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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9613]

RIN 1545-BI67

Reduced 2009 Estimated Income Tax Payments for Individuals with Small Business Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 6654 of the Internal Revenue Code (Code) relating to reduced estimated income tax payments for qualified individuals with small business income for any taxable year beginning in 2009 and does not apply to any taxable years beginning before or after 2009. The final regulations implement changes to section 6654 made by the American Recovery and Reinvestment Act of 2009. The final regulations provide guidance for qualified individuals with small business income to certify that they satisfy the statutory gross income requirement for purposes of the reduction in their required 2009 estimated income tax payments.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF**

PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

Applicability Date: These regulations apply for any taxable year that begins in 2009.

FOR FURTHER INFORMATION CONTACT: Janet Engel Kidd at (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Income Tax Regulations (26 CFR part 1) under section 6654(d) of the Code relating to the addition to tax for failure by an individual to pay estimated income tax. Section 6654(d)(1)(D) was added by section 1212 of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (123 Stat. 336 (2009)), effective for taxable years beginning in 2009. It does not apply to any taxable years beginning before or after 2009.

Section 6654 imposes an addition to tax in the case of an individual taxpayer's underpayment of estimated tax. Estimated tax is payable in four installments throughout the taxable year, and the amount of each required installment is generally 25 percent of the required annual payment of estimated tax. Under section 6654(d)(1)(B), the required annual payment is the lesser of (i) 90 percent of the tax shown on the income tax return for the taxable year (or, if no return is filed, 90 percent of the tax for the year), or (ii) 100 percent of the tax shown on the taxpayer's return for the preceding taxable year (or 110 percent if the taxpayer's adjusted gross income for the preceding taxable year exceeded \$150,000). The provision allowing for the payment of 100 (or 110) percent of the tax shown on the taxpayer's return for the preceding taxable year does not apply if the preceding taxable year was less than 12 months or if the taxpayer did not file a return for that year.

Section 6654(d)(1)(D) provides a “[s]pecial rule for 2009.” Under this provision, the applicable percentage of tax shown on the return for the preceding taxable year (either 100 or 110 percent) is reduced to 90 percent for qualified individuals for taxable years that begin in 2009. In other words, for taxable years that begin in 2009, a qualified individual’s annual required payment of estimated tax is the lesser of (i) 90 percent of the tax shown on the return for the 2009 taxable year (or, if no return is filed, 90 percent of the tax for the year), or (ii) 90 percent of the tax shown on the individual’s return for taxable year 2008.

To implement the special rule for 2009, the Treasury Department and the IRS published in the **Federal Register** (75 FR 9141) on March 1, 2010, a notice of proposed rulemaking (REG-117501-09) proposing amendments to §1.6654-2, which provides exceptions to the addition to tax for an individual’s failure to pay estimated income tax. The notice of proposed rulemaking cross-referenced temporary regulations (TD 9480) published in the **Federal Register** (75 FR 9101) on the same day.

The IRS received one written public comment responding to the proposed regulations. The comment is available for public inspection at <http://www.regulations.gov> or upon request. The commenter expressed appreciation for efforts to simplify tax reporting by small business owners. A public hearing was not requested or held.

Explanation of Provisions

The final regulations adopt the proposed regulations without change. The final regulations explain who is a qualified individual under section 6654(d)(1)(D) and how a taxpayer establishes that the taxpayer is a qualified individual. A qualified individual is

any individual (1) whose adjusted gross income shown on the individual's return for the preceding taxable year (prior to the taxable year that begins in 2009) is less than \$500,000, and (2) who certifies that more than 50 percent of the gross income shown on that return was income from a small business. See section 6654(d)(1)(D)(ii). If an individual is married within the meaning of section 7703, and files a separate return for a taxable year that begins in 2009, then to qualify, the individual's adjusted gross income shown on the preceding year's return must be less than \$250,000, rather than \$500,000. See section 6654(d)(1)(D)(iv). Pursuant to section 6654(d)(1)(D)(ii)(II), the Secretary shall prescribe by regulation the form, manner, and time for filing a certification. Additionally, section 6654(m) authorizes the Secretary to prescribe regulations as necessary to carry out the purposes of section 6654.

Income from a small business is defined in general terms in section 6654(d)(1)(D)(iii) as income from a trade or business the average number of employees of which was less than 500 for calendar year 2008. The final regulations specify that the trade or business must be a bona fide trade or business of which the individual was an owner. The final regulations provide that a trade or business may be organized as, or take the legal form of, a corporation, partnership, limited liability company, or sole proprietorship.

The final regulations also provide that a qualified individual shall file a certification with the IRS in the manner and at the time prescribed in forms, publications, or other guidance, such as Form 2210, "Underpayment of Estimated Tax by Individuals, Estates, and Trusts" (or any successor form and its instructions).

The final regulations will be applicable for taxable years that begin in 2009. The reduced percentage in section 6654(d)(1)(D) is limited to taxable years that begin in 2009 and does not apply to taxable years that begin before or after 2009.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 because the 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 that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Drafting Information

The principal author of these regulations is Janet Engel Kidd, Office of the Associate Chief Counsel, Procedure and Administration.

List of Subjects 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 * * *

Section 1.6654-2 also issued under 26 U.S.C. 6654(m).

Par. 2. Section 1.6654-2 is amended by revising paragraphs (a) introductory text, (a)(1)(ii), and (f) to read as follows:

§1.6654-2 Exceptions to imposition of the addition to the tax in the case of individuals.

(a) In general. The addition to the tax under section 6654 will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equals or exceeds the lesser of the amount in §1.6654-2(a)(1) or the amount in §1.6654-2(a)(2).

(1) * * *

(ii) Special rule for taxable years beginning in 2009. For any taxable year beginning in 2009, for a qualified individual, the amount described in paragraph (a)(1)(i) of this section is reduced to 90 percent of that amount.

(A) Qualified individual means any individual whose adjusted gross income shown on the individual's return for the preceding taxable year is less than \$500,000 and who certifies, as prescribed in paragraph (a)(1)(ii)(D) of this section, that more than 50 percent of the gross income shown on the return for the preceding taxable year was income from a small business.

(B) Income from a small business means income from the operation of a bona fide trade or business of which the individual was an owner during calendar year 2009, and that on average had fewer than 500 employees in calendar year 2008.

(C) The trade or business may be organized as, or take the legal form of, a corporation, partnership, limited liability company, or sole proprietorship.

(D) A qualified individual shall file a certification of the individual's qualification in the manner and at the time prescribed by the Internal Revenue Service in forms, publications, or other guidance.

* * * * *

(f) Effective/applicability date. Paragraph (a)(1)(ii) of this section applies to any taxable year beginning in 2009 and does not apply to any taxable years beginning before or after 2009.

§ 1.6654-2T [Removed]

Par. 3. Section 1.6654-2T is removed.

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

Approved: February 22, 2013

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).

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