munity as flood prone, whichever is later, the requirement will apply to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program and flood insurance has been purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. Therefore notice and public procedure under 5 U.S.C. 553(b) are impracticable, unnecessary, and contrary to the public interest.

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. 551. The entry reads as follows:

§ 1914.4 List of eligible communities.

* * * * *

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	State map repository	Local map repository
*	*	*	*	*	*	*
Alaska	Bethel	Bethel, city of	May 12, 1975, Emergency	June 28, 1974		
Alabama	Jefferson	Warrior, city of	do	Dec. 27, 1974		
Arizona	Graham	Pima, town of	do	May 24, 1974		
Arkansas	Jackson	Diaz, city of	do	Mar. 8, 1974		
Do.	Poinsett	Tyronza, city of	do			
California	Riverside	Corona, city of	do	May 24, 1974		
Do.	Santa Clara	Milipitas, city of	do	Mar. 22, 1974		
Do.	Butte	Oroville, city of	do	June 7, 1974		
Connecticut	Hartford	Rocky Hill, town of	do	do		
Florida	Bay	Unincorporated area	do	Jan. 17, 1975		
Do.	Orange	Winter Garden, city of	do	July 19, 1974		
Georgia	Madison	Comer, city of	do	Apr. 12, 1974		
Do.	Coweta	Newnan, city of	do	May 31, 1974		
Illinois	Lake	Antioch, village of	do	Apr. 5, 1974		
Do.	McLean	Hudson, village of	do	June 14, 1974		
Do.	Williamson	Marion, city of	do	June 7, 1974		
Do.	McLean	Towanda, village of	do	June 28, 1974		
Kentucky	McCracken	Paducah, city of	do			
Maine	Somerset	Moscow, town of	do	Dec. 6, 1974		
Do.	Knox	Thomaston, town of	do	Sept. 6, 1974		
Michigan	Hillsdale	Hillsdale, city of	do	June 28, 1974		
Montana	Gallatin	Bozeman, city of	do	Feb. 15, 1974		
Do.	Park	Livingston, city of	do	Jan. 1, 1974		
Nebraska	Franklin	Franklin, city of	do	May 24, 1974		
Do.	Stanton	Stanton, town of	do	May 3, 1974		
New Hampshire	Rockingham	Derry, town of	do	Sept. 13, 1974		
Do.	do	Exeter, town of	do	Sept. 20, 1974		
Do.	Sullivan	Newport, town of	do	June 14, 1974		
New York	Jefferson	Carthage, village of	do	May 10, 1974		
Ohio	Stark	Minerva, village of	do	May 17, 1974		
Do.	Seneca	Tiffin, city of	do	Mar. 1, 1974		
Do.	Butler	Trenton, city of	do	May 10, 1974		
Do.	Greene	Xenia, city of	do			
Oklahoma	Murray	Sulphur, city of	do	Nov. 28, 1973		
Oregon	Union	North Powder, city of	do	Aug. 30, 1974		
Pennsylvania	Wayne	Buckingham, township of	do	Nov. 15, 1974		
Do.	Beaver	Freedom, borough of	do	Feb. 1, 1974		
Do.	Schuylkill	Mechanicsville, borough of	do	Nov. 1, 1974		
Do.	Bedford	New Paris, borough of	do	Nov. 11, 1974		
Do.	Allegheny	Pine, township of	do	Aug. 2, 1974		
Do.	Wayne	Preston, township of	do	Nov. 15, 1974		
Do.	Cambria	Richland, township of	do			
Do.	Crawford	Saegertown, borough of	do	June 21, 1974		
Do.	Forest	Tionesta, borough of	do	Nov. 29, 1974		
Vermont	Addison	Salisbury, town of	do	Dec. 20, 1974		
West Virginia	Hardy	Moorefield, town of	do	May 31, 1974		
Do.	Wetzel	New Martinsville, city of	do	June 28, 1974		
Wisconsin	Pierce	Plum City, village of	do	July 19, 1974		

(National Flood Insurance Act of 1968 (title XIII, Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Secretary's delegation of authority to Federal Insurance Administrator, (34 FR 2680, Feb. 27, 1969) as amended, 39 FR 2787, Jan. 24, 1974)

Issued: May 6, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-14129 Filed 5-30-75;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[Income Tax Regulations; T.D. 7356]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Terminal Railroad Corporations and Their Shareholders

By a notice of proposed rule making appearing in the FEDERAL REGISTER for June 28, 1973 (38 FR 17010) an amendment of the Income Tax Regulations (26 CFR Part 1) was proposed in order to conform such regulations to the provisions of section 1 of the Act of October 23, 1962 (Public Law 87-870, 76 Stat. 1158), relating to terminal railroad corporations and their shareholders. After consideration of all relevant matter presented by interested persons regarding the rules proposed, the amendments of the regulations are adopted by this document, subject to the changes set forth below.

