

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

Review of Calculation of Competitive
Products Assumed Income Tax, 2020

Docket No. T2021-1

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING
SUBMISSION OF FY 2020 ASSUMED FEDERAL
INCOME TAX ON COMPETITIVE PRODUCTS

(March 5, 2021)

The Public Representative hereby provides comments pursuant to Order No. 5817.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons on a Postal Service Notice concerning submission of the FY 2020 assumed Federal income tax on competitive products.² The Commission's Notice invites comments on whether the Postal Service's submission is consistent with the policies of 39 U.S.C. § 3634 and 39 C.F.R. § 3060.40 *et. seq.* Notice at 2.

On January 14, 2021, in accordance with 39 C.F.R. § 3060.40(c), the Postal Service filed the Notice. Included in the Notice is a supporting attachment consisting of two tables containing the Postal Service's calculation of the FY 2020 assumed Federal income tax on competitive products income.³ The first table shows the FY 2020 competitive products Net Income Before Tax. The second table calculates the FY 2020 assumed Federal income tax on the Net Income to be transferred to the Postal Service Fund (PSF). Also attached is a tax rate schedule that shows how the Federal income tax was calculated.

¹ PRC Order No. 5817, Notice and Order Concerning the Review of the Calculation of the Assumed Federal Income Tax on Competitive Products, January 15, 2021 (Notice).

² Notice of the United States Postal Service of Submission of the Calculation of the FY 2020 Assumed Federal Income Tax on Competitive Products, January 14, 2021 (Postal Service Notice).

³ The one-page attachment is entitled, Calculation of Assumed Federal Income Tax on Competitive Products Income for the Fiscal Year ending September 30, 2020 (Attachment).

Background. 39 U.S.C. § 3634 requires the Postal Service to calculate “assumed Federal income tax on competitive products income” based on competitive product income statements. It also requires the Postal Service to calculate the assumed income tax in compliance with Chapter 1 of the Internal Revenue Code of 1986. 39 U.S.C. §§ 3634 (b)(1) and (2). The Postal Service must transfer the assumed Federal income tax from the Competitive Products Fund (CPF) to the Postal Service Fund (PSF) by January 15th following the close of the relevant fiscal year. 39 U.S.C. § 3634(c).

Commission rules implementing 39 U.S.C. § 3634 are codified in 39 C.F.R. § 3060.40 *et. seq.* Rule 3060.40 requires the assumed Federal income tax on competitive products income be calculated in compliance with Chapter 1 of the Internal Revenue Code of 1986 and filed with the Commission no later than January 15th following the close of each fiscal year. Rule 3060.41 specifies the supporting documentation that the Postal Service is required to file in support of its calculations, including detailed schedules and any adjustments to income. Rule 3060.42 states that interested persons shall be provided with an opportunity to comment on the calculations and supporting documentation, and that the Commission shall review the documentation provided by the Postal Service and either approve or take other action it deems appropriate including, but not limited to, requiring additional supporting materials from the Postal Service.

Prior to FY 2014 the review of competitive product income statements was included as part of the Commission’s Annual Compliance Determination. Following the FY 2012 Annual Compliance Determination, the Commission initiated a proceeding to review the competitive product fund calculation and transfer process.⁴ Upon review, the Commission concluded that for FY 2014 and future years, it would review the Postal Service assumed Federal income tax statements and calculations in a separate “T” docket. The Commission stated its intention “to enhance transparency and alleviate any confusion associated with the information required by 39 C.F.R. § 3060.41.”⁵

⁴ PRC Order No. 1782, Notice Establishing Docket Concerning the Competitive Products Fund, Docket No. PI2013-1, July 19, 2013, at 1.

⁵ PRC Order No. 2329, Final Order on Competitive Products Fund Inquiry, Docket No. PI2013-1, January 23, 2015, at 6.

In FY 2019, the Commission amended its regulations governing the assumed Federal income tax on competitive product income appearing in 39 C.F.R. part 3060.⁶ The Commission revised the regulations to replace specific cross-references to the Internal Revenue Code with general instruction for the Postal Service to use the applicable tax rate for corporations, enabling the regulations to remain current with any future changes to the Internal Revenue Code. Furthermore, the Commission removed obsolete provisions in §§ 3060.40(c) and 3060.43(c) having to do with one-time payment extensions for FY 2008. *Id.* at 2.

COMMENTS

In its analysis, the Commission must determine if the Postal Service properly calculated the assumed Federal income tax in accordance with Chapter 1 of the Internal Revenue Code of 1986, and that the assumed Federal income tax was transferred from the CPF to the PSF by the statutory deadline of January 15th following the close of FY 2020.

The Public Representative has reviewed the Postal Service's Notice, the Attachment, subsequent revisions to the Attachment, and library reference USPS.FY20.39.CPF.Files, filed in Docket No. ACR2020. On the first table of the calculation, the Postal Service reports \$7.927 billion in Net Income before Tax for FY 2020. The second table applies a tax rate of 21 percent⁷ obtained from IRS Form 1120, Schedule J, and calculates an assumed Federal income tax obligation of \$1.665 billion. Attachment at 1.

The Postal Service states that this amount will be transferred to the PSF by January 15, 2020.⁸ The sum of the FY 2020 Net Income after Tax of \$6.262 billion and

⁶ PRC Order No. 5136, Order Amending Assumed Federal Income Tax Calculation Rules, June 27, 2019, at 1.

⁷ The Tax Cut and Jobs Act of 2017 changed the corporate tax rate to 21 percent 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).

⁸ Docket No. ACR2020, Library Reference USPS-FY20-39, The Postal Service's Annual Report to the Secretary of the Treasury Regarding the Competitive Products Fund for Fiscal Year 2020, Required by 39 U.S.C. § 2011(i), December 29, 2020, at 1.

the Net Income (Loss) After Tax from prior year's results in a cumulative ending balance for competitive products of \$27.215 billion.⁹

Based upon the foregoing, the Public Representative concludes that the calculations and supporting documentation filed in this docket are consistent with the policies of 39 U.S.C. § 3634 and 39 C.F.R. § 3060.40 *et. seq.*

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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⁹ *Id.*, Table 2. This amount would also be reported as the FY 2020 balance in the CPS if year-end reporting by the fund were required.