Bulletin No. 1997–11
March 17, 1997

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 97–12, page 5.
Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 1997, will be 8 percent for overpayments, 9 percent for underpayments, and 11 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 is 6.5 percent.

Rev. Rul. 97–14, page 5.
Fringe benefits aircraft valuation formula. For purposes of section 1.61–21(g) of the regulations, relating to the rule for valuing noncommercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL), cents-per-mile rates, and terminal charges in effect for the first half of 1997 are set forth.

REG–208288–90, page 14.
Proposed regulations under section 905 of the Code relate to the substantiation requirements for taxpayers claiming foreign tax credits.

REG–209121–89, page 15.
Proposed regulations under section 337 of the Code generally affect a taxable corporation that transfers all or substantially all of its assets to a tax-exempt entity or converts from a taxable corporation to a tax-exempt entity, and generally requires the taxable corporation to recognize gain or loss in such a transaction. A public hearing will be held on May 6, 1997.

REG–209824–96, page 19.
Proposed regulations under section 1402 of the Code relate to the definition of limited partner for self-employment tax purposes. A public hearing will be held on May 21, 1997.

EMPLOYEE PLANS

Announcement 97–20, page 22.
Beginning April 1, 1997, requests for employee plan determination letters and applications for recognition of tax exemption, formerly sent to the district office in Los Angeles, CA, should be sent to the Internal Revenue Service Center in Covington, KY.

Announcement 97–24, page 24.
An amendment to section 401(a)(9)(C) of the Code, pertaining to the required beginning date for minimum distributions in the instance of certain plan participants (other than 5% owners) that was made by section 1404(a) of the Small Business Job Protection Act of 1996, is described.

EXEMPT ORGANIZATIONS

Announcement 97–23, page 23.
A list is given of organizations now classified as private foundations.

ADMINISTRATIVE

REG–209729–94, page 19.
EE–45–94, 1995–1 C.B. 853, relating to the self-employment tax treatment of members of certain limited liability companies, is withdrawn.

Rev. Proc. 97–20, page 10.
Automobile owners and lessees. This procedure provides owners and lessees of passenger automobiles with tables detailing the limitations on depreciation deductions for automobiles first placed in service during calendar year 1997 and the amounts to be included in income for automobiles first leased during calendar year 1997. In addition, this procedure provides the maximum

(Continued on page 4)

ADMINISTRATIVE—Continued

allowable value of employer-provided automobiles first made available to employees for personal use in calendar year 1997 for which the vehicle cents-per-mile valuation rule provided under section 1.61–21(e) of the Income Tax Regulations may be applicable.

Notice 97–21, page 9.
Self-amortizing investments in conduit financing entities. The Service and Treasury expect to issue regulations under section 7701(l) of the Code in order to prevent tax avoidance. In cases where certain conduit financing entities issue ''equity'' interests that are economically self-amortizing, it is expected that the regulations will treat the owners of the conduits as having invested directly in the conduit's income-producing assets.

Announcement 97–21, page 23.
A list is provided of organizations that no longer qualify as organizations to which contributions are deductible under section 170 of the Code.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is ''protecting the revenue.'' The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

For sale by the Superintendent of Documents U.S. Government Printing Office, Washington, D.C. 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 61.—Gross Income Defined

26 CFR 61–21: Taxation of fringe benefits.

This procedure provides the maximum value of employer-provided automobiles first made available to employees for personal use in calendar year 1997 for which the vehicle cents-per-mile valuation rule provided under § 1.61–21(e) of the Income Tax Regulations may be applicable. See Rev. Proc. 97–20, page 10.

26 CFR 1.61–21: Taxation of fringe benefits.

Fringe benefits aircraft valuation formula. For purposes of section 1.61–21(g) of the regulations, relating to the rule for valuing noncommercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL), cents-per-mile rates, and terminal charges in effect for the first half of 1997 are set forth.

Rev. Rul. 97–14

For purposes of the taxation of fringe benefits under section 61 of the Internal Revenue Code, section 1.61–21(g) of the Income Tax Regulations provides a rule for valuing noncommercial flights on employer-provided aircraft. Section 1.61–21(g)(5) provides an aircraft valuation formula to determine the value of such flights. The value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in section 1.61–21(g)(7) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are reviewed semi-annually.

The following chart sets forth the terminal charges and SIFL mileage rates:

Period During Which the Flight Was Taken	*Terminal Charge*	*SIFL Mileage Rates*
1/1/97–6/30/97	$31.73	Up to 500 miles = $.1735 per mile 501–1500 miles = $.1323 per mile Over 1500 miles = $.1272 per mile

DRAFTING INFORMATION

The principal author of this revenue ruling is Felicia A. Daniels of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this revenue ruling contact, Ms. Daniels on (202) 622–6050 (not a toll-free call).

Section 280F.—Limitation on Depreciation for Luxury Automobiles; Limitation Where Certain Property Used for Personal Purposes

26 CFR 280F–7: Property leased after December 31, 1986.

This procedure provides owners and lessees of passenger automobiles with tables detailing the limitations on depreciation deductions for automobiles first placed in service during calendar year 1997 and the amounts to be included in income for automobiles first leased during calendar year 1997. See Rev. Proc. 97–20, page 10.

Section 6621.—Determination of Interest Rate

26 CFR 301.6621–1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 1997, will be 8 percent for overpayments, 9 percent for underpayments, and 11 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 is 6.5 percent.

Rev. Rul. 97–12

Section 6621 of the Internal Revenue Code establishes different rates for interest on tax overpayments and interest on tax underpayments. Under § 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 2 percentage points, except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting ''5 percentage points'' for ''3 percentage points.'' See § 6621(c) and § 301.6621–3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable rate. Section 6621(c) and § 301.6621–3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(2)(B) provides that in determining the addition to tax under § 6654 for failure to pay individual estimated tax for any taxable year, the federal short-term rate that applies during the third month following such taxable year also applies during the first 15 days of the fourth month following such taxable year.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88–59, 1988–1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during

the month of January 1997 is 6 percent. Accordingly, an overpayment rate of 8 percent and an underpayment rate of 9 percent are established for the calendar quarter beginning April 1, 1997. The overpayment rate for the portion of corporate overpayments exceeding $10,000 for the calendar quarter beginning April 1, 1997, is 6.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning April 1, 1997, is 11 percent. These rates apply to amounts bearing interest during that calendar quarter.

Under § 6621(b)(2)(B), the 9 percent rate that applies to individual estimated tax underpayments for the first calendar quarter in 1997, as provided in Rev. Rul. 96–61, 1996–52 I.R.B. 24, also applies to such underpayments for the first 15 days in April 1997.

Interest factors for daily compound interest for annual rates of 6.5 percent, 8 percent, 9 percent, and 11 percent are published in Tables 18, 21, 23, and 27 of Rev. Proc. 95–17, 1995–1 C.B. 556, 572, 575, 577, and 581.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Marcia Rachy of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Ms. Rachy on (202) 622–4940 (not a toll-free call).

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975–PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	DAILY RATE TABLE IN 1995–1 C.B.
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES

FROM JAN. 1, 1987–PRESENT

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	TABLE 1995–1 C.B.	PG	RATE	TABLE 1995–1 C.B.	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581

TABLE OF INTEREST RATES—Continued

FROM JAN. 1, 1987–PRESENT

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	TABLE 1995–1 C.B.	PG	RATE	TABLE 1995–1 C.B.	PG
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991–PRESENT

	RATE	TABLE 1995–1 C.B.	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS—Continued

FROM JANUARY 1, 1991–PRESENT

	RATE	TABLE 1995–1 C.B.	PG
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581

TABLE OF INTEREST RATES FOR CORPORATE OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995–PRESENT

	RATE	TABLE 1995–1 C.B.	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572

Part III. Administrative, Procedural, and Miscellaneous

Tax Avoidance Using Self-Amortizing Investments In Conduit Financing Entities

Notice 97–21

The Internal Revenue Service understands that certain persons are engaging in multiple-party financing transactions to avoid taxes imposed by the Internal Revenue Code. These transactions are designed to allow a person (the ''sponsor'') to avoid tax on substantial amounts of income (or to shelter substantial amounts of other income) by using a conduit entity whose income tax treatment artificially allocates the conduit entity's income to participants that are not subject to federal income tax.

Example

An example of these transactions is as follows:

A corporate sponsor forms a real estate investment trust or a foreign corporation (the ''Company''). The Company issues two classes of stock. The corporate sponsor holds substantially all of the common stock of the Company. The other class (the ''fast-pay preferred stock'') is held by persons that are not subject to federal income tax (the ''exempt participants''). The fast-pay preferred stock has limited voting rights and provides for preferred ''dividends'' equal to 13 percent of the stock's issue price each year for 10 years.

The Company holds income-producing assets (such as one or more mortgage loans) that are the obligations of or guaranteed by the corporate sponsor or that are guaranteed by a federal agency. At all times during the first 10 years after the fast-pay preferred stock is issued, the Company is required to invest in assets that will produce income, and cash flows, at least equal to 101 percent of the dividends payable on the fast-pay preferred stock.

During the first 10 years, the Company may also make distributions on its common stock. It is not, however, permitted to distribute more than 105 percent of its income in any year. Accordingly, it is not permitted to make any distributions representing a meaningful return of initial investment to the holders of the common stock during the first 10 years.

In year 11, and thereafter, the fast-pay preferred stock provides for distributions in each year of 1 percent of its original issue price. As a result, after the first 10 years, the fair market value of the fast-pay preferred stock is substantially less than the amount for which the exempt participants purchased it.

Beginning in year 11, the Company may be merged into another corporation without the separate approval of the exempt participants provided that the exempt participants receive a formula payment equal to the present value of the annual 1-percent dividend payments on the fast-pay preferred stock (computed using a discount rate of 10 percent). Otherwise the fast-pay preferred stock cannot be called by the Company.

As illustrated by this example, the fast-pay preferred stock performs economically much like a 10-year, self-amortizing debt instrument. That is, payments on the fast-pay preferred stock reflect in part recoveries of the amount originally invested by the exempt participants and in part a market yield on the unamortized portion of the original investment. The economic self-amortization of the fast-pay preferred stock is conceptually inconsistent with characterizing the full amount of each payment as a ''dividend'' (and thus as income on an investment).

