

the final rule (*i.e.*, RIN 0694–AE93)—all comments on the latter should be submitted by one of the three methods outlined above.

**FOR FURTHER INFORMATION CONTACT:** Sheila Quarterman, Bureau of Industry and Security, Office of Exporter Services, Regulatory Policy Division, by phone at 202–482–2440 or by fax 202–482–3355.

**SUPPLEMENTARY INFORMATION:**

**Background**

In this rule, BIS makes a technical amendment to the Export Administration Regulations (EAR) to remove three references concerning Federal court jurisdiction to review certain BIS enforcement orders. Paragraph (e) of section 766.22 discusses judicial review of a final decision and order by the Under Secretary for Industry and Security in a BIS export control administrative proceeding. Section 766.24 contains two references to judicial review. Paragraph (g) of section 766.24 discusses judicial review of a final decision and order by the Under Secretary concerning the administrative appeal of a temporary denial order issued by the Assistant Secretary for Export Enforcement, and paragraph (e)(5) of the same section includes a reference to paragraph (g). Federal court jurisdiction to review these BIS final orders is governed by statute, not by regulation. BIS is deleting these provisions, which were not promulgated with the intent to create or govern Federal court jurisdiction.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 13, 2009 (74 FR 41325 (August 14, 2009)), has continued the EAR in effect under the International Emergency Economic Powers Act.

**Rulemaking Requirements**

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provisions of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve a collection of information, and, therefore, does not implicate requirements of the PRA.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(A) and (B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule is one of procedure, which is exempted from the notice and comment requirements of the APA. This rule only deletes provisions from Part 766 that discuss federal court jurisdiction, which is an issue governed by statute, not by regulation. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

**List of Subjects in 15 CFR Part 766**

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

■ Accordingly, 15 CFR part 766 of the Export Administration Regulations (15 CFR Parts 730–774) is amended as follows:

**PART 766—[AMENDED]**

■ 1. The authority citation for 15 CFR Part 766 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

**§ 766.22 [Amended]**

■ 2. In § 766.22, remove paragraph (e).

**§ 766.24 [Amended]**

■ 3. In § 766.24, remove the last sentence from paragraph (e)(5) and remove paragraph (g).

Dated: June 11, 2010.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 2010–14525 Filed 6–14–10; 8:45 am]

**BILLING CODE 3510–33–P**

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1215**

[CPSC Docket No. CPSC–2009–0064]

**Third Party Testing for Certain Children's Products; Infant Bath Seats: Requirements for Accreditation of Third Party Conformity**

**Correction**

In rule document 2010–13080 beginning on page 31688 in the issue of Friday, June 4, 2010 make the following corrections:

1. On page 31689, in the third column, in the first full paragraph, in the fourth and fifth lines, “December 1, 2010” should read “December 6, 2010”.

2. On the same page, in the same column, in the same paragraph, in the 10th and 11th lines, “December 2, 2010” should read “December 7, 2010”.

3. On page 31691, in the first column, in the second line from the top, “December 1, 2010” should read “December 7, 2010”.

[FR Doc. C1–2010–13080 Filed 6–14–10; 8:45 am]

**BILLING CODE 1505–01–D**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 40, 49, and 602**

[TD 9486]

**RIN 1545–BJ41**

**Indoor Tanning Services; Cosmetic Services; Excise Taxes**

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

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations that provide guidance on the indoor tanning services excise tax imposed by the Patient Protection and Affordable Care Act. These final and temporary regulations

affect persons that use, provide, or pay for indoor tanning services. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on June 15, 2010.

*Applicability Date:* For dates of applicability, see §§ 40.0–1T(e) and 49.5000B–1T(h).

**FOR FURTHER INFORMATION CONTACT:**

Taylor Cortright, (202) 622–3130 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget under control number 1545–2177. The information is required to be maintained in order for the provider of indoor tanning services to accurately calculate the tax on indoor tanning services when those services are offered with other goods and services, as described in § 49.5000B–1T(d)(2). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

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.

**Background**

This document amends the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49) under section 5000B of the Internal Revenue Code (Code). Section 5000B was added to the Code by section 10907 of the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), to impose an excise tax on indoor tanning services.