The Act of October 23, 1962 added a new section 281 to the Internal Revenue Code of 1954 which provides special rules for the computation of the taxable incomes of a terminal railroad corporation and its shareholders. In general, the regulations adopted by this Treasury decision provide that if income, which is earned from the operation of a railroad terminal, is used to reduce a charge that a terminal railroad corporation had made or would have made for terminal services rendered to any shareholder railroad corporation, then the terminal railroad corporation is not considered to have received the amount by which such charge was reduced. Similarly the amount by which the charge was reduced is not to be

treated as a dividend to, nor allowed as a deduction for, a railroad shareholder of the terminal railroad corporation.

Further the regulations provide that the terminal railroad corporation shall not be disallowed a deduction as a result of the reduced charge if such deduction is otherwise allowable to it.

Section 1.281–3(b)(2)(iii), as proposed, has been revised to include income derived from the sale or rental of advertising space at a terminal facility as related terminal income. This was done in response to an objection that the language in the proposed regulations limiting such treatment to the sale or rental of advertising space "on either the inside or outside of the terminal" was too restrictive.

Section 1.281–3(e), as proposed, has been revised to include within the definition of a railroad corporation, for the purposes of section 281, a corporation which, although it is not a common carrier, is a lessor of railroad equipment or facilities to a common carrier.

Adoption of amendment to the regulations. On June 28, 1973, a notice of proposed rule making with respect to the Income Tax Regulations (26 CFR Part 1) under section 281 of the Internal Revenue Code of 1954 to conform such regulations to the provisions of section 1 of the Act of October 23, 1962 (Public Law 87–870, 76 Sta. 1158) was published in the FEDERAL REGISTER (38 FR 17010). After consideration of all relevant matter presented by interested persons regarding the proposed rules, the amendment of the Income Tax Regulations under section 281 is hereby adopted as proposed, except that § 1.281–3 is amended by revising paragraphs (b)-(2)(iii) and (e) thereof to read as set forth below.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; (26 U.S.C. 7805))

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: May 27, 1975.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS

Sec.
1.281 Statutory provisions; terminal railroad corporations and their shareholders.
1.281–1 In general.
1.281–2 Effect of section 281 upon the computation of taxable income.
1.281–3 Definitions.
1.281–4 Taxable years affected.

There are inserted immediately after § 1.279–7 the following new sections:

TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS

§ 1.281 Statutory provisions; terminal railroad corporations and their shareholders.

SEC. 281. *Terminal railroad corporations and their shareholders*—(a) *Computation of taxable income of terminal railroad corporations*—(1) *In general.* In computing the taxable income of a terminal railroad corporation—

(A) Such corporation shall not be considered to have received or accrued—

(i) The portion of any liability of any railroad corporation, with respect to related terminal services provided by such corporation, which is discharged by crediting such liability with an amount of related terminal income, or

(ii) The portion of any charge which would be made by such corporation for related terminal services provided by it, but which is not made as a result of taking related terminal income into account in computing such charge; and

(B) No deduction otherwise allowable under this chapter shall be disallowed as a result of any discharge of liability described in subparagraph (A)(i) or as a result of any computation of charges in the manner described in subparagraph (A)(ii).

(2) *Limitation.* In the case of any taxable year ending after the date of the enactment of this section, paragraph (1) shall not apply to the extent that it would (but for this paragraph) operate to create (or increase) a net operating loss for the terminal railroad corporation for the taxable year.

(b) *Computation of taxable income of shareholders.* Subject to the limitation in subsection (a)(2), in computing the taxable income of any shareholder of a terminal railroad corporation, no amount shall be considered to have been received or accrued or paid or incurred by such shareholder as a result of any discharge of liability described in subsection (a)(1)(A)(i) or as a result of any computation of charges in the manner described in subsection (a)(1)(A)(ii).

(c) *Agreement required.*—In the case of any taxable year, subsections (a) and (b) shall apply with respect to any discharge of liability described in subsection (a)(1)(A)(i), and to any computation of charges in the manner described in subsection (a)(1)(A)(ii), only if such discharge or computation (as the case may be) was provided for in a written agreement, to which all of the shareholders of the terminal railroad corporation were parties, entered into before the beginning of such taxable year.