At the end of 10 years, the Company's obligation to make distributions on the fast-pay preferred stock will have virtually ceased, and substantially all of the net value of the Company will be represented by its common stock. Because only the current income of the Company will have been distributed during the first 10 years, the value of the Company's assets is unlikely to have declined significantly. Accordingly, the sponsor's investment in the Company economically performs like a zero-coupon investment, substantially increasing in value as the exempt participants' interest in the Company declines. If the Company makes the formula payment to the exempt participants after the initial 10-year period, the Company may be merged into or consolidated with a corporate sponsor or its affiliate. In the event of a merger, the corporate sponsor expects to receive substantially all of the Company's assets with the Company's high basis and to avoid recognizing any gain.

Thus, in the example, the corporate sponsor's expectation in investing in the Company is that it will realize a predictable economic benefit at the end of the 10-year period without ever incurring any tax liability for that benefit. Alternatively, if the principal asset of the Company is a debt instrument or other obligation issued by the sponsor, the sponsor could be viewed as attempting to use deductions from that debt instrument or obligation to shelter income, without ever having to recognize its share of the income that corresponds to those deductions. These expectations result from the parties' treatment of the full amount of the payments to the exempt participants as dividends. This treatment causes substantially all of the Company's income to be allocated to the exempt participants, even though a significant portion of that income inures economically to the sponsor.

Alternative tax-avoidance structures may involve the use of other conduit entities whose income is generally subject to U.S. income tax only at the shareholder level, where the amount of the tax depends on the receipt or nonreceipt by the shareholder of earnings and profits from the conduit entity. The terms of the stock issued by the conduit entity may also vary, and the stock may be subject to options to buy or sell.

Proper Characterization of the Transactions

Under section 7701(*l*) of the Internal Revenue Code, the Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among two or more of the parties in order to prevent the avoidance of tax. Treasury and the Service expect to issue regulations recharacterizing any transaction (for example, the transaction described above) in which (1) a conduit entity is interposed between two or more parties, (2) an investment in the conduit entity is economically, taking into account all relevant factors including options to buy or sell, partially or fully self-amortizing (that is, the value of the investor's interest in the conduit entity is expected to decrease over time as payments are received), and (3) payments by the conduit entity that represent a recovery of investment to the investor are treated by the conduit entity as a distribution of earnings and profits or otherwise as reducing the conduit entity's or any other taxpayer's taxable income.

It is expected that, under these regulations, the sponsor will be treated as having engaged in a transaction directly with the other parties to the debt instruments, leases, or other assets held by the conduit entity, and the holders of the self-amortizing interests in the conduit entity will be treated either as having engaged in the transaction directly with the other parties or as having engaged in an income ''stripping'' transaction with the sponsor. *See, e.g.*, section 1286 of the Code. If the sponsor is the issuer of a debt instrument held by the conduit entity, the sponsor may be treated as having issued one or more instruments directly to the holders of the self-amortizing interests in the conduit entity. In that event, the sponsor's obligation

under any asset held by the conduit entity will be ignored for purposes of determining the sponsor's taxable income. The regulations issued under section 7701(l) of the Code will be applicable to taxable years ending on or after February 27, 1997. Thus, all amounts accrued or paid on or after the first day of the first taxable year ending on or after February 27, 1997, will be subject to the regulations, regardless of when a particular share of stock or a particular debt instrument was issued or acquired. To the extent that a payment or accrual under a conduit financing transaction is not subject to these regulations, the Service may determine under existing tax principles, depending on the facts of the particular case, that the transaction does not produce the results intended by the participants.

Persons that wish to comment on the subject matter of this notice may submit comments to: CC:DOM:CORP:R (OGI–103642–97), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (OGI–103642–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. Comments will be available for public inspection.

This notice was issued to the public on February 27, 1997.

For further information regarding this notice, contact Jonathan Zelnik of the Office of Assistant Chief Counsel (Financial Institutions & Products) at (202) 622–3940 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, § 280F; 1.280F–7, 1.61–21.)

Rev. Proc. 97–20

SECTION 1. PURPOSE

This revenue procedure provides: (1) limitations on depreciation deductions for owners of passenger automobiles first placed in service during calendar year 1997; (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 1997; and (3) the maximum allowable value of employer-provided automobiles first made available to employees for personal use in calendar year 1997 for which the vehicle cents-per-mile valuation rule provided under § 1.61–21(e) of the Income Tax Regulations may be applicable. The tables detailing these depreciation limitations and lessee inclusion amounts reflect the automobile price inflation adjustments required by § 280F(d)(7) of the Internal Revenue Code. The maximum allowable automobile value for applying the vehicle cents-per-mile valuation rule reflects the automobile price inflation adjustment of § 280F(d)(7) as required by § 1.61–21(e)(1)(iii)(A).

SECTION 2. BACKGROUND

For owners of automobiles, § 280F(a) imposes dollar limitations on the depreciation deduction for both the year that the automobile is placed in service and each succeeding year. Section 280F(d)(7) requires the amounts allowable as depreciation deductions to be increased by a price inflation adjustment amount for passenger automobiles placed in service after calendar year 1988.

For leased automobiles, § 280F(c) requires a reduction in the deduction allowed to the lessee of the automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of automobiles. Under § 1.280F–7(a), this reduction requires the lessees to include in gross income an inclusion amount determined by applying a formula to the amount obtained from a table. The table shows inclusion amounts for a range of fair market values for each tax year after the automobile is first leased.

For automobiles first provided by employers to employees that meet the requirements of § 1.61–21(e)(1), the value to the employee of the use of the automobile may be determined under the vehicle cents-per-mile valuation rule of § 1.61–21(e). Section 1.61–21(e)(1)(iii)(A) provides that for an automobile first made available after 1988 to any employee of the employer for personal use, the value of the use of the automobile may not be determined under the vehicle cents-per-mile valuation rule for a calendar year if the fair market value of the automobile (determined pursuant to § 1.61–21(d)(5)(i) through (iv)) on the first date the automobile is made available to the employee exceeds $12,800 as adjusted by § 280F(d)(7).

SECTION 3. SCOPE AND OBJECTIVE

01. The limitations on depreciation deductions in section 4.02 of this revenue procedure apply to automobiles (other than leased automobiles) that are placed in service in calendar year 1997 and continue to apply for each tax year that the automobile remains in service.

02. The table in section 4.03 of this revenue procedure applies to leased automobiles for which the lease term begins in calendar year 1997. Lessees of such automobiles must use this table to determine the inclusion amount for each tax year during which the automobile is leased. *See* Rev. Proc. 96–25, 1996–8 I.R.B. 19, which provides information on determining inclusion amounts for automobiles first leased before January 1, 1997.

03. The maximum fair market value figure in section 4.04(2) of this revenue procedure applies to employer-provided automobiles first made available to any employee for personal use in calendar year 1997.

SECTION 4. APPLICATION

01. A taxpayer placing an automobile in service for the first time during calendar year 1997 is limited to the depreciation deduction shown in Table 1 of section 4.02(2). A taxpayer first leasing an automobile in calendar year 1997 must use Table 2 in section 4.03 to determine the inclusion amount that is added to gross income. Otherwise, the procedures of § 1.280F–7(a) must be followed. An employer providing an automobile for the first time in calendar year 1997 for the personal use of any employee may determine the value of the use of the automobile by using the cents-per-mile valuation rule in § 1.61–21(e) if the fair market value of the automobile does not exceed the amount specified in section 4.04(2). If the fair market value of the automobile does exceed the amount specified in section 4.04(2), the employer may determine the value of the use of the automobile under the general valuation rules of § 1.61–21(b) or under the special valuation rules of § 1.61–21(d) (Automobile lease valuation) or § 1.61–21(f) (Commuting valuation) if the applicable requirements are met.

02. *Limitations on Depreciation Deductions for Certain Automobiles.*

(1) *Amount of the Inflation Adjustment.* Under § 280F(d)(7)(B)(i), the automobile price inflation adjustment for any calendar year is the percentage (if any) by which the CPI automobile component for October of the preceding calendar year exceeds the CPI automobile component for October 1987. The term ''CPI automobile component'' is defined in § 280F(d)(7)(B)(ii) as the ''automobile component'' of the Consumer Price Index for all Urban Consumers published by the Department of Labor (the CPI). The new car component of the CPI was 115.2 for October 1987 and 141.5 for October 1996. The October 1996 index exceeded the October 1987 index by 26.3. The Internal Revenue Service has, therefore, determined that the automobile price inflation adjustment for 1997 is 22.83 percent (26.3/115.2 x 100%). This adjustment is applicable to all automobiles that are first placed in service in calendar year 1997. The dollar limitations in § 280F(a) must therefore be multiplied by a factor of 0.2283, and the resulting increases, after rounding to the nearest $100, are added to the 1988 limitations to give the depreciation limitations for 1997.

(2) *Amount of the Limitation.* For automobiles placed in service in calendar year 1997, Table 1 contains the dollar amount of the depreciation limitations for each tax year.

REV. PROC. 97–20 TABLE 1

DEPRECIATION LIMITATIONS FOR AUTOMOBILES FIRST PLACED IN SERVICE IN CALENDAR YEAR 1997

Tax Year	*Amount*
1st Tax Year	$3,160
2nd Tax Year	$5,000
3rd Tax Year	$3,050
Each Succeeding Year	$1,775

03. *Inclusions in Income of Lessees of Automobiles.*

The inclusion amounts for automobiles first leased in calendar year 1997 are calculated under the procedures described in § 1.280F–7(a). Table 2 of this revenue procedure is the applicable table to be used in applying those procedures.

