published in the **Federal Register** on August 4, 1989. The Certification states that, if adopted, the Form will not have a significant economic impact on a substantial number of small entities. The Certification states that Form ADV–E would serve as a cover sheet to accountant examination certificates, and consequently, only entities required to file an examination certificate would be required to file the proposed form. The Certification also states that the form would neither require additional information to be gathered or disclosed, nor impose a new filing burden. Therefore, the form would not have a significant economic impact on a substantial number of small entities.

Title: Form U–13–1.

Citation: 17 CFR 259.113.

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79q, and 79t.

Description: Form U–13–1 under the Public Utility Holding Company Act of 1935 is the application to be filed for approval of a company as a mutual service company pursuant to Rule 88 under the Act or the declaration to be filed with respect to the organization and conduct of business of a subsidiary service company pursuant to Rule 88 under the Act.

Prior Commission Final Action Under 5 U.S.C. 601: The Form was adopted prior to the enactment of the Regulatory Flexibility Act, and has not been amended since the enactment of the RFA. The Commission has taken no prior action on this Form under the RFA.

Title: Form U–12(I)–A.

Citation: 17 CFR 259.212a.

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l* 79m, 79q and 79t.

Description: Form U–12(I)–A under the Public Utility Holding Company Act of 1935 is a statement to be filed by a person employed by a registered holding company or employed by a subsidiary of a registered holding company who engages in any activity within the scope of Section 12(I) of the Act.

Prior Commission Final Action Under 5 U.S.C. 601: In connection with the release proposing revisions to Form U–12(I)–A published in the **Federal Register** on November 4, 1992, the Chairman of the Commission certified that the amended rules would not have a significant impact on a substantial number of small entities. The Commission received no comments on the certification.

Title: Form U–12(I)–B.

Citation: 17 CFR 259.212b.

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79q, and 79t.

Description: Form U–12(I)–B under the Public Utility Holding Company Act of 1935 is an advance statement to be filed every three years by a person employed by a registered holding company or employed by a subsidiary of a registered holding company who engages in any activity within the scope of Section 12(I) of the Act and whose anticipated activities contemplate only routine expenses as specified in Rule 71(b) under the Act.

Prior Commission Final Action Under 5 U.S.C. 601: In connection with the release adopting revisions to Form U–12(I)–B published in the **Federal Register** on April 28, 1994, the Chairman of the Commission certified that the amended rules would not have a significant impact on a substantial number of small entities.

Title: Form U–R–1.

Citation: 17 CFR 259.221.

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79q, and 79t.

Description: Form U–R–1 under the Public Utility Holding Company Act of 1935 is a declaration to be filed pursuant to Rule 62 under the Act for solicitations in connection with any reorganization subject to the rule.

Prior Commission Final Action Under 5 U.S.C. 601: The Form was adopted prior to the enactment of the Regulatory Flexibility Act and has not been amended since the enactment of the RFA. The Commission has taken no prior action on this Form under the RFA.

Title: Form U–13–60.

Citation: 17 CFR 259.313.

Authority: 15 U.S.C. 79m.

Description: Form U–13–60 under the Public Utility Holding Company Act of 1935 is to be filed pursuant to Rule 94 under the Act by mutual service companies and subsidiary service companies required under the rule to file annual reports under Section 13 of the Act.

Prior Commission Final Action Under 5 U.S.C. 601: The Form was adopted prior to the enactment of the Regulatory Flexibility Act and has not been amended since the enactment of the RFA. The Commission has taken no prior action on this Form under the RFA.

Title: Form U–3A3–1.

Citation: 17 CFR 259.403.

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79q and 79t.

Description: Form U–3A3–1 under the Public Utility Holding Company Act of 1935 is a statement to be filed pursuant to Rule 3 under the Act by a bank claiming exemption from any obligation, duty, or liability as a holding company under the Act.

Prior Commission Final Action Under 5 U.S.C. 601: The Form was adopted prior to the enactment of the Regulatory Flexibility Act, and has not been amended since the enactment of the RFA. The Commission has taken no prior action on this Form under the RFA.

The Commission invites public comment on both the list and on the rules to be reviewed.

By the Commission.