**Explanation of Provisions**

Section 5000B(a) imposes on any indoor tanning service a tax equal to 10 percent of the amount paid for such service. Indoor tanning service, as defined in section 5000B(b), does not include any phototherapy service provided by a licensed medical professional. The regulations define phototherapy service and clarify that such service must be performed by, and on the premises of, a licensed medical professional.

The tax applies to amounts paid after June 30, 2010, for indoor tanning services. Liability for the tax arises at the time of payment for the indoor tanning services. In some cases (such as purchase of an undesignated payment card, discussed later in this preamble), it may not be possible to determine whether there is a payment for indoor tanning services. Thus, the regulations provide in those cases that a payment is treated as made, and the tax is imposed, at the time it can reasonably be determined that the payment is made specifically for indoor tanning services. In the case of membership fees paid to certain physical fitness facilities that provide indoor tanning services, the regulations provide a different rule, discussed later in this preamble.

The regulations provide that the “amount paid” for purposes of determining the tax base includes all amounts paid to the provider for indoor tanning services, including any amount paid by insurance. Providers of indoor tanning services, however, often sell other goods and services (such as protective eyewear, footwear, towels, and tanning lotions; manicures, pedicures and other cosmetic or spa treatments; and access to sport or exercise facilities) in addition to indoor tanning services. Thus, the regulations provide rules for determining the tax when the provider charges for other goods and services in addition to indoor tanning services.

Section 6001 requires taxpayers to keep books and records sufficient to show whether or not they are liable for tax. To that end, the regulations allow the provider to exclude charges for other goods and services if the charges are separable, do not exceed the fair market value of the other goods and services, and are shown in the exact amounts in the records pertaining to the indoor tanning services charge.

If the charges are not separately stated, but the total amount paid covers indoor tanning services, then the tax is based on the portion of the amount paid that is reasonably attributable to the indoor tanning services. For example, if

the provider sells bundled services in which the indoor tanning service is bundled with other goods and services, and the charge is not separately stated, the tax applies to the amount paid that is reasonably attributable to the indoor tanning services. This is consistent with the approach taken in Rev. Rul. 63–155 (1963–2 CB 566) (relating to the application of the section 4261 tax on transportation by air to a package tour sold by a hotel that includes airfare, hotel accommodations, and other services not subject to the section 4261 tax).

The regulations provide that a payment for indoor tanning services is treated as made, and liability for the tax is imposed, at the time it can reasonably be determined that the payment is made specifically for indoor tanning services. If a payment is made with a gift certificate, gift card or similar device with a monetary value that can be redeemed for goods or services that may, but do not necessarily, include indoor tanning services (an undesignated payment card), it can reasonably be determined that a payment is made specifically for indoor tanning services when the undesignated payment card is redeemed, in whole or in part, to pay specifically for indoor tanning services (and not when a payment is made to purchase the undesignated payment card). This is consistent with the approach taken in Rev. Rul. 56–157 (1956–1 CB 523) (relating to the application of the section 4261 tax on transportation by air to a gift certificate that could be redeemed for air transportation or cash). In these cases, the provider of the services calculates the tax on the amount of the undesignated payment card that is redeemed for indoor tanning services at the time it is redeemed, and the rules of section 5000B(c) apply to determine the person liable for the tax.

If, however, the provider sells bundled services in which access to indoor tanning services (in a specified or unlimited amount) over a period of time is bundled with other goods and services, it can reasonably be determined that the payment is made specifically for indoor tanning services at the time the bundled services are purchased, because there is value attributable to the access to indoor tanning services. This is different than the example of the gift certificate, because the gift certificate can be redeemed entirely for non-taxable services, but the purchase of bundled services will always include access to indoor tanning services in the “bundle”. In addition, for purposes of these regulations, payments for indoor

tanning services are subject to tax, regardless of actual usage. Thus, the tax applies to the amount paid that is reasonably attributable to the access to indoor tanning services, and the rules of section 5000B(c) apply to determine the person liable for the tax.