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

(1) *Terminal railroad corporation.*—The term "terminal railroad corporation" means a domestic railroad corporation which is not a member, other than as a common parent corporation, of an affiliated group (as defined in sec. 1504) and—

(A) All of the shareholders of which are domestic railroad corporations subject to part I of the Interstate Commerce Act;

(B) The primary business of which is the providing of railroad terminal and switching facilities and services to domestic railroad corporations subject to part I of the Interstate Commerce Act and to the shippers and passengers of such railroad corporations;

(C) A substantial part of the services of which for the taxable year is rendered to one or more of its shareholders; and

(D) Each shareholder of which computes its taxable income on the basis of a taxable year beginning or ending on the same day that the taxable year of the terminal railroad corporation begins or ends.

(2) *Related terminal income.* The term "related terminal income" means the income (determined in accordance with regulations prescribed by the Secretary or his delegate) of a terminal railroad corporation derived—

(A) From services or facilities of a character ordinarily and regularly provided by terminal railroad corporations for railroad corporations or for the employees, passengers, or shippers of railroad corporations;

(B) From the use by persons other than railroad corporations of portions of a facility, or a service, which is used primarily for railroad purposes;

(C) From any railroad corporation for services or facilities provided by such terminal railroad corporation in connection with railroad operations; and

(D) From the United States in payment for facilities or services in connection with mail handling.

For purposes of subparagraph (B), a substantial addition, constructed after the date of the enactment of this section, to a facility shall be treated as a separate facility.

(3) *Related terminal services.* The term "related terminal services" includes only services, and the use of facilities, taken into account in computing related terminal income.

(e) *Application to taxable years ending before the date of enactment.* In the case of any taxable year ending before the date of the enactment of this section—

(1) This section shall apply only to the extent that the taxpayer computed on its return, filed at or prior to the time (including extensions thereof) that the return for such taxable year was required to be filed, its taxable income in the manner described in subsection (a) in the case of a terminal railroad corporation, or in the manner described in subsection (b) in the case of a shareholder of a terminal railroad corporation; and

(2) This section shall apply to a taxable year for which the assessment of any deficiency, or for which refund or credit of any overpayment, whichever is applicable, was prevented, on the date of the enactment of this section, by the operation of any law or rule of law (other than sec. 3760 of the Internal Revenue Code of 1939 or sec. 7121 of this title, relating to closing agreements, and sec. 3761 of the Internal Revenue Code of 1939 or sec. 7122 of this title, relating to compromises), only—

(A) To the extent any overpayment of income tax would result from the recomputation of the taxable income of a terminal railroad corporation in the manner described in subsection (a),

(B) If claim for credit or refund of such overpayment, based upon such recomputation, is filed prior to 1 year after the date of the enactment of this section,

(C) To the extent that paragraph (1) applies, and

(D) If each shareholder of such terminal railroad corporation consents in writing to the assessment, within such period as may be agreed upon with the Secretary or his delegate, of any deficiency for any year to the extent attributable to the recomputation of its taxable income in the manner described in subsection (b) correlative to its allocable share of the adjustment of taxable income made by the terminal railroad corporation in its recomputation under subparagraph (A).

(f) *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section.

[Sec. 281 as added by sec. 1, Act of Oct. 23, 1962 (Public Law 87–870, 76 Stat. 1158)]

§ 1.281–1 In general.

Section 281 provides special rules for the computation of the taxable incomes of a terminal railroad corporation and its shareholders when the terminal railroad corporation, as a result of taking related terminal income into account,

reduces a charge which was made or which would be made for related terminal services furnished to a railroad corporation. Section 281 and paragraphs (a) and (b) of § 1.281–2 provide that the "reduced amount" described in paragraph (c) of § 1.281–2 is not includable in gross income of the terminal railroad corporation, is not treated as a dividend or other distribution to its railroad shareholders, and is not treated as an amount paid or incurred by the railroad shareholders to the terminal railroad corporation. Section 281 and paragraph (a)(2) of § 1.281–2 provide that no deduction otherwise allowable to a terminal railroad corporation shall be disallowed as a result of the "reduced amount" described in paragraph (c) of § 1.281–2. Section 1.281–3 defines the terms "terminal railroad corporation", "related terminal income", "related terminal services", "agreement", and "railroad corporation", Section 1.281–4 describes the effective dates and special rules for application of section 281 to taxable years ending before October 23, 1962.

§ 1.281–2 Effect of section 281 upon the computation of taxable income.

