

# Notice of Proposed Rulemaking

## Rents and Royalties

### REG-151043-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the inclusion in gross income of advance rentals. The proposed regulations authorize the Commissioner to provide rules allowing for the inclusion of advance rentals in gross income in a year other than the year of receipt. The proposed regulations will affect taxpayers that receive advance payments for the use of certain items (such as intellectual property) to be designated by the Commissioner.

DATES: Written or electronic comments and requests for a public hearing must be received by February 17, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-151043-02), room 5226, 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:ITA:RU (REG-151043-02), Courier's Desk Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/reg](http://www.irs.gov/reg).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Edwin B. Cleverdon, at (202) 622-7900; concerning submissions of comments, Guy Traynor, at (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### Background

This document contains proposed amendments to 26 CFR part 1 relating to

the inclusion in gross income of advance rentals under section 61.

#### Explanation of Provisions

Currently § 1.61-8(b) provides that, except as provided in section 467 and the regulations thereunder, advance rentals must be included in gross income in the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer. The proposed amendments authorize the Commissioner to provide, through administrative guidance, rules for deferring income inclusion of advance rentals to a taxable year other than the year of receipt. This amendment will ensure that the Commissioner, in modifying Rev. Proc. 71-21, 1971-2 C.B. 549, may provide deferral rules for licenses of intellectual property.

#### Proposed Effective Date

The regulations, as proposed, are effective on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

#### Special Analyses

It has been determined that this notice of 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 these regulations and, because the 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, this notice of proposed rulemaking will be 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 written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS.

The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may 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 author of these regulations is Edwin B. Cleverdon, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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#### Proposed Amendment to the Regulations

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

#### PART—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. In § 1.61-8, the first sentence of paragraph (b) is revised to read as follows:

§ 1.61-8 *Rents and royalties*.

\* \* \* \* \*

(b) \* \* \* Except as provided in section 467 and the regulations thereunder, and except as otherwise provided by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), gross income includes advance rentals, which must be included in income for the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer. \* \* \*

David A. Mader,  
Assistant Deputy Commissioner  
of Internal Revenue.