On the other hand, in the case of a payment of a membership fee to a qualified physical fitness facility (QPFF) (as defined in the regulations) that includes access to indoor tanning services, the IRS and Treasury Department have determined that the access is incidental to the QPFF's predominant business or activity and any amount attributable to such access would be difficult to calculate and administer. Thus, an amount paid to a QPFF is not a payment for indoor tanning services and the tax is not imposed on the amount paid. The regulations narrowly define QPFF to require, among other things, that the predominant business or activity of the facility is to serve as a physical fitness facility, taking into consideration all of the facts and circumstances. Thus, for example, a business predominantly engaged in providing indoor tanning or other cosmetic services cannot become a QPFF by allowing users access to exercise classes or pieces of exercise equipment. The regulations further provide that a QPFF cannot charge separately for indoor tanning services, offer such services to the public, or offer different membership fee rates based on access to indoor tanning services. Thus, a physical fitness facility that distinguishes memberships based on access to indoor tanning services is not a QPFF.

Section 5000B(c)(1) provides that the person liable for the tax is the individual on whom the indoor tanning service is performed. In some cases, a person might pay for services to be performed on someone else, such as by purchasing a gift certificate for indoor tanning services. Because the tax is calculated on the amount paid for the indoor tanning services, and because the statute contemplates that the tax will be collected at the time payment is made, the person who pays for the services (payor) is deemed to be the person on whom the services are performed for purposes of collecting the tax. Thus, the payor is liable for the tax on the services. If a person pays for a gift certificate for indoor tanning services (or for bundled services that includes indoor tanning services), then the liability for the tax arises at the time of payment.

However, if a person purchases an undesignated payment card, then a payment has not been made for indoor

tanning services until the undesignated payment card is redeemed specifically to pay for indoor tanning services. In that case, the liability for the tax arises at the time the undesignated payment card is redeemed. The person who redeems the card for indoor tanning services is deemed to be the person on whom the services are performed for purposes of collecting the tax, and that person is liable for the tax on the services.

Section 5000B(c)(2) provides that the person receiving the payment on which tax is imposed (the provider) generally must collect the tax from the payor and pay the tax over quarterly to the government. These regulations provide that the amount paid by the payor to the provider is presumed to include the tax if the tax is not separately stated.

In the Proposed Rules section in this issue of the **Federal Register**, the IRS and Treasury Department are requesting comments regarding these temporary regulations, including comments on whether the presumption relating to section 5000B(c)(2) (that the amount paid by the payor to the provider includes the tax if the tax is not separately stated) is consistent with the manner in which providers maintain books and records and specifically whether such a rule is useful for purposes of minimizing recordkeeping burdens of the providers.

If the payor does not pay the tax at the time payment for the indoor tanning services is made, section 5000B(c)(3) provides that, to the extent the tax is not collected, the provider must pay the tax. Thus, the regulations provide that if the provider of the indoor tanning services fails to collect the tax from the payor at the time the payor makes a payment for indoor tanning services, the provider is liable for the tax.

These regulations apply the existing excise tax procedural rules in 26 CFR part 40 to the tax on indoor tanning services. Thus, the tax, whether paid by the payor or the provider under section 5000B(c), is reported by the provider on Form 720 "Quarterly Federal Excise Tax Return." These temporary part 40 regulations do not require semimonthly deposits of tax; rather, full payment of the tax is due quarterly at the time Form 720 is timely filed. The existing regulations also provide that once a Form 720 is required to be filed for a calendar quarter, a Form 720 must be filed for each subsequent calendar quarter, whether or not liability is incurred (or tax must be collected and paid over) during that subsequent quarter, until a final return under § 40.6011(a)-2 is filed.

Some providers of indoor tanning services may operate more than one location at which the services are provided. Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person that must file a separate Form 720.

Collected taxes are held in special trust for the United States pursuant to section 7501, and any person who willfully fails to collect and pay over the tax may be subject to the penalty in section 6672. The IRS will generally administer the indoor tanning services tax (in Chapter 49 of the Code), the same way it administers the other collected excise taxes in Chapter 33 of the Code (the communications and transportation taxes). However, the reporting provisions in § 49.4291-1 of the regulations (relating to certain inability to collect or refusals to pay tax) do not apply to the tax on indoor tanning services because section 4291 provides that these rules apply only to the Chapter 33 taxes.

