

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. 97-7, page 14.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate.

For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for February 1997.

T.D. 8690, page 5.

Final regulations under section 170 of the Code provide guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of \$250 or more, and the disclosure requirements for *quid pro quo* contributions in excess of \$75.

T.D. 8691, page 16.

Final regulations under section 6335 of the Code relate to the sale of seized property.

Rev. Proc. 97-13, page 18.

Tax-exempt bonds; private activity bonds. This procedure sets forth conditions under which a management contract does not result in private business use under section 141(b) of the Code. This procedure also applies to determinations of whether a management contract causes the test in section 145(a)(2)(B) to be met for qualified 501(c)(3) bonds.

Rev. Proc. 97-14, page 20.

Tax-exempt bonds; private activity bonds. This procedure sets forth conditions under which a research

agreement does not result in private business use under section 141(b) of the Code. This procedure also applies to determinations of whether a research agreement causes the test in section 145(a)(2)(B) of the Code to be met for qualified 501(c)(3) bonds.

Rev. Proc. 97-15, page 21.

Tax-exempt bonds; private activity bonds. This procedure provides a program under which an issuer of state or local bonds may request a closing agreement regarding outstanding bonds to fail to meet certain requirements of sections 141 through 150 of the Code relating to use of proceeds as a result of an action subsequent to the issue date.

EXEMPT ORGANIZATIONS

Announcement 97-9, page 27.

A list is given of organizations now classified as private foundations.

ADMINISTRATIVE

Rev. Proc. 97-16, page 25.

Domestic asset/liability and investment yield percentages. This procedure provides the domestic asset/liability percentages and domestic investment yield percentages necessary for foreign companies conducting insurance business in the United States to compute the minimum effectively connected net investment income under section 842(b) for taxable years after December 31, 1995.

Finding Lists begin on page 31.

Announcement of Disbarments and Suspensions begins on page 29.

Monthly Index for January begins on page 33.

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 semi-annually 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.

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, page 14.

Section 57.—Items of Tax Preference

What are the procedures under which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code relating to use of proceeds? See Rev. Proc. 97-15, page 21.

Section 103.—Interest on State and Local Bonds

What are the conditions under which a management contract does not result in private business use under § 141(b) or § 145(a)(2)(B) of the Internal Revenue Code? See Rev. Proc. 97-13, page 18.

What are the conditions under which a research agreement does not result in private business use under § 141(b) or § 145(a)(2)(B) of the Internal Revenue Code? See Rev. Proc. 97-14, page 20.

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Section 141.—Private Activity Bond; Qualified Bond

What are the conditions under which a management contract does not result in private business use under § 141(b) or § 145(a)(2)(B) of the Internal Revenue Code? See Rev. Proc. 97-13, page 18.

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26 CFR 1.141-3: Definition of private business use.

What are the conditions under which a management contract does not result in private business use under § 141(b) or § 145(a)(2)(B) of the Internal Revenue Code? See Rev. Proc. 97-13, page 18.

What are the conditions under which a research agreement does not result in private business use under § 141(b) or § 145(a)(2)(B) of the Internal Revenue Code? See Rev. Proc. 97-14, page 20.

26 CFR 1.141-12: Remedial actions.

What are the procedures under which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code relating to use of proceeds? See Rev. Proc. 97-15, page 21.

Section 142.—Exempt Facility Bond

What are the procedures under which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code relating to use of proceeds? See Rev. Proc. 97-15, page 21.

26 CFR 1.142-2: Remedial actions.

What are the procedures under which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code relating to use of proceeds? See Rev. Proc. 97-15, page 21.

Section 144.—Qualified Small Issue Bond; Qualified Student Loan Bond; Qualified Redevelopment Bond

What are the procedures under which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code relating to use of proceeds? See Rev. Proc. 97-15, page 21.

26 CFR 1.144-2: Remedial actions.

What are the procedures under which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code relating to use of proceeds? See Rev. Proc. 97-15, page 21.

Section 145.—Qualified 501(c)(3) Bonds

What are the conditions under which a management contract does not result in private business use under § 141(b) or § 145(a)(2)(B) of the Internal Revenue Code? See Rev. Proc. 97-13, page 18.

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26 CFR 1.145-2: Application of private activity bond regulations.

What are the conditions under which a management contract does not result in private business use under § 141(b) or § 145(a)(2)(B) of the Internal Revenue Code? See Rev. Proc. 97-13, page 18.

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Section 147.—Other Requirements Applicable to Certain Private Activity Bonds

What are the procedures which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code relating to use of proceeds? See Rev. Proc. 97-15, page 21.

26 CFR 1.147-2: Remedial actions.

What are the procedures under which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code relating to use of proceeds? See Rev. Proc. 97-15, page 21.

Section 170.—Charitable, Etc., Contributions and Gifts

26 CFR 1.170A-1: Charitable, etc., contributions and gifts; allowance of deduction.

T.D. 8690

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of \$250 or more, and the disclosure requirements for quid pro quo contributions in excess of \$75. The regulations will affect organizations described in section 170(c) and individuals and entities that make payments to these organizations.

EFFECTIVE DATE: These regulations are effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Jefferson K. Fox of the Office of Assistant Chief Counsel (Income Tax and Accounting) at 202-622-4930 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1464. Responses to this collection of information are required for charitable contribution deductions under section 170.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per recordkeeper varies from three minutes to one hour, depending on individual circumstances, with an estimated average of six minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may be material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) that provide guidance relating to (1) the substantiation rules for charitable contributions under section 170(f)(8) of the Internal Revenue Code of 1986 (Code), and (2) the disclosure requirements for quid pro quo contributions under section 6115. Sections 170(f)(8) and 6115 were added to the Code by sections 13172 and 13173 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 455, 1993-3 C.B. 43.

Temporary regulations (TD 8544) and a notice of proposed rulemaking cross-referencing the temporary regulations were published in the **Federal Register** for May 27, 1994 (59 FR 27458, 27515). Those regulations primarily addressed substantiation of charitable contributions made by payroll deduction and substantiation of payments to a charitable organization in exchange for goods or services of insubstantial value. The notice of proposed rulemaking indicated that comments would be considered both on the issues addressed in the temporary regulations, and on other issues arising under section 170(f)(8).

A notice of proposed rulemaking (IA-44-94) addressing substantiation issues under section 170(f)(8) other than contributions made by payroll deduction was published in the **Federal Register** for August 4, 1995 (60 FR 39896). Included in these proposed regulations were the provisions that had originally appeared in the temporary regulations published on May 27, 1994, relating to the substantiation of payments to charitable organizations in exchange for goods or services of insubstantial value. In drafting these proposed regulations, the IRS had the benefit of the comments received in response to the notice of proposed rulemaking published in the **Federal Register** for May 27, 1994. Many of the suggestions offered in the comments were incorporated into the proposed regulations.

Final regulations (TD 8623) relating to the substantiation of charitable contributions made by payroll deduction were published in the **Federal Register** for October 12, 1995 (60 FR 53126). These final regulations did not include the provisions relating to the substantiation of payments to charitable organizations in exchange for goods or services with insubstantial value that had appeared in the temporary regulations published on

May 27, 1994 and were also included in the proposed regulations published on August 4, 1995. The temporary regulations published in the **Federal Register** for May 27, 1994, were removed. For the convenience of taxpayers, the final regulations relating to the substantiation of charitable contributions made by payroll deduction (§ 1.170A-13(f)(11) and (12)) that were published in the **Federal Register** for May 27, 1994, have been reprinted with the final regulations adopted by this Treasury Decision.

Comments were received in response to the notice of proposed rulemaking published on August 4, 1995, and a public hearing was held on November 1, 1995. After consideration of those comments, together with the relevant comments received in response to the notice of proposed rulemaking published on May 27, 1994, the proposed regulations under sections 170(f)(8) and 6115 are adopted as revised by this Treasury Decision.

Public Comments

Intent to Make a Charitable Contribution

Section 1.170A-1(h) of the final regulations incorporates the two-part test adopted by the Supreme Court in *United States v. American Bar Endowment*, 477 U.S. 105 (1986), for determining deductibility under section 170(a) of a payment that is partly in consideration for goods or services. A deduction is not allowed for a payment to charity in consideration for goods or services except to the extent the amount of the payment exceeds the fair market value of the goods or services. In addition, a deduction is not allowed unless the taxpayer intends to make a payment in excess of the fair market value of the goods or services.

Section 1.170A-13(f)(6) provides that a charitable organization provides goods or services “in consideration for” a taxpayer’s payment if, at the time of payment, the taxpayer receives or “expects to receive” goods or services in exchange. One commenter stated that a charitable organization has no way of knowing what a taxpayer expects to receive, and that the regulation requires the charity to determine its donors’ states of mind. The commenter suggested that a payment be treated as made in consideration for goods or services “if the donee organization expects to provide and does provide services of which the donor has been informed.” Another com-

menter questioned whether donor appreciation events, such as banquets honoring contributors, are held “in consideration for” charitable contributions. The commenter also asked whether invitations to occasional events not disclosed to prospective donors until after they make their contributions are “in exchange for” the contributions.

The regulations follow *American Bar Endowment* by incorporating a standard that is based on the facts and circumstances of each charitable contribution. When a donor’s contribution is made in response to an express promise of a benefit, the donor generally will have an expectation of a quid pro quo. A donor may also have an expectation of a quid pro quo when the donor makes a contribution with knowledge that the charitable donee has conferred a benefit on other donors making comparable contributions. For example, if a charity has a history of sponsoring a dinner-dance for donors making substantial contributions, a donor making a substantial contribution may have an expectation of receiving an invitation to such an event. The expectation of a quid pro quo may exist even though the donor is not aware of the exact nature of the quid pro quo (e.g., a donation to a charity that sponsors a donor appreciation event of a different type every year). This standard for determining a donor’s expectation of a quid pro quo disallows deductions in situations where facts and circumstances indicate that the donor expected, at the time of his or her payment to charity, that there would be a quid pro quo, even though there was no explicit promise of one.

A commenter requested guidance on the proper treatment of a payment in consideration for a quid pro quo received in a year after the year of payment. Under section 1.170A-13(f)(6), goods or services provided by donee organizations in consideration for a donor’s payment include goods or services provided in a year other than the year of payment. Accordingly, if a donor makes a payment to a charitable organization in exchange for goods or services, the donor’s deductible charitable contribution for the year of payment is limited to the amount, if any, by which the payment exceeds the value of those goods or services, even if they are not available to the donor until a subsequent year.

Refusal of Benefits

Commenters asked for guidance on the proper manner of substantiating a

contribution by a donor who refuses benefits offered by a charitable organization. One commenter suggested that the regulations indicate that when a taxpayer receives a right to quid pro quo benefits but does not use them, the taxpayer is not necessarily allowed a charitable contribution deduction in the full amount of the quid pro quo payment. Another suggested that a taxpayer wishing to deduct the full amount of a quid pro quo payment could check a box on a document to be sent to the charity at the time of contribution to show refusal of the benefit.

These comments are consistent with IRS views. Rev. Rul. 67-246, 1967-2 C.B. 104, provides guidance relating to the refusal of benefits offered by a charitable organization. The revenue ruling holds that a taxpayer choosing not to use tickets that were made available to him is not entitled to a greater contribution than would otherwise be allowed; i.e., the deduction is limited to the amount paid in excess of the value of the tickets received in exchange. 1967-2 C.B. 106. A deduction in the full amount of a taxpayer’s payment may be allowed, however, if the taxpayer properly rejects the right to the tickets. Rev. Rul. 67-246 contains two examples (Examples 3 and 7) illustrating ways that donors can effectively reject benefits offered by charitable organizations. Example 7 illustrates that a check-off box on a form provided by the charity can be used to reject a ticket at the time of contribution. A taxpayer who has properly rejected a benefit offered by a charitable organization may claim a deduction in the full amount of the payment to the charitable organization, and the contemporaneous written acknowledgment need not reflect the value of the rejected benefit.

Certain Goods or Services Disregarded

Goods or services with insubstantial value

Under guidelines set forth in Rev. Proc. 90-12, 1990-1 C.B. 471, and Rev. Proc. 92-49, 1992-1 C.B. 987, certain goods or services received in exchange for a payment to a charity are treated as having insubstantial value and can therefore be disregarded for the purpose of determining the amount of a taxpayer’s payment that is deductible as a charitable contribution. Under these guidelines, if a taxpayer makes a payment to a charitable organization in the context of a fundraising campaign, and receives

benefits with a fair market value of not more than two percent of the amount of the payment (up to a maximum of \$67, for 1996), the benefits received are considered to have insubstantial value for purposes of determining the amount of the taxpayer's contribution. (The \$67 benefit limitation is adjusted annually for inflation.)

Further, if a taxpayer makes a payment of \$33.50 or more to a charity and receives only token items in return, the items are considered to have insubstantial value if they (1) bear the charity's name or logo, and (2) have an aggregate cost to the charity of \$6.70 or less. (The \$33.50 and \$6.70 amounts apply to payments made in 1996; these amounts are adjusted annually for inflation.) In addition, newsletters not of commercial quality and low-cost items provided for free without an advance order are considered to have insubstantial value.