(a) *Computation of taxable income of terminal railroad corporations*—(1) *Income not considered received or accrued.* A terminal railroad corporation (as defined in paragraph (a) of § 1.281–3) shall not be considered to have received or accrued the "reduced amount" described in paragraph (c) of this section in the computation of its taxable income. Thus, income is not to be considered accrued or actually or constructively received by a terminal railroad corporation where, in the manner described in paragraph (c) of this section, (i) a charge which would be made to any railroad corporation for related terminal services is not made, or (ii) a portion of any liability payable by any railroad corporation with respect to related terminal services is discharged.

(2) *Deduction not disallowed.* In the computation of the taxable income of a terminal railroad corporation, a deduction relating to a "reduced amount", described in paragraph (c) of this section, which is otherwise allowable to it under chapter 1 of the Code (without regard to sec. 277) shall not be disallowed by reason of section 281. Thus, deductions for expenses attributable to services rendered to a shareholder are not to be disallowed to a terminal railroad corporation merely because, in the manner described in paragraph (c) of this section, (i) a charge which would be made to any railroad corporation for related terminal services is not made, or (ii) a portion of any liability payable by any railroad corporation with respect to related terminal services is discharged. To the extent that section 281 applies to a deduction relating to a "reduced amount", such deduction shall not be disallowed under section 277.

(b) *Computation of taxable income of shareholders*—(1) *Income not considered received or accrued.* A shareholder of a terminal railroad corporation shall not be considered to have received or accrued any "reduced amount" (described in paragraph (c) of this section) in the computation of the shareholder's taxable income. Thus a dividend is not to be considered actually or constructively received by a shareholder of a terminal railroad corporation merely because, in the manner described in paragraph (c) of this section, (i) a charge which would be made to the shareholder or any other railroad corporation for related terminal services is not made, or (ii) a portion of any liability payable by it or any other railroad corporation with respect to related terminal services is discharged.

(2) *Expenses not considered paid or incurred.* In the computation of the taxable income of a shareholder of a terminal railroad corporation, the shareholder shall not be considered to have paid or incurred any "reduced amount" (described in paragraph (c) of this section). Thus, a shareholder of the terminal railroad corporation may not deduct as an expense for related terminal services (as defined in paragraph (c) of § 1.281–3) an amount in excess of the net cost to it of such services.

(c) *Amounts to which section 281 applies*—(1) *Reduced amount.* For purposes of this section, the term "reduced amount" means, subject to the limitation of paragraph (c)(4) of this section, the amount by which—

(i) A charge which would be made by a terminal railroad corporation for its taxable year for related terminal services provided to a railroad corporation; or

(ii) A liability of a railroad corporation, resulting from a charge made by a terminal railroad corporation for its taxable year, with respect to related terminal services provided by the terminal railroad corporation,

is reduced by reason of the terminal railroad corporation's taking into account, pursuant to an agreement (as defined in paragraph (d) of § 1.281–3), related terminal income (as defined in paragraph (b) of § 1.281–3) received or accrued (without regard to section 281) during such taxable year.

(2) *Charge which would be made.* For purposes of this section, a "charge which would be made" by a terminal railroad corporation is the amount that would be charged to any railroad corporation for related terminal services provided if the terminal railroad corporation made the charge without taking related terminal income into account.

(3) *Reduction resulting from related terminal income.* For purposes of subparagraph (1) of this section, a charge or a liability is reduced by taking related terminal income into account to the extent that—

(i) Related terminal income is received or accrued (without regard to section 281) by the terminal railroad corporation for its taxable year in which the charge or liability is reduced; and

(ii) The charge or liability in question would have been larger than it is had such income not been received or accrued (without regard to section 281).

The reduction must be made (directly or indirectly) on the books of the terminal railroad corporation, and in fact, for the same taxable year for which the charge would be made or for which the liability is incurred. The reduction of the charge or liability must be taken into account by the terminal railroad corporation in ascertaining the income, profit, or loss for such taxable year for the purpose of reports to shareholders and the Interstate Commerce Commission, and for credit purposes.

(4) *Limitation.* To the extent that a reduced amount (as described in paragraph (c)(1) of this section but without regard to the limitation under this subparagraph) would operate either to create or to increase a net operating loss for the terminal railroad corporation, this section shall not apply. Therefore, if a portion of a liability is discharged (in the manner described in this paragraph) and the discharged portion of the liability exceeds an amount equal to the terminal railroad corporation's gross income minus the deductions allowed by chapter 1 of the Code (computed with regard to the modifications specified in section 172(d) but without regard to section 281 and this section), then section 281 and this section shall not apply to such excess. The limitation described in this subparagraph shall apply only to taxable years of terminal railroad corporations ending after October 23, 1962.

