

Issued in Renton, Washington, on August 11, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

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FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Trade Commission ("Commission") published a final rule on August 10, 2010, adopting amendments to the Telemarketing Sales Rule that address the telemarketing of debt relief services. This document makes technical corrections to that final rule.

DATES: *Effective Date:* September 27, 2010.

FOR FURTHER INFORMATION CONTACT:

Allison Brown, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580 (202-326-3224).

SUPPLEMENTARY INFORMATION: In FR Doc. 2010-19412 appearing on page 48458 in the *Federal Register* of Tuesday, August 10, 2010, the following corrections are made:

§ 310.8 [Corrected]

■ 1. On page 48523, in the first column, in § 310.8 (c), "\$54" is corrected to read "\$55" and, "\$14,580" is corrected to read "\$15,058".

§ 310.8 [Corrected]

■ 2. On the same page, in the second column, in § 310.8 (d), in the fourth line, "\$54" is corrected to read "\$55".

Donald S. Clark,

Secretary.

[FR Doc. 2010-20680 Filed 8-23-10; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9499]

RIN 1545-BF65

Clarification to Section 6411 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations amending existing regulations under section 6411 of the Internal Revenue Code (Code) relating to the computation and allowance of the tentative carryback adjustment. These regulations adopt without change the rules of the temporary regulations, which clarify that, for purposes of allowing a tentative adjustment, the IRS may credit or reduce the tentative adjustment by both assessed and certain unassessed tax liabilities. These final regulations affect taxpayers that file an application for a tentative carryback allowance.

DATES: *Effective Date:* These regulations are effective on August 24, 2010.

Applicability Date: These regulations apply with respect to applications for tentative refund filed on or after August 24, 2010.

FOR FURTHER INFORMATION CONTACT:

Contact Elizabeth Mezheritsky at (202) 622-3600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Revisions

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 6411 relating to the computation and allowance of the tentative carryback adjustment.

On August 24, 2007, temporary regulations (TD 9355), 2007-37 IRB 577 (72 FR 48933) and a notice of proposed rulemaking by cross-reference to temporary regulations (REG-118886-06), 2007-37 IRB 591 (72 FR 48952) were published in the *Federal Register*. On October 4, 2007, corrections to the temporary regulations were published in the *Federal Register* (72 FR 56619). Only one set of written comments responding to the notice of proposed rulemaking was received, and the same commenter was the sole speaker at a public hearing on the notice of proposed rulemaking, which was held on February 5, 2008. After consideration of the comments, the temporary regulations are adopted without change by this Treasury decision. The comments are discussed in the preamble.

Explanation of Provisions and Summary of Comments

In general, section 6411(a) provides that, in the case of certain loss or credit carrybacks, a taxpayer may file an application for a tentative carryback adjustment of the tax for a prior taxable

year. Under section 6411(b), any resulting decrease in tax attributable to the carryback must be credited against any tax or installment "then due" from the taxpayer, or refunded to the taxpayer. Existing regulations at section 1.6411-3(d)(1)(iii) further provide that the decrease in tax is first applied against any unpaid amount of tax that is "due and payable" on the date the decrease is allowed.

These regulations amend existing regulations under section 6411 to clarify the computation and allowance of the tentative carryback adjustment. The tentative allowance is computed pursuant to § 1.6411-2 but applied pursuant to § 1.6411-3. The regulations provide that, for purposes of computing the tentative allowance under section 6411, the Commissioner will not consider amounts to which the taxpayer and the Commissioner are in disagreement. For purposes of applying the tentative allowance, however, the regulations provide that the Commissioner may credit or reduce the tentative adjustment by any assessed tax liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances. Regarding unassessed liabilities determined in a statutory notice of deficiency, *see* Rev. Rul. 2007-51. Regarding unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, *see* Rev. Rul. 2007-52. *See also* § 601.601(d)(2).

