional 30-day extension of time to file the return may be allowed if the filer or transmitter submits a request for the additional extension before the expiration of the automatic 30-day extension. The request must—

(i) Be submitted on Form 8809 or in any other manner as may be prescribed by the Commissioner;

(ii) Explain in detail why the additional time is needed;

(iii) Be signed by the filer or transmitter; and

(iv) Otherwise satisfy the requirements of § 1.6081–1.

(e) *No effect on time to provide statement to recipients.* An extension under this section of time to file an information return does not extend the due date for providing a statement to the person with respect to whom the information is required to be reported.

(f) *Form W–2 filed on expedited basis.* This section does not apply to a return on Form W–2 (series) if the procedures authorized in § 31.6081(a)–1(a)(2)(ii) of this chapter allow an automatic extension of time to file the return.

(g) *Effective date.* This section applies to requests for extension of time to file information returns due after December 7, 2004.

§ 1.6081–8T [Removed]

■ **Par. 5.** Section 1.6081–8T is removed.

■ **Par. 6.** Section 1.6081–9 is added to read as follows:

§ 1.6081–9 Automatic extension of time to file exempt organization returns.

(a) *In general.* A corporation required to file a return on Form 990–T will be allowed an automatic six-month extension of time to file the return after the date prescribed for filing if the corporation files an application in accordance with paragraph (b) of this section. In any other case, an exempt organization required to file a return on Form 990 (series, except for Form 990–C), 1041–A, 4720, 5227, 6069, or 8870 will be allowed an automatic three-month extension of time to file the return after the date prescribed for filing if the exempt organization files an application in accordance with paragraph (b) of this section. For guidance on extensions of time for an exempt organization to file Form 990–C, ''Farmer's Cooperative Association Income Tax Return,'' or Form 1120–POL, ''U.S. Income Tax Return for Certain Political Organizations,'' see § 1.6081–3.

(b) *Requirements.* To satisfy this paragraph (b), an application for an automatic extension under this section must—

(1) Be submitted on Form 8868, ''Application for Extension of Time To File an Exempt Organization Return,'' or in any other manner as may be prescribed by the Commissioner;

(2) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the date prescribed for filing the return;

(3) Show the full amount properly estimated as tentative tax for the exempt organization for the taxable year; and

(4) Be accompanied by the full remittance of the amount properly estimated as tentative tax which is unpaid as of the date prescribed for the filing of the return.

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the exempt organization a notice of termination. The notice must be mailed at least 10 days prior to the termination date designated in such notice. The notice of termination must be mailed to the address shown on the application for extension or to the exempt organization's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter.

(d) *Penalties.* See sections 6651 and 6652(c) for failure to file an exempt organization return or failure to pay the amount shown as tax on the return.

(e) *Coordination with § 1.6081–1.* No extension of time will be granted under § 1.6081–1 for filing an exempt organization return listed in paragraph (a) of this section until an automatic extension has been allowed pursuant to this section.

(f) *Effective date.* This section applies to requests for extensions of time to file an exempt organization return due after December 7, 2004.

§ 1.6081–9T [Removed]

■ **Par. 7.** Section 1.6081–9T is removed.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 8.** The authority citation for part 25 continues to read in part as follows:

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

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 9.** The authority citation for part 31 is amended by removing the entry for § 31.6081(a)–1T to read in part as follows:

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

Section 31.6081(a)–1 also issued under 26 U.S.C. 6081.* * *

■ **Par. 10.** Section 31.6081(a)–1 is amended by:

1. Revising paragraph (a)(2)(i).
2. Adding paragraph (d).

The revision and addition reads as follows:

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) * * *

(2) *Information returns of employers on Forms W–2 and W–3*—(i) *In general.* The Commissioner may grant an extension of time in which to file the Social Security Administration copy of Forms W–2 and the accompanying transmittal form which constitutes an information return under § 31.6051–2(a). For further guidance regarding extensions of time to file the Social Security Administration copy of Forms W–2 and W–3, see § 1.6081–8 of this chapter.

* * * * *

(d) *Effective date.* Paragraph (a)(2)(i) of this section applies to requests for extensions of time to file the Social Security Administration copy of Forms W–2 and W–3 due after December 7, 2004.

§ 31.6081(a)–1T [Removed]

■ **Par. 11.** Section 31.6081(a)–1T is removed.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 12.** The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

PART 55—EXCISE TAX ON REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

■ **Par. 13.** The first sentence of the authority citation for part 55 is revised to read as follows:

Authority: 26 U.S.C. 6001, 6011, 6071, 6091, and 7805. * * *

PART 156—EXCISE TAX ON GREENMAIL

■ **Par. 14.** The authority citation for part 156 is revised to read as follows:

Authority: 26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805.

■ **Par. 15.** In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column in its place:

Section	Remove	Add
1.6081–2(f), first sentence	district director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
1.6081–4(c), first sentence	district director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
1.6081–5(a)(1)	1.6031–1(e)(2)	1.6031(a)–1(e)(2)
1.6081–6(d), first sentence	district director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
1.6081–7(d), first sentence	district director, including the Assistant Commissioner (International), or the director of a service center.	Commissioner.
25.6081–1, second sentence	district director or director of the service center.	Commissioner.
31.6081(a)–1(b), first sentence	district director or director of a service center	Commissioner.
53.6081–1(a), first sentence	District directors and directors of service centers are.	The Commissioner is
53.6081–1(b), first sentence	to the district director or director of the service center with whom the return is to be filed.	in accordance with the instructions to the extension request form
55.6081–1, first sentence	District directors and directors of service centers are.	The Commissioner is
156.6081–1(a), first sentence	District directors and directors of service centers are.	The Commissioner is
156.6081–1(b), first sentence	to the district director or director of the service center with whom the return is to be filed.	in accordance with the instructions to the extension form.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 16.** The authority citation for part 301 continues to read as follows:

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

§ 301.6651–1 [Amended]

■ **Par. 17.** Section 301.6651–1(c)(4) introductory text is amended by removing the language ''or (b)'', removing paragraph (c)(4)(i), and redesignating paragraphs (c)(4)(ii) and (c)(4)(iii) as paragraphs (c)(4)(i) and (c)(4)(ii), respectively.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 18.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 19.** In § 602.101, paragraph (b) is amended by removing the entries for §§ 1.6081–8T and 1.6081–9T from the table.

Approved: November 23, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–26837 Filed 12–6–04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9144]

RIN 1545–BA75

Statutory Options; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects final regulations (TD 9144) that were published in the **Federal Register** on Monday, August 3, 2004 (69 FR 46401) and corrected on Monday, October 18, 2004 (69 FR 61309). The final regulations relate to statutory options.

DATES: This document is effective on August 3, 2004.

FOR FURTHER INFORMATION CONTACT: Erinn Madden, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9144) that are the subject of these corrections are under sections 421, 422, and 424 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9144) contain errors that may prove to be misleading and are in need of clarification.