

Discussion of Change

Heading 9817, HTSUS, provides for classes of articles entitled to duty free entry into the United States.

The classes of merchandise encompass unwrought metal including remelt scrap ingot (except copper, lead, zinc, and tungsten) in the form of pigs, ingots or billets (a) that are defective or damaged, or have been produced from melted down metal waste and scrap for convenience in handling and transportation without sweetening, alloying, fluxing or deliberate purifying, and (b) that cannot be commercially used without remanufacture; relaying or rerolling rails; and articles of metal (except articles of lead, of zinc or of tungsten, and not including metal-bearing materials provided for in section VI, chapter 26 or subheading 8548.10 and not including unwrought metal provided for in chapters 72–81) to be used in remanufacture by melting or to be processed by shredding, shearing, compacting or similar processing which renders them fit only for the recovery of the metal content.

Specifically, subheading 9817.00.80, provides for articles of copper and subheading 9817.00.90, provides for articles of any other metal fitting into one of the above referenced classes.

Part 54, Customs Regulations (19 CFR Part 54), provides procedures for the duty free entry of certain importations. Section 54.5, Customs Regulations (19 CFR 54.5) sets forth the scope of several exemptions from entitlement to duty free entry of metal articles classified in subheadings 9817.00.80 and 9817.00.90, HTSUS. The provision presently does not apply to:

1. Articles of lead, zinc, or tungsten;
2. Metal-bearing materials provided for in Chapter 26, HTSUS; or
3. Unwrought metal provided for in Section XV, HTSUS.

Inasmuch as subheadings 9817.00.80 and 9817.00.90, HTSUS, also exclude metal-bearing materials provided for in Section VI, HTSUS, as well as articles provided for in subheading 8548.10, HTSUS, § 54.5(a)(2), Customs Regulations, must be amended to include these exemptions. The amendment rectifies the omission of these exemptions.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as this amendment merely conforms the Customs Regulations to existing law as noted above, pursuant to 5 U.S.C. 553(b)(B), notice and public

procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "significant regulatory action" as defined in E.O. 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 54

Customs duties and inspection, Metals, Reporting and recordkeeping requirements.

Amendment to the Regulations

Part 54, Customs Regulations (19 CFR Part 54), is amended as set forth below.

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

1. The general authority citation for part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. Section 54.5 is amended by revising paragraph (a)(2) to read as follows:

§ 54.5 Scope of exemptions; nondeposit of estimated duty.

(a) * * *

(2) Metal-bearing materials provided for in section VI, Chapter 26 or subheading 8548.10, HTSUS; or
* * * * *

Douglas M. Browning,

Acting Commissioner of Customs.

Approved: December 5, 1997.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8749]

RIN 1545–AU34

Qualified Small Business Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the 50-percent exclusion for gain from certain small business stock. The final regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 and provide guidance to the issuers and owners of the stock of certain small businesses.

DATES: This regulation is effective December 31, 1997. For dates of applicability of these regulations, see § 1.1202–2(e).

FOR FURTHER INFORMATION CONTACT: Catherine A. Prohowsky of the Office of the Assistant Chief Counsel (Income Tax and Accounting) at 202–622–4930 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 1202 of the Internal Revenue Code allows a taxpayer (other than a corporation) to exclude 50 percent of certain gain from the sale or exchange of qualified small business stock held for more than 5 years. This document contains amendments to the Income Tax Regulations (26 CFR part 1) that provide guidance relating to the effect of redemptions on the availability of this exclusion.

On June 6, 1996, the **Federal Register** published a notice of proposed rulemaking (IA–26–94), 61 FR 28821, relating to the effect of certain redemptions on the 50-percent exclusion of gain from the sale or exchange of qualified small business stock under section 1202. The proposed regulations provide that these redemptions are disregarded in determining whether the anti-churning rules of section 1202(c) are violated.

Four comments responding to this notice were received. A public hearing was held on October 3, 1996. After consideration of the comments, the proposed regulations under section 1202 are adopted as modified by this Treasury decision.

