



[4830-01-p]

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[REG-104872-18]

RIN 1545-BO66

Removal of Regulations on Advance Payments for Goods and Long-Term Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking proposes to streamline IRS regulations by removing regulations that are no longer necessary after the enactment of recent tax legislation. Specifically, these regulations would remove existing regulations regarding advance payments for goods and long-term contracts. The regulations would affect accrual method taxpayers who receive advance payments for goods, including those for inventorable goods.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL**

REGISTER].

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-104872-18), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-104872-18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent

electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-104872-18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Charles Gorham, (202) 317-5091, or Joanna L. Trebat, (202) 317-6890; concerning submissions of comments and requests for a hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document proposes to remove §1.451-5 of the Income Tax Regulations (26 CFR part 1), and its cross-references, relating to the treatment of advance payments for goods and long-term contracts under section 451 of the Internal Revenue Code (Code).

In general, section 451 provides that the amount of any item of gross income is included in gross income for the taxable year in which it is received by the taxpayer, unless, under the method of accounting used in computing taxable income, the amount is to be properly accounted for as of a different period.

Under §1.451-1, accrual method taxpayers generally include items of income in the taxable year when all the events have occurred that fix the right to receive the income and the amount of the income can be determined with reasonable accuracy (the “all events” test).

Section 1.451-5 generally allows accrual method taxpayers to defer the inclusion of income for advance payments for goods until the taxable year in which they are properly included in income under the taxpayer’s method of accounting for federal income tax purposes if that method results in the advance payments being included in

gross income no later than when the advance payments are recognized in gross receipts under the taxpayer's method of accounting for financial reporting purposes.

Section 13221 of "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," Public Law 115-97 (the "Act"), amended section 451 by redesignating section 451(b) through (i) as (d) through (k) and adding new subsections (b) and (c).

New section 451(b) generally requires that for accrual method taxpayers the all events test with respect to a particular item of gross income must not be treated as met any later than when the item is taken into account as revenue in a taxpayer's applicable financial statement, or such other financial statement as the Secretary may prescribe.

New section 451(c) generally requires an accrual method taxpayer that receives any advance payment described in section 451(c)(4) during the taxable year to include the advance payment in income in the taxable year of receipt or make an election to: (1) include any portion of the advance payment in income in the taxable year of receipt to the extent required under new section 451(b); and (2) include the remaining portion of the advance payment in income in the following taxable year. The election to defer advance payments of goods and services under new section 451(c) is similar to the rules regarding the treatment of advance payments for goods, services, and other specified items provided in Revenue Procedure 2004-34, 2004-1 CB 991. See H.R. Rep. No. 115-466, at 429 (2017) (Conf. Rep.).

New section 451(c) and its election to defer advance payments override the deferral method provided by §1.451-5. See H.R. Rep. No. 115-466, at 429 n.880 (2017) (Conf. Rep.). Accordingly, the Treasury Department and the IRS propose to

remove §1.451-5 and its cross references. Removing §1.451-5 also will ensure that the new deferral rules of section 451(c) apply uniformly and consistently to all taxpayers as well as simplify tax administration.

The rules of section 446 regarding changes in methods of accounting will apply to taxpayers changing a method of accounting for advance payments from a method described in §1.451-5 to another method. The Treasury Department and the IRS request comments on whether any changes to existing procedural rules under section 446 for changes in methods of accounting are necessary or desirable as a result of removing §1.451-5.

Proposed Applicability Date

The removal of these regulations would apply as of the date the Treasury decision adopting this notice of proposed rulemaking is published in the **Federal Register**.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Because the proposed 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, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS in the preamble under the “ADDRESSES” section. All comments submitted will be made available at www.regulations.gov for public inspection and copying.

A public hearing will be scheduled, if requested, by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this document is Joanna L. Trebat, Office of the Associate Chief Counsel (Income Tax and Accounting). Other personnel from the IRS and Treasury Department participated in its development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be 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 1.381(c)(4)-1 is amended by revising the second sentence of paragraph (b)(2) to read as follows:

§1.381(c)(4)-1 Method of accounting.

* * * * *

(b) * * *

(2) * * * The installment method under section 453, the mark-to-market method under section 475, the amortization of bond premium under section 171, the percentage of completion method under section 460, the recurring item exception of §1.461-5, and the income deferral method under section 455 are examples of special methods of accounting.* * *

* * * * *

Par. 3. Section 1.382-7 is amended by revising the third sentence of paragraph (a) to read as follows:

§1.382-7 Built in gains and losses.

(a) * * * Examples to which this paragraph (a) will apply include, but are not limited to, income received prior to the change date that is deferred under section 455 or Rev. Proc. 2004-34 (2004-1 CB 991 (June 1, 2004)) (or any successor revenue procedure) (see §601.601(d)(2)(ii)(b)).

* * * * *

§1.451-5 [Removed]

Par. 4. Section 1.451-5 is removed.

§1.861-18 [Amended]

Par. 5. Section 1.861-18 is amended in paragraph (i)(4) by:

1. Removing Example 2;

2. Designating Examples 1 and 3 as paragraphs (i)(4)(i) and (ii), respectively;
and

3. In the heading for newly designated paragraph (i)(4)(ii), removing “3” and adding “2” in its place.

§1.6655-0 [Amended]

Par. 6. Section 1.6655-0 is amended by removing the entries for §1.6655-2(f)(3)(i) and (f)(3)(i)(A) and redesignating the entry for §1.6655-2(f)(3)(i)(B) as §1.6655-2(f)(3)(i).

§1.6655-2 [Amended]

Par. 7. Section 1.6655-2 is amended by removing paragraphs (f)(3)(i) heading and (f)(3)(i)(A) and redesignating (f)(3)(i)(B) as (f)(3)(i).

Par. 8. Section 1.6655-6 is amended in paragraph (c) by:

1. Revising the heading and introductory text;
2. Removing Example 1;
3. Designating Example 2 as paragraph (c)(1) and revising the heading of newly designated paragraph (c)(1); and
3. Adding a reserved paragraph (c)(2).

The revisions read as follows:

§1.6655-6 Methods of accounting.

* * * * *

(c) Example. The following example illustrates the rules of this section:

(1) Example. * * *

* * * * *

**PART 602 – OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION
ACT**

Par. 9. Add an authority citation for part 602 to read as follows:

Authority: 26 U.S.C. 7805.

§602.101 [Amended]

Par. 10. Section 602.101 is amended by removing the entry for §1.451-5 and the parenthetical authority citation at the end of the section.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.