(d) *Examples.* The provisions of this section may be illustrated by the following examples. In these examples, references to "before the application of section 281", "after the application of section 281", "taxable income", and "allowable deductions" take no account of section 277, which may apply to deductions to which section 281 does not apply.

Example (1)—(1) *Facts.* The T Company is a terminal railroad corporation which charges its three equal shareholders, the X, Y, and Z railroad corporations, a rental calculated monthly on a wheelage or user basis for the use of its services and facilities. The T Company and each of its shareholders report income on the calendar year basis. A written lease agreement to which all of the shareholders were parties was entered into in 1947. The agreement provides that at the end of each year the liabilities of each of the shareholders resulting from charges for rental obligations with respect to related terminal services shall be reduced by the shareholder's one-third share of the net in-

come from each source of revenue that produced income (computed before reduction for Federal income taxes). For the calendar year 1973, the T Company's charges to its shareholders include the following charges for related terminal services: $35,000 to the X Company, $25,000 to the Y Company, and $20,000 to the Z Company. Thus, prior to reduction, total shareholder liabilities to the T Company for related terminal services are $80,000 at the end of 1973. The T Company's net income from all sources (before reduction of liabilities pursuant to the 1947 agreement and before reduction for Federal income taxes) and its taxable income, before the application of section 281, for 1973 are $36,000 determined as follows:

Source	Gross income	Allowable deductions	Income (or loss)
Related terminal services performed:			
For shareholders	$80,000	$65,000	$15,000
For nonshareholders	46,000	37,000	9,000
Related terminal income	126,000	102,000	24,000
Nonrelated terminal income	30,000	18,000	12,000
Total	156,000	120,000	36,000

The liability of each shareholder is, pursuant to the agreement, discharged in part by the T Company crediting $12,000 against the rental due from each shareholder for a total discharge of liabilities of $36,000 (the net income from all sources), resulting in net shareholder liabilities owing to the T Company at the end of 1973 of $44,000 ($80,000 less $36,000): $23,000 from the X Company, $13,000 from the Y Company, and $8,000 from the Z Company.

(ii) *Effect on terminal railroad corporation.* The reduced amount to which this section applies is $24,000 (related terminal income of $9,000 from nonshareholders and $15,000 from shareholders). Thus, to the extent of $24,000, the T Company is not considered to have received or accrued income from the discharged liabilities of $36,000. Similarly, to the extent of the same $24,000, the T Company is not disallowed deductions for expenses merely by reason of the discharge. The T Company's taxable income for 1973 after application of section 281 is $12,000, computed as follows:

Gross income ($156,000 less $24,000)	$132,000
Less allowable deductions	120,000
Taxable income	12,000

(iii) *Effect on shareholders.*—The reduced amount of $24,000 shall not be deemed to constitute either a dividend to the shareholders of the T Company or an expense paid or incurred by them. Thus, under the facts described, neither the X Company, the Y Company, nor the Z Company shall be considered to have received or accrued a dividend of $8,000, or to have paid or incurred an expense of $8,000. Assuming the X Company's taxable income for 1973 before the application of section 281 would have been $43,200, computed in the following manner, its taxable income for 1973 after the application of section 281 is $50,000, determined as follows:

	Before the application of sec. 281	After the application of sec. 281
Gross income:		
From sources other than T Co.	$146,000	$146,000
Dividend considered received because of T Co.'s discharge of liabilities of $12,000	12,000	4,000
Total	158,000	150,000
Less allowable deductions:		
From sources other than T Co.	69,600	69,600
85 percent dividend received deduction under sec. 243 attributable to dividend considered received because of T Co.'s discharge of liabilities	10,200	3,400
Expenses for accrued charges for related terminal services performed by T Co.	35,000	27,000
	114,800	100,000
Taxable income	43,200	50,000

Example (2). Assume the same facts as in example (1), except that the charges to each of the shareholders for related terminal services for 1973 were as follows: $35,000 to the X Company, $40,000 to the Y Company, and $5,000 to the Z Company. Assume further that the Z Company, prior to the reduction in liabilities at the end of 1973, owed the T Company an additional $4,000 resulting from charges for 1972 for related terminal services and $6,000 resulting from the purchase of equipment. Since only $21,000 (X Company $8,000, Y Company $8,000, Z Company $5,000) of the liabilities which were discharged resulted from charges made for 1973 for related terminal services, the reduced amount to which this section applies is $21,000 (instead of $24,000 as in example (1)). Thus, the T Company's taxable income for 1973 would be $15,000 ($36,000 less $21,000 reduced amount) and the amount which shall be considered not to have been received or accrued as a dividend nor paid or incurred as an expense of each shareholder is $8,000 for the X Company, $8,000 for the Y Company, and $5,000 for the Z Company.

