

4. Revising paragraph (b)(4)(iii).
 5. Adding *Example 3* to paragraph (b)(4)(iv).
 6. Revising paragraphs (d)(3), (e)(1), and (e)(2)(i).

The revisions and additions read as follows:

§ 1.865-2 Loss with respect to stock.

(a)(1) * * * For purposes of this section, loss includes loss on property that is marked-to-market (such as under section 475) and subject to the rules of this section. * * *

* * * * *

(3) * * *

(ii) * * * If gain from a sale of such stock would give rise to income exempt from tax under section 933, the loss with respect to such stock shall be allocated to amounts that are excluded from gross income under section 933(1) and therefore shall not be allowed as a deduction from gross income. See section 933(1) and § 1.933-1(c).

* * * * *

(b) * * *

(1) * * *

(iv) * * *

Example 6. (i) On January 1, 1998, *P*, a domestic corporation, purchases *N*, a foreign corporation, for \$1,000. On March 1, 1998, *P* causes *N* to sell its operating assets, distribute a \$400 general limitation dividend to *P*, and invest its remaining \$600 in short-term government securities. *P* converted the *N* assets into low-risk investments with a principal purpose of holding the *N* stock without significant risk of loss until the recapture period expired. *N* earns interest income from the securities. The income constitutes subpart F income that is included in *P*'s income under section 951, increasing *P*'s basis in the *N* stock under section 961(a). On March 1, 2002, *P* sells *N* and recognizes a \$400 loss.

(ii) Pursuant to paragraph (d)(3) of this section, the recapture period is increased by the period in which *N*'s assets were held as low-risk investments because *P* caused *N*'s assets to be converted into and held as low-risk investments with a principal purpose of enabling *P* to hold the *N* stock without significant risk of loss. Accordingly, under paragraph (b)(1)(i) of this section the \$400 loss is allocated against foreign source general limitation income.

* * * * *

(4) * * *

(iii) *Matching rule.* If a taxpayer (or a person described in section 1059(c)(3)(C) with respect to the taxpayer) engages in a transaction or series of transactions with a principal purpose of recognizing foreign source income that results in the creation of a corresponding loss with respect to stock (as a consequence of the rules regarding the timing of recognition of income, for example), the loss shall be allocated and apportioned against such income to the

extent of the recognized foreign source income. This paragraph (b)(4)(iii) applies to any portion of a loss that is not allocated under paragraph (b)(1)(i) of this section (dividend recapture rule), including a loss in excess of the dividend recapture amount and a loss that is related to a dividend recapture amount described in paragraph (b)(1)(ii) (de minimis exception) or (b)(1)(iii) (passive dividend exception) of this section.

(iv) *Examples.* * * *

Example 3. (i) *Facts.* On January 1, 2002, *P* and *Q*, domestic corporations, form *R*, a domestic partnership. The corporations and partnership use the calendar year as their taxable year. *P* contributes \$900 to *R* in exchange for a 90-percent partnership interest and *Q* contributes \$100 to *R* in exchange for a 10-percent partnership interest. *R* purchases a dance studio in country *X* for \$1,000. On January 2, 2002, *R* enters into contracts to provide dance lessons in Country *X* for a 5-year period beginning January 1, 2003. These contracts are prepaid by the dance studio customers on December 31, 2002, and *R* recognizes foreign source taxable income of \$500 from the prepayments (*R*'s only income in 2002). *P* takes into income its \$450 distributive share of partnership taxable income. On January 1, 2003, *P*'s basis in its partnership interest is \$1,350 (\$900 from its contribution under section 722, increased by its \$450 distributive share of partnership income under section 705). On September 22, 2003, *P* contributes its *R* partnership interest to *S*, a newly-formed domestic corporation, in exchange for all the stock of *S*. Under section 358, *P*'s basis in *S* is \$1,350. On December 1, 2003, *P* sells *S* to an unrelated party for \$1050 and recognizes a \$300 loss.

(ii) *Loss allocation.* *P* recognized foreign source income for tax purposes before the income had economically accrued, and the accelerated recognition of income increased *P*'s basis in *R* without increasing its value by a corresponding amount, which resulted in the creation of a built-in loss with respect to the *S* stock. Under paragraph (b)(4)(iii) of this section the \$300 loss is allocated against foreign source income if *P* had a principal purpose of recognizing foreign source income and corresponding loss.

* * * * *

(d) * * *

(3) *Recapture period.* A recapture period is the 24-month period ending on the date on which a taxpayer recognized a loss with respect to stock. For example, if a taxpayer recognizes a loss on March 15, 2002, the recapture period begins on and includes March 16, 2000, and ends on and includes March 15, 2002. A recapture period is increased by any period of time in which the taxpayer has diminished its risk of loss in a manner described in section 246(c)(4) and the regulations thereunder and by any period in which the assets of the corporation are hedged against

risk of loss (or are converted into and held as low-risk investments) with a principal purpose of enabling the taxpayer to hold the stock without significant risk of loss until the recapture period has expired. In the case of a loss recognized after a dividend is declared but before such dividend is paid, the recapture period is extended through the date on which the dividend is paid.

