



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

32.1.9

AUGUST 1, 2018

EFFECTIVE DATE

(08-01-2018)

PURPOSE

- (1) This transmits revised CCDM 32.1.9, Regulation Handbook, Closing a Regulation Project.

BACKGROUND

- (1) CCDM 32.1.9, Closing a Regulation Project, is being updated to reflect current practices.

MATERIAL CHANGES

- (1) CCDM 32.1.9.2 is updated to reflect new closing classification codes.

EFFECT ON OTHER DOCUMENTS

This section supersedes CCDM 32.1.9, dated August 11, 2004.

AUDIENCE

Chief Counsel

Kathryn A. Zuba
Associate Chief Counsel
(Procedure & Administration)

32.1.9

Closing a Regulation Project

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32.1.9.1

(08-01-2018)

Criteria for Closing a Regulation Project

- (1) A regulation project can be closed only after
 - a. The IRS withdraws an NPRM or publishes it as a final regulation,
 - b. In the case of a temporary regulations with a cross-referencing NPRM, the IRS removes the temporary regulations and withdraws the NPRM or published it as a final regulation, or
 - c. The IRS decides not to publish a regulation.

32.1.9.2

(08-01-2018)

Final Regulation Published

- (1) After a final regulation is published, the drafting attorney should use Form 9506, Treasury Decision File Closing Information Sheet and Assembly Checklist, to assemble and organize the folder(s) of the legal file. The drafting attorney should use a two-hole punch to put holes in the top of each paper or document and put the papers and documents in the folders using file fasteners. The drafting attorney should send the legal file to the Communications, Records, and User Fee Unit (CC:PA:LPD:DRU) in room 5336 as soon as possible after publication of the final regulation.
- (2) After a final regulation is published, the drafting attorney should ensure that the final regulation is closed on CASE-MIS using status code 951 (closed – publication) and classification code W (Regulations, revenue ruling, revenue procedure, IRB notice & announcement (**non-ministerial**)). The Publications and Regulations Branch enters the Federal Register filing and publication information on CASE-MIS.

32.1.9.3

(08-01-2018)

NPRM Published But Will Not be Finalized

- (1) If the IRS will not publish an NPRM as a final regulation, the NPRM should be withdrawn before closing the regulation project. To withdraw a regulation, a withdrawal of notice of proposed rulemaking must be signed by the Commissioner, approved by Treasury, and published in the Federal Register. Once the NPRM is withdrawn, the drafting attorney should assemble the legal file and forward it to the Communications, Records, and User Fee Unit (CC:PA:LPD:DRU). The drafting attorney should ensure that the regulation project is closed on CASE-MIS using status code 960 (closed – withdrawn).
- (2) Occasionally, the IRS decides not to publish an NPRM as a final regulation and does not issue a withdrawal of notice of proposed rulemaking. In that situation, the regulation project remains open in CASE-MIS with status code 745 (NPRM published) and classification code W (Regulations, revenue ruling, revenue procedure, IRB notice & announcement (**non-ministerial**)). See Exhibit 32.1.9-1, Sample Withdrawal of Notice of Proposed Rulemaking.

32.1.9.4

(08-01-2018)

No Regulation Published

- (1) If the IRS will not publish a regulation, prepare a closing memorandum for the signature of the Associate Chief Counsel stating the reason the project is being closed. Include the closing memorandum in the legal file. Send the legal file to the Communications, Records, and User Fee Unit (CC:PA:LPD:DRU) for storage. Files closed by nonpublication will be retained in accordance with the records control schedule set forth in Document 12990, Records and Information Management Records Control Schedules. Close the regulation project on CASE-MIS using status code 952 (closed – non-publication) and classification code W (Regulations, revenue ruling, revenue procedure, IRB notice & announcement (**non-ministerial**)).
- (2) An open regulation project may be closed by nonpublication for any of the following reasons:

- a. The matter involves an issue specifically addressed by another open regulation project,
 - b. The issue is answered by statute, treaty, or regulations, or will be answered by pending legislation; answered by publications or court opinions previously published in the IRB; involves a determination of fact rather than an interpretation of law; or is of insufficient importance or interest to warrant publication.
 - c. The matter is recommended for nonpublication by an Associate Chief Counsel, a Division Counsel, the Chief Counsel, the Commissioner, or by a Treasury official.
- (3) If an open regulation project is identified as an appropriate subject for nonpublication, a nonpublication memorandum is prepared by the drafting attorney for the signature of the Associate Chief Counsel. After the memorandum is approved by the Associate Chief Counsel, the original is included in the case file.
- (4) The body of the nonpublication memorandum must contain the following in separate paragraphs:
- Introduction: A statement that the project is under consideration; a description of the regulation project; the date of issuance of any relevant document; and
 - Background or Reason for Nonpublication: A discussion of the developments or events that led to a conclusion that the regulation should be closed by nonpublication. The memorandum should contain sufficient information for the Associate Chief Counsel to determine whether the regulation should be closed without reviewing the file.
 - Action: A direct statement that the project is being closed and no further consideration will be given to its publication.
- (5) See Exhibit 32.1.9-2, Sample Closing Memorandum by Nonpublication.

32.1.9.5
(08-01-2018)
**Closed Regulation File
Assembly**

- (1) Follow the procedures on Form 9506, Treasury Decision File Closing Information Sheet and Assembly Checklist, for assembling the contents of the legal file. See Exhibit 32.1.9-3, Form 9506, TD File Closing: Information Sheet And Assembly Checklist.
- (2) See CCDM 32.1.2(2) for a list of documents that should be included in the legal file.