Example (3). Assume the same facts as in example (1), except that the allowable deductions with respect to nonrelated terminal activities were $39,000 instead of $18,000. The T Company's net income from all sources (before reduction for Federal income taxes) and its taxable income, before the application of section 281, is therefore $15,000, determined as follows:

Source	Gross income	Allowable deductions	Income (or loss)
Related terminal income	$126,000	$102,000	$24,000
Nonrelated terminal income	30,000	39,000	(9,000)
Total	156,000	141,000	15,000

The liability of each shareholder is nevertheless discharged in part, pursuant to the agreement, by the T Company crediting $8,000 against the rental due from each shareholder for a total discharge of liabilities of $24,000 (the net income from each source of revenue that produced income). Assume further that none of the modifications specified in section 172(d) apply. If the limitation under paragraph (c)(4) of this section were not applied, the reduced amount for the purposes of this section would be $24,000, and the operation of this section would result in a net operating loss of $9,000, since the allowable deductions of $141,000 would exceed the gross income of $132,000 ($156,000 less discharged liabilities of $24,000) by that amount. Because of the limitation under paragraph (c)(4) of this section, however, $9,000 is not included in the reduced amount to which this section applies. Accordingly, the reduced amount is $15,000 (instead of $24,000 as in example (1)). Thus, the T Company's taxable income for 1973 would be zero ($15,000 less the $15,000 reduced amount), and the amount which each shareholder shall be considered not to have received or accrued as a dividend nor paid or incurred as an expense is $5,000.

Example (4). Assume the same facts as in example (1), except that under the agreement income from the terminal parking lot would not reduce the shareholders' liabilities. Assume further that such income amounted to $3,000 of the total related terminal income of $24,000 for the taxable year 1973. The liability of each shareholder therefore is discharged by crediting $11,000 against its rental due for a total discharge of liabilities of $33,000. The reduced amount to which this section applies is $21,000 ($24,000 less $3,000) since only to the extent of $21,000 would there have been no such reduction under the agreement if there were no related terminal income.

Example (5). Assume the same facts as in example (1), except that, pursuant to the agreement, the A Company, a nonshareholder railroad corporation, is to have its liabilities resulting from charges for rental obligations reduced equally with each of the shareholders. Assume further that the T Company's charges to the A Company for the calendar year 1973 included $15,000 for related terminal services and that the liability of each shareholder and the A Company is discharged in part pursuant to the agreement by the T Company crediting $9,000 against the rental due from each. The reduced amount to which this section applies is $24,000. Thus, the T Company's taxable income for 1973 is $12,000, and each shareholder shall not be considered to have received or accrued as a dividend nor paid or incurred as an expense $6,000 ($24,000/$36,000 x $9,000) merely because of the discharge of its own liability. Similarly, each shareholder shall not be considered to have received or accrued as a dividend nor paid or incurred as an expense $2,000 (⅓ x ($24,000/$36,000 x $9,000)) merely because of the discharge of the liability of the A Company. Section 281 does not apply to the determination of the tax consequences of the transaction to the A Company. Similarly, the section does not apply to the determination of the tax consequences to the shareholders resulting from that portion of the discharge of the liability of the A Company which is attributable to the application of income which is not related terminal income ($3,000). Hence, such consequences shall be determined under the sections of the Internal Revenue Code which govern in the absence of section 281.

Example (6). (i) *Facts.* The TR Company is a terminal railroad corporation with three equal shareholders, the M, N, and O Railroad Corporations. The TR Company and

each of its shareholders report income on the calendar year basis. Pursuant to a written agreement entered into in 1947 to which all shareholders were parties, the TR Company makes one annual charge to each of the three shareholders at the end of each year for the difference between the cost of operations, allocated on a wheelage or user basis for the use of its services and facilities provided to the shareholder during the year, and one-third of its net income from all other sources (computed before reduction for Federal income taxes). The TR Company's taxable income, before the application of section 281, for 1973 is $21,000 determined as follows:

Source	Gross income	Allowable deductions	Income (or loss)
Related terminal services performed:			
For shareholders	$65,000	$65,000	0
For nonshareholders	46,000	37,000	$9,000
Related terminal income	111,000	102,000	9,000
Nonrelated terminal income from nonshareholders	30,000	18,000	12,000
Total	141,000	120,000	21,000

For the calendar year 1973, the TR company's charges to its shareholders are $23,000 ($30,000 less $7,000) to the M company, $13,000 ($20,000 less $7,000) to the N company, and $8,000 ($15,000 less $7,000) to the O company for a total of $44,000 for related terminal services.