* * * * *

(e) *Effective date*—(1) *In general.* This section is applicable to loss recognized on or after January 11, 1999, except that paragraphs (a)(3)(ii), (b)(1)(iv) *Example 6*, (b)(4)(iii), (b)(4)(iv) *Example 3*, and (d)(3) of this section are applicable to loss recognized on or after January 8, 2002. For purposes of this paragraph (e), loss that is recognized but deferred (for example, under section 267 or 1092) shall be treated as recognized at the time the loss is taken into account.

(2) * * *

(i) The taxpayer's tax liability as shown on an original or amended tax return is consistent with the rules of this section for each such year for which the statute of limitations does not preclude the filing of an amended return on June 30, 2002; and

* * * * *

§ 1.865-2T [Removed]

Par. 7. Section 1.865-2T is removed.

§ 1.904-4 [Amended]

Par. 8. In § 1.904-4, paragraph (c)(2)(ii)(A), remove the language "1.865-1T through 1.865-2T" at the end of the first sentence and add "1.865-1 and 1.865-2" in its place.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 19, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

[FinCEN Issuance 2001-2]

Financial Crimes Enforcement Network; Bank Secrecy Act Regulations—Issuance Concerning the Requirement that Money Transmitters and Money Order and Traveler's Check Issuers, Sellers, and Redeemers Report Suspicious Transactions; Effective Date and Reporting Form

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Guidance on reporting requirement effective date and form.

SUMMARY: This document reminds money transmitters and money order and traveler's check issuers, sellers, and redeemers of the January 1, 2002 effective date for the requirement to report suspicious transactions. In addition, this document explains which form these businesses must use to report suspicious transactions.

FOR FURTHER INFORMATION CONTACT:

Patrice Motz, Money Services Business Program, Office of Compliance and Regulatory Enforcement, FinCEN (800) 949-2732; Judith Starr, Chief Counsel or Cynthia L. Clark, Deputy Chief Counsel, FinCEN (703) 905-3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5331, authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. On March 14, 2000, FinCEN issued a final rule requiring money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks, to report suspicious transactions. (65 FR 13683).

II. FinCEN Issuance 2001-2

This document, FinCEN Issuance 2001-2, reminds money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks that the requirement to report suspicious transactions applies to transactions occurring on or after January 1, 2002.¹

¹ The information collection in this Issuance has been approved by the Office of Management and Budget ("OMB") in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1506-0001.

A report of a suspicious transaction must be filed no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a report of the suspicious transaction. *See*, 31 CFR 103.20(b)(3).

FinCEN is developing a form to be used solely by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks to report suspicious transactions. That form, the Suspicious Activity Report—MSB ("SAR—MSB"), will be published in the **Federal Register** for public comment. In the meantime, money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks are to use the existing bank suspicious activity report, Form TD F 90-22.47, to report suspicious activities. Money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks are requested to enter the letters "MSB" in block letters at the top of the form and in the empty space in item 5 of the TD F 90-22.47. Further information about completing the TD F 90-22.47 is available on the general FinCEN Web site at <http://www.treas.gov/fincen> and on the site specific to money services businesses at <http://www.msb.gov>.

Money services businesses are encouraged to continue to use the Financial Institutions Hotline to voluntarily report to law enforcement suspicious transactions that may relate to recent terrorist activity against the United States. The Hotline was established to facilitate the immediate transmittal of this information to law enforcement. The use of the Hotline is voluntary and does not negate the responsibility of a particular money services business to file a TD F 90-22.47.

Dated: December 20, 2001.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 010815207-1285-03]

RIN 0651-AB41

Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: In implementing the provisions of the American Inventors Protection Act of 1999 related to the eighteen-month publication of patent applications, the United States Patent and Trademark Office (Office) revised the rules of practice related to requirements for claiming the benefit of a prior-filed application. The Office is now revising the time period for claiming the benefit of a prior-filed application in an application filed under the Patent Cooperation Treaty (PCT), revising the time period for filing an English language translation of a non-English language provisional application, and making other technical corrections to the rules of practice related to eighteen-month publication.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT:

Robert A. Clarke or Joni Y. Chang, Legal Advisors, Office of Patent Legal Administration, by telephone at (703) 308-6906, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872-9399, marked to the attention of Robert A. Clarke.

SUPPLEMENTARY INFORMATION: The American Inventors Protection Act of 1999 was enacted into law on November 29, 1999. *See* Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999). The American Inventors Protection Act of 1999 contained a number of changes to title 35, United States Code, including provisions for the publication of pending applications for patent, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code ("eighteen-month publication"). The Office implemented the eighteen-month publication provisions of the American Inventors Protection Act of 1999 in a final rule published in September of 2000. *See Changes to Implement Eighteen-Month Publication of Patent*

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