



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[REG-107163-18]

RIN 1545-BO80

Regulations to Prescribe Return and Time for Filing for Payment of Section 4960, 4966, 4967, and 4968 Taxes and to Update the Abatement Rules for Section 4966 and 4967 Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations specifying which return to use to pay certain excise taxes and the time for filing the return. The regulations also implement the statutory addition of two excise taxes to the first-tier taxes subject to abatement. These regulations affect applicable tax-exempt organizations and their related organizations, applicable educational institutions, sponsoring organizations that maintain certain donor advised funds, fund managers of such sponsoring organizations, and certain donors, donor advisors and persons related to a donor or donor advisor of a donor advised fund.

DATES: Written or electronic comments and requests for a public hearing must be received by **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-107163-18), 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-107163-18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, 20224 or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS REG-107163-18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amber L. MacKenzie at (202) 317-4086 or Ward L. Thomas at (202) 317-6173; concerning submission of comments and request for hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending regulations under section 6011 of the Internal Revenue Code (Code) to specify the return to accompany payment of excise taxes under sections 4960, 4966, 4967, and 4968; amending regulations under section 6071 to specify the time for filing that return; and amending regulations under section 4963 that define the first-tier taxes subject to abatement under section 4962.

These regulations affect applicable tax-exempt organizations described in section 4960(c)(1) and their related organizations described in section 4960(c)(4)(B); applicable educational institutions described in section 4968(b)(1); sponsoring organizations described in section 4966(d)(1) that maintain donor advised funds described in section 4966(d)(2); fund managers of such sponsoring organizations described in sections 4966(d)(3) ; and donors, donor

advisors and persons related to a donor or donor advisor of a donor advised fund described in section 4967(d).

These regulations implement section 1231 of the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780, 1094 (“PPA”), as amended by section 3(h) of the Tax Technical Corrections Act of 2007, Pub. L. 110-172, 121 Stat. 2473, 2475, and sections 13602 and 13701 of the Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054, 2157, 2167 (2017) (“TCJA”).

The PPA added sections 4966 and 4967 to the Code. These sections impose excise taxes related to certain distributions from donor advised funds (defined in section 4966(d)(2)) maintained by organizations that are defined as sponsoring organizations in section 4966(d)(1).

Section 4966(a)(1) imposes a 20 percent excise tax on each “taxable distribution” from a donor advised fund, payable by the sponsoring organization of the donor advised fund. Section 4966(a)(2) imposes a separate 5 percent excise tax on the agreement of any fund manager (as defined in section 4966(d)(3)) to the making of the distribution, knowing that it is a taxable distribution. Section 4966(b)(1) states that if more than one fund manager is liable for the tax, all such managers are jointly and severally liable with respect to the taxable distribution. Section 4966(b)(2) provides that the maximum amount of tax that may be imposed on all fund managers for any one taxable distribution is \$10,000.

Section 4966(c)(1) defines the term “taxable distribution” as any distribution from a donor advised fund: (A) To any natural person; or (B) to any

other person if (i) the distribution is for any purpose other than one specified in section 170(c)(2)(B), or (ii) the sponsoring organization does not exercise expenditure responsibility in accordance with section 4945(h) with respect to such distribution. Section 4966(c)(2) excepts from the definition of taxable distribution: (A) Distributions to any organization described in section 170(b)(1)(A), other than a disqualified supporting organization (as defined in section 4966(d)(4)); (B) distributions to the sponsoring organization of such donor advised fund; and (C) distributions to any other donor advised fund.

Section 4967(a)(1) imposes a tax on the advice of a donor, donor advisor, or related person, described in subsection (d), if a distribution from a donor advised fund results in such person (or any other person described in subsection (d)) receiving, directly or indirectly, a more than incidental benefit (a “prohibited benefit”). The tax, which is equal to 125 percent of the amount of the prohibited benefit, is paid by any person described in subsection (d) who advises as to a distribution or who receives a prohibited benefit as a result of the distribution. Section 4967(c)(1) provides that if more than one person is liable for the tax under section 4967(a)(1), then all such persons are jointly and severally liable for the tax.

Section 4967(a)(2) imposes a tax on a fund manager (defined in section 4966(d)(3)) who agrees to the making of a distribution described in section 4967(a)(1), knowing that it would confer a more than incidental benefit on a donor, donor advisor, or related person. Section 4967(a)(2) states that the tax is equal to 10 percent of the amount of the prohibited benefit. Section 4967(c)(1)

provides that if more than one fund manager is liable for the tax, all such fund managers are jointly and severally liable. Section 4967(c)(2) provides that the maximum amount of tax under section 4967(a)(2) on all fund managers for any one prohibited benefit transaction is \$10,000. Section 4967(b) provides that no tax is imposed under section 4967 if a tax has been imposed with respect to the distribution under section 4958 (taxing excess benefit transactions).

In 2006, the PPA added section 4966 and section 4967 taxes to the definitions of “first tier tax” in section 4963(a) and “taxable event” in section 4963(c). In 2007, section 4962(b) was amended by the Tax Technical Corrections Act of 2007, Pub. L. 110-172, sec. 3(h), 121 Stat. 2473, 2475, to add subchapter G of chapter 42 (i.e., section 4966 and section 4967 taxes) to the definition of “qualified first tier tax” for purposes of tax abatement. Thus under the Code, section 4966 and section 4967 taxes are subject to abatement under the generally applicable rules. Treas. Reg. § 53.4963-1 sets forth definitions with respect to abatement of taxes.