#### Availability of IRS Documents

The IRS revenue rulings cited in this preamble are published in the Internal Revenue Cumulative Bulletin and are available from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

#### 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. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analysis section in the preamble to the cross-referenced notice of proposed rulemaking in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations 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 Taylor Cortright, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects****26 CFR Part 40**

Excise taxes, Reporting and recordkeeping requirements.

**26 CFR Part 49**

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

**26 CFR Part 602**

Reporting and recordkeeping requirements.

**Amendments to the Regulations**

■ Accordingly, 26 CFR parts 40, 49, and 602 are amended as follows:

**PART 40—EXCISE TAX PROCEDURAL REGULATIONS**

■ **Paragraph 1.** The authority citation for part 40 continues to read in part as follows:

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

■ **Par. 2.** Section 40.0–1 is amended as follows:

■ 1. Paragraph (d) is redesignated as paragraph (f) and new paragraphs (d) and (e) are added.

■ 2. The paragraph heading of redesignated paragraph (f) is revised.

The addition and revision read as follows:

**§ 40.0–1 Introduction.**

\* \* \* \* \*

(d) [Reserved]. For further guidance, see § 40.0–1T(d).

(e) [Reserved]. For further guidance, see § 40.0–1T(e).

(f) *Effective/applicability dates.* \* \* \*

■ **Par. 3.** Section 40.0–1T is added to read as follows:

**§ 40.0–1T Introduction (temporary).**

(a) through (c) [Reserved]. For further guidance, see § 40.0–1(a) through (c).

(d) *Indoor tanning services.* The regulations in this part 40 also set forth administrative provisions relating to the excise taxes imposed by chapter 49, relating to cosmetic services.

(e) *Effective/applicability date.*

Paragraph (d) of this section applies to returns that relate to calendar quarters beginning after June 30, 2010.

(f) [Reserved]. For further guidance, see § 40.0–1(f).

(g) *Expiration date.* Paragraph (d) of this section expires on or before June 11, 2013.

■ **Par. 4.** Section 40.6302(c)–1 is amended by:

■ 1. In paragraph (a)(1), removing the language “by statute” and adding “by statute, by § 40.6302(c)–1T(g),” in its place.

■ 2. Revising the paragraph heading in paragraph (f).

■ 3. Adding paragraph (g).

The revision and additions read as follows:

**§ 40.6302(c)–1 Use of Government depositories.**

\* \* \* \* \*

(f) *Effective/applicability date.* \* \* \*

(g) [Reserved]. For further guidance, see § 40.6302(c)–1T(g).

■ **Par. 5.** Section 40.6302(c)–1T is added to read as follows:

**§ 40.6302(c)–1T Use of government depositories (temporary).**

(a) through (f) [Reserved]. For further guidance, see § 40.6302(c)–1(a) through (f).

(g) *Exception for indoor tanning services.* No deposit is required for the taxes imposed by section 5000B (relating to indoor tanning services) for any calendar quarter beginning after June 30, 2010.

(h) *Expiration date.* This section expires on or before June 11, 2013.

**PART 49—FACILITIES AND SERVICES EXCISE TAX**

■ **Par. 6.** The authority citation for part 49 continues to read in part as follows:

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

■ **Par. 7.** Section 49.0–3T is added to read as follows:

**§ 49.0–3T Introduction; cosmetic services (temporary).**

On and after July 1, 2010, this part 49 also applies to taxes imposed by chapter 49 of the Internal Revenue Code, relating to cosmetic services. See part 40 of this chapter for regulations relating to returns and payments of taxes imposed by chapter 49.

■ **Par. 8.** Subpart G is added to read as follows:

**Subpart G—Cosmetic Services****§ 49.5000B–1T Indoor tanning services (temporary).**

(a) *Overview.* This section provides rules for the tax imposed by section 5000B on any indoor tanning service.