Under section 1.170A-13(f)(8)(i)(A) of the regulations, the same types of goods and services disregarded under the guidelines of Rev. Procs. 90-12 and 92-49 can be disregarded for purposes of substantiation under section 170(f)(8). One commenter asked whether the contemporaneous written acknowledgment provided to a donor receiving goods or services of insubstantial value should indicate that no goods or services were received. When a donee organization provides a donor only with goods or services having insubstantial value under Rev. Procs. 90-12 and 92-49, the contemporaneous written acknowledgment may indicate that no goods or services were provided in exchange for the donor's payment. See Example 2, § 1.170A-13(f)(8)(ii).

Another commenter stated that the rules in Rev. Procs. 90-12 and 92-49 for goods or services of insubstantial value are unduly restrictive and prevent charitable organizations from recognizing longstanding, generous contributors with suitable gifts of appreciation. Another argued that the costs of token items received by a taxpayer during the year from a charity should not be aggregated. Sections 1.170A-13(f)(8)(B) and 1.170A-13(f)(9)(i) provide that certain membership benefits provided in exchange for a payment of \$75 or less may be disregarded for purposes of determining whether any quids pro quo were provided to the donor. For purposes of sections 170(f)(8) and 6115, these provisions supplement the categories of goods or services treated as having insubstantial value under the

guidelines of Rev. Procs. 90-12 and 92-49. The IRS and Treasury believe that application of the guidelines of Rev. Procs. 90-12 and 92-49, together with the membership benefit provisions in the final regulations, strikes an appropriate balance between administrative and compliance concerns under sections 170(f)(8) and 6115. Accordingly, the guidelines of Rev. Procs. 90-12 and 92-49 have not been modified.

Membership Benefits

The regulations provide limited relief with respect to certain types of benefits customarily provided to donors in exchange for membership payments. Two types of membership benefits offered in exchange for a payment of \$75 or less may be disregarded: (1) free admission to members-only events with a per-person cost to the charity that is no higher than the standard for low-cost articles under section 513(h)(2)(C) (\$6.70 for 1996); and (2) rights or privileges that can be exercised frequently during the membership period (other than rights or privileges described in section 170(l), governing rights to purchase tickets for college athletic events).

Some commenters said that the term *frequently*, when read in conjunction with the examples, provided sufficient clarity and appropriate flexibility. Other commenters expressed concern about use of the term *frequently*, stating that it was vague and imprecise. For smaller organizations, they argued, in determining whether a right of free admission to a series of events can be frequently exercised, consideration should be given to the number of events held by the organization each year. The IRS and Treasury believe that a charity can make a determination that a right or privilege is frequently exercisable by reference to the examples that were in the proposed regulations and are adopted in the final regulations.

A commenter suggested that the \$75 payment amount in the special rules for membership benefits should be indexed for inflation. The IRS and Treasury believe that it is important for the membership payment amount to be a number that can be easily remembered by charities and donors. For this reason, annual inflation adjustments are not advisable. However, the IRS and Treasury will consider increases to this \$75 figure in the future.

A commenter asked whether the rule that allows taxpayers to disregard certain membership benefits applies to discounts offered by a donee organization for purchases from retailers working with the charity to provide discounts to members. These discounts are to be treated like any other rights or privileges and, therefore, may be disregarded for purposes of section 170(f)(8) if they can be exercised frequently during the membership period.

Goods or services provided to a donor's employees

Prior to publication of the proposed regulations, several commenters asked for guidance on the proper method of valuation of goods or services provided by charitable organizations to employees of donors. The final regulations follow the proposed regulations and provide that goods or services provided to a donor's employees can be disregarded if they consist of the types of benefits that could be disregarded when provided directly to a donor (i.e., goods or services with insubstantial value and certain annual membership benefits). For any other types of goods or services provided to employees of a donor making a contribution of \$250 or more, the contemporaneous written acknowledgment must describe the goods or services, but need not include the donee organization's good faith estimate of their fair market value.

A commenter stated that the special rule for goods or services provided to employees of a donor should also be available for partners in a partnership. In the final regulations, the exception for goods or services provided to a donor's employees has been modified to include partners in a donor-partnership.

A commenter was concerned about charities that receive funds from a private foundation established by a business entity. The commenter suggested that such charities should be permitted to provide benefits to employees of the business entity without any tax consequences. Because this suggestion raises issues beyond the scope of this regulation (including issues relating to the self-dealing rules under section 4941), this suggestion was not adopted.

A commenter stated that when employees receive benefits as a result of an employer's charitable contribution, it would be easier for the charity (rather than the employer) to estimate the fair market value of the benefits. Another commenter stated that when employees receive benefits that cannot be disre-

garded under section 170, the employer/donor is likely to deduct the value of those benefits as a business expense under section 162. Because employers may claim the full amount of their payments to charity—including the value of the benefits—as a deduction, the commenter suggested that employers should be relieved of the burden of valuing such benefits, and that the full amount of such payments should be deductible under section 170.

The IRS and Treasury recognize that in cases where employee benefits cannot be disregarded for purposes of section 170, employers may nevertheless seek to deduct their costs pursuant to section 162. For deductions under section 170, however, *United States v. American Bar Endowment*, supra, limits the allowable deduction to the amount of the employer's payment in excess of the value of employee benefits. Accordingly, if the employee benefits cannot be disregarded, their value must be subtracted from the amount of the employer's payment to determine the correct amount of the charitable contribution deduction. Although valuation may be difficult, the IRS and Treasury continue to believe that the employer is in a better position than the charity to be responsible for valuation of benefits provided to employees.

Payments for the right to purchase tickets to college athletic events

A commenter asked for clarification regarding the applicability of the substantiation requirements to payments for the right to purchase tickets to college athletic events. Section 170(l) provides that payments to colleges or universities for the right to purchase tickets to athletic events are partially (eighty percent) deductible as charitable contributions. The final regulations have been modified to clarify how sections 170(f)(8) and 6115 apply to payments described in section 170(l).

For purposes of section 170(f)(8), twenty percent of the amount paid for the right to purchase tickets for seating at college or university athletic events is treated as the fair market value of such right. When the total payment for the right to purchase tickets to college athletic events is \$312.50 or more, the portion of the payment treated as a charitable contribution will be \$250 or more, and substantiation will be required under section 170(f)(8). For purposes of section 6115, twenty percent of the amount paid for the right to purchase tickets for seating at college or univer-

sity athletic events is treated as a good faith estimate of the fair market value of this right.

Rules Applicable to Corporations

Several commenters suggested that subchapter C corporations (C corporations) should be relieved of the substantiation requirements. Some indicated that C corporations should be exempt; others argued for a de minimis exception for C corporations making substantial contributions. Under a de minimis exception, deductions for all of a C corporation's charitable contributions would be allowed if the corporation had contemporaneous written acknowledgments substantiating most, or substantially all, of its contributions. These commenters stated that the substantiation requirements were enacted to deter individuals—not businesses—that had claimed charitable contribution deductions for the full amounts of their payments to charitable organizations, even though they had received quids pro quo in exchange. They suggested that the IRS exercise the authority provided in section 170(f)(8)(E) and make the substantiation requirements inapplicable to C corporations. The final regulations do not adopt these suggestions. The IRS and Treasury believe that exempting C corporations from the substantiation requirements could, in fact, encourage abuses and would therefore conflict with the purpose of section 170(f)(8).

Meaning of Contemporaneous

A commenter asked whether a taxpayer may file an amended income tax return to claim a charitable contribution deduction if the taxpayer obtained the contemporaneous written acknowledgment for the contribution after timely filing the original return. Section 170(f)(8)(C) provides that a written acknowledgment is contemporaneous if obtained on or before the earlier of (1) the date that the taxpayer files the return for the year in which the contribution was made, or (2) the due date (including extensions) for filing the return for that taxable year. A written acknowledgment obtained after a taxpayer files the original return for the year of the contribution is not contemporaneous within the meaning of the statute.

Substantiation of Multiple Contributions

Several commenters asked whether the substantiation requirements apply to multiple contributions totaling \$250 or

more made to a single charity during a single year, when each contribution is less than \$250. The conference report accompanying the Omnibus Budget Reconciliation Act of 1993 indicates that separate payments will be treated as separate contributions and will not be aggregated for purposes of applying the \$250 threshold. H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 565, n. 29 (1993). If there is no separate payment of \$250 or more, substantiation under section 170(f)(8) is not required, even if the sum of the separate payments is \$250 or more. Section 1.170A-13(f)(1) has been modified to clarify this. A commenter asked whether there must be a separate contemporaneous written acknowledgment for each contribution of \$250 or more. Section 1.170A-13(f)(1) has been modified to clarify that for multiple contributions of \$250 or more to one charity, one acknowledgment that reflects the total amount of the taxpayer's contributions to the charity for the year is sufficient.

Form of Substantiation

Commenters asked whether a contemporaneous written acknowledgment must be in any particular format. As long as it is in writing and contains the information required by law, a contemporaneous written acknowledgment may be in any format. One commenter suggested that the regulations should allow charities to report charitable contributions directly to the IRS on Form 990 or 990-PF. Section 170(f)(8) authorizes the Secretary to prescribe regulations allowing donee organizations to satisfy the requirements of section 170(f)(8) by filing a return that includes the information described in section 170(f)(8)(B). The IRS and Treasury have decided not to implement this suggestion at this time. However, in an effort to reduce paperwork and taxpayer burdens, the IRS will examine whether any existing IRS forms can be modified to assist in their use in substantiating charitable contributions.

A commenter asked for guidance on the proper method of substantiating payments by corporations that agree to match employee contributions to charity. When an employee makes a charitable contribution that is eligible for a corporate matching payment, some charities routinely send the participating corporation a letter, notifying the corporation of the employee's gift and thanking it in advance for the matching payment the charity expects to receive. Commenters

suggested that this letter be treated as meeting the corporation's requirements under section 170(f)(8). This suggestion has not been adopted, because letters sent in advance of a contribution do not substantiate the contribution. The acknowledgment under section 170(f)(8) must include information about what has been "contributed." The acknowledgment cannot be completed until after the charitable contribution has been made. (See section 1.170A-1(b), which states that ordinarily a contribution is made at the time delivery is effected.)

Out-of-Pocket Expenses

The proposed regulations allowed volunteers who incurred unreimbursed out-of-pocket expenses while performing services for a charity to substantiate their contributions with a statement that described the services and the date they were performed. The acknowledgment was not required to list the amount of the unreimbursed expense. Several commenters suggested an exemption from the substantiation requirements for unreimbursed out-of-pocket expenses incurred incident to the rendition of services to a donee organization. Exemption is appropriate, they argued, because the requirements are burdensome, particularly since a donee organization is often unaware of the amount and nature of expenses incurred by volunteers performing services on behalf of the charity, or the exact dates on which the volunteer services were performed. The final regulations eliminate the requirement that the contemporaneous written acknowledgment include the date on which services were performed for the charity. However, to carry out the purposes of the statute, volunteers claiming a charitable contribution deduction for an unreimbursed expense of \$250 or more are still required to obtain substantiation confirming the type of services they performed for the charity.

Good Faith Estimate

Section 170(f)(8) requires a written acknowledgment furnished by a charity to a donor to include a good faith estimate of the value of any goods or services provided to the donor. Section 6115(a)(2) similarly requires a written disclosure statement provided to a donor making a quid pro quo contribution of more than \$75 to include a good faith estimate of the value of goods or services provided to the donor. The regulations define a good faith estimate as an

estimate of the fair market value of the goods or services. A taxpayer can generally rely on the good faith estimate provided by a charity.

A commenter stated that the regulations should contain an example illustrating how charities can compute the fair market value of goods or services. We have not adopted this suggestion. There is no single correct way to determine fair market value; a charitable organization may use any reasonable methodology (e.g., comparison with comparable retail prices, mark-up from wholesale cost) to determine the fair market value. Examples 1 and 2 of section 1.6115-1(a)(3) illustrate this rule.

A commenter recommended that the regulations state that a donor does not have to use the good faith estimate provided by a charitable organization if the donor believes another estimate is more accurate. The regulations do not mandate that a donor use the estimate provided by a donee organization in calculating the deductible amount. Indeed, when a taxpayer knows or has reason to know that an estimate is inaccurate, the taxpayer may not treat the donee organization's estimate as the fair market value.

A commenter suggested that the regulations indicate that recognition items, such as plaques or trophies with an honoree's name inscribed, should be considered to have little, if any, fair market value. This suggestion has not been adopted. Inscribed plaques and trophies may have some value, even though the value may be less than cost. In addition, see § 1.170A-13(f)(8)(i)(A) regarding goods or services with insubstantial value.

Another commenter asked whether the listing of a donor's name in a program at a charity-sponsored event has a substantial value. An acknowledgment in such a program, which identifies—rather than promotes—a donor, is an inconsequential benefit with no significant value. See Rev. Rul. 68-432, 1968-2 C.B. 104, 105, holding that "[s]uch privileges as being associated with or being known as a benefactor of the [charitable] organization are not significant return benefits that have monetary value."