Dated: January 12, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1475 Filed 1–20–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208254–90]

RIN 1545–AO72

Source of Compensation for Labor or Personal Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a proposed Income Tax Regulation describing the appropriate basis for determining the source of income from labor or personal services performed partly within and partly without the United States. This proposed regulation would modify the existing final regulation under section 861 of the Internal Revenue Code (Code). This regulation would affect foreign and United States persons that perform services partly within and partly without the United States during the taxable year. This document also provides a notice of a public hearing on this proposed regulation.

DATES: Written and electronic comments and outlines of topics to be discussed at the public hearing scheduled for April 19, 2000, must be received by March 29, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–208254–90), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208254–90), Courier's Desk, Internal Revenue Service, 1111 Constitution

Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Reg'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/regslist.html. The public hearing will be held at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, (202) 622–3850; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 861 of the Internal Revenue Code (Code). These amendments modify the application of the existing final regulation relating to the determination of the source of income from the performance of labor or personal services when such labor or personal services are performed partly within and partly without the United States.

Explanation of Provisions

Section 861(a)(3) of the Code provides, in general, that compensation for the performance of labor or personal services within the United States is treated as gross income from sources within the United States. Generally, under current § 1.861–4(b)(1)(i) of the Income Tax Regulations, if a specific amount is paid for labor or personal services performed in the United States, that amount shall be included in United States source gross income. If no accurate allocation or segregation of amounts paid as compensation for labor or personal services performed in the United States can be made, or when such compensation is paid for labor or personal service performed partly within and partly without the United States, this regulation provides that the amount to be included in gross income from sources within the United States shall be determined on the basis that most correctly reflects the proper source of income under the facts and circumstances of the particular case. In many cases, the facts and circumstances will be such that an apportionment on a time basis will be acceptable; that is, the amount to be included in gross income from sources within the United States will be that amount that bears the same relation to the total compensation as the number of days of performance of the labor or service within the United States bears to the total number of days of performance of labor or services for which the payment is made. In other cases, the facts and circumstances will be such that another method of apportionment will be acceptable.

The IRS understands that, under the current regulations, U.S. individuals posted overseas and foreign individuals posted to the United States generally apportion compensation on a time basis. However, the IRS has become aware that under the facts and circumstances test of the current regulations, U.S. individuals are taking the position that certain fringe benefits associated with an overseas posting by their employer should be considered compensation for labor or personal services performed outside the United States and treated entirely as foreign source income even though some services are performed within the United States during the time of the overseas posting. Conversely, foreign individuals posted to the United States are taking the position that fringe benefits associated with their U.S. posting should be apportioned between compensation for labor or personal services performed within and without the United States based upon the amount of time spent in each jurisdiction and would be partly U.S. and partly foreign source income. In addition, under the current regulations, similarly situated taxpayers may be treated differently depending upon how their employers account for any foreign posting fringe benefits. Where an employer separately states the value of a fringe benefit, a U.S. individual posted overseas may argue that the fringe benefit is entirely compensation for labor or personal services performed outside the United States and foreign source. However, another employee receiving the same amount of additional compensation as part of a foreign posting, but where that benefit is not separately stated, will often be required to apportion this benefit on the basis of time. Finally, the current regulations may allow U.S. individuals to take an inconsistent position for U.S. and foreign tax purposes with respect to the source of fringe benefits associated with an overseas posting and avoid all tax on such compensation.

Treasury and the IRS have determined that an individual who performs labor or personal services partly within and partly without the United States during a specific time period should apportion the services income, including any income in the nature of fringe benefits, between compensation for labor or personal services performed within and without the United States on a time basis. The amount of compensation paid for labor or personal services performed in the United States, as determined under proposed § 1.861–4(b), will constitute United States source income unless an exception applies under § 1.861–4(a). A time basis test for individuals will provide certainty as well as ease of administration for both taxpayers and the IRS. A time basis test will also prevent the possibility of inbound taxpayers taking a time basis apportionment position to apportion a portion of their United States posting fringe benefits back to their home country while similarly situated outbound taxpayers take a facts and circumstances position to allocate all of their fringe benefits to foreign sources. This rule will also eliminate any disparate treatment of similarly situated taxpayers that might occur due to their employer's method of wage accounting. Finally, Treasury and the IRS believe that this rule will limit the potential for individuals to take inconsistent positions for U.S. and foreign tax purposes with respect to the source of their fringe benefits and avoid all tax.

Treasury and the IRS have further determined that, with respect to persons other than an individual, an apportionment based upon all of the facts and circumstances available, for example, an apportionment based upon payroll expenses or capital and intangibles employed, may better reflect the proper source of such compensation. In many situations, an apportionment on a time basis may be acceptable.