The sole commenter asserted that the IRS lacks the authority to credit a tax decrease due to a tentative carryback adjustment against a tax liability unless the liability has been assessed against the taxpayer. According to the commenter, an assessed liability is the only proper interpretation of the terms "due and payable" and "then due" for purposes of section 6411(b). The Treasury Department and the IRS disagree with this position. The general authority to apply credits is provided by section 6402, which permits the IRS to credit the amount of any overpayment, including interest, against any tax liability of the person who made the overpayment. Nothing in section 6402 or the applicable regulations specifies when a liability arises for purposes of crediting overpayments. The Treasury Department and IRS have determined that both assessed and certain unassessed liabilities are appropriately considered "then due" for purposes of section 6411. Accordingly, the

temporary regulations are adopted as final regulations without change.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations and because these final regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small businesses and no comments were received.

Drafting Information

The principal author of these final regulations is Elizabeth K. Mezheritsky, Office of the Associate Chief Counsel (Procedure and Administration).

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 1.6411–2 is amended by:

- 1. Revising paragraph (a).
- 2. Revising paragraph (b).

The revisions read as follows:

§ 1.6411–2 Computation of tentative carryback adjustment.

(a) *Tax previously determined.* The taxpayer is to determine the amount of decrease, attributable to the carryback, in tax previously determined for each taxable year before the taxable year of the net operating loss, net capital loss, or unused investment credit. The tax previously determined is to be ascertained in accordance with the method prescribed in section 1314(a). Thus, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without

assessment) as deficiencies before the date of the filing of the application for a tentative carryback adjustment, and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to that date. Any items as to which the Commissioner and the taxpayer are in disagreement at the time of the filing of the application shall, for purposes of § 1.6411–2, be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported on the return, or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application. The tax previously determined, therefore, will reflect the foreign tax credit and the credit for tax withheld at source provided in section 33.

(b) *Decrease attributable to carryback.* After ascertaining the tax previously determined in the manner described in paragraph (a) of this section, the taxpayer shall determine the decrease in tax previously determined attributable to the carryback and any related adjustments on the basis of the items of tax taken into account in computing the tax previously determined. In determining any decrease attributable to the carryback or any related adjustment, items shall be taken into account under this subsection only to the extent that they were reported on the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, credited, refunded, or otherwise repaid, before the date of filing the application for a tentative carryback adjustment. If the Commissioner and the taxpayer are in disagreement as to the proper treatment of any item, it shall be assumed, for purposes of determining the decrease in the tax previously determined, that the item was reported correctly by the taxpayer unless, and to the extent that, the disagreement has resulted in the assessment of a deficiency (or the collection of an amount without an assessment), or the allowing or making of an abatement, credit, refund, or other repayment, before the date of filing the application. Thus, if the taxpayer claimed a deduction on its return of \$50,000 for salaries paid its officers but the Commissioner proposes that the deduction should not exceed \$20,000, and the Commissioner and the taxpayer have not agreed on the amount properly deductible before the date the application for a tentative carryback adjustment is filed, \$50,000 shall be

considered as the amount properly deductible for purposes of determining the decrease in tax previously determined in respect of the application for a tentative carryback adjustment. In determining the decrease in tax previously determined, any items that are affected by the carryback must be adjusted to reflect the carryback. Thus, unless otherwise provided, any deduction limited, for example, by adjusted gross income, such as the deduction for medical, dental, etc., expenses, is to be recomputed on the basis of the adjusted gross income as affected by the carryback. See § 1.6411–3(d) for rules on the application of the decrease in tax to any tax liability.

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§ 1.6411–2T [Removed]

■ **Par. 3.** Section 1.6411–2T is removed.

■ **Par. 4.** Section 1.6411–3 is amended by:

- 1. Revising paragraph (b).
- 2. Revising paragraph (c).
- 3. Revising paragraph (d)(1) introductory text.
- 4. Revising paragraph (d)(1)(ii).
- 5. Revising paragraph (d)(1)(iii).
- 6. Revising paragraph (d)(2).
- 7. Revising paragraph (d)(3).

The revisions read as follows:

§ 1.6411–3 Allowance of adjustments.

