

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; and  
Michael Kubayanda

Amendments to Assumed Federal  
Income Tax Calculation Rules

Docket No. RM2019-5

NOTICE OF PROPOSED RULEMAKING TO AMEND  
ASSUMED FEDERAL INCOME TAX CALCULATION RULES

(Issued May 16, 2019)

I. INTRODUCTION

Pursuant to 39 U.S.C. 503 and 2011(h)(2)(B)(ii), this Order establishes a rulemaking docket that proposes amendments to the Commission's regulations governing the assumed Federal income tax on competitive product income appearing in existing 39 CFR part 3060. The proposed amendments would revise regulations concerning the annual assumed Federal income tax calculation for competitive products to reflect changes to the Internal Revenue Code made by the Tax Cuts and Jobs Act and to remove other obsolete provisions.<sup>1</sup> The proposed rules appear after the signature of this Order in the Attachment.

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<sup>1</sup> See Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

## II. PROPOSED AMENDMENTS

Section 3634(b) of title 39 of the United States Code requires the Postal Service to calculate the assumed Federal income tax on its competitive products income each year and transfer the amount of the assumed tax from the Competitive Products Fund to the Postal Service Fund. As required by 39 U.S.C. 2011(h)(2)(B)(ii), on December 18, 2008, the Commission issued the substantive and procedural rules for determining the assumed Federal income tax calculation, as codified in existing 39 CFR part 3060.<sup>2</sup> In accordance with its specific authority under 39 U.S.C. 2011(h)(2)(B)(ii) and its general authority under 39 U.S.C. 503 to promulgate regulations and establish procedures, the Commission establishes this proceeding to consider two forms of amendments. First, the Commission proposes revisions to reflect changes made to the Internal Revenue Code after the Commission's initial 2008 rulemaking that would affect the computation of the applicable tax rate for the assumed Federal income tax calculation. Second, the Commission proposes to remove obsolete provisions that authorized one-time extensions of time for the Postal Service to calculate and transfer the assumed Federal income tax for fiscal year 2008.

### A. Applicable Corporate Tax Rate

The assumed taxable income from competitive products for a given year “refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year[.]” 39 U.S.C. 3634(a)(2). Existing 39 CFR 3060.40(a) requires the Postal Service's calculation of the assumed Federal income tax on competitive product income to comply with chapter 1 of the Internal Revenue Code. Additionally, existing § 3060.40(a) specifies that the computation of the competitive products enterprise's assumed tax liability use either the “regular” rates in

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<sup>2</sup> See Docket No. RM2008-5, Order Establishing Accounting Practices and Tax Rules for Competitive Products, December 18, 2008 (Order No. 151).

section 11 or the Alternative Minimum Tax (AMT) rates in section 55(b)(1)(B) of the Internal Revenue Code, whichever might be applicable.

Since the codification of existing § 3060.40(a), the Internal Revenue Code has undergone changes. Effective December 22, 2017, the AMT no longer applies to corporations. Tax Cuts and Jobs Act § 12001, 131 Stat. at 2092 (codified at 26 U.S.C. 55(a)). Therefore, it is no longer appropriate for the Postal Service to compute the tax liability at the AMT rate, as contemplated in existing § 3060.40(a).

Rather than simply removing the cross-reference to the AMT, the Commission proposes replacing both specific cross-references to particular sections of chapter 1 of the Internal Revenue Code with a general instruction for the Postal Service to use the applicable tax rate for corporations. This would enable proposed § 3060.40(a) to stay current with any future changes to chapter 1 of the Internal Revenue Code affecting the tax rate for corporations. Moreover, this proposed approach would remain consistent with 39 U.S.C. 3634(a)(2).

#### B. Obsolete One-time Extension Provisions

The Commission published the existing regulations concerning the assumed Federal income tax calculation in December 2008 and they took effect in January 2009. Order No. 151 at 1, 21. Existing §§ 3060.40(c) and 3060.43(c) include a one-time extension for the Postal Service to submit the calculation and perform the annual transfer for FY 2008, extending both deadlines to July 15, 2009. Since the existing provisions concerning past extensions are outdated and unnecessary, the Commission proposes removing this material from existing §§ 3060.40(c) and 3060.43(c). The removal of these obsolete provisions would simplify the regulations.

### III. SECTION-BY-SECTION ANALYSIS

*Proposed § 3060.40(a).* Proposed § 3060.40(a) replaces “section 11 (regular) or section 55(b)(1)(B) (Alternative Minimum Tax) tax rates, as applicable” with “applicable corporate tax rate.”

*Proposed § 3060.40(c).* Proposed § 3060.40(c) deletes the phrase “except that a one-time extension of 6 months, until July 15, 2009, shall be permitted for the calculation of the assumed Federal income tax due for fiscal year end September 30, 2008.”

*Proposed § 3060.43(c).* Proposed § 3060.43(c) replaces the text of existing § 3060.43(c), in its entirety, with the text of existing § 3060.43(d).

#### IV. ADMINISTRATIVE ACTIONS

The Regulatory Flexibility Act requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. See 5 U.S.C. 601, *et seq.* (1980). If the proposed or final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply. See 5 U.S.C. 605(b).

In the context of this rulemaking, the Commission’s primary responsibility is in the regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have a regulatory impact on the Postal Service, but do not impose any regulatory obligation upon any other entity. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Interested persons are invited to provide written comments concerning the proposed amendments to the assumed Federal income tax calculation regulations in 39 CFR part 3060. Comments are due no later than 30 days after the date of publication of this notice in the *Federal Register*. All comments and suggestions received will be available for review on the Commission’s website, <http://www.prc.gov>.

Pursuant to 39 U.S.C. 505, Jennaca D. Upperman is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

V. ORDERING PARAGRAPHS

*It is ordered:*

1. Docket No. RM2019-5 is established for the purpose of receiving comments on the proposed amendments to 39 CFR part 3060, as discussed in this Order.
2. Interested persons may submit comments no later than 30 days from the date of publication of this notice in the *Federal Register*.
3. Pursuant to 39 U.S.C. 505, Jennaca D. Upperman is appointed to serve as Public Representative in this proceeding.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Stacy L. Ruble  
Secretary

**List of Subjects in 39 CFR Part 3060**

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission proposes to amend 39 chapter III of title 39 of the Code of Federal Regulations as follows:

**PART 3060—ACCOUNTING PRACTICES AND TAX RULES FOR THE THEORETICAL COMPETITIVE PRODUCTS ENTERPRISE**

1. The authority citation for part 3060 continues to read as follows:

**Authority:** 39 U.S.C. 503, 2011, 3633, 3634.

2. Amend § 3060.40, by revising paragraphs (a) and (c) to read as follows:

**§ 3060.40 Calculation of the assumed Federal income tax.**

(a) The assumed Federal income tax on competitive products income shall be based on the Postal Service theoretical competitive products enterprise income statement for the relevant year and must be calculated in compliance with chapter 1 of the Internal Revenue Code by computing the tax liability on the taxable income from the competitive products of the Postal Service theoretical competitive products enterprise at the applicable corporate tax rate.

(b) \* \* \*

(c) The calculation of the assumed Federal income tax due shall be submitted to the Commission no later than the January 15 following the close of the fiscal year referenced in paragraph (b) of this section.

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3. Amend § 3060.43, by removing paragraph (c)
4. Amend § 3060.43, by redesignating paragraph (d) as paragraph (c).