Contributions to a Split-Interest Trust

Section 1.170A-13(f)(13) of the proposed regulations provides that section 170(f)(8) does not apply to a transfer of

property to a charitable remainder unitrust (as defined in section 664(d)(2)). A commenter observed that there are two other types of unitrusts in addition to the type described in section 664(d)(2), and that these unitrusts should be treated similarly. The final regulations have been modified to provide that the substantiation requirements of section 170(f)(8) do not apply to transfers to unitrusts described in section 664(d)(3) or section 1.664-3(a)(1)(i)(b), as well as to unitrusts described in section 664(d)(2).

Section 1.170A-13(f)(13) of the proposed regulations provides that section 170(f)(8) applies to a transfer to a pooled income fund. Commenters requested further guidance on the proper way to substantiate contributions to pooled income funds. The final regulations have been modified to require, in the case of a transfer of cash or other property to a pooled income fund, that the written acknowledgment of the charitable organization maintaining the fund include a statement that the cash or other property was transferred to the organization's pooled income fund and state whether any goods or services, in addition to the income interest in the fund, were provided to the transferor. The contemporaneous written acknowledgment need not include an estimate of the value of the income interest in the pooled income fund. The final regulations also provide guidance on the proper method of substantiating a deduction claimed by a taxpayer who has purchased an annuity from a charitable organization.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a cost-benefit analysis 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 notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. See 5 U.S.C. section 601, Pub. L. No. 104-121 section 245. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for

comment on the impact of the proposed regulations on small businesses.

Drafting Information

The principal author of these regulations is Jefferson K. Fox, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new entry in numerical order for Section 1.170A-1 and revising the entry for Section 1.170A-13 to read as follows:

Authority: 26 U.S.C. 7805

Section 1.170A-1 also issued under 26 U.S.C. 170(a).

Section 1.170A-13 also issued under 26 U.S.C. 170(f)(8). * * *

Par. 2. Section 1.170A-1 is amended as follows:

1. Paragraph (h) is redesignated as paragraph (j).

2. Paragraph (i) is redesignated as paragraph (k) and is revised.

3. Paragraph (h) is added.

4. Paragraph (i) is added and reserved.

The additions and revisions read as follows:

§ 1.170A-1 Charitable, etc., contributions and gifts; allowance of deduction.

* * * * *

(h) Payment in exchange for consideration—(1) Burden on taxpayer to show that all or part of payment is a charitable contribution or gift. No part of a payment that a taxpayer makes to or for the use of an organization described in section 170(c) that is in consideration for (as defined in § 1.170A-13(f)(6)) goods or services (as defined in § 1.170A-13(f)(5)) is a contribution or gift within the meaning of section 170(c) unless the taxpayer—

(i) Intends to make a payment in an amount that exceeds the fair market value of the goods or services; and

(ii) Makes a payment in an amount that exceeds the fair market value of the goods or services.

(2) Limitation on amount deductible—(i) In general. The charitable contribution deduction under section 170(a) for a payment a taxpayer makes partly in consideration for goods or services may not exceed the excess of—

(A) The amount of any cash paid and the fair market value of any property (other than cash) transferred by the taxpayer to an organization described in section 170(c); over

(B) The fair market value of the goods or services the organization provides in return.

(ii) Special rules. For special limits on the deduction for charitable contributions of ordinary income and capital gain property, see section 170(e) and §§ 1.170A-4 and 1.170A-4A.

(3) Certain goods or services disregarded. For purposes of section 170(a) and paragraphs (h)(1) and (h)(2) of this section, goods or services described in § 1.170A-13(f)(8)(i) or § 1.170A-13(f)(9)(i) are disregarded.

(4) Donee estimates of the value of goods or services may be treated as fair market value—(i) In general. For purposes of section 170(a), a taxpayer may rely on either a contemporaneous written acknowledgment provided under section 170(f)(8) and § 1.170A-13(f) or a written disclosure statement provided under section 6115 for the fair market value of any goods or services provided to the taxpayer by the donee organization.

(ii) Exception. A taxpayer may not treat an estimate of the value of goods or services as their fair market value if the taxpayer knows, or has reason to know, that such treatment is unreasonable. For example, if a taxpayer knows, or has reason to know, that there is an error in an estimate provided by an organization described in section 170(c) pertaining to goods or services that have a readily ascertainable value, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services. Similarly, if a taxpayer is a dealer in the type of goods or services provided in consideration for the taxpayer's payment and knows, or has reason to know, that the estimate is in error, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services.

(5) Examples. The following examples illustrate the rules of this paragraph (h).

Example 1. Certain goods or services disregarded. Taxpayer makes a \$50 payment to Charity B, an organization described in section 170(c), in exchange for a family membership. The family membership entitles Taxpayer and members of Taxpayer's family to certain benefits. These benefits include free admission to weekly poetry readings, discounts on merchandise sold by B in its gift shop or by mail order, and invitations to special events for members only, such as lectures or informal receptions. When B first offers its membership package for the year, B reasonably projects that each special event for members will have a cost to B, excluding any allocable overhead, of \$5 or less per person attending the event. Because the family membership benefits are disregarded pursuant to § 1.170A-13(f)(8)(i), Taxpayer may treat the \$50 payment as a contribution or gift within the meaning of section 170(c), regardless of Taxpayer's intent and whether or not the payment exceeds the fair market value of the goods or services. Furthermore, any charitable contribution deduction available to Taxpayer may be calculated without regard to the membership benefits.

Example 2. Treatment of good faith estimate at auction as the fair market value. Taxpayer attends an auction held by Charity C, an organization described in section 170(c). Prior to the auction, C publishes a catalog that meets the requirements for a written disclosure statement under section 6115(a) (including C's good faith estimate of the value of items that will be available for bidding). A representative of C gives a copy of the catalog to each individual (including Taxpayer) who attends the auction. Taxpayer notes that in the catalog C's estimate of the value of a vase is \$100. Taxpayer has no reason to doubt the accuracy of this estimate. Taxpayer successfully bids and pays \$500 for the vase. Because Taxpayer knew, prior to making her payment, that the estimate in the catalog was less than the amount of her payment, Taxpayer satisfies the requirement of paragraph (h)(1)(i) of this section. Because Taxpayer makes a payment in an amount that exceeds that estimate, Taxpayer satisfies the requirements of paragraph (h)(1)(ii) of this section. Taxpayer may treat C's estimate of the value of the vase as its fair market value in determining the amount of her charitable contribution deduction.

Example 3. Good faith estimate not in error. Taxpayer makes a \$200 payment to Charity D, an organization described in section 170(c). In return for Taxpayer's payment, D gives Taxpayer a book that Taxpayer could buy at retail prices typically ranging from \$18 to \$25. D provides Taxpayer with a good faith estimate, in a written disclosure statement under section 6115(a), of \$20 for the value of the book. Because the estimate is within the range of typical retail prices for the book, the estimate contained in the written disclosure statement is not in error. Although Taxpayer knows that the book is sold for as much as \$25, Taxpayer may treat the estimate of \$20 as the fair market value of the book in determining the amount of his charitable contribution deduction.

(i) [Reserved]

* * * * *

(k) Effective date. In general this section applies to contributions made in taxable years beginning after December 31, 1969. Paragraph (j)(11) of this sec-

tion, however, applies only to out-of-pocket expenditures made in taxable years beginning after December 31, 1976. In addition, paragraph (h) of this section applies only to payments made on or after December 16, 1996. However, taxpayers may rely on the rules of paragraph (h) of this section for payments made on or after January 1, 1994.

Par. 3. Section 1.170A-13 is amended by revising paragraph (f) to read as follows:

§ 1.170A-13 Recordkeeping and return requirements for deductions for charitable contributions.

* * * * *

(f) *Substantiation of charitable contributions of \$250 or more*—(1) *In general.* No deduction is allowed under section 170(a) for all or part of any contribution of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee organization. A taxpayer who makes more than one contribution of \$250 or more to a donee organization in a taxable year may substantiate the contributions with one or more contemporaneous written acknowledgments. Section 170(f)(8) does not apply to a payment of \$250 or more if the amount contributed (as determined under § 1.170A-1(h)) is less than \$250. Separate contributions of less than \$250 are not subject to the requirements of section 170(f)(8), regardless of whether the sum of the contributions made by a taxpayer to a donee organization during a taxable year equals \$250 or more.

(2) *Written acknowledgment.* Except as otherwise provided in paragraphs (f)(8) through (f)(11) and (f)(13) of this section, a written acknowledgment from a donee organization must provide the following information—

(i) The amount of any cash the taxpayer paid and a description (but not necessarily the value) of any property other than cash the taxpayer transferred to the donee organization;

(ii) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for any of the cash or other property transferred to the donee organization;

(iii) If the donee organization provides any goods or services other than intangible religious benefits (as described in section 170(f)(8)), a description and good faith estimate of the value of those goods or services; and

(iv) If the donee organization provides any intangible religious benefits, a statement to that effect.

(3) *Contemporaneous.* A written acknowledgment is contemporaneous if it is obtained by the taxpayer on or before the earlier of—

(i) The date the taxpayer files the original return for the taxable year in which the contribution was made; or

(ii) The due date (including extensions) for filing the taxpayer's original return for that year.

(4) *Donee organization.* For purposes of this paragraph (f), a donee organization is an organization described in section 170(c).

(5) *Goods or services.* Goods or services means cash, property, services, benefits, and privileges.

(6) *In consideration for.* A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. Goods or services a donee organization provides in consideration for a payment by a taxpayer include goods or services provided in a year other than the year in which the taxpayer makes the payment to the donee organization.

(7) *Good faith estimate.* For purposes of this section, good faith estimate means a donee organization's estimate of the fair market value of any goods or services, without regard to the manner in which the organization in fact made that estimate. See § 1.170A-1(h)(4) for rules regarding when a taxpayer may treat a donee organization's estimate of the value of goods or services as the fair market value.

(8) *Certain goods or services disregarded*—(i) *In general.* For purposes of section 170(f)(8), the following goods or services are disregarded—

(A) Goods or services that have insubstantial value under the guidelines provided in Revenue Procedures 90-12, 1990-1 C.B. 471, 92-49, 1992-1 C.B. 987, and any successor documents. (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.); and

(B) Annual membership benefits offered to a taxpayer in exchange for a payment of \$75 or less per year that consist of—

(I) Any rights or privileges, other than those described in section 170(I), that the taxpayer can exercise frequently

during the membership period. Examples of such rights and privileges may include, but are not limited to, free or discounted admission to the organization's facilities or events, free or discounted parking, preferred access to goods or services, and discounts on the purchase of goods or services; and

(2) Admission to events during the membership period that are open only to members of a donee organization and for which the donee organization reasonably projects that the cost per person (excluding any allocable overhead) attending each such event is within the limits established for "low cost articles" under section 513(h)(2). The projected cost to the donee organization is determined at the time the organization first offers its membership package for the year (using section 3.07 of Revenue Procedure 90-12, or any successor documents, to determine the cost of any items or services that are donated).

(ii) *Examples.* The following examples illustrate the rules of this paragraph (f)(8).

Example 1. Membership benefits disregarded. Performing Arts Center *E* is an organization described in section 170(c). In return for a payment of \$75, *E* offers a package of basic membership benefits that includes the right to purchase tickets to performances one week before they go on sale to the general public, free parking in *E*'s garage during evening and weekend performances, and a 10% discount on merchandise sold in *E*'s gift shop. In return for a payment of \$150, *E* offers a package of preferred membership benefits that includes all of the benefits in the \$75 package as well as a poster that is sold in *E*'s gift shop for \$20. The basic membership and the preferred membership are each valid for twelve months, and there are approximately 50 performances of various productions at *E* during a twelve-month period. *E*'s gift shop is open for several hours each week and at performance times. *F*, a patron of the arts, is solicited by *E* to make a contribution. *E* offers *F* the preferred membership benefits in return for a payment of \$150 or more. *F* makes a payment of \$300 to *E*. *F* can satisfy the substantiation requirement of section 170(f)(8) by obtaining a contemporaneous written acknowledgment from *E* that includes a description of the poster and a good faith estimate of its fair market value (\$20) and disregards the remaining membership benefits.

Example 2. Contemporaneous written acknowledgment need not mention rights or privileges that can be disregarded. The facts are the same as in Example 1, except that *F* made a payment of \$300 and received only a basic membership. *F* can satisfy the section 170(f)(8) substantiation requirement with a contemporaneous written acknowledgment stating that no goods or services were provided.

Example 3. Rights or privileges that cannot be exercised frequently. Community Theater Group *G* is an organization described in section 170(c). Every summer, *G* performs four different plays. Each play is performed two times. In return for a membership fee of \$60, *G* offers its members free admission to any of its performances. Non-

members may purchase tickets on a performance by performance basis for \$15 a ticket. *H*, an individual who is a sponsor of the theater, is solicited by *G* to make a contribution. *G* tells *H* that the membership benefit will be provided in return for any payment of \$60 or more. *H* chooses to make a payment of \$350 to *G* and receives in return the membership benefit. *G*'s membership benefit of free admission is not described in paragraph (f)(8)(i)(B) of this section because it is not a privilege that can be exercised frequently (due to the limited number of performances offered by *G*). Therefore, to meet the requirements of section 170(f)(8), a contemporaneous written acknowledgment of *H*'s \$350 payment must include a description of the free admission benefit and a good faith estimate of its value.