The TCJA added sections 4960 and 4968 to the Code. Section 4960 imposes an excise tax equal to the product of the rate of tax under section 11 and the sum of (1) so much of the remuneration paid (other than any excess parachute payment) by an applicable tax-exempt organization for the taxable year with respect to employment of any covered employee in excess of \$1,000,000, plus (2) any excess parachute payment paid by such an organization to any covered employee. Section 4960(c)(4)(A) provides that remuneration of a covered employee by an applicable tax-exempt organization

includes any remuneration paid with respect to employment of such employee by any related person or governmental entity. Section 4960(c)(4)(C) provides that when remuneration from more than one employer is taken into account in determining the tax imposed by subsection (a), each such employer is liable for a pro rata share of the tax imposed by subsection (a) based on the ratio of the amount of remuneration paid by such employer with respect to such employee to the amount of remuneration paid by all such employers to such employee. Separately, section 4968 imposes an excise tax on each applicable educational institution based on the net investment income of such institution (including certain income of related organizations) for the taxable year.

Section 6011(a) generally provides that when required by regulations prescribed by the Secretary, any person liable for any tax imposed by the Code shall make a return or statement according to the forms and regulations prescribed by the Secretary. Section 6071 generally provides that when not otherwise provided for under the Code, return filing dates are prescribed by regulation. Treas. Reg. §§ 53.6011-1 and 53.6071-1 require persons subject to certain enumerated excise taxes under Chapter 42 of the Code to file a Form 4720 to accompany payment of those excise taxes and provide the time for filing the return. (Form 4720 is denominated "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.") Sections 4960, 4966, 4967, and 4968 were added to Chapter 42 of the Code, but are not enumerated in Treas. Reg. §§ 53.6011-1 and 53.6071-1.

Explanation of Provisions

1. Section 4962 Abatement.

These proposed regulations add section 4966 and section 4967 taxes to the definitions of “first tier tax” and “taxable event” in Treas. Reg. § 53.4963-1. Qualified first tier taxes are subject to abatement under section 4962.

2. Requirement to File a Form 4720.

These proposed regulations amend Treas. Reg. § 53.6011-1(b) to provide that persons (including governmental entities) that are liable for section 4960, 4966, 4967, or 4968 excise taxes are required to file a return on Form 4720.

3. Deadline for Filing a Form 4720.

Under § 53.6071-1(i) of these proposed regulations, a person required to file a Form 4720 to report an excise tax under section 4960, 4966, 4967, or 4968 must file a Form 4720 by the 15th day of the fifth month after the end of the person's taxable year during which the excise tax liability was incurred. Thus, for example, an organization reporting on a calendar-year basis that incurred excise tax during the calendar year ending December 31, 2018, would be required to file a Form 4720 and pay the tax due by May 15, 2019.

4. Effective/Applicability Date

These regulations are proposed to apply as of the date of publication of the final rule 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. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This rule merely provides guidance as to the timing and filing of Form 4720 for persons liable for the specified excise taxes and who have a statutory filing obligation. Completing the applicable portion of the Form 4720 imposes little incremental burden in time or expense as compared to any other filing method. In addition, a person may already be required to file the Form 4720 under the existing final regulations in §§ 53.6011-1 and 53.6071-1 if it is liable for another excise tax for which filing of the Form is required. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

Comments and Requests for 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 as prescribed in the preamble under the “ADDRESSES” section. All comments submitted will be made available at www.regulations.gov or upon request.

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 hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Amber L. MacKenzie and Ward L. Thomas, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

PART 53--FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read, in part, as follows:

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

§ 53.4963-1 [Amended]

Par. 2. Section 53.4963-1 is amended as follows:

1. Paragraph (a) is amended by removing the language “4958, 4971” and adding “4958, 4966, 4967, 4971” in its place.

2. Paragraph (c) is amended by removing the language “4958, 4971” and adding “4958, 4966, 4967, 4971” in its place.

Par. 3. Section 53.6011-1 is amended by:

1. Revising the first sentence of paragraph (b).
2. Removing from the third sentence of paragraph (b) the language "4958(a), or 4965(a)," and adding "4958(a), 4960(a), 4965(a), 4966(a), or 4967(a)," in its place.

The revision reads as follows:

§ 53.6011-1 General requirement of return, statement or list.

* * * * *

(b) Every person (including a governmental entity) liable for tax imposed by sections 4941(a), 4942(a), 4943(a), 4944(a), 4945(a), 4955(a), 4958(a), 4959, 4960(a), 4965(a), 4966(a), 4967(a), or 4968(a), and every private foundation and every trust described in section 4947(a)(2) which has engaged in an act of self-dealing (as defined in section 4941(d)) (other than an act giving rise to no tax under section 4941(a)) shall file an annual return on Form 4720 and shall include therein the information required by such form and the instructions issued with respect thereto. * * *

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§ 53.6071-1 [Amended]

Par. 4. Section 53.6071-1 is amended by:

1. Redesignating paragraph (i) as paragraph (j).
2. Adding new paragraphs (i) and (j)(3).

The additions read as follows:

§53.6071-1 Time for filing returns.

* * * * *

(i) Taxes under section 4960, 4966, 4967, or 4968. A person (including a governmental entity) required by § 53.6011-1(b) to file a return for a tax imposed by section 4960(a), 4966(a), 4967(a), or 4968(a) in a taxable year must file the Form 4720 on or before the 15th day of the fifth month after the end of the person's taxable year (or, if the person has not established a taxable year for Federal income tax purposes, the person's annual accounting period).

(j) * * *

(3) Paragraph (i) of this section applies on and after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Kirsten Wielobob

Deputy Commissioner for Services and Enforcement.

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