Summary of Comments and Modifications

The notice of proposed rulemaking requested comments on how to determine when an independent contractor has terminated services. One commentator suggested that the determination of whether services of an independent contractor were terminated should be based on all the facts and circumstances, with termination conclusively presumed if no further services were provided for six months. The IRS and Treasury Department have not adopted this suggestion, but are continuing to study this issue and request additional comments.

Commentators suggested an additional exception for all redemptions occurring in the ordinary course of business or for legitimate business reasons. The final regulations do not incorporate this suggestion. The exceptions in the final regulations relate to redemptions that are incident to certain events affecting a shareholder. Because of the extraordinary nature of these events and the fact that they are generally not within the control of the issuing corporation, the exceptions are unlikely to lead to avoidance of the requirement that qualified small business stock be purchased at original issue. The IRS and Treasury are concerned, however, that a much broader exception for redemptions that arise out of the ordinary business needs and purposes of the issuing corporation, and are not incident to extraordinary events affecting its shareholders, would be much more likely to undermine the original issue requirement.

Two commentators requested that the final regulations be effective for stock purchases by an issuing corporation at any time after August 10, 1993. The effective date has been modified in response to this suggestion. The final regulations will apply to stock issued after August 10, 1993. Thus, regardless of the date on which a redemption occurs (or on which the redeemed stock was issued) the redemption is treated as provided in the final regulations for purposes of determining whether stock issued after August 10, 1993, is qualified small business stock.

The Chief Counsel for Advocacy of the Small Business Administration recommended the inclusion of an exception for redemptions occurring in connection with the divorce of a shareholder. This suggestion has been adopted. The final regulations provide that redemptions of stock occurring incident to the divorce of a shareholder are disregarded in determining whether

redemptions exceed de minimis amounts.

The Chief Counsel for Advocacy also requested that the IRS and Treasury Department analyze the current use of section 1202. No exclusion under section 1202 can be claimed until 1998 because stock must be issued after August 10, 1993, to be qualified small business stock, and must be held for more than 5 years to qualify for the exclusion. Thus, the available tax return data do not provide the information necessary to analyze the current use of section 1202.

Minor clarifying changes in the regulatory language have also been made.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 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, and because these 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 Internal Revenue 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 its impact on small business.

Drafting Information

The principal author of these regulations is Catherine A. Prohowsky, Office of the Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.1202-2 is also issued under 26 U.S.C. 1202(k). * * *

Par. 2. Sections 1.1202-0 and 1.1202-2 are added to read as follows:

§ 1.1202-0 Table of contents.

This section lists the major captions that appear in the regulations under § 1.1202-2.

§ 1.1202-2 Qualified small business stock; effect of redemptions.

- (a) Redemptions from taxpayer or related person.
 - (1) In general.
 - (2) De minimis amount.
- (b) Significant redemptions.
 - (1) In general.
 - (2) De minimis amount.
- (c) Transfers by shareholders in connection with the performance of services not treated as purchases.
- (d) Exceptions for termination of services, death, disability or mental incompetency, or divorce.
- (e) Termination of services.
- (2) Death.
- (3) Disability or mental incompetency.
- (4) Divorce.
- (e) Effective date.

§ 1.1202-2 Qualified small business stock; effect of redemptions.

(a) *Redemptions from taxpayer or related person*—(1) *In general.* Stock acquired by a taxpayer is not qualified small business stock if, in one or more purchases during the 4-year period beginning on the date 2 years before the issuance of the stock, the issuing corporation purchases (directly or indirectly) more than a de minimis amount of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(2) *De minimis amount.* For purposes of this paragraph (a), stock acquired from the taxpayer or a related person exceeds a de minimis amount only if the aggregate amount paid for the stock exceeds \$10,000 and more than 2 percent of the stock held by the taxpayer and related persons is acquired. The following rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock held (directly or indirectly) by the taxpayer and related persons immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(b) *Significant redemptions*—(1) *In general.* Stock is not qualified small business stock if, in one or more purchases during the 2-year period beginning on the date 1 year before the issuance of the stock, the issuing corporation purchases more than a de minimis amount of its stock and the purchased stock has an aggregate value

(as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of the issuing corporation's stock as of the beginning of such 2-year period.