(b) *Imposition of tax—(1) General rule.* Tax is imposed by section 5000B at the time of payment for any indoor tanning service.

(2) *Undesignated payment cards.* In the case of an undesignated payment card (within the meaning of paragraph (c)(5) of this section), payment for indoor tanning services is made when it can reasonably be determined that a payment is made specifically for indoor tanning services. Thus, when the

undesignated payment card is redeemed, in whole or in part, to pay for indoor tanning services (and not when a payment is made to purchase the undesignated payment card), it can reasonably be determined that a payment for indoor tanning services is made, and the tax is imposed.

(3) *Payments to qualified physical fitness facilities.* No portion of a payment to a qualified physical fitness facility (within the meaning of paragraph (c)(4) of this section) that includes access to indoor tanning services is treated as a payment for indoor tanning services.

(c) *Definitions—(1) Indoor tanning service* means a service employing any electronic product designed to incorporate one or more ultraviolet lamps and intended for the irradiation of an individual by ultraviolet radiation, with wavelengths in air between 200 and 400 nanometers, to induce skin tanning. The term does not include phototherapy service performed by, and on the premises of, a licensed medical professional (such as a dermatologist, psychologist, or registered nurse).

(2) *Other goods and services* include, but are not limited to, protective eyewear, footwear, towels, and tanning lotions; manicures, pedicures and other cosmetic or spa treatments; and access to sport or exercise facilities.

(3) *Phototherapy service* means a service that exposes an individual to specific wavelengths of light for the treatment of—

(i) Dermatological conditions (such as acne, psoriasis, and eczema);

(ii) Sleep disorders;

(iii) Seasonal affective disorder or other psychiatric disorder;

(iv) Neonatal jaundice;

(v) Wound healing; or

(vi) Other medical condition determined by a licensed medical professional to be treatable by exposing the individual to specific wavelengths of light.

(4) *Qualified physical fitness facility* means a facility—

(i) In which the predominant business or activity is providing facilities, equipment, and services to its members for purposes of exercise and physical fitness (determined by taking into consideration all of the facts and circumstances, such as the cost of the equipment, variety of services offered, actual usage of services by customers, revenue generated by different services, and how the entity holds itself out to the public through advertising or other means);

(ii) In which providing indoor tanning services is not a substantial part of the business or activity; and

(iii) That does not sell indoor tanning services for a fee to the public or otherwise offer different pricing options to its members based in whole or in part on access to indoor tanning services.

(5) *Undesignated payment card* means a gift certificate, gift card, or similar item that can be redeemed for goods or services that may, but do not necessarily, include indoor tanning services.

(d) *Application of tax*—(1) *Tax on total amount paid for indoor tanning services.* The tax is imposed on the total amount paid for indoor tanning services, including any amount paid by insurance.

(2) *Charges for other goods and services; tanning services separately stated.* If a payment covers charges for indoor tanning services as well as other goods and services, the charges for other goods and services may be excluded in computing the tax payable on the amount paid, if the charges—

- (i) Are separable (regardless of the manner of invoicing the charges);
- (ii) Do not exceed the fair market value of such other goods and services; and
- (iii) Are shown in the exact amounts in the records pertaining to the indoor tanning services charge.

(3) *Charges for other goods and services; tanning services bundled.* This paragraph (d)(3) applies if paragraph (d)(2) of this section does not apply. If a provider offers indoor tanning services (whether of a specified or unlimited amount, including “free” or reduced-rate indoor tanning services) bundled with other goods and services, the payment for the bundled services includes an amount paid for indoor tanning services. The tax applies to that portion of the amount paid to the provider that is reasonably attributable to indoor tanning services. The amount reasonably attributable to indoor tanning services may be determined by applying to the total amount paid a ratio determined by comparing—

(i) The provider’s charge for indoor tanning services not in bundled services or, in the event the provider only charges for other goods and services as part of bundled services, the fair market value of similar services (based on the amount charged by comparable providers in the same geographic area); to

(ii) The charge determined in paragraph (d)(3)(i) of this section plus the provider’s charge for the other goods and services in the bundled services or, in the event the provider only charges for other goods and services as part of bundled services, the fair market value of similar goods and services (based on

the amount charged by comparable providers in the same geographic area).