The proposed regulation would delete as obsolete current § 1.861–4(b)(2), containing rules applicable to taxable years beginning before January 1, 1976.

Proposed Effective Date

These regulations are proposed to be applicable for taxable years beginning on or after the date they are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this proposed rulemaking 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 this regulation, and, because this regulation does not impose a collection

of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 19, 2000, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 29, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.861–4 is amended as follows:

1. The heading for paragraph (a) is revised.

2. A new sentence is added at the beginning of paragraph (a)(1).

3. Paragraphs (b) and (d) are revised.

The addition and revisions read as follows:

§ 1.861–4 Compensation for labor or personal services.

(a) *Compensation for labor or personal services performed within the United States.* (1) Generally, a specific amount paid for labor or personal services performed in the United States is gross income from sources within the United States. * * *

* * * * *

(b) *Compensation for labor or personal services performed partly within and partly without the United States*—(1) *Persons other than individuals.* If a taxpayer other than an individual receives compensation for a specific time period for labor or personal services performed partly within and partly without the United States, the amount of compensation for labor or personal services performed in the United States shall be determined on the basis that most correctly reflects the proper source of the income under the facts and circumstances of the particular case. To the extent that a determination is made on a time basis, the time period to which the compensation for services relates is presumed to be the taxable year of the taxpayer in which the services are performed unless the taxpayer establishes to the satisfaction of the Commissioner, or the Commissioner determines, a change in circumstances that establishes a distinct, separate, and continuous period of time.

(2) *Individuals.* If an individual receives compensation, including fringe benefits, for a specific time period for labor or personal services that are performed partly within and partly without the United States, the amount of compensation for labor or personal services performed within the United States shall be determined on a time basis. An amount of compensation for labor or personal services performed in the United States determined on a time basis is an amount that bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the compensation payment is made. The time period to which the compensation for services relates is presumed to be the calendar year in which the services are performed, unless the taxpayer establishes to the satisfaction of the Commissioner, or the Commissioner determines, a change in circumstances that establishes a distinct, separate, and continuous period of time. For example, a transfer from a position in the United States to a foreign posting during the year would generally establish two separate time periods. However, a foreign posting that requires short-term returns to the United States to perform services for the employer would not be sufficient to establish a distinct, separate, and continuous time period within the foreign posting time period. Short-term returns to the United States during the separate time period of the foreign posting would be relevant to the apportionment of compensation relating to such time period.

(3) *Examples.* The following examples illustrate the application of this paragraph (b):

Example 1. Corp X, a United States corporation, receives compensation of $15,000 under a contract for services to be performed concurrently in the United States and in several foreign countries at differing rates of compensation by numerous Corp X employees during the taxable year. The employees performing services under this contract perform their services exclusively in one jurisdiction and do not work both within and without the United States during the taxable year. The payroll costs for employees performing services in the United States associated with these contract services is $2,000 out of a total contract payroll cost of $3,000. Since the employees add relatively different amounts of value to the product, a time basis test is not the best test under the facts and circumstances of this particular case. An apportionment of the income received under the contract based upon relative payroll costs would be the basis that most correctly reflects the proper source of the income. Thus, $10,000 of the compensation received under this contract will be compensation for labor or personal services performed in the United States ($15,000 × $2,000/$3,000).

Example 2. Corp X, a United States corporation, receives compensation of $15,000 under a contract for services. Corp X

is able to perform the services necessary to fulfill its obligation under the contract by assigning only three of its employees, each with the same rate of compensation, to render services both within and without the United States during the taxable year. Since the rate of compensation is the same, it can be assumed that all employees are adding the same value to the product. The total number of employee-days necessary to complete the contract is 30 days of which 10 days were spent performing services within the United States. Under these facts and circumstances, an apportionment on a time basis would be the basis that most correctly reflects the proper source of the income. The amount of compensation for labor or personal services performed in the United States will be that amount that bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made. Thus, $5,000 will be compensation from labor or personal services performed in the United States ($15,000 × 10/30).

Example 3. B, a nonresident alien individual, was employed by M, a domestic corporation, from March 1 to June 12 of the taxable year, a total of 104 days, for which B received compensation in the amount of $12,240. Under the contract, B was subject to call at all times by M and was in a payment status on a 7-day week basis. Pursuant to the contract, B performed services within the United States for 59 days and performed services without the United States for 45 days. Under subparagraph (b)(2) of this section, the amount of compensation from labor or personal services performed in the United States will be determined on a time basis and equal to $6,943.85 ($12,240 × 59/104).