(ii) *Effect on terminal railroad corporation.* The reduced amount to which this section applies is $9,000. The TR company is not considered to have received or accrued income of $9,000 (related terminal income) merely because the charge of $21,000 (net income from all sources other than shareholders) was not made. Similarly, to the extent of $9,000, the TR company is not disallowed deductions for expenses merely because the full cost of services was not charged. The TR company's taxable income for 1973 after application of section 281, is $12,000, computed as follows:

Gross income ($141,000 less $9,000 charges not made)	$132,000
Less allowable deductions	120,000
Taxable income	12,000

(iii) *Effect on shareholders.* Neither the M company, the N company, nor the O company shall be considered to have received or accrued a dividend of $3,000 nor to have paid or incurred an expense of $3,000 merely by reason of the reduced charges. Thus, assuming the M company's taxable income for 1973 before the application of section 281 would have been $47,450, computed in the following manner, its taxable income for 1973 after the application of section 281 is $50,000, determined as follows:

	Before the application of sec. 281	After the application of sec. 281
Gross income:		
From sources other than TR Co.	$146,000	$146,000
Dividend considered received because of TR Co.'s reduction of charges	7,000	4,000
Total	153,000	150,000
Less allowable deductions:		
From sources other than ETR Co.	60,000	60,000
85 percent dividend received deduction under sec. 243 attributable to dividend considered received because of TR Co.'s reduction of charges	5,950	3,400
Expenses for accrued charges for related terminal services performed by TR Co.	30,000	27,000
	105,550	100,000
Taxable income	47,450	50,000

§ 1.281–3 Definitions.

(a) *Terminal railroad corporation.* The term "terminal railroad corporation" means a corporation which, in the taxable year, meets all of the following conditions:

(1) The corporation and each of its shareholders must be domestic corporations. Thus, all of the shareholders of the corporation, as well as the corporation itself, must be corporations which were organized or created in the United States, including only the States and the District of Columbia, or under the law of the United States or of any State or territory.

(2) All of the shareholders must be railroad corporations which are subject to part I of the Interstate Commerce Act. Thus, if any shareholder of the corporation, regardless of the class or percentage of stock owned, is not subject to the jurisdiction of the Interstate Commerce Commission under part I of that Act, the corporation cannot qualify as a terminal railroad corporation.

(3) The corporation must not be a member of an affiliated group of corporations (as defined in section 1504), other than as a common parent corporation. For this purpose it is immaterial whether or not the affiliated group has ever made a consolidated income tax return. Thus, if the X railroad corporation owns 80 percent of all of the outstanding stock of the Y railroad corporation, the X railroad corporation may qualify, but the Y railroad corporation cannot qualify, as a terminal railroad corporation.

(4) The primary business of the corporation must be that of providing to domestic railroad corporations subject to part I of the Interstate Commerce Act and to the shippers and passengers of such railroad corporations one or more of the following facilities or services: (i) Railroad terminal facilities, (ii) railroad switching facilities, (iii) railroad terminal services, or (iv) railroad switching services. The designated facilities and services include the furnishing of terminal trackage, the operation of stockyards or a union passenger or freight station, and the operation of railroad bridges and ferries. The providing of the designated facilities includes the leasing of those facilities. A corporation shall be considered as having established that its primary business is that of providing the designated facilities and services if more than 50 percent of its gross income (computed without regard to section 281, and excluding dividends and gains and losses from the disposition of capital assets or property described in section 1231(b)) for the taxable year is derived from those sources. The fact that income from a service or facility is included within the definition of related terminal income is immaterial for purposes of determining whether that service or facility is one which is designated in this subparagraph. Thus, although income from the operation of a commuter railroad line may be related terminal income, a corporation whose primary business is the operation of that facility is not a terminal railroad corporation, since its primary business is not the providing of the designated facilities or services.

(5) A substantial part of the services rendered by the corporation for the taxable year must be rendered to one or more of its shareholders. For purposes of this requirement, providing the use of facilities shall be considered the rendering of services.

(6) Each shareholder of the corporation must compute its taxable income on the basis of a taxable year which either begins or ends on the same day as the taxable year of the corporation.

