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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information from certain resident alien individuals and foreign persons required to furnish taxpayer identifying numbers under section 6109 of the Internal Revenue Code (Code) is found in § 301.6109-1. This information will be used by the IRS for tax administration purposes. The likely respondents and recordkeepers are certain resident alien individuals and foreign persons such as nonresident alien individuals and foreign corporations who make a return of tax.

The burden for the collection of information contained in § 301.6109-1(d) is reflected in the burden of Form W-7.

Background

This document withdraws the notice of proposed rulemaking under section 6109 published in the **Federal Register** on September 27, 1990 at 55 FR 39486. This document also contains proposed amendments to 26 CFR part 301 to provide rules under section 6109 of the Internal Revenue Code relating to a new type of taxpayer identifying number.

Explanation of Provisions

In General

Section 6109(a) of the Code provides that, when required by regulations, a person must furnish a taxpayer identifying number (TIN) for securing proper identification of that person on any return, statement, or other document made under the Code. The assignment of a unique and permanent number to each taxpayer is important for the effective operation of the IRS

automatic data processing system. The numbering system improves the IRS' ability to identify and access database records; to match information provided on tax and information returns, statements, and other documents with the proper taxpayers; and to provide better customer service to taxpayers.

The Treasury Department and the IRS are concerned about individuals who are filing tax returns but who are unable to obtain a social security number. In order to insure that all taxpayers required to provide a TIN for tax purposes are able to obtain one, the IRS is developing a separate numbering system that will make unique and permanent numbers available to those individuals. The proposed regulations explain how alien individuals, whether resident or nonresident, can obtain an IRS individual taxpayer identification number from the IRS.

The regulations require any foreign person who makes a return to provide a TIN on the return. This TIN may be an employer identification number, a social security number, or a new IRS individual taxpayer identification number in the case of an alien individual who does not have a social security number and cannot obtain one.

The Treasury Department and the IRS are also considering changes to the procedures that apply to withholding tax on payments to foreign persons in order to encourage compliance and reduce paperwork burden. The Treasury Department and the IRS are aware that significant changes in this area will impact some aspects of transactions subject to withholding. Accordingly, the Treasury Department and the IRS intend to move very cautiously, particularly by considering the possible effect of changes in these procedures on investment decisions by foreign persons and by considering the adequacy of existing procedures for those taxpayers who wish to continue to comply with current rules. Generally, no new procedures will be adopted without adequate opportunity for public comment and appropriate transition periods before taking effect. This will not, however, preclude the Treasury Department and the IRS from adopting new procedures to replace the current address rule for dividends.

Specific Changes

The most significant changes proposed by these regulations are described below. The first change is the introduction of a new IRS-issued TIN for use by alien individuals who currently do not have, and are not eligible to obtain, social security numbers. The number is called an IRS

individual taxpayer identification number (ITIN). This number is intended to be issued to alien individuals, whether resident or nonresident, who are currently required to furnish a number for tax purposes but who are not entitled to obtain social security numbers. Therefore, these amendments are designed to help taxpayers maintain compliance with TIN requirements under the Code and regulations. The Social Security Administration limits its assignment of social security numbers to individuals who are U.S. citizens and alien individuals legally admitted to the United States for permanent residence or under other immigration categories which authorize U.S. employment. Therefore, IRS-issued numbers are necessary for those individuals who need a TIN but cannot qualify for a social security number.

The second change is to modify the existing rule set forth in § 301.6109-1(g) that currently excludes from the general requirement of providing a TIN, foreign persons that do not have either (1) income effectively connected with the conduct of a U.S. trade or business or (2) a U.S. office or place of business or a U.S. fiscal or paying agent. Under the proposed regulations, the exclusion is modified to require that any foreign person who makes a return of tax furnish its TIN on that return. This change is intended solely to address the IRS' and Treasury's concern that, without TINs, taxpayers cannot be identified and tax returns cannot be processed effectively.

The Treasury Department and the IRS are giving added thought to applying the TIN requirement to facilitate changes to the procedures that apply to withholding taxes on payments to foreign persons. Decisions with respect to the withholding tax system have yet to be made, and when made, will be proposed in subsequent regulations. The Treasury Department and the IRS will proceed cautiously in expanding the scope of the TIN requirement and will consider the adequacy of existing procedures for those taxpayers who wish to continue to comply with current rules.

The IRS individual taxpayer identification numbers issued under this regulation will differ from, and replace, the "temporary" TINs the IRS currently issues under the authority of section 6109(c). For example, after declaring in Rev. Rul. 84-158, 1984-2 C.B. 262, that a partnership must request the social security numbers of its individual partners (including a nonresident alien limited partner), the IRS announced in Rev. Rul. 85-61, 1985-1 C.B. 355, that it would issue