REV. PROC. 97–20 TABLE 2

DOLLAR AMOUNTS FOR AUTOMOBILES
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 1997

Fair Market Value of Automobile		Tax Year During Lease				
Over	Not Over	1st	2nd	3rd	4th	5th and Later
$ 15,800	16,100	1	5	5	8	10
16,100	16,400	4	10	13	18	21
16,400	16,700	6	15	22	27	32
16,700	17,000	9	20	30	36	44
17,000	17,500	12	28	40	49	58
17,500	18,000	16	37	53	65	77
18,000	18,500	20	46	66	82	95
18,500	19,000	24	55	80	97	114
19,000	19,500	28	64	93	113	132
19,500	20,000	32	73	106	129	151
20,000	20,500	36	82	120	145	169
20,500	21,000	40	91	133	161	187
21,000	21,500	45	99	147	177	205
21,500	22,000	49	108	160	193	224
22,000	23,000	55	122	180	216	252
23,000	24,000	63	140	206	249	288
24,000	25,000	71	158	233	280	326
25,000	26,000	79	176	259	313	362
26,000	27,000	88	193	287	344	399
27,000	28,000	96	211	313	377	435
28,000	29,000	104	229	340	408	473
29,000	30,000	112	247	366	441	509
30,000	31,000	120	265	393	472	546
31,000	32,000	128	283	420	504	583
32,000	33,000	137	301	446	536	620
33,000	34,000	145	319	472	568	657

REV. PROC. 97–20 TABLE 2—Continued

DOLLAR AMOUNTS FOR AUTOMOBILES
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 1997

Fair Market Value of Automobile		Tax Year During Lease				
Over	Not Over	1st	2nd	3rd	4th	5th and Later
34,000	35,000	153	337	499	600	693
35,000	36,000	161	355	526	631	731
36,000	37,000	169	373	552	664	767
37,000	38,000	178	391	578	696	804
38,000	39,000	186	409	605	727	841
39,000	40,000	194	427	632	759	878
40,000	41,000	202	445	658	791	915
41,000	42,000	210	463	685	823	951
42,000	43,000	218	481	712	854	989
43,000	44,000	227	498	739	886	1,026
44,000	45,000	235	516	765	919	1,062
45,000	46,000	243	534	792	951	1,098
46,000	47,000	251	552	819	982	1,136
47,000	48,000	259	570	845	1,015	1,172
48,000	49,000	268	588	871	1,047	1,209
49,000	50,000	276	606	898	1,078	1,246
50,000	51,000	284	624	925	1,110	1,282
51,000	52,000	292	642	951	1,142	1,320
52,000	53,000	300	660	978	1,174	1,356
53,000	54,000	308	678	1,004	1,206	1,394
54,000	55,000	317	695	1,032	1,237	1,430
55,000	56,000	325	713	1,058	1,270	1,467
56,000	57,000	333	732	1,084	1,301	1,504
57,000	58,000	341	750	1,110	1,334	1,540
58,000	59,000	349	768	1,137	1,365	1,578
59,000	60,000	358	785	1,164	1,397	1,615
60,000	62,000	370	812	1,204	1,445	1,670
62,000	64,000	386	848	1,257	1,509	1,743
64,000	66,000	403	884	1,310	1,573	1,817
66,000	68,000	419	920	1,363	1,637	1,890
68,000	70,000	435	956	1,417	1,700	1,964
70,000	72,000	452	991	1,470	1,764	2,038
72,000	74,000	468	1,027	1,524	1,827	2,112
74,000	76,000	484	1,063	1,577	1,891	2,186
76,000	78,000	501	1,099	1,630	1,955	2,259
78,000	80,000	517	1,135	1,683	2,019	2,333
80,000	85,000	546	1,198	1,776	2,130	2,462
85,000	90,000	587	1,287	1,909	2,291	2,645
90,000	95,000	627	1,377	2,042	2,450	2,830
95,000	100,000	668	1,467	2,175	2,609	3,014
100,000	110,000	730	1,601	2,375	2,848	3,290
110,000	120,000	812	1,780	2,641	3,167	3,659
120,000	130,000	893	1,960	2,907	3,486	4,027
130,000	140,000	975	2,139	3,173	3,805	4,395
140,000	150,000	1,057	2,318	3,439	4,125	4,763
150,000	160,000	1,139	2,498	3,704	4,444	5,131
160,000	170,000	1,221	2,677	3,971	4,762	5,500
170,000	180,000	1,302	2,857	4,236	5,082	5,868
180,000	190,000	1,384	3,036	4,503	5,400	6,237
190,000	200,000	1,466	3,215	4,769	5,719	6,605
200,000	210,000	1,548	3,394	5,035	6,039	6,973
210,000	220,000	1,630	3,574	5,300	6,358	7,341
220,000	230,000	1,712	3,753	5,567	6,676	7,710
230,000	240,000	1,793	3,932	5,833	6,996	8,078
240,000	250,000	1,875	4,112	6,099	7,314	8,446

04. *Maximum Automobile Value for Using the Cents-per-mile Valuation Rule.*

(1) *Amount of Adjustment.* Under § 1.61–21(e)(1)(iii)(A), the limitation on the fair market value of an employer-provided automobile first made available to any employee for personal use after 1988 is to be adjusted in accordance with § 280F(d)(7). Accordingly, the adjustment for any calendar year is the percentage (if any) by which the CPI automobile component for October of the preceding calendar year exceeds the CPI automobile component for October 1987 (*See*, section 4.02(1).) The new car component of the CPI was 115.2 for October 1987 and 141.5 for October 1996. The October 1996 index exceeded the October 1987 index by 26.3. The Internal Revenue Service has, therefore, determined that the adjustment for 1997 is 22.83 percent (26.3/115.2 x 100%). This adjustment is applicable to all employer-provided automobiles first made available to any employee for personal use in calendar year 1997. The maximum fair market value specified in § 1.61–21(e)(1)(iii)(A) must therefore be multiplied by a factor of 0.2283, and the resulting increase, after rounding to the nearest $100, is added to $12,800 to give the maximum value for 1997.

(2) *The Maximum Automobile Value.* For automobiles first made available in calendar year 1997 to any employee of the employer for personal use, the vehicle cents-per-mile valuation rule may be applicable if the fair market value of the automobile on the date it is first made available does not exceed $15,700.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for automobiles (other than leased automobiles) that are first placed in service during calendar year 1997, to leased automobiles that are first leased during calendar year 1997, and to employer-provided automobiles first made available to employees for personal use in calendar year 1997.

DRAFTING INFORMATION

The principal author of this revenue procedure is Bernard P. Harvey of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding the depreciation limitations and lessee inclusion amounts in this revenue procedure, contact Mr. Harvey at (202) 622–3110; for further information regarding the maximum automobile value for applying the vehicle cents-per-mile valuation rule, contact Ms. Janine Cook of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622–6040 (not toll-free calls).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Filing Requirements for Returns Claiming the Foreign Tax Credit

REG–208288–90

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the substantiation requirements for taxpayers claiming foreign tax credits. The proposed regulation is necessary to provide guidance to U.S. taxpayers who claim foreign tax credits.

DATES: Written comments and requests for a public hearing must be received by April 14, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–208288–90), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208288–90), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at HTTP://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Joan Thomsen, (202) 622–3840 (not a toll-free call); concerning submissions, Evangelista Lee, (202) 622–7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1988, the Internal Revenue Service issued a Notice (Notice 88–65, 1988–1 C.B. 552) which stated that regulations would be issued suspending portions of § 1.905–2 of the Treasury Regulations. Section 1.905–2 requires taxpayers who claim foreign tax credits to attach documents to their returns substantiating the credits. The Notice was issued in response to problems taxpayers were experiencing because they could not timely obtain and prepare the necessary documentation in a form suitable for submission with their tax returns. The intent of the Notice was to advise taxpayers that Treasury and the IRS would issue a new regulation that would suspend, beginning on January 1, 1988, the existing regulation requiring the submission of this documentation with a tax return. This new regulation has not been issued. Instead of suspending the relevant portions of the existing regulation, Treasury and the IRS now have decided to permanently eliminate the requirement that documentation be submitted with the tax return, effective January 1, 1988.

Explanation of Provisions

§ 1.905–2(a)(1), 1.905–2(b)(1) and (2), and 1.905–2(c)

Sections 1.905–2(a)(1), 1.905–2(b)(1) and (2), and 1.905–2(c) are unchanged from the final regulations.

§ 1.905–2(a)(2)

Under § 1.905–2(a)(2), taxpayers generally are required to attach to their income tax returns either (1) the receipt for the foreign tax payment, or (2) a foreign tax return for accrued foreign taxes. Proposed § 1.905–2(a)(2) removes the requirement that the documentation must be attached to the income tax return. The proposed regulation now provides that such evidence of foreign taxes must be presented to the district director upon request.

§ 1.905–2(b)(3)

Section 1.905–2(b)(3) addresses issues for taxes withheld at the source. The section allows the district director to accept secondary evidence of such withholding. The proposed regulation clarifies that evidence of a tax withheld at the source and the amount withheld is only sufficient for an interim credit. Upon request of the district director, taxpayers must provide evidence, as provided in § 1.905–2(a)(2), that the tax withheld was actually paid to the foreign country. Although this regulation will be effective on the date that is 30 days after the date the final regulation is published in the **Federal Register**, it reflects an IRS requirement upheld as a reasonable interpretation of current law by the Tax Court and the Court of Appeals for the Seventh Circuit in *Continental Illinois Corp. v. Commissioner*, T.C. Memo. 1991–66, 61 T.C.M. (CCH) 1916, 1939–42 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516–17 (7th Cir. 1993).

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. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Joan Thomsen of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par 2. Section 1.905–2 is amended by:

1. Revising the second through fourth sentences in paragraph (a)(2).

2. Adding two sentences to the end of paragraph (b)(3).

The revision and addition read as follows:

§ 1.905–2 Conditions of allowance of credit.

(a) * * *

(2) * * * Except where it is established to the satisfaction of the district director that it is impossible for the taxpayer to furnish such evidence, the taxpayer must provide upon request the receipt for each such tax payment if credit is sought for taxes already paid or withheld, or the return on which each such accrued tax was based if credit is sought for taxes accrued. This receipt or return must be either the original, a duplicate original, or a duly certified or authenticated copy. The preceding two sentences are effective for returns whose original due date falls on or after January 1, 1988. * * *

(b) * * *

(3) * * * Any foreign tax credit claimed for taxes withheld at the source is an interim credit and the taxpayer must prove that any taxes withheld at the source were paid to the foreign country, as required in paragraph (a) of this section. The preceding sentence is effective the date that is 30 days after the date this regulation is published in the **Federal Register** as a final regulation, however, for periods prior to the date that is 30 days after the date this regulation is published in the **Federal Register** as a final regulation, see *Continental Illinois Corp. v. Commissioner*, T.C. Memo. 1991–66, 61 T.C.M. (CCH) 1916, 1939–42 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516–17 (7th Cir. 1993), wherein the court upheld this rule as a reasonable interpretation of section 905(b) of the Internal Revenue Code.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 10, 1997, 8:45 a.m., and published in the issue of the Federal Register for January 13, 1997, 62 F.R. 1700)

Notice of Proposed Rulemaking and Notice of Public Hearing

Certain Asset Transfers to a Tax-Exempt Entity

REG–209121–89

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice of proposed rulemaking and notice of public hearing

SUMMARY: This document contains proposed regulations. The proposed regulations effectuate provisions of the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations generally affect a taxable corporation that transfers all or substantially all of its assets to a tax-exempt entity or converts from a taxable corporation to a tax-exempt entity, and generally require the taxable corporation to recognize gain or loss in such a transaction.