Example 4. Multiple memberships. In December of each year, *K*, an individual, gives each of her six grandchildren a junior membership in Dinosaur Museum, an organization described in section 170(c). Each junior membership costs \$50, and *K* makes a single payment of \$300 for all six memberships. A junior member is entitled to free admission to the museum and to weekly films, slide shows, and lectures about dinosaurs. In addition, each junior member receives a bi-monthly, non-commercial quality newsletter with information about dinosaurs and upcoming events. *K*'s contemporaneous written acknowledgment from Dinosaur Museum may state that no goods or services were provided in exchange for *K*'s payment.

(9) *Goods or services provided to employees or partners of donors—(i) Certain goods or services disregarded.* For purposes of section 170(f)(8), goods or services provided by a donee organization to employees of a donor, or to partners of a partnership that is a donor, in return for a payment to the organization may be disregarded to the extent that the goods or services provided to each employee or partner are the same as those described in paragraph (f)(8)(i) of this section.

(ii) *No good faith estimate required for other goods or services.* If a taxpayer makes a contribution of \$250 or more to a donee organization and, in return, the donee organization offers the taxpayer's employees or partners goods or services other than those described in paragraph (f)(9)(i) of this section, the contemporaneous written acknowledgment of the taxpayer's contribution is not required to include a good faith estimate of the value of such goods or services but must include a description of those goods or services.

(iii) *Example.* The following example illustrates the rules of this paragraph (f)(9).

Example. Museum *J* is an organization described in section 170(c). For a payment of \$40, *J* offers a package of basic membership benefits that includes free admission and a 10% discount on merchandise sold in *J*'s gift shop. *J*'s other membership categories are for supporters who contribute \$100 or more. Corporation *K* makes a payment of \$50,000 to *J* and, in return, *J* offers

K's employees free admission for one year, a tee-shirt with *J*'s logo that costs *J* \$4.50, and a gift shop discount of 25% for one year. The free admission for *K*'s employees is the same as the benefit made available to holders of the \$40 membership and is otherwise described in paragraph (f)(8)(i)(B) of this section. The tee-shirt given to each of *K*'s employees is described in paragraph (f)(8)(i)(A) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is not required to include a description or good faith estimate of the value of the free admission or the tee-shirts. However, because the gift shop discount offered to *K*'s employees is different than that offered to those who purchase the \$40 membership, the discount is not described in paragraph (f)(8)(i) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is required to include a description of the 25% discount offered to *K*'s employees.

(10) *Substantiation of out-of-pocket expenses.* A taxpayer who incurs unreimbursed expenditures incident to the rendition of services, within the meaning of § 1.170A-1(g), is treated as having obtained a contemporaneous written acknowledgment of those expenditures if the taxpayer—

(i) Has adequate records under paragraph (a) of this section to substantiate the amount of the expenditures; and

(ii) Obtains by the date prescribed in paragraph (f)(3) of this section a statement prepared by the donee organization containing—

(A) A description of the services provided by the taxpayer;

(B) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for the unreimbursed expenditures; and

(C) The information required by paragraphs (f)(2)(iii) and (iv) of this section.

(11) *Contributions made by payroll deduction— (i) Form of substantiation.* A contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization may be substantiated, for purposes of section 170(f)(8), by both—

(A) A pay stub, Form W-2, or other document furnished by the employer that sets forth the amount withheld by the employer for the purpose of payment to a donee organization; and

(B) A pledge card or other document prepared by or at the direction of the donee organization that includes a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.

(ii) *Application of \$250 threshold.* For the purpose of applying the \$250 threshold provided in section 170(f)(8)(A) to contributions made by the means described in paragraph (f)(11)(i) of this section, the amount withheld from each payment of wages to a taxpayer is treated as a separate contribution.

(12) *Distributing organizations as donees.* An organization described in section 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of section 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in section 170(c). This paragraph (f)(12) does not apply, however, to a case in which the distributee organization provides goods or services as part of a transaction structured with a view to avoid taking the goods or services into account in determining the amount of the deduction to which the donor is entitled under section 170.

(13) *Transfers to certain trusts.* Section 170(f)(8) does not apply to a transfer of property to a trust described in section 170(f)(2)(B), a charitable remainder annuity trust (as defined in section 664(d)(1)), or a charitable remainder unitrust (as defined in section 664(d)(2) or (d)(3) or § 1.664-3)(a)(1)(i)(b)). Section 170(f)(8) does apply, however, to a transfer to a pooled income fund (as defined in section 642(c)(5)); for such a transfer, the contemporaneous written acknowledgment must state that the contribution was transferred to the donee organization's pooled income fund and indicate whether any goods or services (in addition to an income interest in the fund) were provided in exchange for the transfer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the income interest.

(14) *Substantiation of payments to a college or university for the right to purchase tickets to athletic events.* For purposes of paragraph (f)(2)(iii) of this section, the right to purchase tickets for seating at an athletic event in exchange for a payment described in section 170(l) is treated as having a value equal to twenty percent of such payment. For example, when a taxpayer makes a

payment of \$312.50 for the right to purchase tickets for seating at an athletic event, the right to purchase tickets is treated as having a value of \$62.50. The remaining \$250 is treated as a charitable contribution, which the taxpayer must substantiate in accordance with the requirements of this section.

(15) *Substantiation of charitable contributions made by a partnership or an S corporation.* If a partnership or an S corporation makes a charitable contribution of \$250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of section 170(f)(8). Therefore, the partnership or S corporation must substantiate the contribution with a contemporaneous written acknowledgment from the donee organization before reporting the contribution on its income tax return for the year in which the contribution was made and must maintain the contemporaneous written acknowledgment in its records. A partner of a partnership or a shareholder of an S corporation is not required to obtain any additional substantiation for his or her share of the partnership's or S corporation's charitable contribution.

(16) *Purchase of an annuity.* If a taxpayer purchases an annuity from a charitable organization and claims a charitable contribution deduction of \$250 or more for the excess of the amount paid over the value of the annuity, the contemporaneous written acknowledgment must state whether any goods or services in addition to the annuity were provided to the taxpayer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the value of the annuity. See § 1.170A-1(d)(2) for guidance in determining the value of the annuity.

(17) *Substantiation of matched payments—(i) In general.* For purposes of section 170, if a taxpayer's payment to a donee organization is matched, in whole or in part, by another payor, and the taxpayer receives goods or services in consideration for its payment and some or all of the matching payment, those goods or services will be treated as provided in consideration for the taxpayer's payment and not in consideration for the matching payment.

(ii) *Example.* The following example illustrates the rules of this paragraph (f)(17).

Example. Taxpayer makes a \$400 payment to Charity L, a donee organization. Pursuant to a matching payment plan, Taxpayer's employer

matches Taxpayer's \$400 payment with an additional payment of \$400. In consideration for the combined payments of \$800, L gives Taxpayer an item that it estimates has a fair market value of \$100. L does not give the employer any goods or services in consideration for its contribution. The contemporaneous written acknowledgment provided to the employer must include a statement that no goods or services were provided in consideration for the employer's \$400 payment. The contemporaneous written acknowledgment provided to Taxpayer must include a statement of the amount of Taxpayer's payment, a description of the item received by Taxpayer, and a statement that L's good faith estimate of the value of the item received by Taxpayer is \$100.

(18) *Effective date.* This paragraph (f) applies to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of this paragraph (f) for contributions made on or after January 1, 1994.

Par. 4. Section 1.6115-1 is added under the undesignated centerheading *Miscellaneous Provisions* to read as follows:

§ 1.6115-1 *Disclosure requirements for quid pro quo contributions.*

(a) *Good faith estimate defined—(1) In general.* A good faith estimate of the value of goods or services provided by an organization described in section 170(c) in consideration for a taxpayer's payment to that organization is an estimate of the fair market value, within the meaning of § 1.170A-1(c)(2), of the goods or services. The organization may use any reasonable methodology in making a good faith estimate, provided it applies the methodology in good faith. If the organization fails to apply the methodology in good faith, the organization will be treated as not having met the requirements of section 6115. See section 6714 for the penalties that apply for failure to meet the requirements of section 6115.

(2) *Good faith estimate for goods or services that are not commercially available.* A good faith estimate of the value of goods or services that are not generally available in a commercial transaction may be determined by reference to the fair market value of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

(3) *Examples.* The following examples illustrate the rules of this paragraph (a).

Example 1. Facility not available on a commercial basis. Museum M, an organization described in section 170(c), is located in Community N. In return for a payment of \$50,000 or more, M

allows a donor to hold a private event in a room located in M. Private events other than those held by such donors are not permitted to be held in M. In Community N, there are four hotels, O, P, Q, and R, that have ballrooms with the same capacity as the room in M. Of these hotels, only O and P have ballrooms that offer amenities and atmosphere that are similar to the amenities and atmosphere of the room in M (although O and P lack the unique collection of art that is displayed in the room in M). Because the capacity, amenities, and atmosphere of ballrooms in O and P are comparable to the capacity, amenities, and atmosphere of the room in M, a good faith estimate of the benefits received from M may be determined by reference to the cost of renting either the ballroom in O or the ballroom in P. The cost of renting the ballroom in O is \$2500 and, therefore, a good faith estimate of the fair market value of the right to host a private event in the room at M is \$2500. In this example, the ballrooms in O and P are considered similar and comparable facilities to the room in M for valuation purposes, notwithstanding the fact that the room in M displays a unique collection of art.

Example 2. Services available on a commercial basis. Charity S is an organization described in section 170(c). S offers to provide a one-hour tennis lesson with Tennis Professional T in return for the first payment of \$500 or more that it receives. T provides one-hour tennis lessons on a commercial basis for \$100. Taxpayer pays \$500 to S and in return receives the tennis lesson with T. A good faith estimate of the fair market value of the lesson provided in exchange for Taxpayer's payment is \$100.

Example 3. Celebrity presence. Charity U is an organization described in section 170(c). In return for the first payment of \$1000 or more that it receives, U will provide a dinner for two followed by an evening tour of Museum V conducted by Artist W, whose most recent works are on display at V. W does not provide tours of V on a commercial basis. Typically, tours of V are free to the public. Taxpayer pays \$1000 to U and in return receives a dinner valued at \$100 and an evening tour of V conducted by W. Because tours of V are typically free to the public, a good faith estimate of the value of the evening tour conducted by W is \$0. In this example, the fact that Taxpayer's tour of V is conducted by W rather than V's regular tour guides does not render the tours dissimilar or incomparable for valuation purposes.

(b) *Certain goods or services disregarded.* For purposes of section 6115, an organization described in section 170(c) may disregard goods or services described in § 1.170A-13(f)(8)(i).

(c) *Value of the right to purchase tickets to college or university athletic events.* For purposes of section 6115, the right to purchase tickets for seating at an athletic event in exchange for a payment described in section 170(l) is treated as having a value equal to twenty percent of such payment.

(d) *Goods or services provided to employees or partners of donors—(1) Certain goods or services disregarded.* For purposes of section 6115, goods or services provided by an organization described in section 170(c) to employees

of a donor or to partners of a partnership that is a donor in return for a payment to the donee organization may be disregarded to the extent that the goods or services provided to each employee or partner are the same as those described in § 1.170A-13(f)(8)(i).

(2) *Description permitted in lieu of good faith estimate for other goods or services.* The written disclosure statement required by section 6115 may include a description of goods or services, in lieu of a good faith estimate of their value, if the donor is—

(i) An employer and, in return for the donor's quid pro quo contribution, an organization described in section 170(c) provides the donor's employees with goods or services other than those described in paragraph (d)(1) of this section; or

(ii) A partnership and, in return for its quid pro quo contribution, the organization provides partners in the partnership with goods or services other than those described in paragraph (d)(1) of this section.

(e) *Effective date.* This section applies to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of this section for contributions made on or after January 1, 1994.

PART 602 — OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

Par. 6. Section 602.101(c) is amended by adding the following entries in numerical order to the table:

§ 602.101 *OMB Control numbers.*

* * * * *

(c) * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
Section 1.170A-13(f)	1545-1464
* * * * *	
Section 1.6115-1	1545-1464

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved November 27, 1996.

Donald C. Lubick,
*Acting Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on December 13, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 16, 1996, 61 F.R. 65946)

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, this page.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-in Losses Following Ownership Change

The adjusted federal long-term rate is set forth for the month of February 1997. See Rev. Rul. 97-7, this page.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, this page.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, this page.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, this page.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, this page.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for February 1997.