Exhibit 32.1.9-1 (08-11-2004)**Sample Withdrawal of Notice of Proposed Rulemaking**

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[PS-158-86]

RIN 1545-AJ23

Petroleum Tax Imposed on Natural Gasoline

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a proposed regulation relating to the petroleum tax imposed on natural gasoline. The withdrawal affects persons that produce natural gasoline at fractionation facilities or receive natural gasoline produced at those facilities.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, (202) 622-3130
(not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4611 imposed a tax on crude oil (including natural gasoline) received at a United States refinery. On April 26, 1993, a notice of proposed rulemaking (PS-158-86) relating to this tax was published in the Federal Register (58 FR 21963). The proposed regulation treats any facility that produces natural gasoline by fractionation or similar operation as a United States refinery. Under this rule, tax would be imposed on natural gasoline when it is produced from natural gas liquids at a fractionation facility.

Since the publication of the proposed regulation, the tax imposed by section 4611 has expired. Because tax is not currently imposed under section 4611, the proposed regulation is being withdrawn. For purposes of section 4611 prior to its expiration, the IRS will follow the result in Enron Gas Processing Co. v. United States, 96-1 USTC ¶ 70,058 (S.D. Tex. 1996), in all cases involving substantially similar facts. In Enron, the U.S. District Court for the Southern

Exhibit 32.1.9-1 (Cont. 1) (08-11-2004)**Sample Withdrawal of Notice of Proposed Rulemaking**

District of Texas held that fractionation facilities are not United States refineries.

List of Subjects in 26 CFR Part 52

Chemicals, Excise taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (PS- 158-86) that was published in the Federal Register on April 26, 1993 (58 FR 21963) is withdrawn.

Deputy Commissioner for Services and Enforcement.

Exhibit 32.1.9-2 (08-11-2004)

Sample Closing Memorandum by Nonpublication

**Office of Chief Counsel
Internal Revenue Service
memorandum**

[Branch symbols and initiator's name]
[TECHMIS number]

date:

to: File

from: [Insert name]
Associate Chief Counsel

subject: [Regulation or Other Form of Published Guidance] to be Closed by Nonpublication

We have under consideration the publication of a [regulation or other form of published guidance] based on a [describe source of regulation or other form of published guidance project]. The proposed [regulation or other form of published guidance] would address [insert description of project].

[Insert discussion of the reason(s) for nonpublication. This memorandum should contain sufficient information to enable the Associate Chief Counsel to determine whether the project should be closed without the Associate Chief Counsel needing to review the legal file.]

Action

Accordingly, this project is being closed and no further consideration will be given to its publication.

The file in this case should be classified [add file classification] and returned to [insert name of initiator].

Exhibit 32.1.9-3 (08-11-2004)**Form 9506, TD File Closing: Information Sheet and Assembly Checklist**

**TREASURY DECISION FILE CLOSING
INFORMATION SHEET AND ASSEMBLY CHECKLIST**

File Name: _____
 CODE Section(s): _____ UIL Number(s): _____
 Regulation Section(s): _____
 TD Number: _____ ACC Number: _____

For Purged File Task Force Use Only: Microfilm Number: _____ Box Number: _____

ASSEMBLY INSTRUCTIONS-CHECKLIST**STEP 1 – Discard The Following Material:**

- ____ All duplicate copies
- ____ All readily available Printed matter (e.g., the statute and the associated legislative history)
- ____ All scraps, blank sheets, etc., that do not contain substantive information

STEP 2 – Separate Material into Subject Files and arrange Files in the Following Order:

<u>Subject Files</u>	<u>Material</u>
____ 1. Published Regulations and Notices	All initialed and certified copies; printed Regulations and correction notices
____ 2. Unmarked Drafts	A clean copy of each draft, including Related buckslips and distribution memos
____ 3. IRS and Treasury Mark-ups	Pertinent pages of mark-ups, including Related buckslips and distribution memos
____ 4. Briefing Memos	Internal memos prepared for briefings
____ 5. IRS & Treasury Memos	Transmittal and policy memos and internal Comments
____ 6. Conference and Briefing Reports	Summaries of conferences and briefing Sessions
____ 7. Public Comments and Hearings	Public comments, including summaries of These comments, public hearing related documents
____ 8. Administrative Memos	Regulations Subsystem Master Form, Regulation Development Checklist (if Completed), Small Business Administration Documents, Seven Point Memo, Closing Memo, CATS documentation, OMB 83-l materials, Plain Language Summaries, Congressional Review Act Submissions
____ 9. Bibliography	Citations to all statutes, legislative history, Court cases, regulations, rulings, and articles Consulted

NOTE: All handwritten notes should be placed in the appropriate subject file(s), and the material within separate files should be placed in inverse chronological order.

STEP 3 – Other Actions

- ____ Place Federal Register print on top of the separate subject files
- ____ Close regulation project on CATS and CASE TECHMIS
- ____ Submit the purged and assembled Treasury Decision file to the Records Unit

PERSON CLOSING THE FILE

Name: _____ Phone: _____ Date Closed: _____

PERSON REVIEWING THE CLOSED FILE

Name: _____ Phone: _____ Date Reviewed: _____