(e) *Person liable for the tax*—(1) *General rule.* The person who pays for the indoor tanning service is deemed to be the person on whom the service is performed for purposes of collecting the tax. Thus, the person paying for the indoor tanning service is liable for the tax at the time of payment.

(2) *Undesignated payment cards.* In the case of a payment made with an undesignated payment card (within the meaning of paragraph (c)(5) of this section) described in paragraph (b)(2) of this section, the person who redeems the card, in whole or in part, to pay specifically for indoor tanning services is the person who pays for the indoor tanning services. Thus, the person who redeems an undesignated payment card, in whole or in part, to pay specifically for indoor tanning services is liable for the tax at the time such payment is made.

(3) *Tax not collected at time of payment.* If the person paying for the indoor tanning services does not pay the tax to the person receiving the payment for the services at the time of payment for the services, the person receiving the payment is liable for the tax.

(f) *Persons receiving payment must collect tax.* Every person receiving a payment for indoor tanning services on which a tax is imposed under this section shall collect the amount of the tax from the person making that payment. The total amount paid is presumed to include the tax if the tax is not separately stated.

(g) *Examples.* The following examples illustrate the application of section 5000B and this section.

*Example 1.* A is a provider of indoor tanning services and other goods and services. On July 1, 2010, B, an individual, pays A for one 10-minute indoor tanning service (as defined in paragraph (c)(1) of this section) and one pair of protective eyewear. A charges \$15.00 for the 10-minute indoor tanning service and \$2.00 for a pair of protective eyewear. The \$2.00 charge for the protective eyewear does not exceed its fair market value. The invoice from A is \$17.00 (exclusive of the tax imposed by section 5000B) and separately states the cost of the protective eyewear. Because the cost of the protective eyewear is separately stated, A calculates the section 5000B tax on \$15.00 as provided by paragraph (d)(2) of this section. B is liable for the tax when B pays for the services. If A does not collect the tax from B at the time B pays for the services, A is liable for the tax.

*Example 2.* A, a provider of indoor tanning services and other goods and services, periodically offers bundled services to promote additional business. On July 1, 2010, C, an individual, buys bundled service from A that includes 10 swimming lessons, the use

of towels while on A’s premises, one pair of protective eyewear, and 2 “free” 10-minute indoor tanning services. A charges \$252.00 (exclusive of the tax imposed by section 5000B) for the bundled services. If these services are purchased separately, A charges (exclusive of the tax imposed by section 5000B) \$25.00 per swimming lesson, \$15.00 for a 10-minute indoor tanning service, \$2.00 for the protective eyewear and does not charge for the use of towels while on A’s premises. As determined under paragraph (d)(3) of this section, the section 5000B tax applies to the amount reasonably attributable to the indoor tanning service, which is \$26.81 ( $(\$30/\$282) \times \$252$ ).

*Example 3.* On July 1, 2010, D buys bundled services (described in *Example 2*) from A as a gift for C. Under paragraph (e)(1) of this section, D is deemed to be the person on whom the indoor tanning services are performed for purposes of collecting the tax. Therefore, under paragraph (b)(1) of this section, D is liable for the tax when D pays for the services. The tax will be computed under the rules of paragraph (d)(3) of this section. If D does not pay the tax at the time D pays for the services, A is liable for the tax.

*Example 4.* S operates a spa that provides a variety of cosmetic goods and services, including indoor tanning services. On July 1, 2010, D buys a gift certificate in the amount of \$100.00 from S as a gift for C. The gift certificate may be redeemed by C for C’s choice among several services offered by S, including indoor tanning services. On July 15, 2010, C partially redeems the gift certificate to pay for one 10-minute indoor tanning service. Under paragraph (b)(2) of this section, a payment for indoor tanning services is made, and the tax under section 5000B is imposed, on July 15, 2010, when C partially redeems the gift certificate to pay for one indoor tanning service. Under paragraph (e)(2) of this section, C is the person who pays for the indoor tanning services. Therefore, C is liable for the tax, computed under the rules of paragraph (d) of this section, and pays the tax by permitting S to debit the amount of the tax from the balance of the gift certificate or by paying the amount of the tax to S in cash. If C does not pay the tax at the time C partially redeems the gift certificate to pay for the indoor tanning services, S is liable for the tax.