* * * * *

(b) *Examination.* Within the 90-day period described in paragraph (a) of this section, the Commissioner shall make, to the extent deemed practicable within this period, an examination of the application to discover omissions and errors of computation. The Commissioner shall determine within this period the decrease in tax previously determined, affected by the carryback or any related adjustments, upon the basis of the application and examination. The decrease shall be determined in the same manner as that provided in section 1314(a) for the determination by the taxpayer of the decrease in taxes previously determined, which must be set forth in the application for a tentative carryback adjustment. The Commissioner may correct any errors of computation or omissions discovered upon examination of the application. In determining the decrease in tax previously determined which is affected by the carryback or any related adjustment, the Commissioner may correct any mathematical error appearing on the application and may correct any modification required by the law and incorrectly made by the taxpayer in computing the net operating loss, net capital loss, or unused investment

credit, the resulting carrybacks, or the net operating loss deduction, capital loss deduction, or investment credit allowable. If the required modification has not been made by the taxpayer and the Commissioner has the necessary information to make the modification within the 90-day period, the Commissioner may, in the Commissioner's discretion, make the modification. In determining the decrease, the Commissioner will not, for example, change the amount claimed on the return as a deduction for depreciation because the Commissioner believes that the taxpayer has claimed an excessive amount; and the Commissioner will not include in gross income any amount not so included by the taxpayer, even though the Commissioner believes that the amount is subject to tax and properly should be included in gross income.

(c) *Disallowance in whole or in part.* If the Commissioner finds that an application for a tentative carryback adjustment contains material omissions or errors of computation, the Commissioner may disallow the application in whole or in part without further action. If the Commissioner deems that any error of computation can be corrected within the 90-day period, the Commissioner may do so and allow the application in whole or in part. The Commissioner's determination as to whether the Commissioner can correct any error of computation within the 90-day period shall be conclusive. The Commissioner's action in disallowing, in whole or in part, any application for a tentative carryback adjustment shall be final and may not be challenged in any proceeding. The taxpayer may, however, file a claim for credit or refund under section 6402, and may maintain a suit based on the claim if the claim is disallowed or if the Commissioner does not act upon the claim within 6 months from the date it is filed.

(d) *Application of decrease.* (1) Each decrease determined by the Commissioner in any previously determined tax that is affected by the carryback or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. The unpaid amount of tax may include one or more of the following:

* * * * *

(ii) An amount the time for payment of which has been extended under section 6164 and which is due and payable on or after the date of the allowance of the decrease.

(iii) An amount (not including an amount the time for payment of which

has been extended under section 6164) which is due and payable on or after the date of the allowance of the decrease, including any assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances.

(2) If the unpaid amount of tax includes more than one unpaid amount, the Commissioner may determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in paragraphs (d)(1)(i) through (iii) of this section in the order named. If there are several amounts of the type described in paragraph (d)(1)(iii) of this section, any amount of the decrease that is to be applied against the amount will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied is "the tax" and that the taxpayer had elected to pay the tax in installments. The unpaid amount of tax against which a decrease may be applied under paragraph (d)(1) of this section may not include any amount of tax for any taxable year other than the year of the decrease. After making the application, the Commissioner will credit any remainder of the decrease against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, capital loss, or unused investment credit, the time for payment of which has been extended under section 6164.

(3) Any remainder of the decrease after the application and credits may, within the 90-day period, in the discretion of the Commissioner, be credited against any tax liability or installment thereof then due from the taxpayer (including assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances), and, if not so credited, shall be refunded to the taxpayer within the 90-day period.

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§ 1.6411-3T [Removed]

■ **Par. 5.** Section 1.6411-3T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: August 11, 2010.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010-20916 Filed 8-23-10; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2010-0756]

RIN 1625-AA08

Special Local Regulation for Marine Events; Roanoke River, Plymouth, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "East Coast Drag Boat Association Race", a power boat race to be held on the waters of the Roanoke River near Plymouth, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Roanoke River adjacent to Plymouth, North Carolina during the power boat race.

DATES: This rule is effective from 8 a.m. August 28, 2010 through 9 p.m. August 29, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0756 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0756 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Kevin Ouyoumjian, Prevention Department, Coast Guard Sector North Carolina; telephone (252) 247-4528, e-mail Kevin.J.Ouyoumjian@uscg.mil. If you