DATES: Written comments must be received by April 15, 1997. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for May 6, 1997, at 10 a.m. must be submitted by April 15, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209121–89), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209121–89), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Stephen R. Cleary (202) 622–7530; concerning submissions and the hearing, Evangelista Lee, (202) 622–7180, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the repeal of the *General Utilities* doctrine in the Tax Reform Act of 1986. Under the *General Utilities* doctrine, which took its name from *General Utilities & Operating Co. v. Helvering*, 296 U.S. 200 (1935), corporations were not required to recognize gain or loss when they distributed appreciated or depreciated property to their shareholders. The *General Utilities* doctrine applied to distributions of property in complete liquidation, certain sales of property that were in connection with a complete liquidation, and nonliquidating distributions of property. It was codified in former sections 311, 336, and 337 of the Internal Revenue Code of 1954.

The *General Utilities* doctrine was an exception to the general rule that income earned by a corporation is taxed twice, once to the corporation when the income is earned and a second time to the corporation's shareholders when the earnings are distributed. The *General Utilities* doctrine generally permitted the permanent elimination of corporate-level tax on the disposition of appreciated assets because the transferee received a fair market value basis in the assets and the corporation generally did not recognize any gain. Thus, the appreciated assets left corporate solution without any corporate-level tax having been paid.

Beginning in 1969, the scope of the *General Utilities* doctrine was restricted by a series of amendments (initially relating to nonliquidating distributions governed by section 311), until ultimately the *General Utilities* doctrine was repealed, with limited exceptions, in the Tax Reform Act of 1986. Sections 336 and 337 were amended to generally require corporations to recognize gain or loss when appreciated or depreciated property is distributed in complete liquidation or sold in connection with a complete liquidation.

Section 337(a) provides one of the limited exceptions from the repeal of the *General Utilities* doctrine by allowing a subsidiary to liquidate into its 80-percent distributee (a corporation meeting the stock ownership requirements of section 332(b) in the liquidating corporation) without recognizing gain or loss.

The 80-percent distributee takes a carryover basis in the distributed property. However, under section 337(b)(2), this nonrecognition exception generally does not apply if the 80-percent distributee is a tax-exempt entity.

The Tax Reform Act of 1986 added section 337(d), directing the Secretary to prescribe regulations as may be necessary to carry out the purposes of the repeal of the *General Utilities d*octrine. The legislative history of the Tax Reform Act of 1986 indicates that the *General Utilities* doctrine was repealed because it tended to undermine the corporate income tax by allowing appreciated property to leave corporate solution without imposition of a corporate level tax. H.R. Rep. No. 99–426, 99th Cong., 1st Sess. 282 (1985). The Technical and Miscellaneous Revenue Act of 1988 amended section 337(d) to specify that the section authorizes regulations to ''ensure that these purposes shall not be circumvented . . . through the use of a . . . tax-exempt entity.'' The legislative history concerning the 1988 amendment to section 337(d) explains:

> The bill also clarifies in connection with the built-in gain provisions of the Act that the Treasury Department shall prescribe such regulations as may be necessary or appropriate to carry out those provisions . . . . For example, this includes rules to require the recognition of gain if appreciated property of a C corporation is transferred to a . . . tax-exempt entity [footnote 32] in a carryover basis transaction that would otherwise eliminate corporate level tax on the built-in appreciation.
>
> [footnote 32] The Act generally requires recognition of gain if a C corporation transfers appreciated assets to a tax exempt entity in a section 332 liquidation. See Code section 337(b)(2).

S. Rep. No. 145, 100th Cong., 2d Sess. 66 (1988).

Explanation of Provision

An acquisition by a tax-exempt entity of all or substantially all of the assets of a taxable corporation or a change in status of a taxable corporation to a tax-exempt entity, like a liquidation into an 80-percent tax-exempt distributee that is taxable under section 337(b)(2), could eliminate the corporate level tax on the appreciation in the taxable corporation's assets. Accordingly, the proposed regulations apply rules similar to section 337(b)(2) to these transactions. The proposed regulations generally do not affect the tax treatment of the taxable corporation's shareholders or the availability of any charitable contribution deduction.

The proposed regulations provide that a taxable corporation that transfers all or substantially all of its assets to one or more tax-exempt entities is required to recognize gain or loss as if the assets transferred were sold at their fair market values. Like section 337(b)(2), the proposed regulations provide that no gain or loss will be recognized on any of the assets transferred that are used by the tax-exempt entity in an activity the income from which is subject to the unrelated business tax under section 511(a). However, gain on such assets will later be recognized as unrelated business taxable income if the tax-exempt entity disposes of the assets or ceases to use the assets in an unrelated trade or business activity.

The proposed regulations generally treat a taxable corporation that changes its status to a tax-exempt entity as having transferred all of its assets to a tax-exempt entity immediately before the change in status becomes effective, irrespective of whether an actual transfer of the assets has occurred. For this purpose, if a state, a political subdivision thereof, or an entity any portion of whose income is excluded from gross income under section 115, acquires the stock of a taxable corporation and thereafter any of the taxable corporation's income is excluded from gross income under section 115, the taxable corporation will be treated as if it transferred all of its assets to a tax-exempt entity immediately before the stock acquisition.

Certain exceptions are provided to the change in status rule for organizations that are tax-exempt or are seeking tax-exempt status under section 501(a). These exceptions provide relief for corporations needing a brief start-up period to establish their tax-exempt status and for those that temporarily lose their tax-exempt status. Under the proposed regulations, the change in status rule does not apply to a corporation that is tax-exempt within three taxable years of the taxable year of its formation, or to a corporation that regains its tax-exempt status within three years after either a final adverse adjudication on its tax-exempt status or filing a tax return as a taxable corporation. The change in status rule also does not apply to an organization that before publication of these proposed regulations was exempt or unsuccessfully applied for exemption, if the organization is tax-exempt within three years after the date of publication of final regulations. An organization that files for recognition of its exempt status during one of the three-year periods will be deemed to have or regain tax-exempt status if the application ultimately results in recognition as of a date during the three-year period. An anti-abuse rule makes all these exceptions unavailable to a taxable corporation that acquires all or substantially all of the assets of another taxable corporation and then changes its status with a principal purpose of avoiding the gain or loss recognition rule made applicable by these regulations.

The proposed regulations disallow the recognition of loss if assets are acquired by the taxable corporation in a section 351 transaction or a contribution to capital, or if assets are distributed by the taxable corporation to a shareholder, with a principal purpose to recognize loss by the taxable corporation on the transfer of its assets to a tax-exempt entity (loss limitation rule). For example, the loss limitation rule may apply if (a) a loss asset is contributed to a taxable corporation and then is transferred with substantially all of the taxable corporation's assets to a tax-exempt entity; (b) loss assets not constituting substantially all of a taxable corporation's assets are contributed to a new subsidiary and then the new subsidiary transfers the loss assets which are its only assets to a tax-exempt entity, or (c) assets are distributed by a taxable corporation to its parent and then the taxable corporation transfers loss assets now constituting substantially all of its assets to a tax-exempt entity. For purposes of the loss limitation rule, the principles of section 336(d)(2) apply.

Under the proposed regulations, a ''taxable corporation'' is any corporation that is not a tax-exempt entity as defined in the proposed regulations. Thus, taxable corporations include all S corporations whether or not subject to tax on built-in gain under section 1374. After the repeal of the *General Utilities* doctrine, an S corporation like a C corporation is required to recognize gain or loss when it liquidates. This gain or loss passes through to the S corporation's shareholders under section 1366. The proposed regulations parallel this treatment.

Under the proposed regulations, a ''tax-exempt entity'' includes organiza-

tions exempt from tax under section 501, section 527, section 528, or section 529; Federal, state, and local governments; Indian tribal governments and federally chartered Indian tribal corporations; foreign governments and international organizations; and entities any portion of whose income is excluded from gross income under section 115. The term does not, however, include a cooperative described in section 521, paralleling the exception to section 337(b)(2).

A transaction conveying all or substantially all of the assets of a taxable corporation to an Indian tribal government or a corporation organized under section 17 of the Indian Reorganization Act (IRA) or section 3 of the Oklahoma Welfare Act (OWA) will be covered by these regulations. Rev. Rul. 94–16, 1994–1 C.B. 19, held that an unincorporated Indian tribe or a corporation organized under section 17 of the IRA is not subject to federal income tax, but a corporation wholly owned by an Indian tribe and organized under state law is subject to federal income tax. Rev. Rul. 94–65, 1994–2 C.B. 14, held that a corporation organized under section 3 of the OWA also was not subject to federal income tax. In that ruling, the Service announced that an Indian tribe seeking to dissolve a corporation organized under state law and organize into a federally chartered corporation (corporation organized under either section 17 of the IRA or section 3 of the OWA) will be granted relief under section 7805(b) of the Code upon application for such relief provided it demonstrates to the Service that it has acted reasonably and in good faith to achieve the dissolution and organization. The relief described in that ruling applied to taxes on income earned after September 30, 1994, by a corporation organized by an Indian tribe under state law from income earned within the boundaries of the reservation (including gain or loss properly allocable to such activities from the sale or exchange of assets). The Service intends to provide similar relief from tax resulting from any gain or loss recognized under the rules provided in these regulations. The relief will be available to state law corporations wholly owned by Indian tribes that have acted reasonably and in good faith to dissolve and reorganize as federally chartered corporations.

Proposed Effective Date

These regulations are proposed to be applicable to transfers of assets as described in the regulations occurring after the date that is 30 days after publication in the Federal Register of these regulations as final regulations, unless the transfer is pursuant to a written agreement which is (subject to customary conditions) binding on or before the date that is 30 days after publication in the Federal Register of these regulations as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, May 6, 1997, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 15, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 15, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Stephen R. Cleary of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART I—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR Part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–4 also issued under 26 U.S.C. 337. * * *

Par. 2. Section 1.337(d)–4 is added to read as follows:

§ 1.337(d)–4 Taxable to tax-exempt.

(a) *Gain or loss recognition*—(1) *General rule.* If a taxable corporation transfers all or substantially all of its assets to one or more tax-exempt entities, the taxable corporation must recognize gain or loss immediately before the transfer as if the assets transferred were sold at their fair market values. But see section 267 and paragraph (d) of this section concerning limitations on the recognition of loss.

(2) *Change in corporation's tax status treated as asset transfer.* Except as provided in paragraph (a)(3) of this section, a taxable corporation's change in status to a tax-exempt entity will be treated as if it transferred all of its assets to a tax-exempt entity immediately before the change in status becomes effective in a transaction to which paragraph (a)(1) of this section applies. For purposes of this paragraph (a), if a state, a political subdivision thereof, or an entity any portion of whose income is excluded from gross income under section 115, acquires the stock of a taxable corporation and thereafter any of the taxable corporation's

income is excluded from gross income under section 115, the taxable corporation will be treated as if it transferred all of its assets to a tax-exempt entity immediately before the stock acquisition.

(3) *Exceptions for certain changes in status*— (i) *To whom available.* Paragraph (a)(2) of this section does not apply to the following corporations—

(A) A corporation previously exempt under section 501(a) which regains its tax-exempt status under section 501(a) within three years from the later of a final adverse adjudication on the corporation's tax exempt status, or the filing by the corporation, or by the Secretary or his delegate under section 6020(b), of a federal income tax return of the type filed by a taxable corporation;

(B) A newly-formed corporation that is tax-exempt under section 501(a) within three taxable years from the end of the taxable year in which it was formed;

(C) A corporation previously exempt under section 501(a) or that applied for but did not receive recognition of exemption under section 501(a), before January 15, 1997, if such corporation is tax-exempt under section 501(a) within three years from the date of publication of these regulations in the Federal Register as final regulations.

(ii) *Application for recognition.* An organization is deemed to have or regain tax-exempt status within one of the three-year periods described in paragraph (a)(3)(i) of this section if it files an application for recognition of exemption with the Commissioner within the three-year period and the application either results in a determination by the Commissioner or a final adjudication that the organization is tax-exempt under section 501(a) during any part of the three-year period. The preceding sentence does not require the filing of an application for recognition of exemption by any organization not otherwise required, such as by § 1.501(a)–1, § 1.505(c)–1T, and § 1.508–1(a), to apply for recognition of exemption.

(iii) *Anti-abuse rule.* This paragraph (a)(3) does not apply to a corporation that, with a principal purpose of avoiding the application of paragraphs (a)(1) and (a)(2) of this section, acquires all or substantially all of the assets of another taxable corporation and then changes its status to that of a tax-exempt entity.

(4) *Related transactions.* This section applies to any series of related transactions having an effect similar to any of the transactions to which this section applies.

(b) *Exceptions.* Paragraph (a) of this section does not apply to—

(1) Any assets transferred to a tax-exempt entity if the assets are used in an activity the income from which is subject to tax under section 511(a). However, if assets on which no gain or loss was recognized by reason of the preceding sentence are disposed of by the tax-exempt entity, then, notwithstanding any other provision of law, any gain (not in excess of the amount not recognized by reason of the preceding sentence) shall be included in the tax-exempt entity's unrelated business taxable income. If the tax-exempt entity ceases to use the assets in an activity the income from which is subject to tax under section 511(a), the entity will be treated for purposes of this subparagraph as having disposed of the assets on the date of the cessation;

(2) Any transfer of assets to the extent gain or loss otherwise is recognized by the taxable corporation on the transfer. See, for example, sections 336, 337(b)(2), 367, and 1001;

(3) Any forfeiture of a taxable corporation's assets in a criminal or civil action to the United States, the government of a possession of the United States, a state, the District of Columbia, the government of a foreign country, or a political subdivision of any of the foregoing; or any expropriation of a taxable corporation's assets by the government of a foreign country; and

(4) Any transfer of assets to a cooperative described in section 521.

(c) *Definitions.* For purposes of this section—

(1) *Taxable corporation.* A *taxable corporation* is any corporation that is not a tax-exempt entity as defined in paragraph (c)(2) of this section.

(2) *Tax-exempt entity.* A *tax-exempt entity* is—

(i) Any entity that is exempt from tax under section 501(a), section 527, section 528, or section 529;

(ii) A charitable remainder annuity trust or charitable remainder unitrust as defined in section 664(d);

(iii) The United States, the government of a possession of the United States, a state, the District of Columbia, the government of a foreign country, or a political subdivision of any of the foregoing;

(iv) An Indian Tribal Government as defined in section 7701(a)(40), a subdivision of an Indian tribal government determined in accordance with section 7871(d), or an agency or instrumentality of an Indian tribal government or subdivision thereof;

(v) An Indian Tribal Corporation organized under section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 477, or section 3 of the Oklahoma Welfare Act, 25 U.S.C. 503;

(vi) An international organization as defined in section 7701(a)(18);

(vii) An entity any portion of whose income is excluded under section 115; or

(viii) An entity that would not be taxable under the Internal Revenue Code for reasons substantially similar to those applicable to any entity listed in this paragraph (c)(2) unless otherwise explicitly made exempt from the application of this section by statute or by action of the Commissioner.

(3) *Substantially all.* The term *substantially all* has the same meaning as under section 368(a)(1)(C).

(d) *Loss limitation rule.* For purposes of determining the amount of loss recognized by a taxable corporation on the transfer of its assets to a tax-exempt entity under paragraph (a) of this section, if assets are acquired by the taxable corporation in a transaction to which section 351 applied or as a contribution to capital, or assets are distributed from the taxable corporation to a shareholder or another member of the taxable corporation's affiliated group, and in either case as part of a plan a principal purpose of which is to recognize loss by the taxable corporation on the transfer of its assets to the tax-exempt entity, the losses recognized by the taxable corporation on the assets transferred to the tax-exempt entity will be disallowed. For purposes of the preceding sentence, the principles of section 336(d)(2) apply.

(e) *Effective date.* This section is applicable to transfers of assets as described in paragraph (a) of this section occurring after the date that is 30 days after publication in the Federal Register of these regulations as final regulations, unless the transfer is pursuant to a written agreement which is (subject to customary conditions) binding on or before the date that is 30 days after

publication in the Federal Register of these regulations as final regulations.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 10, 1997, 8:45 a.m., and published in the issue of the Federal Register for January 15, 1997, 62 F.R. 2064)

Withdrawal of Notice of Proposed Rulemaking

Self-Employment Tax Treatment of Members of Certain Limited Liability Companies

REG–209729–94

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the self-employment tax treatment of members of certain limited liability companies that was published in the **Federal Register** on Thursday, December 29, 1994. The proposed regulations sought to provide guidance concerning the applicability of certain self-employment tax rules to certain members of limited liability companies. The IRS and Treasury have issued new proposed regulations that will provide guidance on this issue.

FOR FURTHER INFORMATION CONTACT: Robert Honigman, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On Thursday, December 29, 1994, the IRS issued proposed regulations (EE–45–94 [1995–1 C.B. 853]) relating to the self-employment tax treatment of members of certain limited liability companies (59 FR 67253). Upon consideration of the written comments received and the oral comments made at the public hearing held on June 23, 1995, the IRS has decided to withdraw those proposed regulations.

* * * * *

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the Federal Register on Thursday, December 29, 1994, at 59 FR 67253, is withdrawn.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 10, 1997, 8:45 a.m., and published in the issue of the Federal Register for January 13, 1997, 62 F.R. 1701)

Notice of Proposed Rulemaking and Notice of Public Hearing

Definition of Limited Partner for Self-Employment Tax Purposes

REG–209824–96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to the self-employment income tax imposed under section 1402 of the Internal Revenue Code of 1986. These regulations permit individuals to determine whether they are limited partners for purposes of section 1402(a)(13), eliminating the uncertainty in calculating an individual's net earnings from self-employment under existing law. This document also contains a notice of public hearing on the proposed regulations.

DATES: Written comments must be received by April 14, 1997. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for May 21, 1997, at 10 a.m. must be received by April 30, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209824–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209824–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Auditorium, Internal Revenue Service building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, Robert Honigman, (202) 622–3050; concerning submissions and the hearing, Christina Vasquez, (202) 622–6808 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1402 of the Internal Revenue Code and replaces the notice of proposed rulemaking published in the **Federal Register** on December 29, 1994, at 59 FR 67253 (EE–45–94, 1995–1 C.B. 853), that treated certain members of a limited liability company (LLC) as limited partners for self-employment tax purposes. Written comments responding to the proposed regulations were received, and a public hearing was held on June 23, 1995.

Under the 1994 proposed regulations, an individual owning an interest in an LLC was treated as a limited partner if (1) the individual lacked the authority to make management decisions necessary to conduct the LLC's business (the management test), and (2) the LLC could have been formed as a limited partnership rather than an LLC in the same jurisdiction, and the member could have qualified as a limited partner in the limited partnership under applicable law (the limited partner equivalence test). The intent of the 1994 proposed regulations was to treat owners of an LLC interest in the same manner as similarly situated partners in a state law partnership.

Public comments on the 1994 proposed regulations were mixed. While some commentators were pleased with the proposed regulations for attempting to conform the treatment of LLCs with state law partnerships, others criticized the 1994 proposed regulations based on a variety of arguments.

A number of commentators discussed administrative and compliance problems with the 1994 proposed regulations. For example, it was noted that both the management test and the limited partner equivalence test depend upon legal or factual determinations that may be difficult for taxpayers or the IRS to make with certainty.

Another commentator pointed out that basing the self-employment tax treatment of LLC members on state law

limited partnership rules would lead to disparate treatment between members of different LLCs with identical rights based solely on differences in the limited partnership statutes of the states in which the members form their LLC. For example, State A's limited partnership act may allow a limited partner to participate in a partnership's business while State B's limited partnership act may not. Thus, an LLC member, who is not a manager, that participates in the LLC's business would be a limited partner under the proposed regulations if the LLC is formed in State A, but not if the LLC is formed in State B. Commentators asserted that this disparate treatment is inherently unfair for federal tax purposes.

Some commentators argued for a ''material participation'' test to determine whether an LLC member's distributive share is included in the individual's net earnings from self-employment. The proposed regulations did not contain a participation test. Commentators advocating a participation test stressed that such a test would eliminate uncertainty concerning many LLC members' limited partner status and would better implement the self-employment tax goal of taxing compensation for services.

Other commentators argued for a more uniform approach, stating that a single test should govern all business entities (i.e., partnerships, LLCs, LLPs, sole proprietorships, et al.) whose members may be subject to self-employment tax. These commentators generally recognized, however, that a change in the treatment of a sole proprietorship or an entity that is not characterized as a partnership for federal tax purposes would be beyond the scope of regulations to be issued under section 1402(a)(13).

Finally, some commentators focused on whether the Service would respect the ownership of more than one class of partnership interest for self-employment tax purposes (bifurcation of interests). The proposed regulations treated an LLC member as a limited partner with respect to his or her entire interest (if the member was not a manager and satisfied the limited partner equivalence test), or not at all (if either the management test or limited partner equivalence test was not satisfied). Commentators, however, pointed to the legislative history of section 1402(a)(13) to support their argument that Congress only intended to tax a partner's distributive share attributable to a general partner interest. Under this argument, a partner that holds both a general partner interest and a limited partner interest is only subject to self-employment tax on the distributive share attributable to the partner's general partner interest. This intent also may be inferred from the statutory language of section 1402(a)(13) that the self-employment tax does not apply to ''. . . the distributive share of any item of income or loss of a limited partner, as such . . ..'' Based on this evidence, these commentators requested that the proposed regulations be revised to allow the bifurcation of interests for self-employment tax purposes.

After considering the comments received, the IRS and Treasury have decided to withdraw the 1994 notice of proposed rulemaking and to re-propose amendments to the Income Tax Regulations (26 CFR part 1) under section 1402 of the Code. Explanation of Provisions

The proposed regulations contained in this document define which partners of a federal tax partnership are considered limited partners for section 1402(a)(13) purposes. These proposed regulations apply to all entities classified as a partnership for federal tax purposes, regardless of the state law characterization of the entity. Thus, the same standards apply when determining the status of an individual owning an interest in a state law limited partnership or the status of an individual owning an interest in an LLC. In order to achieve this conformity, the proposed regulations adopt an approach which depends on the relationship between the partner, the partnership, and the partnership's business. State law characterizations of an individual as a ''limited partner'' or otherwise are not determinative.

Generally, an individual will be treated as a limited partner under the proposed regulations unless the individual (1) has personal liability (as defined in § 301.7701–3(b)(2)(ii) of the Procedure and Administration Regulations) for the debts of or claims against the partnership by reason of being a partner; (2) has authority to contract on behalf of the partnership under the statute or law pursuant to which the partnership is organized; or, (3) participates in the partnership's trade or business for more than 500 hours during the taxable year. If, however, substantially all of the activities of a partnership involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, or consulting, any individual who provides services as part of that trade or business will not be considered a limited partner.

By adopting these functional tests, the proposed regulations ensure that similarly situated individuals owning interests in entities formed under different statutes or in different jurisdictions will be treated similarly. The need for a functional approach results not only from the proliferation of new business entities such as LLCs, but also from the evolution of state limited partnership statutes. When Congress enacted the limited partner exclusion found in section 1402(a)(13), state laws generally did not allow limited partners to participate in the partnership's trade or business to the extent that state laws allow limited partners to participate today. Thus, even in the case of a state law limited partnership, a functional approach is necessary to ensure that the self-employment tax consequences to similarly situated taxpayers do not differ depending upon where the partnership organized.

The proposed regulations allow an individual who is not a limited partner for section 1402(a)(13) purposes to nonetheless exclude from net earnings from self-employment a portion of that individual's distributive share if the individual holds more than one class of interest in the partnership. Similarly, the proposed regulations permit an individual that participates in the trade or business of the partnership to bifurcate his or her distributive share by disregarding guaranteed payments for services. In each case, however, such bifurcation of interests is permitted only to the extent the individual's distributive share is identical to the distributive share of partners who qualify as limited partners under the proposed regulation (without regard to the bifurcation rules) and who own a substantial interest in the partnership. Together, these rules exclude from an individual's net earnings from self-employment amounts that are demonstrably returns on capital invested in the partnership.

Proposed Effective Date

These regulations are proposed to be effective beginning with the individual's first taxable year beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, May 21, 1997, at 10 a.m. in the Auditorium, Internal Revenue Service building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 14, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 30, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Robert Honigman of the Office of Assistant Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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. Section 1.1402(a)–2 is amended by:

1. Revising the first sentence of paragraph (d).

2. Removing the reference ''section 702(a)(9)'' in the first sentence of paragraph (e) and adding ''section 702(a)(8)'' in its place.

3. Revising the last sentence of paragraph (f).

4. Revising paragraphs (g) and (h).

5. Adding new paragraphs (i) and (j).

The revisions and additions read as follows:

§ 1.1402(a)–2 *Computation of net earnings from self-employment.*

* * * * *

(d) * * * Except as otherwise provided in section 1402(a) and paragraph (g) of this section, an individual's net earnings from self-employment include the individual's distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by each partnership of which the individual is a partner. * * *

* * * * *

(f) * * * For rules governing the classification of an organization as a partnership or otherwise, see § § 301.7701–1, 301.7701–2, and 301.7701–3 of this chapter.

(g) *Distributive share of limited partner.* An individual's net earnings from self-employment do not include the individual's distributive share of income or loss as a limited partner described in paragraph (h) of this section. However, guaranteed payments described in section 707(c) made to the individual for services actually rendered to or on behalf of the partnership engaged in a trade or business are included in the individual's net earnings from self-employment.

(h) *Definition of limited partner*—(1) *In general.* Solely for purposes of section 1402(a)(13) and paragraph (g) of this section, an individual is considered to be a limited partner to the extent provided in paragraphs (h)(2), (h)(3), (h)(4), and (h)(5) of this section.

(2) *Limited partner.* An individual is treated as a limited partner under this paragraph (h)(2) unless the individual—

(i) Has personal liability (as defined in § 301.7701–3(b)(2)(ii) of this chapter for the debts of or claims against the partnership by reason of being a partner;

(ii) Has authority (under the law of the jurisdiction in which the partnership is formed) to contract on behalf of the partnership; or

(iii) Participates in the partnership's trade or business for more than 500 hours during the partnership's taxable year.

(3) *Exception for holders of more than one class of interest.* An individual holding more than one class of interest in the partnership who is not treated as a limited partner under paragraph (h)(2) of this section is treated as a limited partner under this paragraph (h)(3) with respect to a specific class of partnership interest held by such individual if, immediately after the individual acquires that class of interest—

(i) Limited partners within the meaning of paragraph (h)(2) of this section own a substantial, continuing interest in that specific class of partnership interest; and,

(ii) The individual's rights and obligations with respect to that specific class of interest are identical to the rights and obligations of that specific class of partnership interest held by the limited partners described in paragraph (h)(3)(i) of this section.

(4) *Exception for holders of only one class of interest.* An individual who is not treated as a limited partner under paragraph (h)(2) of this section solely because that individual participates in the partnership's trade or business for more than 500 hours during the partnership's taxable year is treated as a limited partner under this paragraph (h)(4) with respect to the individual's partnership interest if, immediately after the individual acquires that interest—

(i) Limited partners within the meaning of paragraph (h)(2) of this section own a substantial, continuing interest in that specific class of partnership interest; and

(ii) The individual's rights and obligations with respect to the specific class

of interest are identical to the rights and obligations of the specific class of partnership interest held by the limited partners described in paragraph (h)(4)(i) of this section.

(5) *Exception for service partners in service partnerships.* An individual who is a service partner in a service partnership may not be a limited partner under paragraphs (h)(2), (h)(3), or (h)(4) of this section.

(6) *Additional definitions.* Solely for purposes of this paragraph (h)—

(i) A *class of interest* is an interest that grants the holder specific rights and obligations. If a holder's rights and obligations from an interest are different from another holder's rights and obligations, each holder's interest belongs to a separate class of interest. An individual may hold more than one class of interest in the same partnership provided that each class grants the individual different rights or obligations. The existence of a guaranteed payment described in section 707(c) made to an individual for services rendered to or on behalf of a partnership, however, is not a factor in determining the rights and obligations of a class of interest.

(ii) A *service partner* is a partner who provides services to or on behalf of the service partnership's trade or business. A partner is not considered to be a service partner if that partner only provides a de minimis amount of services to or on behalf of the partnership.

(iii) A *service partnership* is a partnership substantially all the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, or consulting.

(iv) A *substantial interest in a class of interest* is determined based on all of the relevant facts and circumstances. In all cases, however, ownership of 20 percent or more of a specific class of interest is considered substantial.

(i) *Example.* The following example illustrates the principles of paragraphs (g) and (h) of this section:

Example. (i) A, B, and C form LLC, a limited liability company, under the laws of State to engage in a business that is not a service partnership described in paragraph (h)(6)(iii) of this section. LLC, classified as a partnership for federal tax purposes, allocates all items of income, deduction, and credit of LLC to A, B, and C in proportion to their ownership of LLC. A and C each contribute $1x for one LLC unit. B contributes $2x for two LLC units. Each LLC unit entitles its holder to receive 25 percent of LLC's tax items, including profits. A does not perform services for LLC; however, each year B receives a guaranteed payment of $6x for 600 hours of services rendered to LLC and C receives a guaranteed payment of $10x for 1000 hours of services rendered to LLC. C also is elected LLC's manager. Under State's law, C has the authority to contract on behalf of LLC.

(ii) *Application of general rule of paragraph (h)(2) of this section.* A is treated as a limited partner in LLC under paragraph (h)(2) of this section because A is not liable personally for debts of or claims against LLC, A does not have authority to contract for LLC under State's law, and A does not participate in LLC's trade or business for more than 500 hours during the taxable year. Therefore, A's distributive share attributable to A's LLC unit is excluded from A's net earnings from self-employment under section 1402(a)(13).

(iii) *Distributive share not included in net earnings from self-employment under paragraph (h)(4) of this section.* B's guaranteed payment of $6x is included in B's net earnings from self-employment under section 1402(a)(13). B is not treated as a limited partner under paragraph (h)(2) of this section because, although B is not liable for debts of or claims against LLC and B does not have authority to contract for LLC under State's law, B does participates in LLC's trade or business for more than 500 hours during the taxable year. Further, B is not treated as a limited partner under paragraph (h)(3) of this section because B does not hold more than one class of interest in LLC. However, B is treated as a limited partner under paragraph (h)(4) of this section because B is not treated as a limited partner under paragraph (h)(2) of this section solely because B participated in LLC's business for more than 500 hours and because A is a limited partner under paragraph (h)(2) of this section who owns a substantial interest with rights and obligations that are identical to B's rights and obligations. In this example, B's distributive share is deemed to be a return on B's investment in LLC and not remuneration for B's service to LLC. Thus, B's distributive share attributable to B's two LLC units is not net earnings from self-employment under section 1402(a)(13).

(iv) *Distributive share included in net earnings from self-employment.* C's guaranteed payment of $10x is included in C's net earnings from self-employment under section 1402(a). In addition, C's distributive share attributable to C's LLC unit also is net earnings from self-employment under section 1402(a) because C is not a limited partner under paragraphs (h)(2), (h)(3), or (h)(4) of this section. C is not treated as a limited partner under paragraph (h)(2) of this section because C has the authority under State's law to enter into a binding contract on behalf of LLC and because C participates in LLC's trade or business for more than 500 hours during the taxable year. Further, C is not treated as a limited partner under paragraph (h)(3) of this section because C does not hold more than one class of interest in LLC. Finally, C is not treated as a limited partner under paragraph (h)(4) of this section because C has the power to bind LLC. Thus, C's guaranteed payment and distributive share both are included in C's net earnings from self-employment under section 1402(a).

(j) *Effective date.* Paragraphs (d), (e), (f), (g), (h), and (i) are applicable beginning with the individual's first taxable year beginning on or after the date this section is published as a final regulation in the **Federal Register**.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 10, 1997, 8:45 a.m., and published in the issue of the Federal Register for January 13, 1997, 62 F.R. 1702)

Employee Plans and Exempt Organizations; Requests for Certain Determination Letters and Applications for Recognition of Exemption

Announcement 97–20

PURPOSE

This is to announce new ''Where to File'' instructions for applications for employee plan determination and other letters, as well as exempt organization applications for recognition of exemption from federal income tax, previously submitted to the Los Angeles Key District Office of Internal Revenue.

BACKGROUND

The Internal Revenue Service is in the process of centralizing the filing of requests for determination and other letters and applications for recognition of tax exemption. Announcement 95–51, published in Internal Revenue Bulletin 1995–25 at page 132, announced that centralization will be phased in by district. Announcement 96–92, published in Internal Revenue Bulletin 1996–38 at page 151, announced that beginning September 1, 1996, requests formerly sent to the key district offices in Atlanta, Georgia, and Baltimore, Maryland, should be sent to the Internal Revenue Service Center in Covington, Kentucky. Announcement 96–133, published in Internal Revenue Bulletin 1996–53 at page 60, announced that beginning January 1, 1997, requests formerly sent to the key district offices in Chicago, Illinois, and Dallas, Texas, should also be sent to the Covington address.

In addition, the Service is consolidating the employee plan volume submitter and regional prototype programs that are presently maintained by each individual key district office. Plans previously approved by a key district office, whose determination letter processing program is being transferred to Cincinnati, will be reviewed using the same criteria and procedures used by the original district office. New guidelines are being devel-

oped that will combine the best features and procedures currently in use by the districts. Guidelines for the revised volume submitter and regional prototype programs will be explained in a future announcement.

INSTRUCTIONS

Beginning April 1, 1997, letter requests and applications previously submitted to the Key District Office in Los Angeles, California, should be sent to the Internal Revenue Service Center in Covington, Kentucky, at the address shown below. (For a period of time, requests and applications mistakenly sent to the Los Angeles Key District Office will be forwarded.) The new address applies to requests for determination letters, regional prototype notification letters and volume submitter advisory letters, on the qualified status of employee plans under sections 401, 403(a), and 409, and the exempt status of any related trust under section 501 of the Internal Revenue Code, applications for recognition of tax exemption on Form 1023, Form 1024, and Form 1028 and other applications for recognition of qualification or exemption. The affected plan sponsors and organizations are those whose principal office or place of business is located in Alaska, California, Hawaii, Idaho, Nevada, Oregon, and Washington. These requests and applications, as well as those formerly submitted to the Atlanta, Baltimore, Cincinnati, Chicago, and Dallas Key Districts, should be sent to:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012–0192

Until further notice, plans and organizations in all other locations, i.e., those located within the jurisdiction of the Brooklyn Key District Office, will continue to file their requests or applications in accordance with the applicable user fee instructions, currently in Section 7 of Revenue Procedure 97–8, published in Internal Revenue Bulletin 1997–1, at page 187, and the instructions for Form 8717, User Fee for Employee Plan Determination Letter Request, or Form 8718, User Fee for Exempt Organization Determination Letter Request.

Comments or concerns regarding the centralization of the determination process or applications submitted to the Covington address, may be directed to the EP/EO Customer Service Unit in Cincinnati at (513) 684–3957 (not a toll-free number).

Deletions From Cumulative List of Organizations Contributions to Which Are Deductible Under Section 170 of the Code

Announcement 97–21

The name of an organization that no longer qualifies as an organization described in section 170(c)(2) of the Internal Revenue Code of 1986 is listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on March 17, 1997, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Gilpin Grammar School
Denver, CO

The National Organization for the Reform of Marijuana Laws
Washington, DC

Foundations Status of Certain Organizations

Announcement 97–23

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Abilene Cultural Foundation, Abilene, TX
Academy of Mount St. Scholastica Endowment Association, Inc., Atchison, KS
Accessible Parks Incorporated, Austin, TX
Acorn-Pacific Foundation, Port Collins, CO
Advocates for Incest Survival, Houston, TX
American Association for Advancement Core Curriculum, Denver, CO
American Awareness Institute, Inc., Kansas City, KS
American Economic Defense Foundation, Denver, CO
American Indian Anti-Defamation Council, Denver, CO
American Indian Resource and Education Coalition, San Antonio, TX
American Pow-Mia Coalition, Shawnee Mission, KS
A. M. G. Foundation, Inc., Lewisville, TX
Andale Nogales Foundation, Nogales, AZ
Ardra Foundation, Lawrence, KS
Arizona Childrens Heart Fund, Inc., Phoenix, AZ
Blummer 100 KN Trail Run, Boulder, CO
Bob Rich Memorial Scholarship Foundation Trust, Williamsburg, VA
Boys and Girls Club of La Joya Texas, Inc., La Joya, TX
Brazos Valley Christian Home School Sports Association, Bryan, TX

Bread of Love Outreach Ministries of Texas, Houston, TX
Bright Hopes Foundation, Albuquerque, NM
Broken Bow Summer Baseball, Inc., Broken Bow, OK
Businesswomen Unlimited, Inc., Olathe, KS
Cerebral Palsy Foundation of Nassau, Inc., Roosevelt, NY
Charles Schwartz Foundation for Music, Inc., New York, NY
David Bowen Memorial Scholarship Inc., Yokum, TX
Decatur County Retirement Housing Inc., Oberlin, KS
Denver Broncos Alumni Charities, Englewood, CO
East Texas Arboretum & Botanical Society, Inc., Athens, TX
East Texas Center for Independent Living, Tyler, TX
East Valley Pony Baseball, Sandy, UT
Eberle Puppet Player, Dallas, TX
Ellis County Sheriffs Posse Inc., Waxahachie, TX
Employees Helping Employees Inc., Phoenix, AZ
Environmental Literacy Project, McAllen, TX
Executive Womens Coalition for Children, Phoenix, AZ
Faith Victory Ministries Inc., Tulsa, OK
Families of Murder Victims, Watauga, TX
Family Service Network, Irving, TX
Family Therapy Training Center of Colorado, Denver, CO
Family Watch Inc., Albuquerque, NM
Fatima Foundation, Houston, TX
First Colorado Regiment United States Volunteers LTD, Englewood, CO
First Step Shelter Inc., Pratt, KS
Flying Start Foundation, Tucson, AZ
Georgetown Little Dribblers, Inc., Georgetown, TX
G H F Ministries Inc., Keene, TX
Gloria Russell Childrens Ministry Inc., Lufkin, TX
Golden Earth Days, Golden, CO
Grady County Child Welfare Services Advisory Board, Inc., Chickasha, OK
Greater New Bedford Aglas, Inc., New Bedford, MA
Great Western Trail—Wasatch Section, Farmington, NM
Gulf Coast Drum Corps Associates Inc., Spring, TX
Healthcare Solutions for America, Inc., Belmont, MA
Henry Lukas Foundation, Inc., Blue Point, NY
Hercules Athletic Association, Inc., New York, NY
He's Not Heavy He's My Brother, Inc., Roxbury, MA
Home Base, Inc., Ipswich, MA
Humanitarian Foundation for Nicaragua, Incorporated, New York, NY
Jacksonville College Foundation, Inc., Jacksonville, TX
Jasper Fire Department, Jasper, TX
Jefferson County Domestic Violence Task Force, Inc., Valley Falls, KS
Labette County Humane Society, Parsons, KS
LaDonia Foundation, Inc., LaDonia, TX
Lake Powell Project, Page, AZ
Lamda Phoenix Center, Inc., Phoenix, AZ
Lane Ranch Corporation, Cheyenne, WY
Laughter to Go, Inc., Shawnee Mission, KS
Make a Kid Smile Inc., Houston, TX
Marlin Volunteer Fire Department, Marlin, TX
Metro-Rail Inc., Boulder, CO
Narciso Martinez Cultural Arts Center, San Benito, TX
Northeast Mens Center, Denver, CO
North Texas Drug Awareness Library, Ennis, TX
Operation Exaltation, Inc., Cedar Hill, TX
Opportunity is Through Education, Denver, CO
Orthodox Community Services, Inc., Denver, CO
Our Home, Inc., Tulsa, OK
Paces Foundation Inc., Atlanta, GA
Scottish Rite Charitable Trust Valley of Kansas City Orient Kansas, Kansas City, KS
Seguin Tri-Party Club, Seguin, TX
Seminole Youth Soccer Association, Seminole, TX
Share Parents of Northern Utah, Ogden, UT
Sheridan County Soccer Association, Sheridan, WY
Sheridan Historical Society, Inc., Sheridan, CO
Shoebox Ministry, Inc., Phoenix, AZ
St. Augustine Technical Center Foundation Inc., St. Augustine, FL
10-4 Ministries, Bellingham, MA
Tamina Action Committee, Inc., Spring, TX
Tarrant County Opportunities Industrialization Center, Inc., Fort Worth, TX
Tecumseh Beautiful, Inc., Tecumseh, OK
Telluride Youth Foundation, Telluride, CO
United States Helicopter Museum, Tucson, AZ
United Way of Choctaw County, Inc., Hugo, OK
University of Tulsa Lettermens Association, Tulsa, OK
Unlimited Handi-Capable, Inc., Fowler, CO
Wadley Partners, Inc., Dallas, TX
Walter Smith Ministry, Houston, TX
Water and Sanitation Consultancy Group, Denver, CO
Welch Evangelistic Association, Franklin, TX
Westbury High School Area Improvement Corporation, Houston, TX
West Roosevelt Community Development Corporation, Phoenix, AZ
Zinser Elementary Parent & Teacher Organization, Grand Rapids, MI

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Timing of Certain Plan Amendments Relating to Section 401(a)(9)

Announcement 97–24

PURPOSE

This announcement provides that an employer is not precluded from offering, to employees (other than 5-percent owners) who attain age 70½ after 1995 and have not retired, an option to defer commencement of benefit distributions under a qualified plan merely because the plan has not yet been amended to provide for the option.