Example 4. (i) A, a United States citizen, is employed by a domestic corporation. A earns an annual salary of $100,000. During the first quarter of the calendar year, A's post of duty is in the United States and A performs services entirely within the United States during this period. A is transferred to Country X for the remaining three-quarters of the year, and, in addition to A's annual salary, receives $75,000 in fringe benefits that relate to the foreign posting. These fringe benefits are paid separately from A's annual salary and are specifically stated to be a housing allowance and an allowance for family home leave. Under A's employment contract, A is required to work on a 5-day week basis, Monday through Friday. During the last three quarters of the year, A performs services 30 days in the United States and 150 days abroad.

(ii) A has $175,000 gross income for the taxable year from the performance of services. A is able to clearly establish that A's transfer created two distinct, separate, and continuous time periods within the calendar year. Accordingly, $25,000 of the income designated as salary is attributable to the first quarter of the year (one quarter of $100,000). This amount is allocated entirely to compensation for labor or personal services performed in the United States. The balance of A's adjusted gross income, $150,000 (which includes the $75,000 in fringe benefits that relate to the foreign posting), is compensation allocated to services performed for the final three quarters of his taxable year. During the last three quarters of the year, A's periodic performance of services in the United States does not constitute distinct, separate, and continuous periods of time. Of this $150,000 amount, $125,000 (150/180 × $150,000) is apportioned to compensation for labor or personal services performed outside the United States, and $25,000 (30/180 × $150,000) is apportioned to compensation for labor or personal services performed in the United States.

* * * * *

(d) *Effective date.* Paragraphs (a) and (c) of this section apply with respect to taxable years beginning after December 31, 1966, however, the first sentence of paragraph (a)(1) applies to taxable years beginning on or after final regulations are published in the **Federal Register**. Paragraph (b) of this section applies to taxable years beginning on or after final regulations are published in the **Federal Register**. For paragraph (b) of this section and corresponding rules applicable to taxable years beginning after December 31, 1966, and before the date final regulations are published in the **Federal Register**, see § 1.861–4(b) in effect prior to the date final regulations are published in the **Federal Register** (26 CFR part 1 revised April 1, 1999). For corresponding rules applicable to taxable years beginning before January 1, 1967, see § 1.861–4 in effect prior to October 2, 1975 (26 CFR part 1 revised April 1, 1975).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–757 Filed 1–20–00; 8:45 am]

BILLING CODE 4830–01–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2000–1]

Copyright Rules and Regulations: Information Given by the Copyright Office

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is proposing amendments to its regulations governing information given to the public for litigation purposes in cases where the application for registration is still in-process. The Office is also proposing to publish in regulatory text the existing requirement for submission of a Litigation Statement when a third party needs copies of material accompanying a registration claim for use in actual or pending litigation and other minor clarifications to these regulations. These proposed amendments will allow a qualified party greater access to in-process registration materials and also provide clearer information to the public on how to get these materials.

DATES: Written comments are due March 21, 2000.

ADDRESSES: An original and ten copies of the comments should be addressed, if sent by mail, to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. If delivered by hand, an original and ten copies should be delivered to: Office of the General Counsel, United States Copyright Office, James Madison Memorial Building, Room 403, First Street and Independence Avenue, S.E., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Patricia L. Sinn, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

1. Background

The Copyright Act makes the Register of Copyrights responsible for all administrative functions and duties under title 17 and authorizes the Register to establish regulations for this administration. 17 U.S.C. 701, 702. As an Office of public record, the Copyright Office provides a public record of completed registrations and recordations, and it permits access to these records and to the materials or files accompanying a registration claim—the application, the deposit, and any correspondence—when the conditions specified in the regulations are met. *See* 17 U.S.C. 705, 706. *See also* 37 CFR 201.2.

The Copyright Office's existing regulations tell the public how to get information on or access to such registration materials. 37 CFR 202.1, 202.2. In the past, the regulations have distinguished between providing these materials to copyright claimants and providing them to third parties, and also between providing copies in cases where the claim has been examined and registered or refused and in those where the claim is still pending or in-process. By in-process the Office means those materials, including correspondence files, applications, and deposit copies,