(2) *De minimis amount.* For purposes of this paragraph (b), stock exceeds a de minimis amount only if the aggregate amount paid for the stock exceeds \$10,000 and more than 2 percent of all outstanding stock is purchased. The following rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of the stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock outstanding immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(c) *Transfers by shareholders in connection with the performance of services not treated as purchases.* A transfer of stock by a shareholder to an employee or independent contractor (or to a beneficiary of an employee or independent contractor) is not treated as a purchase of the stock by the issuing corporation for purposes of this section even if the stock is treated as having first been transferred to the corporation under § 1.83-6(d)(1) (relating to transfers by shareholders to employees or independent contractors).

(d) *Exceptions for termination of services, death, disability or mental incompetency, or divorce.* A stock purchase is disregarded if the stock is acquired in the following circumstances:

(1) *Termination of services—(i) Employees and directors.* The stock was acquired by the seller in connection with the performance of services as an employee or director and the stock is purchased from the seller incident to the seller's retirement or other bona fide termination of such services;

(ii) *Independent contractors.* [Reserved];

(2) *Death.* Prior to a decedent's death, the stock (or an option to acquire the stock) was held by the decedent or the decedent's spouse (or by both), by the decedent and joint tenant, or by a trust revocable by the decedent or the decedent's spouse (or by both), and—

(i) The stock is purchased from the decedent's estate, beneficiary (whether by bequest or lifetime gift), heir, surviving joint tenant, or surviving spouse, or from a trust established by the decedent or decedent's spouse; and

(ii) The stock is purchased within 3 years and 9 months from the date of the decedent's death;

(3) *Disability or mental incompetency.* The stock is purchased incident to the disability or mental incompetency of the selling shareholder; or

(4) *Divorce.* The stock is purchased incident to the divorce (within the meaning of section 1041(c)) of the selling shareholder.

(e) *Effective date.* This section applies to stock issued after August 10, 1993.

Approved: December 22, 1997.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, 601, and 602

[TD 8742]

RIN 1545-AU42 and 1545-AV20

Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing the procedures for requesting an extension of time to make certain elections under the Internal Revenue Code. In addition, the regulations provide the standards that the Commissioner will use in determining whether to grant taxpayers extensions of time to make certain elections including changes in accounting method and accounting period. The regulations also set forth the time for filing a Form 3115, Application for Change in Accounting Method, with the Commissioner. The regulations affect taxpayers requesting an extension of time to make certain elections and taxpayers requesting to change their method of accounting for federal income tax purposes.

DATES: These regulations are effective December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Cheryl Lynn Oseekey, (202) 622-4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the

Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1488. Responses to this collection of information are required to obtain an extension of time to make an election.

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.

The estimated annual burden per respondent is 10 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may be 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

On June 27, 1996, temporary regulations relating to the standards the Commissioner will use to grant taxpayers extensions of time to make certain elections were published in the **Federal Register** (TD 8680, 61 FR 33365), and cross-referenced to a notice of proposed rulemaking published in the **Federal Register** on the same date (61 FR 33408). The regulations, §§ 301.9100-1T through 301.9100-3T, provide an automatic 6-month extension from the due date of the return excluding extensions to make statutory and regulatory elections whose due dates are the due date of the return or the due date of the return including extensions. The regulations also provide an automatic 12-month extension of time to make certain regulatory elections. For regulatory elections not eligible for the automatic extensions of time, the regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. A public hearing on the regulations was held on October 30, 1996.

On May 15, 1997, temporary regulations setting forth the time for requesting a change in accounting method and the standards the Commissioner will use to grant an extension of time to request a change in