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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

TD 9232

RIN 1545-BD33

Guidance on Passive Foreign Investment Company (PFIC) Purging Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

SUMMARY: This document contains temporary regulations that provide certain elections for taxpayers that continue to be subject to the PFIC excess distribution regime of section 1291 even though the foreign corporation in which they own stock is no longer treated as a PFIC under section 1297(a) or (e). The regulations are necessary to provide guidance about purging the PFIC taint for such foreign corporations. The regulations will affect U.S. persons that hold stock in a PFIC. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective December 8, 2005.

Applicability Date: For dates of applicability, see §§1.1291-9T(k), 1.1297-3T(f), and 1.1298-3T(f).

FOR FURTHER INFORMATION CONTACT: Ethan Atticks at (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1965. Responses to this collection of information are required to obtain a tax benefit.

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 OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

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 amendments to regulations under sections 1291(d)(2), 1297(e) and 1298(b)(1). The temporary regulations provide rules for a shareholder of a

foreign corporation to make a deemed sale or a deemed dividend election under section 1298(b)(1) when section 1297(e) applies to a portion of the holding period. The temporary regulations also provide rules for such shareholders, or shareholders of foreign corporations that no longer meet the income or asset tests of section 1297(a), to make late deemed sale or deemed dividend elections .

Section 1297(e), added by the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 708), provides that a foreign corporation generally is not treated as a PFIC with respect to a shareholder during the qualified portion of the shareholder's holding period in the stock of the foreign corporation. The "qualified portion" is the portion of the shareholder's holding period which is after December 31, 1997, and during which the shareholder is a U.S. shareholder (as defined in section 951(b)) and the foreign corporation is a controlled foreign corporation. If the qualified portion of the U.S. shareholder's holding period in the stock of the foreign corporation is less than the shareholder's entire holding period, then, notwithstanding section 1297(e), section 1298(b)(1) will apply to treat the foreign corporation as a PFIC with respect to the shareholder if at any time during the shareholder's holding period of the stock, the corporation was a PFIC that was not a QEF, and the shareholder has not made an election under section 1298(b)(1) to purge the PFIC taint under rules similar to the rules of section 1291(d)(2).

Section 1298(b)(1) provides that if a shareholder owns stock in a foreign corporation that, at any time during the shareholder's holding period with respect to such stock, was a PFIC that was not a QEF, the stock will retain its character as PFIC stock, even if the corporation later ceases to qualify as a PFIC under section 1297(a),

unless the shareholder elects to purge the PFIC taint under rules similar to the rules of section 1291(d)(2).

On March 2, 1988, the IRS and Treasury Department published temporary regulations (TD 8178, 1988-1 CB 313 [53 FR 6770]), and proposed regulations that cross-referenced the temporary regulations (INTL 941-86 [53 FR 6781]), concerning the election under section 1298(b)(1) (then section 1297(b)(1)) (1988 temporary regulations). The 1988 temporary regulations permitted a shareholder of a former PFIC, as defined in §1.1291-9(j)(2)(iv), to purge the PFIC taint by making a deemed sale election. On January 2, 1998, the IRS and Treasury Department published temporary regulations (TD 8750; 1998-8 IRB 4 [63 FR 6]) and proposed regulations that cross-referenced the temporary regulations (REG 115795-97 [63 FR 39-01]) that amended the 1988 temporary regulations. The 1998 temporary regulations provided that a shareholder of a former PFIC that was a controlled foreign corporation (as defined in section 957(a)) (CFC) during its last taxable year as a PFIC under section 1297(a), may apply the rules of the deemed dividend election under section 1291(d)(2)(B) and §1.1291-9 to its section 1298(b)(1) election. The 1998 temporary regulations expired on January 2, 2001, pursuant to section 7805(e)(2).

Explanation of Provisions

The regulations contained in this document provide guidance on making a deemed sale or a deemed dividend election for a shareholder of a section 1297(e) PFIC. Section 1.1291-9T(j)(2)(v) defines a section 1297(e) PFIC as a foreign corporation that qualifies as a PFIC under section 1297(a) on the first day of the qualified portion of the shareholder's holding period under section 1297(e), and is also

treated as a PFIC with respect to the shareholder under section 1298(b)(1) because at any time during the shareholder's holding period of the stock, other than the qualified portion, the foreign corporation was a PFIC that was not a QEF.

The deemed sale and deemed dividend election rules contained herein generally conform to the deemed sale and deemed dividend election provisions under §§1.1291-9 and -10, which apply to shareholders making a purging election in conjunction with a QEF election. The deemed sale and deemed dividend election rules contained in these regulations, which apply to shareholders of section 1297(e) PFICs, however, differ from those contained in §§1.1291-9 and -10 in several minor respects.

First, under the deemed dividend or deemed sale election rules contained in §§1.1291-9 and -10, the deemed dividend or the gain recognized on the deemed sale, is taxed as an excess distribution received by the shareholder on the qualification date, defined as the first day of the PFIC's first taxable year as a QEF. See §1.1291-9T(e). Under these regulations, for purposes of a deemed dividend or deemed sale election made by a shareholder of a section 1297(e) PFIC, the deemed dividend, or the gain recognized on the deemed sale, is taxed as an excess distribution received on the CFC qualification date. The "CFC qualification date" is defined in §1.1297-3T(d) as the first day on which the qualified portion of the shareholder's holding period in the Section 1297(e) PFIC begins, as determined under section 1297(e)(3).

Second, under §1.1291-9(a)(2), the term "post-1986 earnings and profits" is defined as certain undistributed earnings and profits as of the day before the qualification date. These regulations contain a similar rule. Section 1.1297-3T(c) provides, in general, that "post-1986 earnings and profits" means certain undistributed

earnings as of the day before the CFC qualification date. Unlike the qualification date under §1.1291-9, which is the first day of the taxable year, the CFC qualification date may be a day after the first day of the taxable year. Thus, §1.1297-3T(c)(3)(i)(B) also contains a special rule for determining post-1986 earnings and profits when the CFC qualification date is a day after the first day of the taxable year. In such instances, the undistributed earnings and profits will be determined at the close of the taxable year that includes the CFC qualification date.

Finally, taxpayers have commented that, if a foreign corporation is a PFIC under the “once a PFIC, always a PFIC” rule of section 1298(b)(1) but the corporation has ceased to qualify as a PFIC under section 1297(a) or is a corporation to which section 1297(e) applies, and if the shareholder fails to make a timely purging election, the shareholder has no way to remove the PFIC taint. To address this situation, the IRS and Treasury Department also have included late election relief provisions in the regulations. These provisions, contained in §§1.1297-3T(e) and 1.1298-3T(e), allow shareholders of a section 1297(e) PFIC or a former PFIC to make a late deemed dividend or deemed sale election with the consent of the Commissioner, provided certain requirements are met. Under this provision, the shareholder applies the rules of §§1.1297-3T and 1.1298-3T as if its purging election were timely made. If the taxable year for which the purging election is made (i.e., the taxable year that includes the CFC qualification date or the termination date) is a closed taxable year, the taxpayer must enter into a closing agreement to agree to eliminate any prejudice to the interests of the U.S. government as a consequence of the taxpayer’s inability to file an amended return.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble of the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the Federal Register. Pursuant to section 7805(f) of the Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Ethan Atticks, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1--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. New §1.1291-9T is added to read as follows:

§1.1291-9T Deemed dividend election (temporary).

(a) through (i)(2)(iv) [Reserved]. For further guidance, see §1.1291-9(a) through (j)(2)(iv).

(j)(2)(v) Section 1297(e) PFIC. A foreign corporation is a section 1297(e) PFIC with respect to a shareholder (as defined in §1.1291-9(j)(3)) if—

(A) The foreign corporation qualifies as a PFIC under section 1297(a) on the first day on which the qualified portion of the shareholder's holding period in the foreign corporation begins, as determined under section 1297(e)(2); and

(B) The stock of the foreign corporation held by the shareholder is treated as stock of a PFIC, pursuant to section 1298(b)(1), because, at any time during the shareholder's holding period of the stock, other than the qualified portion, the corporation was a PFIC that was not a QEF.

(3) [Reserved]. For further guidance, see §1.1291-9(j)(3).

(k) Effective date. (1) The rules of this section are applicable as of December 8, 2005.

(2) The applicability of this section will expire on or before December 5, 2008.

Par. 3. Section 1.1297-0T is added to read as follows:

§1.1297-0T Table of contents (temporary).

This section contains a listing of the headings for §1.1297-3T.

§1.1297-3T Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC (temporary).

- (a) In general.
- (b) Application of deemed sale election rules.
 - (1) Eligibility to make the deemed sale election.
 - (2) Effect of the deemed sale election.
 - (3) Time for making the deemed sale election.
 - (4) Manner of making the deemed sale election.

- (5) Adjustments to basis.
- (6) Treatment of holding period.
- (c) Application of deemed dividend election rules.
 - (1) Eligibility to make the deemed dividend election.
 - (2) Effect of the deemed dividend election.
 - (3) Post-1986 earnings and profits defined.
 - (4) Time for making the deemed dividend election.
 - (5) Manner of making the deemed dividend election.
 - (6) Adjustments to basis.
 - (7) Treatment of holding period.
 - (8) Coordination with section 959(e).
- (d) CFC qualification date.
 - (e) Late elections requiring special consent.
 - (1) In general.
 - (2) Prejudice to the interests of the U.S. government.
 - (3) Procedural requirements.
 - (4) Time and manner of making late election.
- (f) Effective date.

Par. 4. Section 1.1297-3T is revised to read as follows:

§1.1297-3T Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC (temporary).

(a) In general. A shareholder (as defined in §1.1291-9(j)(3)) of a foreign corporation that is a section 1297(e) PFIC (as defined in §1.1291-9T(j)(2)(v)) with respect to such shareholder, shall be treated for tax purposes as holding stock in a PFIC and therefore continues to be subject to taxation under section 1291 unless the shareholder makes a purging election under section 1298(b)(1). A purging election under section 1298(b)(1) is made under rules similar to the rules of section 1291(d)(2). Section 1291(d)(2) allows a shareholder to purge the continuing PFIC taint by either making a deemed sale election or a deemed dividend election.

(b) Application of deemed sale election rules--(1) Eligibility to make the deemed sale election. A shareholder of a foreign corporation that is a section 1297(e) PFIC with

respect to such shareholder may make a deemed sale election under section 1298(b)(1) by applying the rules of this paragraph (b).

(2) Effect of the deemed sale election. A shareholder making the deemed sale election with respect to a section 1297(e) PFIC shall be treated as having sold all of its stock in the section 1297(e) PFIC for its fair market value on the CFC qualification date, as defined in paragraph (d) of this section. A deemed sale under this section is treated as a disposition subject to taxation under section 1291. Thus, the gain from the deemed sale is taxed as an excess distribution received on the CFC qualification date. In the case of an election made by an indirect shareholder, the amount of gain to be recognized and taxed as an excess distribution is the amount of gain that the direct owner of the stock of the PFIC would have realized on an actual sale or disposition of the stock of the PFIC indirectly owned by the shareholder. Any loss realized on the deemed sale is not recognized. After the deemed sale election, the shareholder's stock with respect to which the election was made under this paragraph (b) shall not be treated as stock in a PFIC and the shareholder shall not be subject to taxation under section 1291 with respect to such stock unless the qualified portion of the shareholder's holding period ends, as determined under section 1297(e)(2), and the foreign corporation thereafter qualifies as a PFIC under section 1297(a).

(3) Time for making the deemed sale election. Except as provided in paragraph (e) of this section, a shareholder shall make the deemed sale election under this paragraph (b) and section 1298(b)(1) in the shareholder's original or amended return for the taxable year that includes the CFC qualification date (election year). If the deemed sale election is made in an amended return, the return must be filed by a date that is

within three years of the due date, as extended under section 6081, of the original return for the election year.

(4) Manner of making the deemed sale election. A shareholder makes the deemed sale election under this paragraph (b) by filing Form 8621 ("Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund") with the return of the shareholder for the election year, reporting the gain as an excess distribution pursuant to section 1291(a) as if such sale occurred under section 1291(d)(2), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed sale election after the due date of the return (determined without regard to extensions) for the election year must pay additional interest, pursuant to section 6601, on the amount of underpayment of tax for that year. An electing shareholder that realizes a loss shall report the loss on Form 8621, but shall not recognize the loss.

(5) Adjustments to basis. A shareholder that makes the deemed sale election increases its adjusted basis of the PFIC stock owned directly by the amount of gain recognized on the deemed sale. If the shareholder makes the deemed sale election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of gain recognized by the shareholder. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of gain recognized on the deemed sale. A shareholder shall not adjust the

basis of any stock with respect to which the shareholder realized a loss on the deemed sale, which loss is not recognized under paragraph (b)(2) of this section.

(6) Treatment of holding period. If a shareholder of a foreign corporation has made a deemed sale election, then, for purposes of applying sections 1291 through 1298 to such shareholder after the deemed sale, the shareholder's holding period in the stock of the foreign corporation begins on the CFC qualification date, without regard to whether the shareholder recognized gain on the deemed sale. For other purposes of the Code and regulations, this holding period rule does not apply.

(c) Application of deemed dividend election rules--(1) Eligibility to make the deemed dividend election. A shareholder of a foreign corporation that is a section 1297(e) PFIC with respect to such shareholder may make the deemed dividend election under the rules of this paragraph (c). A deemed dividend election may be made by a shareholder whose pro rata share of the post-1986 earnings and profits of the PFIC attributable to the PFIC stock held on the CFC qualification date is zero.

(2) Effect of the deemed dividend election. A shareholder making the deemed dividend election with respect to a section 1297(e) PFIC shall include in income as a dividend its pro rata share of the post-1986 earnings and profits of the PFIC attributable to all of the stock it held, directly or indirectly on the CFC qualification date, as defined in paragraph (d) of this section. The deemed dividend is taxed under section 1291 as an excess distribution received on the CFC qualification date. The excess distribution determined under this paragraph (c) is allocated under section 1291(a)(1)(A) only to each day of the shareholder's holding period of the stock during which the foreign corporation qualified as a PFIC. For purposes of the preceding sentence, the

shareholder's holding period of the PFIC stock ends on the day before the CFC qualification date. After the deemed dividend election, the shareholder's stock with respect to which the election was made under this paragraph (c) shall not be treated as stock in a PFIC and the shareholder shall not be subject to taxation under section 1291 with respect to such stock unless the qualified portion of the shareholder's holding period ends, as determined under section 1297(e)(2), and the foreign corporation thereafter qualifies as a PFIC under section 1297(a).

(3) Post-1986 earnings and profits defined--(i) In general--(A) General rule. For purposes of this section, the term post-1986 earnings and profits means the post-1986 undistributed earnings, within the meaning of section 902(c)(1) (determined without regard to section 902(c)(3)), as of the day before the CFC qualification date, that were accumulated and not distributed in taxable years of the PFIC beginning after 1986 and during which it was a PFIC, without regard to whether the earnings related to a period during which the PFIC was a CFC.

(B) Special rule. If the CFC qualification date is a day that is after the first day of the taxable year, the term post-1986 earnings and profits means the post-1986 undistributed earnings, within the meaning of section 902(c)(1) (determined without regard to section 902(c)(3)), as of the close of the taxable year that includes the CFC qualification date. For purposes of this computation, only earnings and profits accumulated in taxable years during which the foreign corporation was a PFIC shall be taken into account, but without regard to whether the earnings related to a period during which the PFIC was a CFC.

(ii) Pro rata share of post-1986 earnings and profits attributable to shareholder's stock--(A) In general. A shareholder's pro rata share of the post-1986 earnings and profits of the PFIC attributable to the stock held by the shareholder on the CFC qualification date is the amount of post-1986 earnings and profits of the PFIC accumulated during any portion of the shareholder's holding period ending at the close of the day before the CFC qualification date and attributable, under the principles of section 1248 and the regulations under that section, to the PFIC stock held on the CFC qualification date.

(B) Reduction for previously taxed amounts. A shareholder's pro rata share of the post-1986 earnings and profits of the PFIC does not include any amount that the shareholder demonstrates to the satisfaction of the Commissioner (in the manner provided in paragraph (c)(5)(ii) of this section) was, pursuant to another provision of the law, previously included in the income of the shareholder, or of another U.S. person if the shareholder's holding period of the PFIC stock includes the period during which the stock was held by that other U.S. person.

(4) Time for making the deemed dividend election. Except as provided in paragraph (e) of this section, the shareholder shall make the deemed dividend election under this paragraph (c) and section 1298(b)(1) in the shareholder's original or amended return for the taxable year that includes the CFC qualification date (election year). If the deemed dividend election is made in an amended return, the return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the election year.

(5) Manner of making the deemed dividend election--(i) In general. A shareholder makes the deemed dividend election by filing Form 8621 and the attachment to Form 8621 described in paragraph (c)(5)(ii) of this section with the return of the shareholder for the election year, reporting the deemed dividend as an excess distribution pursuant to section 1291(a)(1), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed dividend election after the due date of the return (determined without regard to extensions) for the election year must pay additional interest, pursuant to section 6601, on the amount of underpayment of tax for that year.

(ii) Attachment to Form 8621. The shareholder must attach a schedule to Form 8621 that demonstrates the calculation of the shareholder's pro rata share of the post-1986 earnings and profits of the PFIC that is treated as distributed to the shareholder on the CFC qualification date, pursuant to this paragraph (c). If the shareholder is claiming an exclusion from its pro rata share of the post-1986 earnings and profits for an amount previously included in its income or the income of another U.S. person, the shareholder must include the following information:

(A) The name, address and taxpayer identification number of each U.S. person that previously included an amount in income, the amount previously included in income by each such U.S. person, the provision of law, pursuant to which the amount was previously included in income, and the taxable year or years of inclusion of each amount.

(B) A description of the transaction pursuant to which the shareholder acquired, directly or indirectly, the stock of the PFIC from another U.S. person, and the provision

of law pursuant to which the shareholder's holding period includes the period the other U.S. person held the CFC stock.

(6) Adjustments to basis. A shareholder that makes the deemed dividend election increases its adjusted basis of the stock of the PFIC owned directly by the shareholder by the amount of the deemed dividend. If the shareholder makes the deemed dividend election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of the deemed dividend. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of the deemed dividend.

(7) Treatment of holding period. If the shareholder of a foreign corporation has made a deemed dividend election, then, for purposes of applying sections 1291 through 1298 to such shareholder after the deemed dividend, the shareholder's holding period of the stock of the foreign corporation begins on the CFC qualification date. For other purposes of the Code and regulations, this holding period rule does not apply.

(8) Coordination with section 959(e). For purposes of section 959(e), the entire deemed dividend is treated as having been included in gross income under section 1248(a).

(d) CFC qualification date. For purposes of this section, the CFC qualification date is the first day on which the qualified portion of the shareholder's holding period in the section 1297(e) PFIC begins, as determined under section 1297(e).

(e) Late elections requiring special consent–(1) In general. This section prescribes the exclusive rules under which a shareholder of a section 1297(e) PFIC may make a section 1298(b)(1) election after the time prescribed in paragraph (b)(2) or (c)(4) of this section for making a deemed sale or a deemed dividend election has elapsed (late purging election). Therefore, a shareholder may not seek such relief under any other provisions of the law, including §301.9100-3 of this chapter. A shareholder may request the consent of the Commissioner to make a late deemed sale or deemed dividend election for the taxable year of the shareholder that includes the CFC qualification date provided the shareholder satisfies the requirements set forth in this paragraph (e). The Commissioner may, in his discretion, grant relief under this paragraph (e) only if--

(i) In a case where the shareholder is requesting consent under this paragraph (e) after June 30, 2006, the shareholder requests such consent before a representative of the Internal Revenue Service raises upon audit the PFIC status of the foreign corporation for any taxable year of the shareholder;

(ii) The shareholder has agreed in a closing agreement with the Commissioner, described in paragraph (e)(3) of this section, to eliminate any prejudice to the interests of the U.S. government, as determined under paragraph (e)(2) of this section, as a consequence of the shareholder's inability to file amended returns for its taxable year in which the CFC qualification date falls, or an earlier closed taxable year in which the shareholder has taken a position that is inconsistent with the treatment of the foreign corporation as a PFIC; and

(iii) The shareholder satisfies the procedural requirements set forth in paragraph (e)(3) of this section.

(2) Prejudice to the interests of the U.S. government. The interests of the U.S. government are prejudiced if granting relief would result in the shareholder having a lower tax liability (other than by a de minimis amount), taking into account applicable interest charges, for the taxable year that includes the CFC qualification date (or a prior taxable year in which the taxpayer took a position on a return that was inconsistent with the treatment of the foreign corporation as a PFIC) than the shareholder would have had if the shareholder had properly made the section 1298(b)(1) election in the time prescribed in paragraph (b)(2) or (c)(3) of this section (or had not taken a position in a return for an earlier year that was inconsistent with the status of the foreign corporation as a PFIC). The time value of money is taken into account for purposes of this computation.

(3) Procedural requirements--(i) In general. The amount due with respect to a late purging election is determined in the same manner as if the purging election had been timely filed. However, the shareholder is also liable for interest on the amount due, determined for the period beginning on the due date (without extensions) for the taxpayer's income tax return for the year in which the CFC qualification date falls and ending on the date the late purging election is filed with the IRS.

(ii) Filing instructions. A late purging election is made by filing a completed Form 8621-A, "Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company."

(4) Time and manner of making late election--(i) Time for making a late purging election. A shareholder may make a late purging election in the manner provided in paragraph (e)(4)(ii) of this section at any time. The date the election is filed with the IRS will determine the amount of interest due under paragraph (e)(3) of this section.

(ii) Manner of making a late purging election. A shareholder makes a late purging election by completing Form 8621-A in the manner required by that form and this section and filing that form with the Internal Revenue Service, DP 8621-A, Ogden, UT 84201.