Rev. Rul. 97-7

This revenue ruling provides various prescribed rates for federal income tax purposes for February 1997 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 97-7 TABLE 1

Applicable Federal Rates (AFR) for February 1997

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	5.81%	5.73%	5.69%	5.66%
110% AFR	6.40%	6.30%	6.25%	6.22%
120% AFR	7.00%	6.88%	6.82%	6.78%
130% AFR	7.59%	7.45%	7.38%	7.34%
<i>Mid-Term</i>				
AFR	6.38%	6.28%	6.23%	6.20%
110% AFR	7.03%	6.91%	6.85%	6.81%
120% AFR	7.68%	7.54%	7.47%	7.42%
130% AFR	8.33%	8.16%	8.08%	8.02%
150% AFR	9.64%	9.42%	9.31%	9.24%
175% AFR	11.29%	10.99%	10.84%	10.75%
<i>Long-Term</i>				
AFR	6.78%	6.67%	6.62%	6.58%
110% AFR	7.47%	7.34%	7.27%	7.23%
120% AFR	8.16%	8.00%	7.92%	7.87%
130% AFR	8.86%	8.67%	8.58%	8.52%

REV. RUL. 97-7 TABLE 2

Adjusted AFR for February 1997

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
adjusted AFR	3.68%	3.65%	3.63%	3.62%
<i>Mid-term</i>				
adjusted AFR	4.60%	4.55%	4.52%	4.51%
<i>Long-term</i>				
adjusted AFR	5.47%	5.40%	5.36%	5.34%

REV. RUL. 97-7 TABLE 3

Rates Under Section 382 for February 1997

Adjusted federal long-term rate for the current month	5.47%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.48%

REV. RUL. 97-7 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for February 1997

Appropriate percentage for the 70% present value low-income housing credit	8.55%
Appropriate percentage for the 30% present value low-income housing credit	3.66%

REV. RUL. 97-7 TABLE 5

Rate Under Section 7520 for February 1997

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

7.6%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, page 14.

Section 6335.—Sale of Seized Property

26 CFR 301.6335-1: Sale of seized property

T.D. 8691

**DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301**

Sale of Seized Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the sale of seized property. The final regulations reflect changes concerning the setting of a minimum price for seized property by the Tax Reform Act of 1986. The regulations affect all sales of seized property.

EFFECTIVE DATE: December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Kevin B. Connelly, (202) 622-3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the sale of seized property under section 6335 of the Internal Revenue Code (Code). The Tax Reform Act of 1986 amended section 6335(e), relating to the manner and conditions of sale, to require the Secretary to determine whether it would be in the best interest of the United States to buy seized

property at the minimum price set by the Secretary. On June 13, 1996, a notice of proposed rulemaking reflecting this change was published in the **Federal Register** (61 FR 30012). No comments responding to the notice of proposed rulemaking were received, and no public hearing was requested or held. The final regulations are adopted as proposed.

Explanation of provisions

Section 1570 of the Tax Reform Act of 1986 amended section 6335(e) of the Code to require the Secretary to determine before the sale of seized property whether it would be in the best interest of the United States to purchase such property at the minimum price set by the Secretary. The best interest determination is to be based on criteria prescribed by the Secretary. If, at the sale, one or more persons offer at least the minimum price, the property shall be sold to the highest bidder. If no one offers at least the minimum price and the Secretary has determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property will be declared sold to the United States for the minimum price. If no one offers the minimum price and the Secretary has not determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property shall be released to the owner of the property and the expense of the levy and sale shall be added to the amount of tax for the collection of which the United States made the levy. Any property released shall remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Code.

The regulations reflect the changes made by the Tax Reform Act of 1986. The regulations authorize district directors to make the required determination whether it would be in the best interest of the United States to purchase seized property for the minimum price. In addition, the regulations set forth factors

the district director may consider when determining the best interest of the United States. The district director may consider all relevant facts and circumstances including for example: (1) marketability of the property; (2) cost of maintaining the property; (3) cost of repairing or restoring the property; (4) cost of transporting the property; (5) cost of safeguarding the property; (6) cost of potential toxic waste cleanup; and (7) other factors pertinent to the type of property. Special Analyses

It has been determined that this Treasury decision 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6335-1 is amended as follows:

1. Paragraph (c)(3) is revised.

2. Paragraphs (c)(4) through (c)(9) are redesignated as paragraphs (c)(5) through (c)(10), respectively.

3. New paragraph (c)(4) is added.

The addition and revision read as follows:

§ 301.6335-1 Sale of seized property.

* * * * *

(c) * * *

(3) *Determinations relating to minimum price*—(i) *Minimum price*. Before the sale of property seized by levy, the district director shall determine a minimum price, taking into account the expenses of levy and sale, for which the property shall be sold. The internal revenue officer conducting the sale may either announce the minimum price before the sale begins, or defer announcement of the minimum price until after the receipt of the highest bid, in which case, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(ii) *Purchase by the United States*. Before the sale of property seized by levy, the district director shall determine whether the purchase of property by the United States at the minimum price would be in the best interest of the United States. In determining whether the purchase of property would be in the best interest of the United States, the district director may consider all relevant facts and circumstances including for example—

- (a) Marketability of the property;
- (b) Cost of maintaining the property;

(c) Cost of repairing or restoring the property;

(d) Cost of transporting the property;

(e) Cost of safeguarding the property;

(f) Cost of potential toxic waste cleanup; and

(g) Other factors pertinent to the type of property.

(iii) *Effective date*. This paragraph (c)(3) applies to determinations relating to minimum price made on or after December 17, 1996.

(4) *Disposition of property at sale*—(i) *Ale to highest bidder at or above minimum price*. If one or more persons offer to buy the property for at least the amount of the minimum price, the property shall be sold to the highest bidder.

(ii) *Property deemed sold to United States at minimum price*. If no one offers at least the amount of the minimum price for the property and the Secretary has determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property shall be declared to be sold to the United States for the minimum price.

(iii) *Release to owner*. If the property is not declared to be sold under paragraph (c)(4)(i) or (ii) of this section, the property shall be released to the owner of the property and the expense of the levy and sale shall be added to the amount of tax for the collection of which the United States made the levy. Any property released under this paragraph (c)(4)(iii) shall remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Internal Revenue Code.

(iv) *Effective date*. This paragraph (c)(4) applies to dispositions of property at sale made on or after December 17, 1996.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved November 19, 1996.

Donald C. Lubick,
Acting Assistant Secretary of Treasury.

(Filed by the Office of the Federal Register on December 16, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 17, 1996, F.R. 66216)

Section 7121.—Closing Agreements

What are the procedures under which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code relating to use of proceeds? See Rev. Proc. 97-15, page 21.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, page 14.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 1997. See Rev. Rul. 97-7, page 14.

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and regulations.
(Also Part I, §§ 103, 141, 145; 1.141-3, 1.145-2.)

Rev. Proc. 97-13

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth conditions under which a management contract does not result in private business use under § 141(b) of the Internal Revenue Code of 1986. This revenue procedure also applies to determinations of whether a management contract causes the test in § 145(a)(2)(B) of the 1986 Code to be met for qualified 501(c)(3) bonds.

SECTION 2. BACKGROUND

.01 *Private Business Use.*

(1) Under § 103(a) of the 1986 Code, gross income does not include interest on any state or local bond. Under § 103(b)(1) of the 1986 Code, however, § 103(a) of the 1986 Code does not apply to a private activity bond, unless it is a qualified bond under § 141(e) of the 1986 Code. Section 141(a)(1) of the 1986 Code defines “private activity bond” as any bond issued as part of an issue that meets both the private business use and the private security or payment tests. Under § 141(b)(1) of the 1986 Code, an issue generally meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Under § 141(b)(6)(A) of the 1986 Code, private business use means direct or indirect use in a trade or business carried on by any person other than a governmental unit. Section 145(a) of the 1986 Code also applies the private business use test of § 141(b)(1) of the 1986 Code, with certain modifications.

(2) Corresponding provisions of the Internal Revenue Code of 1954 set forth the requirements for the exclusion from gross income of the interest on state or local bonds. For purposes of this revenue procedure, any reference to a 1986 Code provision includes a reference to the corresponding provision, if any, under the 1954 Code.

(3) Private business use can arise by ownership, actual or beneficial use of property pursuant to a lease, a management or incentive payment contract, or certain other arrangements. The Conference Report for the Tax Reform Act of 1986, provides as follows:

The conference agreement generally retains the present-law rules under which use by persons other than governmental units is determined for purposes of the trade or business use test. Thus, as under present law, the use of bond-financed property is treated as a use of bond proceeds. As under present law, a person may be a user of bond proceeds and bond-financed property as a result of (1) ownership or (2) actual or beneficial use of property pursuant to a lease, a management or incentive payment contract, or (3) any other arrangement such as a take-or-pay or other output-type contract.

2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-687-688, (1986) 1986-3 (Vol. 4) C.B. 687-688 (footnote omitted).

(4) A management contract that gives a nongovernmental service provider an ownership or leasehold interest in financed property is not the only situation in which a contract may result in private business use.

(5) Section 1.141-3(b)(4)(i) of the Income Tax Regulations provides, in general, that a management contract (within the meaning of § 1.141-3(b)(4)(ii)) with respect to financed property may result in private business use of that property, based on all the facts and circumstances.

(6) Section 1.141-3(b)(4)(i) provides that a management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility.

(7) Section 1.141-3(b)(4)(iii), in general, provides that certain arrangements generally are not treated as management contracts that may give rise to private business use. These are—

(a) Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing or similar services);

(b) The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services, if those privileges are available to all

qualified physicians in the area, consistent with the size and nature of its facilities;

(c) A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property (as defined in § 168(i)(10) of the 1986 Code), if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and

(d) A contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

(8) Section 1.145-2(a) provides generally that §§ 1.141-0 through 1.141-15 apply to § 145(a) of the 1986 Code.

(9) Section 1.145-2(b)(1) provides that in applying §§ 1.141-0 through 1.141-15 to § 145(a) of the 1986 Code, references to governmental persons include section 501(c)(3) organizations with respect to their activities that do not constitute unrelated trades or businesses under § 513(a) of the 1986 Code.

.02 *Existing Advance Ruling Guidelines.* Rev. Proc. 93-19, 1993-1 C.B. 526, contains advance ruling guidelines for determining whether a management contract results in private business use under § 141(b) of the 1986 Code.

SECTION 3. DEFINITIONS

.01 *Adjusted gross revenues* means gross revenues of all or a portion of a facility, less allowances for bad debts and contractual and similar allowances.

.02 *Capitation fee* means a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. For example, a capitation fee includes a fixed dollar amount payable per month to a medical service provider for each member of a health maintenance organization plan for whom the provider agrees to provide all needed medical services for a specified period. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to

protect the service provider against risks such as catastrophic loss.

.03 *Management contract* means a management, service, or incentive payment contract between a qualified user and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract. See §§ 1.141–3(b)(4)(ii) and 1.145–2. .

.04 *Penalties* for terminating a contract include a limitation on the qualified user’s right to compete with the service provider; a requirement that the qualified user purchase equipment, goods, or services from the service provider; and a requirement that the qualified user pay liquidated damages for cancellation of the contract. In contrast, a requirement effective on cancellation that the qualified user reimburse the service provider for ordinary and necessary expenses or a restriction on the qualified user against hiring key personnel of the service provider is generally not a contract termination penalty. Another contract between the service provider and the qualified user, such as a loan or guarantee by the service provider, is treated as creating a contract termination penalty if that contract contains terms that are not customary or arm’s-length that could operate to prevent the qualified user from terminating the contract (for example, provisions under which the contract terminates if the management contract is terminated or that place substantial restrictions on the selection of a substitute service provider).

.05 *Periodic fixed fee* means a stated dollar amount for services rendered for a specified period of time. For example, a stated dollar amount per month is a periodic fixed fee. The stated dollar amount may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards. Capitation fees and per-unit fees are not periodic fixed fees.

.06 *Per-unit fee* means a fee based on a unit of service provided specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program, or the qualified user. For example, a stated dollar amount for each specified medical procedure performed, car parked, or passenger mile is a per-unit fee. Separate billing arrangements between physicians and hospitals generally are treated as per-unit fee arrangements.

.07 *Qualified user* means any state or local governmental unit as defined in § 1.103–1 or any instrumentality thereof. The term also includes a section 501(c)(3) organization if the financed property is not used in an unrelated trade or business under § 513(a) of the 1986 Code. The term does not include the United States or any agency or instrumentality thereof.

.08 *Renewal option* means a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

.09 *Service provider* means any person other than a qualified user that provides services under a contract to, or for the benefit of, a qualified user.

SECTION 4. SCOPE

This revenue procedure applies when, under a management contract, a service provider provides management or other services involving property financed with proceeds of an issue of state or local bonds subject to § 141 or § 145(a)(2)(B) of the 1986 Code.

SECTION 5. OPERATING GUIDELINES FOR MANAGEMENT CONTRACTS

.01 *In general*. If the requirements of section 5 of this revenue procedure are satisfied, the management contract does not itself result in private business use. In addition, the use of financed property, pursuant to a management contract meeting the requirements of section 5 of this revenue procedure, is not private business use if that use is functionally related and subordinate to that management contract and that use is not, in substance, a separate contractual agreement (for example, a separate lease of a portion of the financed property). Thus,

for example, exclusive use of storage areas by the manager for equipment that is necessary for it to perform activities required under a management contract that meets the requirements of section 5 of this revenue procedure, is not private business use.

.02 *General compensation requirements*.

(1) *In general*. The contract must provide for reasonable compensation for services rendered with no compensation based, in whole or in part, on a share of net profits from the operation of the facility. Reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties is not by itself treated as compensation.

(2) *Arrangements that generally are not treated as net profits arrangements*. For purposes of § 1.141–3(b)(4)(i) and this revenue procedure, compensation based on—

(a) A percentage of gross revenues (or adjusted gross revenues) of a facility or a percentage of expenses from a facility, but not both;

(b) A capitation fee; or

(c) A per-unit fee is generally not considered to be based on a share of net profits.