BACKGROUND

Section 1404(a) of the Small Business Job Protection Act of 1996 (SBJPA) amended section 401(a)(9) of the Internal Revenue Code to provide that, in the case of an employee who is not a 5-percent owner, the required beginning date for minimum distributions from a qualified plan is April 1 of the calendar year following the later of the calendar

year in which the employee attains age 70½ or the calendar year in which the employee retires. The amendment to section 401(a)(9) applies to years beginning after December 31, 1996.

Notice 96–67, 1996–53 I.R.B. 12, Q&A–2, provides that, under section 401(a)(9) as amended by the SBJPA, an employee (other than a 5-percent owner) who attained age 70½ in 1996, but who had not retired from employment with the employer maintaining the plan by the end of 1996, is not required to receive a minimum distribution by April 1, 1997.

Many qualified plans continue to contain provisions (consistent with section 401(a)(9) prior to its amendment by the SBJPA) requiring an employee who attains age 70½ in a calendar year to begin receiving distributions by April 1 of the following calendar year. Some employers wish to give employees (other than 5-percent owners) who have not retired the option to defer commencement of distributions beyond April 1 following the calendar year the employees attain age 70½ and have requested guidance as to whether such an option may be offered before their plans are amended to provide for the option.

This announcement responds to these requests concerning the addition of an option to defer commencement of distributions before plan amendment. It does not address the elimination of the option to receive in-service distributions after age 70½.

As noted in Notice 96–67, an amendment that eliminates the right to receive a distribution prior to retirement after age 70½ is precluded by section 411(d)(6) if the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. In Notice 96–67, the Service and Treasury requested comments concerning the extent to which a relaxation of section 411(d)(6) protection is appropriate for amendments that eliminate in-service distributions after age 70½, and the Service and Treasury are currently considering the comments received.

TIMING OF PLAN AMENDMENTS

Under a qualified plan, an employer is permitted to offer an employee (other than a 5-percent owner) who attains age 70½ in a calendar year after 1995 and has not retired by the end of that calendar year the option to delay commencement of benefit distributions until no later than April 1 following the calendar year in which the employee retires from employment with the employer maintaining the plan. A plan that continues to contain provisions requiring an employee to begin receiving distributions by April 1 following the calendar year in which the employee attains age 70½ will not fail to satisfy section 401(a) merely because the employer offers the option described in the preceding sentence prior to amending the plan to include this option. Thus, if employees (other than 5-percent owners) who attained age 70½ in 1996 and did not retire from employment with the employer maintaining the plan by the end of 1996 are offered the opportunity to make an election to defer commencement of benefits rather than to begin receiving benefits from the plan by April 1, 1997, the plan will not fail to satisfy section 401(a) merely because the plan has not yet been amended to provide for this election.

Future guidance will provide that an employer that offers this option under a plan must amend the plan retroactively, no later than the date specified in that guidance, to provide for the option. The retroactive plan amendment will have to conform the plan to its pre-amendment operation regarding the option to defer commencement of benefits. The date by which a plan providing for this option must be retroactively amended will not be earlier than 90 days after the future guidance is published and in no event will be earlier than January 1, 1998.

This announcement also applies to an employer that has adopted a master or prototype or a regional prototype plan. Such an employer should note that if a conforming amendment is not an available option under the sponsor's prototype plan document, the required amendment may result in the loss of prototype status.

ELECTIONS TO STOP RECEIVING DISTRIBUTIONS

This announcement does not address the conditions under which employers may offer employees who have attained age 70½ and have begun to receive distributions under a plan an election to stop receiving distributions until a date no later than April 1 of the calendar year following retirement. Employers are cautioned that, under certain circumstances, an election to stop receiving distributions may violate the qualification requirements under section 401(a), such as sections 401(a)(11) and 417 (relating to participant and spousal consent, joint and survivor annuity requirements, and related matters). Future guidance will address the conditions under which these types of elections may be made and the permitted timing of related plan amendments.

Announcement of the Disbarment, Suspension, or Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Vlymen, Neal Van	San Diego, CA	CPA	Indefinite from November 1, 1996
Lombardi, Theresa	Livonia, MI	CPA	November 1, 1996 to October 31, 1998
Orfall, Warren	Hood River, OR	CPA	November 1, 1996 to June 30, 1997
Oberman, Joseph	Highland Park, IL	CPA	December 1, 1996 to August 31, 1997
Gazzola, Frank	N. Mankato, MN	CPA	December 1, 1996 to November 30, 1997
Tumminello, Anthony G.	St. Louis, MO	Attorney	December 17, 1996 to June 16, 1997
Heffelfinger, Harry N.	Buffalo Grove, IL	CPA	December 20, 1996 to June 19, 1998
Zintl Jr., Ernst J.	Newport, MN	CPA	December 23, 1996 to December 22, 1997
Alms, William R.	Lake Forest, CA	CPA	January 1, 1997 to March 31, 1997
Smith, Arthur L.	Athens, GA	CPA	January 1, 1997 to December 31, 1997
DeGroote Sr., Kevin J.	Mesa, AZ	CPA	January 1, 1997 to October 31, 1997
Oliveri, Robert	Bensalem, PA	CPA	January 1, 1997 to December 31, 1997
Davies, Preston S.	Deerfield, IL	CPA	January 15, 1997 to December 14, 1997
Elbert, David L.	Franktown, CO	CPA	Indefinite from January 21, 1997
Smith Jr., Phillip M.	Long Beach, CA	Attorney	February 1, 1997 to March 31, 1997
Pennington, Richard A.	Vandergrift, PA	CPA	February 1, 1997 to January 31, 2000
Tameron, Joseph A.	Chandler, AZ	CPA	February 1, 1997 to September 30, 1998
Kalb, Mary C.	Kearny, NE	CPA	February 1, 1997 to March 31, 1997
Pritchard, John J.	San Diego, CA	Enrolled Agent	February 1, 1997 to March 31, 1997
Garrett, Richard	Torrance, GA	Enrolled Agent	March 1, 1997 to May 30, 1997
Englert, Larry R.	Eaton, OH	CPA	April 1, 1997 to May 30, 1997

Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings

This announcement serves notice to potential donors that the organization listed below has recently filed a timely declaratory judgment suit under section 7428 of the Code, challenging revocation of its status as an eligible donee under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1). In the case of individual contributors, the maximum amount of contributions protected during this period is limited to $1,000.00, with a husband and wife being treated as one

contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

Society of Separationists, Inc.
Austin, TX

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.

Acq.—Acquiescence.

B—Individual.

BE—Beneficiary.

BK—Bank.

B.T.A.—Board of Tax Appeals.

C.—Individual.

C.B.—Cumulative Bulletin.

CFR—Code of Federal Regulations.

CI—City.

COOP—Cooperative.

Ct.D.—Court Decision.

CY—County.

D—Decedent.

DC—Dummy Corporation.

DE—Donee.

Del. Order—Delegation Order.

DISC—Domestic International Sales Corporation.

DR—Donor.

E—Estate.

EE—Employee.

E.O.—Executive Order.

ER—Employer.

ERISA—Employee Retirement Income Security Act.

EX—Executor.

F—Fiduciary.

FC—Foreign Country.

FICA—Federal Insurance Contribution Act.

FISC—Foreign International Sales Company.

FPH—Foreign Personal Holding Company.

F.R.—Federal Register.

FUTA—Federal Unemployment Tax Act.

FX—Foreign Corporation.

G.C.M.—Chief Counsel's Memorandum.

GE—Grantee.

GP—General Partner.

GR—Grantor.

IC—Insurance Company.

I.R.B.—Internal Revenue Bulletin.

LE—Lessee.

LP—Limited Partner.

LR—Lessor.

M—Minor.

Nonacq.—Nonacquiescence.

O—Organization.

P—Parent Corporation.

PHC—Personal Holding Company.

PO—Possession of the U.S.

PR—Partner.

PRS—Partnership.

PTE—Prohibited Transaction Exemption.

Pub. L.—Public Law.

REIT—Real Estate Investment Trust.

Rev. Proc.—Revenue Procedure.

Rev. Rul.—Revenue Ruling.

S—Subsidiary.

S.P.R.—Statements of Procedural Rules.

Stat.—Statutes at Large.

T—Target Corporation.

T.C.—Tax Court.

T.D.—Treasury Decision.

TFE—Transferee.

TFR—Transferor.

T.I.R.—Technical Information Release.

TP—Taxpayer.

TR—Trust.

TT—Trustee.

U.S.C.—United States Code.

X—Corporation.

Y—Corporation.

Z—Corporation.

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[1]A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1996–27 through 1996–53 will be found in Internal Revenue Bulletin 1997–1, dated January 6, 1997.

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[1]A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1996–27 through 1996–53 will be found in Internal Revenue Bulletin 1997–1, dated January 6, 1997.