*Example 5.* On July 1, 2010, E pays \$1000 (exclusive of the tax imposed by section 5000B) to spa S for the right to use the following equipment and services during the month of July: up to four massages or facials, unlimited use of a sauna, steam room, showers, and towel service, and unlimited indoor tanning services. If the services are purchased separately, S charges (exclusive of the tax imposed by section 5000B) \$150 for unlimited indoor tanning services during the month of July, and \$900 for the other equipment and services during the month of July, not including indoor tanning services. Under paragraph (b) of this section, E has made a payment for indoor tanning services and the tax will be computed under the rules of paragraph (d)(3) of this section. As determined under paragraph (d)(3) of this section, the section 5000B tax applies to the amount reasonably attributable to the indoor

tanning services, which is \$142.86 ((\$150/\$1050) × \$1000). If E does not pay the tax at the time E pays for the bundled services, S is liable for the tax.

**Example 6.** G operates a full-service gym facility that offers fitness classes, multiple exercise machines (such as treadmills, stationary bicycles, weight training machines, and free weights), and has as its predominant business providing these facilities, equipment, and services to members for purposes of exercise and physical fitness. G provides its members with access to indoor tanning services, comprised of two tanning beds that meet the definition of indoor tanning services under paragraph (c)(1) of this section. G generally charges its members a fee for monthly usage of its facilities, equipment, and services, but also offers short-term or free trial memberships and allows non-members to purchase individual or a series of exercise classes. G does not charge any fee for the indoor tanning services, does not offer indoor tanning services separately from its other services, and has no membership tier or category that differs from others based on access to the indoor tanning services. G holds itself out to the public through advertising and marketing as providing equipment and services to improve physical fitness. On July 1, 2010, F pays a membership fee to G in return for use of G's facility during the month of July. Under paragraph (b)(3) of this section, no portion of F's membership fee payment is treated as a payment made for indoor tanning services, because G is a qualified physical fitness facility under paragraph (c)(4) of this section. Therefore, no liability for tax arises under section 5000B.

(h) *Effective/applicability date.* This section applies to amounts paid after June 30, 2010, for indoor tanning services.

(i) *Expiration date.* This section expires on or before June 11, 2013.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 9.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 10.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

### § 602.101 OMB Control numbers.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.5000B-1 .....	1545-2177
* * * * *	

Approved: June 9, 2010.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2010-14398 Filed 6-11-10; 11:15 am]

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4022 and 4044

#### Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** Pension Benefit Guaranty Corporation's regulations on Allocation of Assets in Single-Employer Plans and Benefits Payable in Terminated Single-Employer Plans prescribe interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule (1) amends the asset allocation regulation to adopt interest assumptions for plans with valuation dates in the third quarter of 2010 and (2) amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in July 2010. Interest assumptions are also published on PBGC's Web site (<http://www.pbgc.gov>).

**DATES:** Effective July 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: the regulation on Allocation of Assets in Single-

Employer Plans (29 CFR part 4044) and the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the assumptions under the asset allocation regulation for the third quarter (July through September) of 2010 and updates the assumptions under the benefit payments regulation for July 2010.

The interest assumptions prescribed under the asset allocation regulation (found in Appendix B to Part 4044) are used for the valuation of benefits for allocation purposes under ERISA section 4044. Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) Adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during the third quarter (July through September) of 2010, (2) adds to appendix B to part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during July 2010, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during July 2010.

The interest assumptions that PBGC will use for valuing benefits for allocation purposes (set forth in appendix B to part 4044) will be 4.93 percent for the first 20 years following the valuation date and 4.66 percent thereafter. In comparison with the interest assumptions in effect for the second quarter of 2010, these interest assumptions represent an increase of 0.30 percent for the first 20 years following the valuation date and an increase of 0.15 percent for all years thereafter.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay