

ORDER NO. 5006

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond;
Michael Kubayanda

Review of Calculation of Competitive
Products Assumed Income Tax, 2018

Docket No. T2019-1

ORDER APPROVING THE CALCULATION OF THE FY 2018
ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS

(Issued March 12, 2019)

I. INTRODUCTION

The Postal Service is required each year to calculate its assumed Federal income tax on competitive products income and to transfer the amount of the assumed Federal income tax from the Competitive Products Fund to the Postal Service Fund. 39 U.S.C. § 3634; 39 C.F.R. § 3060.40 *et seq.* The Postal Service filed its calculation of the assumed Federal income tax on competitive products income for Fiscal Year

(FY) 2018.¹ For the reasons discussed below, the Commission approves the calculation, as revised by the Postal Service, in accordance with 39 C.F.R. § 3060.42.

II. BACKGROUND

On January 10, 2019, in accordance with 39 C.F.R. § 3060.40(c), the Postal Service filed the Notice, along with a supporting attachment containing the Postal Service's calculation of the FY 2018 assumed Federal income tax on competitive products net income. The calculation details the FY 2018 competitive product revenue and expenses, the competitive products net income before tax, and the assumed Federal income tax on that income. *Id.*

On January 11, 2019, the Commission issued an order establishing this docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.²

On February 15, 2019, Chairman's Information Request No. 1 was issued, which inquired whether revisions made by the Postal Service to its FY 2018 Annual Compliance Report submission³ affected the assumed Federal income tax calculation, and, if so, requested a revised calculation accounting for the changes.⁴ The Postal Service filed its response, including a revised calculation, on February 22, 2019.⁵

¹ Notice of the United States Postal Service of Submission of the Calculation of the FY 2018 Assumed Federal Income Tax on Competitive Products, January 10, 2019 (Notice). The calculation of the FY 2018 assumed Federal income tax on competitive products is attached to the Notice. Notice, Attachment.

² Notice and Ordering Concerning the Review of the Calculation of the Assumed Federal Income Tax on Competitive Products, January 11, 2019 (Order No. 4986).

³ Docket No. ACR2018, Notice of the United States Postal Service of Revisions to Multiple Annual Compliance Report Folders -- Errata, February 11, 2019.

⁴ Chairman's Information Request No. 1, February 15, 2019 (CHIR No. 1).

⁵ Response of the United States Postal Service to Question 1 of Chairman's Information Request No. 1, February 22, 2019 (Responses to CHIR No. 1).

In the Responses to CHIR No. 1, the Postal Service reports a net income from competitive products of \$7.599 billion for FY 2018.⁶ After subtracting the \$1.690 billion⁷ required institutional cost contribution, the Postal Service reports a net income before tax of \$5.909 billion. Responses to CHIR No. 1, question 1.b. The Postal Service reports a taxable competitive products income of \$5.909 billion.⁸ Multiplying its taxable income by the applicable tax rates,⁹ the Postal Service calculates a FY 2018 assumed Federal income tax on competitive products income of \$1.449 billion. Responses to CHIR No. 1, question 1.b.

III. COMMENTS

The Public Representative filed comments on March 1, 2019.¹⁰ No other interested person filed comments. In preparing her comments, the Public Representative reviewed the Notice and its attachment, the Responses to CHIR No. 1, as well as a library reference filed in Docket No. ACR2018 and its revisions. PR Comments at 4. She also notes the changes to chapter 1 of the Internal Revenue Code

⁶ Responses to CHIR No. 1, question 1.b. For simplicity, this Order rounds all non-whole figures to three decimal places.

⁷ The required institutional cost contribution for FY 2018 was, at a minimum, 5.5 percent of the Postal Service's total institutional costs. 39 C.F.R. § 3015.7(c). \$1.690 billion is 5.5 percent of the Postal Service's total FY 2018 institutional costs of \$30.724 billion as reported in the Postal Service's Annual Compliance Report. Docket No. ACR2018, Library Reference USPS-FY18-1, December 28, 2018 (revised February 11, 2019); see Responses to CHIR No. 1, question 1.b. The Commission's review of this figure (*i.e.*, \$1.690 billion) is under review by the Commission in Docket No. ACR2018. The Commission, however, accepts this figure as correct for purposes of approving the calculation of the FY 2018 assumed Federal income tax on competitive products. Any revisions to this figure should not have a material impact on the amount of assumed tax transferred to the Postal Service Fund.

⁸ *Id.* The Postal Service reports its taxable income consistent with how it reports income for financial reporting purposes (*i.e.*, there are no permanent differences).

⁹ The Tax Cut and Jobs Act of 2017 changed the corporate tax rate and eliminated the Alternative Minimum Tax for corporations, effective January 1, 2018. See Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act). The Postal Service utilizes IRS Form 1120, Schedule J – Line 2 to account for the two rates applicable during the fiscal year. Responses to CHIR No. 1, question 1.b.

¹⁰ Public Representative Comments on Postal Service Notice Concerning Submission of FY 2018 Assumed Federal Income Tax on Competitive Products, March 1, 2019 (PR Comments).

based on the Tax Cuts and Jobs Act. *Id.* at 3-4. Based on the Postal Service's calculation and the Postal Service's statement in Docket No. ACR2018 that it would transfer the assumed Federal income tax to the Postal Service Fund by January 15, 2019, she concludes that the calculation and supporting documentation are consistent with 39 U.S.C. § 3634 and 39 C.F.R. § 3060.40 *et seq.* *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the attached calculation of the assumed Federal income tax on competitive products income for FY 2018, the Postal Service's Responses to CHIR No. 1 and the included revised calculation, and the Public Representative's comments. For the reasons set forth below, the Commission approves the calculation of the assumed Federal income tax for FY 2018 as revised in the Responses to CHIR No. 1.

The Postal Accountability and Enhancement Act of 2006 requires that the Postal Service annually calculate the assumed Federal income tax on competitive products income.¹¹ Section 3634(a)(1) of title 39 of the U.S. Code defines the term "assumed Federal income tax on competitive products income" as "the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year." Sections 3634(b) and (c) of title 39 require that the Postal Service calculate the assumed Federal income tax on competitive products for the year and transfer the amount from the Competitive Products Fund to the Postal Service Fund by the January 15th that follows the close of the fiscal year.

The Commission's regulations require that the Postal Service develop a Competitive Products Income Statement for each fiscal year, as shown in Table 1 of 39 C.F.R. § 3060.21. Section 3060.40(a) of title 39 of the Code of Federal Regulations requires that the Postal Service use the Competitive Products Income Statement to

¹¹ Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006).

calculate the assumed Federal income tax on competitive products income in compliance with chapter 1 of the Internal Revenue Code by computing tax liability at section 11 (regular) or section 55(b)(1)(B) (Alternative Minimum Tax) tax rates, as appropriate.¹² The Postal Service is not required to calculate or pay estimated Federal income taxes or state, local, or foreign income taxes. 39 C.F.R. § 3060.40(d), (e).

In December 2017, Congress passed the Tax Cuts and Jobs Act which, among other things, repealed the Alternative Minimum Tax for corporations. Tax Cuts and Jobs Act § 12001, 131 Stat. at 2092. The Alternative Minimum Tax rate in section 55(b)(1)(B) is no longer applicable to corporations. The Postal Service's revised calculation uses the section 11 rates, which is appropriate. See Responses to CHIR No. 1, question 1.b.

The revised calculation contains two tables and a schedule based on IRS Form 1120.¹³ The first table uses the first eleven lines of the Competitive Products Income Statement to calculate the FY 2018 competitive products net income before tax. Responses to CHIR No. 1, question 1.b. The second table calculates the assumed Federal income tax on competitive products income. *Id.* Because the tax rate changed part way through FY 2018 as a result of the Tax Cuts and Jobs Act, the Postal Service must calculate the tax based on the two applicable tax rates (*i.e.*, the rate in effect prior to the enactment of Tax Cuts and Jobs Act and applicable from October 1, 2017 to December 31, 2017 and the rate in effect after the enactment of the Tax Cuts and Jobs Act and applicable from January 1, 2018 to September 30, 2018).¹⁴ Multiplying a taxable income of \$5.909 billion by a 35-percent tax rate (the applicable rate prior to January 1, 2018) for the corresponding portion of the fiscal year (92 of 365 days) and by

¹² Chapter 1 of title 26 prescribes, among other things, how the Federal income tax liability of corporations is calculated. The amount of Federal income tax imposed on corporations is specified in 26 U.S.C. § 11.

¹³ *Id.*; see Internal Revenue Service Form 1120 (2017), Schedule J, Line 2 instructions (*available at: <https://www.irs.gov/pub/irs-prior/i1120--2017.pdf>*).

¹⁴ See 26 U.S.C. § 15(a); Internal Revenue Service Notice 2018-38, 2018 Fiscal-year Blended Tax Rates for Corporations (*available at: <https://www.irs.gov/pub/irs-drop/n-18-38.pdf>*).

a 21-percent tax rate (the applicable rate starting January 1, 2018) for the remainder of the fiscal year (273 of 365 days), the Postal Service calculates an assumed Federal income tax on competitive products income for FY 2018 of \$1.449 billion. Responses to CHIR No. 1, question 1.b.

The Commission approves of the calculation of the assumed Federal income tax on competitive products net income for FY 2018 as revised in the Responses to CHIR No. 1. The revised calculation contains the information required by 39 C.F.R. §§ 3060.40 and 3060.41. The Commission finds that the Postal Service accurately calculated its FY 2018 competitive products net income before tax and taxable income. In addition, the Commission finds that the 35-percent tax rate is the appropriate section 11 tax rate for the Postal Service's FY 2018 taxable competitive products income prior to January 1, 2018,¹⁵ and the 21-percent tax rate is the appropriate section 11 tax rate after January 1, 2018.¹⁶ Furthermore, the Commission finds the Postal Service correctly calculated the pro-rata tax using the two rates in effect during the fiscal year. Thus, in accordance with 39 C.F.R. § 3060.42, the Commission approves the Postal Service's revised FY 2018 calculation of the assumed Federal income tax on competitive products income provided in the Responses to CHIR No. 1.

¹⁵ See Internal Revenue Service Form 1120 (2017), Schedule J, Line 2 instructions (*available at: <https://www.irs.gov/pub/irs-prior/i1120--2017.pdf>*).

¹⁶ 26 U.S.C. § 11; Tax Cuts and Jobs Act § 13001, 131 Stat. at 2096, 2101.

V. ORDERING PARAGRAPH

It is ordered:

In accordance with 39 C.F.R. § 3060.42, the Commission approves the Postal Service's revised FY 2018 calculation of the assumed Federal income tax on competitive products income provided in the Responses to CHIR No. 1.

By the Commission.

Ruth Ann Abrams
Acting Secretary