(3) *Productivity reward*. For purposes of § 1.141–3(b)(4)(i) and this revenue procedure, a productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or adjusted gross revenues), or reductions in total expenses (but not both increases in gross revenues (or adjusted gross revenues) and reductions in total expenses) in any annual period during the term of the contract, generally does not cause the compensation to be based on a share of net profits.

(4) *Revision of compensation arrangements*. In general, if the compensation arrangements of a management contract are materially revised, the requirements for compensation arrangements under section 5 of this revenue procedure are retested as of the date of the material revision, and the management contract is treated as one that was newly entered into as of the date of the material revision.

.03 *Permissible Arrangements*. The management contract must be described in section 5.03(1), (2), (3), (4), (5), or (6) of this revenue procedure.

(1) *95 percent periodic fixed fee arrangements*. At least 95 percent of the compensation for services for each annual period during the term of the

contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 15 years. For purposes of this section 5.03(1), a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

(2) *80 percent periodic fixed fee arrangements.* At least 80 percent of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 10 years. For purposes of this section 5.03(2), a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

(3) *Special rule for public utility property.* If all of the financed property subject to the contract is a facility or system of facilities consisting of predominantly public utility property (as defined in § 168(i)(10) of the 1986 Code), then “20 years” is substituted—

(a) For “15 years” in applying section 5.03(1) of this revenue procedure; and

(b) For “10 years” in applying section 5.03(2) of this revenue procedure.

(4) *50 percent periodic fixed fee arrangements.* Either at least 50 percent of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee. The term of the contract, including all renewal options, must not exceed 5 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the third year of the contract term.

(5) *Per-unit fee arrangements in certain 3-year contracts.* All of the

compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fixed fee. The term of the contract, including all renewal options, must not exceed 3 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the second year of the contract term.

(6) *Percentage of revenue or expense fee arrangements in certain 2-year contracts.* All the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fee. During the start-up period, however, compensation may be based on a percentage of either gross revenues, adjusted gross revenues, or expenses of a facility. The term of the contract, including renewal options, must not exceed 2 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the first year of the contract term. This section 5.03(6) applies only to—

(a) Contracts under which the service provider primarily provides services to third parties (for example, radiology services to patients); and

(b) Management contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (for example, a contract for general management services for the first year of operations).

.04 No Circumstances Substantially Limiting Exercise of Rights.

(1) *In general.* The service provider must not have any role or relationship with the qualified user that, in effect, substantially limits the qualified user’s ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

(2) *Safe harbor.* This requirement is satisfied if—

(a) Not more than 20 percent of the voting power of the governing body of the qualified user in the aggregate is vested in the service provider and its directors, officers, shareholders, and employees;

(b) Overlapping board members do not include the chief executive officers of the service provider or its governing body or the qualified user or its governing body; and

(c) The qualified user and the service provider under the contract are not related parties, as defined in § 1.150–1(b).

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 93–19, 1993–1 C.B. 526, is made obsolete on the effective date of this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for any management contract entered into, materially modified, or extended (other than pursuant to a renewal option) on or after May 16, 1997. In addition, an issuer may apply this revenue procedure to any management contract entered into prior to May 16, 1997.

DRAFTING INFORMATION

The principal author of this revenue procedure is Loretta J. Finger of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure contact Loretta J. Finger on (202) 622–3980 (not a toll-free call).

26 CFR 601.601: Rules and regulations.
(Also Part I, §§ 103, 141, 145; 1.141–3, 1.145–2.)

Rev. Proc. 97–14

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth conditions under which a research agreement does not result in private business use under § 141(b) of the Internal Revenue Code of 1986. This revenue procedure also applies to determinations of whether a research agreement causes the test in § 145(a)(2)(B) of the 1986 Code to be met for qualified 501(c)(3) bonds.

SECTION 2. BACKGROUND

.01 Private Business Use.

(1) Under § 103(a) of the 1986 Code, gross income does not include interest on any state or local bond. Under § 103(b)(1) of the 1986 Code, however, § 103(a) of the 1986 Code does not apply to a private activity bond, unless it is a qualified bond under § 141(e) of the 1986 Code. Section 141(a)(1) of the 1986 Code defines “private activity bond” as any bond issued as part of an issue that meets both the private business use and the private security or payment tests. Under

§ 141(b)(1) of the 1986 Code, an issue generally meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Under § 141(b)(6)(A) of the 1986 Code, private business use means direct or indirect use in a trade or business carried on by any person other than a governmental unit. Section 145(a) of the 1986 Code also applies the private business use test of § 141(b)(1) of the 1986 Code, with certain modifications.

(2) Corresponding provisions of the Internal Revenue Code of 1954 set forth the requirements for the exclusion from gross income of the interest on state or local bonds. For purposes of this revenue procedure, any reference to a 1986 Code provision includes a reference to the corresponding provision, if any, under the 1954 Code.

.02 Section 1.141-3(b)(6)(i) of the Income Tax Regulations provides, in general, that an agreement by a nongovernmental person to sponsor research performed by a governmental person may result in private business use of the property used for the research, based on all of the facts and circumstances.

.03 Section 1.141-3(b)(6)(ii) provides in general that a research agreement with respect to financed property results in private business use of that property if the sponsor is treated as the lessee or owner of financed property for federal income tax purposes.

.04 Section 1.145-2(a) provides generally that §§ 1.141-0 through 1.141-15 apply to § 145(a) of the 1986 Code.

.05 Section 1.145-2(b)(1) provides that, in applying §§ 1.141-0 through 1.141-15 to § 145(a) of the 1986 Code, references to governmental persons include section 501(c)(3) organizations with respect to their activities that do not constitute unrelated trades or businesses under § 513(a) of the 1986 Code.

SECTION 3. DEFINITIONS

.01 *Basic research*, for purposes of § 141 of the 1986 Code, means any original investigation for the advancement of scientific knowledge not having a specific commercial objective. For example, product testing supporting the trade or business of a specific nongovernmental person is not treated as basic research.

.02 *Qualified user* means any state or local governmental unit as defined in § 1.103-1 or any instrumentality

thereof. The term also includes a section 501(c)(3) organization if the financed property is not used in an unrelated trade or business under § 513(a) of the 1986 Code. The term does not include the United States or any agency or instrumentality thereof.

.03 *Sponsor* means any person, other than a qualified user, that supports or sponsors research under a contract.

SECTION 4. SCOPE

This revenue procedure applies when, under a research agreement, a sponsor uses property financed with proceeds of an issue of state or local bonds subject to § 141 or § 145(a)(2)(B) of the 1986 Code.

SECTION 5. OPERATING GUIDELINES FOR RESEARCH AGREEMENTS

.01 *In general*. If a research agreement is described in either section 5.02 or 5.03 of this revenue procedure, the research agreement itself does not result in private business use.

.02 *Corporate-sponsored research*. A research agreement relating to property used for basic research supported or sponsored by a sponsor is described in this section 5.02 if any license or other use of resulting technology by the sponsor is permitted only on the same terms as the recipient would permit that use by any unrelated, non-sponsoring party (that is, the sponsor must pay a competitive price for its use), with the price paid for that use determined at the time the license or other resulting technology is available for use. Although the recipient need not permit persons other than the sponsor to use any license or other resulting technology, the price paid by the sponsor must be no less than the price that would be paid by any non-sponsoring party for those same rights.

.03 *Cooperative research agreements*. A research agreement relating to property used pursuant to a joint industry-governmental cooperative research arrangement is described in this section 5.03 if—

(1) Multiple, unrelated sponsors agree to fund governmentally performed basic research;

(2) The research to be performed and the manner in which it is to be performed (for example, selection of the personnel to perform the research) is determined by the qualified user;

(3) Title to any patent or other product incidentally resulting from the basic research lies exclusively with the qualified user; and

(4) Sponsors are entitled to no more than a nonexclusive, royalty-free license to use the product of any of that research.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for any research agreement entered into on or after May 16, 1997. In addition, an issuer may apply this revenue procedure to any research agreement entered into prior to May 16, 1997.

DRAFTING INFORMATION

The principal author of this revenue procedure is Loretta J. Finger of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure contact Loretta J. Finger on (202) 622-3980 (not a toll-free call).

26 CFR 601.202: *Closing agreements*. (Also Part I, §§ 57, 103, 141, 142, 144, 145, 147, 7121; 1.141-12, 1.142-2, 1.144-2, 1.145-2, 1.147-2.)

Rev. Proc. 97-15

SECTION 1. PURPOSE

This revenue procedure provides a program under which an issuer of state or local bonds may request a closing agreement with respect to outstanding bonds (1) to prevent the interest on those bonds from being includible in gross income of bondholders or (2) to prevent the interest on those bonds from being treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the Internal Revenue Code of 1986 relating to use of proceeds.

SECTION 2. BACKGROUND

.01 Under § 103(a) of the 1986 Code, gross income does not include interest on any state or local bond if the applicable requirements of §§ 141 through 150 of the 1986 Code are satisfied. These requirements include requirements relating to use of bond proceeds that must be met after the issue date.

.02 Sections 1.141-12, 1.142-2, 1.144-2, 1.145-2, and 1.147-2 of the Income Tax Regulations provide that, in the event that an action taken subsequent to the issue date causes an issue of state or local bonds to fail to meet certain requirements relating to use of proceeds, an issuer may generally take certain remedial actions to prevent interest on the bonds from becoming includible in gross income. Application of these remedial action provisions may not be possible or practicable for issuers in some cases.

.03 The remedial action permitted in § 1.141-12(f) applies to bonds that were not treated as private activity bonds on their issue date. Under this provision, if a subsequent action causes bonds of an issue to meet the private activity bond tests of § 141 of the 1986 Code, the bonds may be treated as reissued qualified private activity bonds on the date of the action for certain purposes, including §§ 55 through 57 of the 1986 Code.

.04 Section 57(a)(5) of the 1986 Code provides that the interest on certain qualified private activity bonds is treated as an item of tax preference for purposes of the alternative minimum tax.

.05 Corresponding provisions of the Internal Revenue Code of 1954 set forth requirements for the exclusion from gross income of the interest on an issue of state or local bonds. For purposes of this revenue procedure, any reference to a provision of the 1986 Code includes a reference to the corresponding provision, if any, under the 1954 Code.

SECTION 3. DESCRIPTION OF THE CLOSING AGREEMENT PROGRAM FOR SUBSEQUENT ACTIONS

.01 Under the program established by this revenue procedure, the Service will enter into closing agreements with issuers of state or local bonds. These closing agreements will provide that (1) the interest on bonds will not be includible in gross income of bondholders or (2) the interest on bonds will not be treated as an item of tax preference for purposes of the alternative minimum tax for bondholders, in each case solely as a result of an action subsequent to the issue date that causes those bonds to fail to meet certain requirements of §§ 141 through 150 of the 1986 Code relating to use of bond proceeds. The closing agreements will not resolve any other matter.

.02 In general, in the case of a closing agreement providing that the interest on bonds will not be includible in gross income of bondholders, the closing agreement will apply only to the period between the issue date of the bonds and the next date on which the bonds may be redeemed under their terms after the date of the closing agreement (the "next redemption date"). The next redemption date will be specified in the closing agreement.

.03 In general, in the case of a closing agreement providing that the interest on bonds will not be treated as an item of tax preference for purposes of the alternative minimum tax, the closing agreement will apply only to the period between the date of the subsequent action and the date specified in the closing agreement.

.04 This program is a compliance program but is not based upon an examination of an issue of bonds by the Service.

.05 Because this program does not arise out of an examination, consideration under this program does not preclude or impede an examination of the issuer, the bondholders, or the issue of bonds by the Service with respect to matters not addressed in the closing agreement.

.06 The intent underlying this program is to treat expeditiously all requests for closing agreements which are submitted in accordance with sections 5 and 6 of this revenue procedure. Accordingly, negotiations with issuers on the basis of mitigating circumstances of individual cases will not be entertained under the terms of this revenue procedure.

SECTION 4. SCOPE

.01 This revenue procedure applies only to failures to meet the requirements for excludability of interest from gross income in §§ 141 through 150 of the 1986 Code that can be remediated under §§ 1.141-12, 1.142-2, 1.144-2, 1.145-2, or 1.147-2 with respect to proceeds that have been spent. These remedial action provisions generally require that the initial use of proceeds of the issue of bonds, including the use of any facility financed with those proceeds, satisfied all the applicable requirements for tax-exempt bonds under §§ 103 and 141 through 150 of the 1986 Code. The requirements for excludability of interest from gross income in §§ 141 through 150 of the 1986 Code that can be

remediated under §§ 1.141-12, 1.142-2, 1.144-2, 1.145-2, and 1.147-2 are §§ 141(b)(1), 141(b)(3), 141(b)(4), 141(b)(5), 141(c), 142 (except paragraphs (d) and (f)), 144 (except paragraphs (a)(4), (a)(10), and (b)), 145(a), 147(c)(3), 147(d)(2) and (3), 147(e), and 147(f) of the 1986 Code. This revenue procedure has no effect on the application of the provisions set forth in §§ 150(b) and (c) of the 1986 Code.

.02 An issue of bonds that is under an examination by the Service is not eligible for the program. An issue of bonds is under examination if the issuer of the bonds has been notified in writing by the Service that the issue has been selected for examination.

SECTION 5. PROCEDURE

.01 An issuer seeking relief must request, within 180 days from the date of the subsequent action, a closing agreement following the procedures in this revenue procedure.

.02 In its request for a closing agreement under this revenue procedure, the issuer must include the following information relating to the issue of bonds:

(1) A copy of the completed and filed Form 8038;

(2) A copy of the final offering document, if any;

(3) A statement detailing the subsequent action;

(4) A statement explaining the computation of the proposed closing agreement amount, as described in section 6 of this revenue procedure; and

(5) In the case of a request for a closing agreement providing that the interest on bonds will not be includible in gross income of bondholders, a copy of the written notice (which may acknowledge that the issuer does not currently have funds on hand to redeem the nonqualified bonds) to the bondholders of the issue that:

(a) The nonqualified bonds will be redeemed on the next redemption date; and

(b) In the event the issuer fails to redeem the nonqualified bonds in accordance with the terms of the closing agreement on the next redemption date, the bonds of the issue will be treated as private activity bonds that are not qualified bonds as of that date.

.03 The closing agreement will be prepared by the Service and, in general, will be in substantially the same form

which is shown as an exhibit at the end of this revenue procedure.

.04 As a condition to the Service executing a closing agreement under this procedure, the following requirements must be met:

(1) The requirements of §§ 1.141-12(a), 1.142-2, 1.144-2, 1.145-2, or 1.147-2, as applicable, relating to conditions for remedial action must be satisfied.

(2) In the case of a closing agreement providing that the interest on bonds will not be includible in gross income of bondholders, the issuer must agree to:

(a) Notify the bondholders in writing, within 30 days after the date the closing agreement is executed by the Service, that:

(i) The nonqualified bonds will be redeemed on the next redemption date; and

(ii) In the event the issuer fails to redeem the nonqualified bonds in accordance with the terms of the closing agreement on the next redemption date, the bonds of the issue will be treated as private activity bonds that are not qualified bonds as of that date; and

(b) Not make any payment under the closing agreement from proceeds of bonds described in § 103(a) of the 1986 Code.

(3) In the case of a closing agreement providing that the interest on bonds will not be treated as an item of tax preference for purposes of the alternative minimum tax, the issuer must agree to not make any payment under the closing agreement from proceeds of bonds described in § 103(a) of the 1986 Code.

(4) In the case of a closing agreement providing that the interest on bonds will not be includible in gross income of bondholders, the issuer must execute, simultaneously with the execution by the issuer of the closing agreement, a § 6103(c) disclosure consent authorizing the Service to make public any returns and return information (as those terms are defined in § 6103(b) of the 1986 Code) of the issuer relating to the closing agreement under this revenue procedure, but only in the event the issuer fails to redeem the nonqualified bonds in accordance with the terms of the closing agreement.

(5) The issuer must pay, simultaneously with the execution by the issuer of the closing agreement, the applicable closing agreement amount computed under section 6 of this revenue procedure.

.05 A request for a closing agreement and the closing agreement under this revenue procedure must be signed by the issuer. The person who signs for an issuer must be an official of the issuer who is authorized to sign a Form 8038 and who has personal knowledge of the facts regarding bonds to be covered by the closing agreement, the subsequent action relating to the use of the proceeds of those bonds, and the computation of the proposed closing agreement amount described in section 6 of this revenue procedure.

.06 To sign the request for a closing agreement or to appear before the Service in connection with the request for a closing agreement, the issuer or the representative must comply with the requirements of sections 9.02(11) and (12) of Rev. Proc. 97-4, 1997-1 I.R.B. 97 or any successor to Rev. Proc. 97-4.

.07 The following declaration must accompany a request for a closing agreement and any factual information submitted after the original request or any change in the request at a later time: **“Under penalties of perjury, I declare that I have examined this request for a closing agreement, including accompanying documents, and that, to the best of my knowledge and belief, the facts presented in support of the requested closing agreement are true, correct, and complete.”** The declaration must be signed by the issuer, not the issuer’s representative.

.08 A request for a closing agreement must be clearly labeled as a request for a closing agreement under this revenue procedure and sent to the following address:

Internal Revenue Service
1111 Constitution Avenue, N.W.
Attention: CP:E:EO:P:2, Room 6052
Washington, D.C. 20224

SECTION 6. CLOSING AGREEMENT AMOUNT

.01 *In general.* Except as provided in section 6.04 of this revenue procedure, the closing agreement amount is equal to an estimate of the federal income tax liability that is not required to be paid with respect to interest accruing on the nonqualified bonds commencing on the date of the subsequent action, as provided in this section. The closing agreement amount is computed as follows:

(1) *Step 1.* Determine the amount of interest accruing on the nonqualified bonds in each calendar year, commenc-

ing on the date on which the subsequent action occurs and ending on the next redemption date;

(2) *Step 2.* Multiply the amount determined in section 6.01(1) of this revenue procedure for each calendar year by 0.29;

(3) *Step 3.* Determine the present value of each amount determined in section 6.01(2) of this revenue procedure for each calendar year in accordance with section 6.02 of this revenue procedure by assuming it is paid on April 15 in the following calendar year;

(4) *Step 4.* Determine the sum of the present value amounts determined in section 6.01(3) of this revenue procedure for all calendar years.

.02 *Computation of present value.* Present value must be computed as of the date on which the payment is sent to the Service.

(1) In the case of a closing agreement providing that the interest on bonds will not be includible in gross income of bondholders, the discount rate used to determine present value is the taxable applicable federal rate (semiannual compounding), determined as of the date of the subsequent action, for a term equal to the period between the date of the subsequent action and the next redemption date.

(2) In the case of a closing agreement providing that the interest on bonds will not be treated as an item of tax preference for purposes of the alternative minimum tax, the discount rate used to determine present value is the taxable applicable federal rate (semiannual compounding), determined as of the date of the subsequent action, for a term equal to the period between the date of the subsequent action and the date specified in the closing agreement.

.03 *Nonqualified bonds* has the same meaning as in §§ 1.141-12(j) or 1.142-2(e), as applicable. Nonqualified bonds that continue to be treated as tax-exempt because of a permissible remedial action under §§ 1.141-12(d), (e), or (f), 1.142-2(c), 1.144-2, 1.145-2, or 1.147-2, as applicable, will not be treated as nonqualified bonds for purposes of this closing agreement program.

.04 *Amount for closing agreement on item of tax preference.* In the case of a closing agreement providing that the interest on bonds will not be treated as an item of tax preference for purposes of the alternative minimum tax, the closing agreement amount is equal to an estimate of the federal income tax liability that is not required to be paid

because of this treatment commencing on the date of the subsequent action, as provided in this section. The closing agreement amount is computed as follows:

(1) *Step 1.* Determine the principal amount of nonqualified bonds that will be outstanding on January 1 of each calendar year commencing the calendar year in which the subsequent action occurs and ending the first calendar year in which the nonqualified bonds will no longer be outstanding;

(2) *Step 2.* Multiply the amount determined in section 6.04(1) of this revenue procedure for each calendar year by .0014;

(3) *Step 3.* Determine the present value of each amount determined in section 6.04(2) of this revenue procedure for each calendar year in accordance with section 6.02 of this revenue procedure by assuming it is paid on April 15 in the following calendar year;

(4) *Step 4.* Determine the sum of the present value amounts determined in section 6.04(3) of this revenue procedure for all calendar years.

SECTION 7. INQUIRIES

Inquiries, comments, or suggestions in regard to this revenue procedure should be directed to:

Internal Revenue Service
1111 Constitution Avenue, N.W.
Attention: CP:E:EO:P:2, Room 6052
Washington, D.C. 20224

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for bonds issued on or after May 16, 1997. In addition, an issuer may apply this revenue procedure to any bonds issued before May 16, 1997.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1528.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in section 5 of this revenue procedure. This information

is required by the Service to verify compliance with §§ 57, 103, 141, 142, 144, 145, and 147 of the 1986 Code, as applicable. This information will be used by the Service to enter into a closing agreement with the issuer and to establish the closing agreement amount. The collections of information are required to obtain a benefit. The likely respondents are state or local governments.

The estimated total annual reporting and/or recordkeeping burden is 75 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 3 hours, depending on individual circumstances, with an estimated average of 1.5 hours. The estimated number of respondents and/or recordkeepers is 50.

The estimated annual frequency of responses (used for reporting requirements only) is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Loretta J. Finger of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure contact Loretta J. Finger on (202) 622-3980 (not a toll-free call).

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS RELATING TO A SUBSEQUENT ACTION RELATING TO USE OF PROCEEDS

Under section 7121 of the Internal Revenue Code (the "Code"), _____ (the "Issuer") and the Commissioner of Internal Revenue (the "Commissioner" or "IRS") make this closing agreement (the "Agreement").

WHEREAS, the parties have determined the following facts and made the following legal conclusions and representations:

A. This Agreement is in settlement of issues raised in a request for a closing agreement under Rev. Proc. 97-15, 1997-5 I.R.B. 21, pertaining to the _____ (the "Bonds") issued on _____ (the "Issue Date").

B. This Agreement is not based upon an examination of the Bonds by the IRS and does not preclude or impede an examination of the Issuer, any holders of the Bonds, or the Bonds by the IRS with respect to matters not addressed in this Agreement.

C. The IRS has not formally asserted any claims against the Issuer, or sought to tax any holders of the Bonds on interest income on the Bonds.

D. The terms of this Agreement were arrived at pursuant to Rev. Proc. 97-15 and may differ from the terms of settlement of bond issues examined or to be examined by the IRS.

E. This Agreement is for the benefit of the past, present and future registered and beneficial owners of the Bonds during the period covered by this Agreement (collectively, the "Bondholders").

F. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: The first date on which the Bonds may be redeemed, under the terms of the bond documents for the Bonds after the date of this Agreement, is _____ (the "Next Redemption Date").]

[Insert additional premises on which this Agreement is based, including a description of the subsequent action causing the Bonds to fail to meet a requirement of the Code relating to use of proceeds. Specifically identify that requirement of the Code.]

NOW IT IS HEREBY DETERMINED AND AGREED PURSUANT TO THIS AGREEMENT EXECUTED BY THE PARTIES HERETO UNDER SECTION 7121 OF THE CODE THAT FOR FEDERAL INCOME TAX PURPOSES:

1. The Issuer shall pay [the amount computed under section 6 of Rev. Proc. 97-15] to the IRS upon the Issuer's execution of this Agreement. Payment of this amount shall not be made from proceeds of bonds described in section 103(a) of the Code. Payments of this amount shall be made by certified check payable to the "Internal Revenue Service." Payment must be sent, simultaneously with this Agreement executed by the Issuer, to Internal Revenue Service, Attention: CP:E:EO, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

2. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: The Bondholders are not required to include in their gross incomes any interest accrued on the Bonds from the Issue Date to the Next Redemption Date be-

cause of the violations set forth herein.] [In the case of a closing agreement entered into under section 3.01(2) of Rev. Proc. 97-15, provide as follows: The Bondholders are not required to treat interest accrued on the Bonds from [the date of the subsequent action] to [a specified date] as an item of tax preference for purposes of the alternative minimum tax, because of the violations set forth herein.]

3. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: Within 30 days after the date this Agreement is executed by the IRS, the Issuer must notify all Bondholders in writing that the Bonds will be redeemed on the Next Redemption Date and that, in the event that the Issuer fails to redeem the Bonds, the Bonds will be treated as private activity bonds that are not qualified bonds after the Next Redemption Date.]

4. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: The Issuer is required to redeem the Bonds on the Next Redemption Date. Further, the Issuer may not redeem the Bonds from proceeds of bonds described in section 103(a) of the Code.]

5. Notwithstanding anything to the contrary contained herein, the IRS may take any appropriate action with respect to the Bonds, including taxing the Bondholders on interest earned on the Bonds, for violations other than those set forth herein or for violations arising after the effective date of this Agreement.

6. This Agreement is executed with respect to a federal income tax liability of the Bondholders.

7. No income shall be recognized by any Bondholder as a result of this Agreement or any payments made pursuant to this Agreement.

8. No party shall endeavor by litigation or other means to attack the validity of this Agreement.

9. This Agreement may not be cited or relied upon by any person or entity whatsoever as precedent in the disposition of any other case.

10. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: The Issuer shall execute, upon the Issuer's execution of this Agreement, a consent meeting the requirements of section 6103(c) of the Code permitting the disclosure to the general public of information concerning this Agreement. The consent will permit such disclosures

only in the event the Issuer fails to redeem the Bonds in accordance with the terms of this Agreement.]

11. [In the case of a closing agreement entered into under section 3.01(1) of Rev. Proc. 97-15, provide as follows: In the event that the Bonds are retired prior to the Next Redemption Date, no amount paid by the Issuer under paragraph 1 of this Agreement may be refunded.] [In the case of a closing agreement entered into under section 3.01(2) of Rev. Proc. 97-15, provide as follows: In the event that the Bonds are retired prior to [the date specified in paragraph 2 of this Agreement], no amount paid by the Issuer under paragraph 1 of this Agreement may be refunded.]

12. This Agreement is final and conclusive except that—

a. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;

b. It is subject to the sections of the Code that expressly provide that effect be given to their provisions (including any stated exception for section 7122 of the Code) notwithstanding any other law or rule of law; and

c. It is subject to any law, enacted after the date of this Agreement, that applies to a tax period ending after the date of this Agreement covered by this Agreement.

By signing, the above parties certify that they have read and agreed to the terms of this Agreement.

ISSUER _____
TIN: _____
By: _____ Date: _____
[Name]
Title: _____

COMMISSIONER OF INTERNAL REVENUE
By: _____ Date: _____
[Name]
Title: _____

CONSENT TO DISCLOSE TAX INFORMATION

I [we] hereby authorize the Internal Revenue Service ("IRS") to make public any returns and return information (as those terms are defined in section 6103(b) of the Internal Revenue Code) of [INSERT NAME OF ISSUER] ("the Issuer") relating to the Closing Agreement ("Agreement") dated [INSERT DATE] between the Issuer, [INSERT NAME OF ANY OTHER PARTY

SIGNING THE AGREEMENT] and the Commissioner of Internal Revenue, concerning [INSERT NAME OF BOND ISSUE]. The above described information may be disclosed by the IRS to members of Congress, the press, or the general public. Such disclosures may be made only in the event the Issuer fails to redeem the Bonds in accordance with the terms of the Agreement.

I [we] am [are] aware that without this authorization the returns and return information of [INSERT NAME OF ISSUER] are confidential and are protected by law under the Internal Revenue Code.

I [we] hereby certify that I [we] have the authority to execute this consent to disclose on behalf of the Issuer.

NAME OF ISSUER: _____
EMPLOYER IDENTIFICATION NUMBER: _____
ISSUER'S ADDRESS: _____
NAME OF INDIVIDUAL EXECUTING CONSENT: _____
TITLE: _____
SIGNATURE: _____
DATE: _____

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, § 842.)

Rev. Proc. 97-16

SECTION 1. PURPOSE

This revenue procedure provides the domestic asset/liability percentages and domestic investment yields needed by foreign life insurance companies and foreign property and liability insurance companies to compute their minimum effectively connected net investment income under § 842(b) of the Internal Revenue Code for taxable years beginning after December 31, 1995. Instructions are provided for computing foreign insurance companies' liabilities for the estimated tax and installment payments of estimated tax for taxable years beginning after December 31, 1995. For more specific guidance regarding the computation of the amount of net investment income to be included by a foreign insurance company on its U.S. income tax return, see Notice 89-96, 96, 1989-2 C.B. 417. For the domestic asset/liability percentage and domestic investment yield, as well as instructions for computing foreign insurance companies' liabilities for estimated tax and installment payments of estimated tax for taxable

years beginning after December 31, 1994, see Rev. Proc. 96-23, 1996-1 C.B. 662.

SEC. 2. CHANGES

.01 DOMESTIC ASSET/LIABILITY PERCENTAGES FOR 1996. The Secretary determines the domestic asset/liability percentage separately for life insurance companies and property and liability insurance companies. For the first taxable year beginning after December 31, 1995, the relevant domestic asset/liability percentages are:

114.8 percent for foreign life insurance companies, and

170.2 percent for foreign property and liability insurance companies.

.02 DOMESTIC INVESTMENT YIELDS FOR 1996. The Secretary is required to prescribe separate domestic investment yields for foreign life insurance companies and for foreign property and liability insurance companies. For the first taxable year beginning after December 31, 1995, the relevant domestic investment yields are:

7.1 percent for foreign life insurance companies, and

5.7 percent for foreign property and liability insurance companies.

The domestic investment yields provided in this revenue procedure are based on tax return data rather than NAIC statement data.

SEC. 3. APPLICATION — ESTIMATED TAXES

To compute estimated tax and the installment payments of estimated tax due for taxable years beginning after December 31, 1995, a foreign insurance company must compute its estimated tax payments by adding to its income other than net investment income the greater of (i) its net investment income as determined under § 842(b)(5), that is actually effectively connected with the conduct of a trade or business within the United States for the relevant period, or (ii) the minimum effectively connected net investment income under § 842(b) that would result from using the most recently available domestic asset/liability percentage and domestic investment yield. Thus, for installment payments due after the release of this revenue procedure, the domestic asset/liability percentages and the domestic investment yields provided in this revenue procedure must be used to compute the minimum effectively connected net in-

vestment income. However, if the due date of an installment is less than 20 days after the date this revenue procedure is published in the Internal Revenue Bulletin, the asset/liability percentages and domestic investment yields provided in Rev. Proc. 96-23 may be used to compute the minimum effectively connected net investment income for such installment. For further guidance in computing estimated tax, see Notice 89-96.

SEC. 4. EFFECTIVE DATE

This revenue procedure is effective for taxable years beginning after December 31, 1995.

DRAFTING INFORMATION

The principal author of this revenue procedure is Ginny Chung of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure, please contact Ms. Chung at (202) 622-3870 (not a toll-free call), or write to the Internal Revenue Service, Office of the Associate Chief Counsel (International), 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:INTL:Br.5, Room 4562.

Part IV. Items of General Interest

Foundations Status of Certain Organizations

Announcement 97-9

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:

- Alabamians for Quality Education, Inc., Birmingham, AL
- Alpharetta Youth Football Association Inc., Alpharetta, GA
- American CFIDS Chronic Fatigue and Immune Dysfunction Syndrome Association Inc., Bartlett, TN
- Americus Literacy Action Inc., Americus, GA
- Antra Incorporated, Miami, FL
- Ark-La-Tex Crisis Pregnancy Center Inc., Shreveport, LA
- Art Judaica Educational Foundation, Oak Park, MI
- Association for the Developmentally Disabled Inc., Cape Coral, FL
- Autism Foundation Inc., Vero Beach, FL
- Baton Rouge Therapeutic Riding Center Inc., Baton Rouge, LA
- Berkley County Society for Prevention of Cruelty to Animals, Moncks Corner, SC
- Bible Themes Inc., Red Bay, AL
- Building a Dream Inc., Naples, FL
- Bulldog Sports Network Inc., Birmingham, AL
- Cambridge Jets Youth Track Club Association, Inc., Cambridge, MA
- Camp Alpha Inc., Baton Rouge, LA
- Chabad Lubavitch of N. Broward & Palm Beach Counties Inc., Margate, FL
- Charles Willis Ministries Inc., Lake Charles, LA
- Charlotte Genesis Inc., Charlotte, NC
- Charlotte HIV AIDS Network Inc., Port Charlotte, FL
- Charlotte IOTA Chapter CHI ETA PHI Inc., Charlotte, NC
- Cher Ami Home Corporation, New Orleans, LA
- Cher Ami Homes Gretna Louisiana Inc., New Orleans, LA
- Chestnut Street Mens Club Inc., Chattanooga, TN
- Christopher D. and Elka P. Norton Foundation of the Arts, Inc., Hobe Sound, FL
- Clayton County BPN Charitable Trust, Jonesboro, GA
- Cliffdale Area Sports Association, Fayetteville, NC
- Common Claws Inc., Plaquemine, LA
- Common Ground, Charlotte, NC
- Comp Inc., Baton Rouge, LA
- Corporate Health Research Inc., Danbury, CT
- Counseling Clinic Inc., Miami, FL
- Coweta County Foster Parents Association Inc., Newnan, GA
- Day Star Christian Ministries, Inc., Salisbury, NC
- D'Iberville Pee Wee Football League Inc., D'Iberville, MS
- Emmaus Road Outreach Ministries Inc., Pensacola, FL
- Every Kid of Palm Beach County Incorporated, West Palm Beach, FL
- Faith Ministries Inc., Dalton, GA
- Family Renewal Institute Inc., Naples, FL
- Family Resource Center Communities Inc., Baton Rouge, LA
- Family Shelter Inc., Charlotte, NC
- First Heritage, Inc., New York, NY
- Flagler County Youth Soccer League Inc., Palm Coast, FL
- Florida Keys Marine Sanctuary Inc., Marathon, FL
- Floridians for Educational Choice Foundation Inc., Tallahassee, FL
- Fragile X Association of Georgia Inc., Marietta, GA
- Friends of Fort Clinch Inc., Fernandina Beach, FL
- Friends of Murphy Harpst and Vashti Inc., Atlanta, GA
- Friends of the Animal Shelter, Newport, TN
- Georgia Branch of the Orton Dyslexia Society Inc., Atlanta, GA
- Greater Golden Triangle Crime Stoppers Inc., Columbus, MS
- Greenville Junior Chamber Foundation, Greenville, SC
- Incentive Project Inc., New Orleans, LA
- Indianapolis FIRE Rally Inc., Indianapolis, IN
- Institute for Southern Culture Inc., Atlanta, GA
- Interfaith Volunteer Caregiver of Northeast Georgia Inc., Gainesville, GA
- International Medical Institute Atlanta Inc., Atlanta, GA
- Islamic Society of Triad, Winston Salem, NC
- Isle Piquant Sugar Foundation, Lydia, LA
- Joyland-Highpoint Community Coalition Inc., Atlanta, GA
- Kenwood Place II, Inc., Indianapolis, IN
- Laser Documentation, New Orleans, LA
- Leadership Monroe Inc., Amory, MS
- Lecanto High School Block and Tackle Booster Club Inc., Lecanto, FL
- Le Conte Woodmanston Foundation Inc., Hinesville, GA
- Louisiana the Beautiful Inc., Baton Rouge, LA
- Manatee AIDS Prevention & Support Inc., Bradenton, FL
- Majorie Bingham Foundation Inc., Gainesville, FL
- Metropolitan Chorale of Miami, Miami, FL
- Miami Artistic Gymnastics Inc., Miami, FL
- Mission Marti: A Cuban National Renaissance Inc., Miami, FL
- MountainMovers, Inc., Glassboro, NJ
- National Association of Black Narcotics Agents, Inc., Detroit, MI
- NBC USA Housing INC Eighteen, Newark, OH
- NBC-USA Housing INC Twenty Five, Newark, OH
- Neighborhood Action United Tenants Association Inc., Fort Walton Beach, FL
- New Orleans Pro Bono Project, New Orleans, LA
- New Orleans Symphony Chamber Orchestra Society, New Orleans, LA
- North Carolina Desert Storm Memorial Foundation Inc., Charlotte, NC
- Northshore High School Band Boosters Incorporated, Slidell, LA
- Northwest Viking Softball Boosters of Guilford County North Carolina, Greensboro, NC
- Oak Grove Athletic Booster Club Inc., Hattiesburg, MS
- Ohio Valley Dive Team Inc., Wheeling, WV
- Oops Inc. Our Own Place Inc., Battle Creek, MI

Orange Mound Development Corporation, Memphis, TN
Palmetto Lacross Inc., Miami, FL
Pan American Coalition of Welding Institutions PACWI Inc., Miami, FL
Parent Teen Resource Foundation Inc., Tallahassee, FL
Past Commanders Club, Allen Park, MI
Potluck Inc., Little Rock, AR
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Project M A G I C Foundation Inc., Atlanta, GA
Pungo Basin Improvement Association Inc., Belhaven, NC
River Region Recovery Residences Inc., New Orleans, LA
Road to Life Ministry, Cleveland, OH
Rock Radio Group, Durham, NC
Ruah, Inc., Manchester, NH
Rugby Public Library and Community Center, Rugby, TN

St. Peters Centers for Comprehensive Services Inc., Winston Salem, NC
Sahara Fund Inc., Miami Beach, FL
Second Chance Inc., Mena, AR
Sherman Michael Anderson Trust Inc., Hickory, NC
Signal Mountain Youth Basketball League Inc., Signal Mountain, TN
South Atlanta Civic League II Inc., Atlanta, GA
South Florida Affordable Housing Corporation, West Palm Beach, FL
STBI Corp., Orlando, FL
Submarine Officers Wives Club of Charleston Inc., Charleston, SC
Subsahara Relief Organization, N. Kingstown, RI
Tau Alpha Chi Inc., Atlanta, GA
Tax Clinics Inc., Athens, GA
Telephone History Institute, Dublin, CA

Washington & Madison County Casa Inc., Fayetteville, AR
Washington County Actors Community, Salem, IN
Youth Foundation of Louisiana, Baton Rouge, LA

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.

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 Section 330, Title 31 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any person who has violated the rules and regulations governing the recognition of attorneys, certified public accountants, enrolled agents or enrolled actuaries to practice before the Internal Revenue Service.

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 under suspension from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify such disbarred or suspended practitioners, 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 of disbarment or period of suspension. This announcement will appear in the weekly Bulletin for five successive weeks or as long as it is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended or disbarred and will be consolidated and published in the Cumulative Bulletin.

After due notice and opportunity for hearing before an administrative law judge, the following individuals have been disbarred from further practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Noske, Joan Marie	Bismarck, ND	CPA	September 7, 1996
Dalrymple, John K.	Troy, MI	CPA	September 26, 1996

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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Key to Abbreviations:

RR	Revenue Ruling
RP	Revenue Procedure
TD	Treasury Decision
CD	Court Decision
PL	Public Law
EO	Executive Order
DO	Delegation Order
TDO	Treasury Department Order
TC	Tax Convention
SPR	Statement of Procedural Rules
PTE	Prohibited Transaction Exemption

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