

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 49

RIN 1545-BJ40

Indoor Tanning Services; Cosmetic Services; Excise Taxes

[REG-112841-10]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the indoor tanning services excise tax imposed by the Patient Protection and Affordable Care Act of 2010. These regulations affect users and providers of indoor tanning services. The text of the temporary regulations also serves as the text of the proposed regulations. These regulations affect users and providers of indoor tanning services.

DATES: Written and electronic comments and requests for a public hearing must be received by September 13, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-112841-10), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-112841-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW; Washington, DC, or

sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-112841-10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Taylor Cortright, (202) 622-3130; concerning submissions of comments and requests for a public hearing, Regina Johnson, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned control number 1545-xxxx. 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, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 13, 2010. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in proposed §49.5000B-1(d)(2). This information is required by the IRS to allow providers of indoor tanning services to calculate the tax on indoor tanning services. The likely recordkeepers are providers of indoor tanning services.

Estimated total average annual recordkeeping burden: 10,000 hours.

Estimated average annual burden hours per recordkeeper: 30 minutes.

Estimated number of recordkeepers: 20,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49) under section 5000B of the Internal Revenue Code (Code). Section

5000B of the Code was enacted by section 10907 of the Patient Protection and Affordable Care Act of 2010, Public Law 111-148 (124 Stat. 119) to impose an excise tax on indoor tanning services. The text of temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

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 been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations are designed to accommodate the recordkeeping methods currently used by small entities that provide indoor tanning services. The regulations merely implement the tax imposed by section 5000B of the Code, and section 6001 of the Code already requires taxpayers to keep books and records sufficient to show whether or not they are liable for tax. The information necessary to prepare these records is readily available to providers, and this recordkeeping will take little additional time to complete. Accordingly, 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 notice of proposed rulemaking has been 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 comments (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 may be 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 Taylor Cortright, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 40 and 49 are proposed to be amended as follows:

PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

Section 40.0-1 also issued under 26 U.S.C. 5000B(c). * * *

Par. 2. Section 40.0-1 is amended by revising paragraphs (d) and (e) to read as follows:

§40.0-1 Introduction.

* * * * *

(d) [The text of this proposed §40.0-1(d) is the same as the text of §40.0-1T(d) published elsewhere in this issue of the **Federal Register**].

(e) [The text of this proposed §40.0-1(e) is the same as the text of §40.0-1T(e) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3 . Section 40.6302(c)-1 is amended by adding paragraph (g) to read as follows:

§40.6302(c)-1 Use of government depositories.

* * * * *

(g) [The text of this proposed §40.6302(c)-1T(g) is the same as the text of §40.6302(c)-1T(g) published elsewhere in this issue of the **Federal Register**].

PART 49--FACILITIES AND SERVICES EXCISE TAX

Par. 4. The authority citation for part 49 is amended by adding an entry in numerical order to read in part as follows:

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

Section 49.5000B-1 also issued under 26 U.S.C. 5000B.

Par. 5. Section 49.0-3 is added to read as follows:

§49.0-3 Introduction; cosmetic services.

[The text of this proposed §49.0-3 is the same as the text of §49.0-3T published elsewhere in this issue of the **Federal Register**].

Par. 6. Subpart G is added to read as follows:

Subpart G--Cosmetic Services

§49.5000B-1 Indoor Tanning Services.

[The text of this proposed §49.5000B-1 is the same as the text of §49.5000B-1T(a) through (h) published elsewhere in this issue of the **Federal Register**].

Deputy Commissioner for Services and Enforcement.