(f) Effective date. (1) The rules of this section are applicable as of December 8, 2005.

(2) The applicability of this section will expire on or before December 5, 2008.

Par. 5. Section 1.1298-0T is added to read as follows:

§1.1298-0T Table of contents (temporary).

This section contains a listing of the paragraph headings for §1.1298-3T.

§1.1298-3T Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC (temporary).

(a) through (d) [Reserved]. For further guidance, see §1.1298-0, the entries for §1.1298-3T(a) through (d).

(e) Late purging elections requiring special consent.

(1) In general.

(2) Prejudice to the interests of the U.S. government.

(3) Procedural requirement.

(4) Time and manner of making late election.

(f) Effective Date.

Par. 6. Section 1.1298-3T is added to read as follows:

§1.1298-3T Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC (temporary).

(a) through (d) [Reserved]. For further guidance see §1.1298-3(a) through (d).

(e) Late purging elections requiring special consent–(1) In general. This section prescribes the exclusive rules under which a shareholder of a former PFIC may make a section 1298(b)(1) election after the time prescribed in paragraph (b)(2) or (c)(4) of this section for making a deemed sale or a deemed dividend election has elapsed (late purging election). Therefore, a shareholder may not seek such relief under any other provisions of the law, including §301.9100-3 of this chapter. A shareholder may request the consent of the Commissioner to make a late purging election for the taxable year of the shareholder that includes the termination date provided the shareholder satisfies the requirements set forth in this paragraph (e). The Commissioner may, in his discretion, grant relief under this paragraph (e) only if--

(i) In a case where the shareholder is requesting consent under this paragraph (e) after June 30, 2006, the shareholder requests such consent before a representative of the Internal Revenue Service raises upon audit the PFIC status of the foreign corporation for any taxable year of the shareholder;

(ii) The shareholder has agreed in a closing agreement with the Commissioner, described in paragraph (e)(3) of this section, to eliminate any prejudice to the interests of the U.S. government, as determined under paragraph (e)(2) of this section, as a consequence of the shareholder's inability to file amended returns for its taxable year in which the termination date falls, or an earlier closed taxable year in which the shareholder has taken a position that is inconsistent with the treatment of the foreign corporation as a PFIC; and

(iii) The shareholder satisfies the procedural requirements set forth in paragraph (e)(3) of this section.

(2) Prejudice to the interests of the U.S. government. The interests of the U.S. government are prejudiced if granting relief would result in the shareholder having a lower tax liability (other than by a de minimis amount), taking into account applicable interest charges, for the taxable year that includes the termination date (or a prior taxable year in which the taxpayer took a position on a return that was inconsistent with the treatment of the foreign corporation as a PFIC) than the shareholder would have had if the shareholder had properly made the section 1298(b)(1) election in the time prescribed in paragraph (b)(2) or (c)(3) of this section (or had not taken a position in a return for an earlier year that was inconsistent with the status of the foreign corporation as a PFIC). The time value of money is taken into account for purposes of this computation.

(3) Procedural requirement--(i) In general. The amount due with respect to a late purging election is determined in the same manner as if the purging election had been timely filed. However, the shareholder is also liable for interest on the amount due, determined for the period beginning on the due date (without extensions) for the taxpayer's income tax return for the year in which the CFC qualification date falls and ending on the date the late purging election is filed with the IRS.

(ii) Filing instructions. A late purging election is made by filing a completed Form 8621-A, "Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company."

(4) Time and manner of making late election--(i) Time for making a late purging election. A shareholder may make a late purging election in the manner provided in

paragraph (e)(4)(ii) of this section at any time. The date the election is filed with the IRS will determine the amount of interest due under paragraph (e)(3) of this section.

(ii) Manner of making a late purging election. A shareholder makes a late purging election by completing Form 8621-A in the manner required by that form and this section and filing that form with the Internal Revenue Service, DP 8621-A, Ogden, UT 84201.

(f) Effective date. (1) The rules of this section are applicable as of December 8, 2005.

(2) The applicability of this section will expire on or before December 5, 2008.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation of part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

Par. 8. In §602.101, paragraph (b) is amended by revising an entry in the table for “1.1297-3T” as follows:

§602.101 OMB Control numbers

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(b) * * *

CFR part or section where Identified and described	Current OMB control No.
* * * * *	
1.1297-3T.....	1545-1965
* * * * *	

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement

Approved: November 21, 2005

/s/ Eric Solomon

Acting Deputy Assistant Secretary of the Treasury