

The basis of the property is reduced to \$300,000 (\$400,000 – \$100,000) prior to any adjustments for depreciation. In 1996, more than 50 percent of the use of the property is other than in X's trade or business.

Because the property is no longer used predominantly in X's business, X must recapture three-fifths of the section 179A deduction or \$60,000 ($\$100,000 \times (5-2)/5 = \$60,000$) and include that amount in gross income on its 1996 federal income tax return. The recapture amount of \$60,000 is added to the basis of the property as of January 1, 1996, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 4. X, a calendar-year taxpayer, purchases and places in service for business use on January 1, 1994, qualified clean-fuel vehicle refueling property costing \$350,000. Assume this property has a 5-year recovery period. On X's 1994 federal income tax return, X claims a deduction of \$100,000, which reduces X's gross income by \$100,000. The basis of the property is reduced to \$250,000 (\$350,000 – \$100,000) prior to any adjustments for depreciation. In 1995, X converts the property to store and dispense gasoline. Because the property is no longer used as qualified clean-fuel vehicle refueling property in 1995, X must recapture four-fifths of the section 179A deduction or \$80,000 ($\$100,000 \times (5-1)/5 = \$80,000$) and include that amount in gross income on its 1995 federal income tax return. The recapture amount of \$80,000 is added to the basis of the property as of January 1, 1995, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 5. The facts are the same as in *Example 4*. In 1996, X sells the refueling property for \$351,000, recognizing a gain from this sale. Under paragraph (f) of this section, section 1245 will apply to any gain recognized on the sale of depreciable property to the extent the basis of the property was reduced by the section 179A deduction net of any basis increase from recapture of the section 179A deduction. Accordingly, the gain from the sale of the property is subject to section 1245 to the extent of the depreciation allowance for the property plus the deduction allowed under section 179A (\$100,000), less the previous recapture amount (\$80,000). Any remaining amount of gain may be subject to other applicable provisions of the Internal Revenue Code.

(h) *Effective date.* This section is effective on October 14, 1994. If the recapture date is before the effective date of this section, a taxpayer may use any reasonable method to recapture the benefit of any deduction allowable under section 179A(a) consistent with section 179A and its legislative history.

For this purpose, the recapture date is defined in paragraph (c) of this section.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: June 21, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

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26 CFR Part 301

[TD 8605]

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Presumptions Where Owner of Large Amount of Cash is not Identified

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations regarding the presumptions that arise where the owner of a large amount of cash or its equivalent is not identified. The final regulations reflect changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Technical and Miscellaneous Revenue Act of 1988, and incorporate the rules of current § 301.6867-1T, relating to cash, cash equivalents, specific cash equivalents and the value of cash equivalents. In addition, several new items have been added to the list of specific cash equivalents. The final regulations affect individuals who are found in possession of a large amount of cash or its equivalent and the true owners of that cash or its equivalent.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622-3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6867 of the Internal Revenue Code of 1986 (Code). The regulations reflect the enactment of section 6867 by section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), and the amendment made by section 1001(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647).

The IRS published a notice of proposed rulemaking in the **Federal Register** on September 29, 1994, (59 FR 49613) providing proposed rules under section 6867 of the Code. No written

comments were received. No public hearing was requested or held. In most respects, the final regulations are identical to the proposed regulations. The final regulations, however, do not contain those provisions of the proposed regulations that had permitted a possessor of cash, solely in that person's capacity as possessor of cash, to bring a suit for refund in the district court after the deficiency had been collected.

Explanation of Provisions

Section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982 amended the Code by adding section 6867, designed to be used in making jeopardy or termination assessments, as appropriate, when there is no known owner of large amounts of cash. Section 6867 provides that if an individual in physical possession of cash in excess of \$10,000 does not claim the cash as belonging to that individual or as belonging to another person whose identity is readily ascertainable and who acknowledges ownership of the cash to the IRS, it is presumed that the cash represents gross income of a single individual for the taxable year in which the possession occurs and that the collection of tax will be jeopardized by delay. Section 6867, as originally enacted, made the entire amount of the cash subject to a 50 percent tax rate. Section 1001(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 amended section 6867, effective for taxable years beginning after December 31, 1986, to provide that the tax rate is to be the highest rate of tax for an individual specified in section 1.

Under section 6867, the possessor of cash is treated (solely with respect to the cash) as the taxpayer for the purposes of chapters 63 and 64 of the Code, relating to assessment and collection, and for the purposes of section 7429(a)(1), entitling that individual to a written statement of information concerning the assessment provided for by that section. Because section 6867 does not treat the possessor as the taxpayer for the purposes of sections 7429(a)(2) and 7429(b), relating to administrative and judicial review of termination and jeopardy assessments, the proposed regulations do not permit the possessor of cash to maintain an action under section 7429 for such review. In addition, because section 7422, relating to civil actions for refund, is in chapter 76B and other provisions dealing with refunds are contained in chapter 65 and not chapters 63 or 64 of the Code, a possessor of cash, solely in that person's capacity as possessor of cash, may not institute a suit for refund