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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-102516-15]

RIN 1545-BM65

Income Inclusion When Lessee Treated as Having Acquired Investment Credit Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document withdraws the notice of proposed rulemaking published in the **Federal Register** on December 20, 1985, and the notice of proposed rulemaking published in the **Federal Register** on September 21, 1987.

In the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and the IRS are issuing temporary regulations relating to the income inclusion rules under section 50(d)(5) of the Internal Revenue Code (Code) that are applicable to a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. The text of those regulations also serves as the text of these proposed regulations.

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-102516-15), room

5203, 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-102516-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-102516-15).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jennifer A. Records at (202) 317-6853; concerning submissions of comments and requests for a public hearing, Regina Johnson of the Publications and Regulations Branch at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On December 20, 1985, the Treasury Department and the IRS published in the **Federal Register** (50 FR 51874-01) a notice of proposed rulemaking (LR-92-73) under sections 46, 47, 48, and 167 providing proposed rules related to the determination of the amount of taxpayer's qualified investment and recapture of the investment credit with respect to mass assets. On September 21, 1987, the Treasury Department and the IRS published in the **Federal Register** (52 FR 35438-01) a notice of proposed rulemaking (LR-183-82) under sections 48, 196, 312, and 705 providing proposed rules related to the adjustment in the basis of property with respect to which a taxpayer claimed the investment credit. On April 27, 1993, the Treasury Department and the IRS withdrew (58 FR 25587-01) the proposed amendments to §1.48-7 of the Income Tax Regulations that were

published as part of the notice of proposed rulemaking (LR-183-82) published in the **Federal Register** (52 FR 35438-01) on September 21, 1987. Because of numerous statutory changes since the publication of those proposed regulations, the remainder of the proposed regulations (50 FR 51874-01 and 52 FR 35438-01) are withdrawn.

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 50(d)(5). The temporary regulations provide rules regarding the income inclusion required under section 50(d)(5) of the Code by a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. The temporary regulations also provide rules to coordinate the section 50(a) recapture rules with the section 50(d)(5) income inclusion rules and rules regarding income inclusion upon a disposition or lease termination outside of the recapture period. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact 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. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their 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 written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. Specifically, the Treasury Department and the IRS request comments regarding whether guidance is needed to address the applicability of the income inclusion rules under section 50(d)(5) to trusts, estates, and/or electing large partnerships. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jennifer A. Records, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under authority of 26 U.S.C. 7805, the notice of proposed rulemaking (LR-92-73) that was published in the **Federal Register** on December 20, 1985 (50 FR 51874-01), and the notice of proposed rulemaking (LR-183-82) that was published in the **Federal Register** on September 21, 1987 (52 FR 35438-01), are withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 1.50-1 is revised to read as follows:

§1.50-1 Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer.

[The text of proposed amendment to §1.50-1 is the same as the text of §1.50-1T(a) through (f) published elsewhere in this issue of the **Federal Register**].

John Dalrymple,

Deputy Commissioner for Services and Enforcement.