(b) *Related terminal income.* (1) *In general.*—Related terminal income is, generally, the type of income normally earned from the operation of a railroad terminal. The term "related terminal income" means the taxable income (computed without regard to sections 172, 277, or 281) which the terminal railroad corporation derives for the taxable year from the sources enumerated in paragraph (b)(2) of this section. Related

terminal income must be derived from direct provision of the specified facilities or services by the terminal corporation itself. Thus, income consisting of rent from a lease of a terminal facility by a terminal corporation to a railroad user would qualify; but dividends from a corporation in which the terminal corporation owned stock and which provided such facilities or services to others would not qualify. The term does not include gain or loss derived from the sale, exchange, or other disposition of capital assets or section 1231 assets, whether or not section 1245 or section 1250 applies to part or all of that gain. For example, the term does not apply to gain from the sale of a terminal building or terminal equipment. All direct and indirect expenses and other deductible items attributable to related terminal services or facilities shall be deducted in determining related terminal income. Attribution shall be determined in accordance with customary railroad accounting practices accepted by the Interstate Commerce Commission, except that interest paid with respect to the indebtedness of a terminal railroad corporation shall be deducted from related terminal income to the extent that the proceeds from the indebtedness were directly or indirectly applied to facilities or activities producing such income. The district director may either accept the use of the taxpayer's method of determining the application of the proceeds of all indebtedness of such corporation or prescribe the use of another method which, under all the facts and circumstances, appears to reflect more accurately the probable application of such proceeds.

(2) *Sources of related terminal income.* The term "related terminal income" includes only income derived from one or more of the following sources:

(i) From services or facilities of a character ordinarily and regularly provided by terminal railroad corporations for railroad corporations or for the employees, passengers, or shippers of railroad corporations. Whether the services or facilities are of a character ordinarily and regularly provided by terminal railroad corporations is to be determined by accepted industry practice. The fact that nonterminal businesses may also provide such services or facilities is immaterial. However, there must be a direct relationship between the service or facility provided and the operation of the terminal, including the operation of its trackage and switching facilities. Thus, the term "related terminal income" includes income derived from operating or leasing switching facilities and terminal facilities, such as income from charges to railroad corporations for the use of a union passenger or freight station. Also included for this purpose is income derived from charges to railroad shippers, including express companies and freight forwarders, for the use of sheds or warehouses, even though not directly intended for railroad use. The term includes income derived from leasing or operating restaurants, drugstores, barbershops, newsstands, ticket agencies, banking facilities, car rental facilities, or other similar facilities for passengers, in waiting rooms or along passenger concourses. Similarly, the term includes income derived from operating or leasing passenger parking facilities, and from renting taxicab space, located on or adjacent to the terminal premises. Although the term does include income derived from the operation of a small hotel operated primarily for and usually occupied primarily by the employees of the railroad corporations, it does not include income derived from the operation of a hotel for passengers or other persons.

(ii) From any railroad corporation for services or facilities provided by the terminal railroad corporation in connection with railroad operations. A service or a facility is provided in connection with railroad operations if it is of a character ordinarily and regularly availed of by railroad corporations. For purposes of this subdivision, the income must be derived from railroad corporations. Thus, in addition to the income derived from sources described in paragraph (b)(2)(i) of this section, the term "related terminal income" includes income derived from switching facilities or leasing to any railroad corporation, or operating for the benefit of such corporation, a beltline or bypass railroad leading to or from the terminal premises. Also included are income derived from the rental of office space (whether or not services are provided to the occupants) in the terminal building to any railroad corporation for that corporation's administrative or operating divisions, and income derived from tolls charged to any railroad corporation for the use of a railroad bridge or ferry.

(iii) From the use by persons other than railroad corporations of a portion of a facility, or of a service, which is used primarily for railroad purposes. A facility or service is used primarily for railroad purposes if the predominant reason for its continued operation or provision is the furnishing of facilities or services described in either subdivision (i) or (ii) of this subparagraph. The determination required by this subdivision is to be made independently for each separate facility or service. Two substantial portions of a single structure may be considered separate facilities, depending upon the respective uses made of each. Moreover, any substantial addition, constructed after October 23, 1962, to a facility shall be considered a separate facility.

The term "related terminal income" includes income produced by operating a commuter service or by renting tracks and facilities for a commuter service to an independent operator. The term also includes the sale or rental of advertising space at a terminal facility. If the conditions described in this subdivision are satisfied, the term "related terminal income" may include income which has no connection with the operation of the terminal. Thus, if a terminal railroad corporation operates a railroad bridge primarily to provide railroad corporations a means of crossing a river and the lower level of the bridge contains a roadway for similar use by automobiles, the term includes income derived from the tolls charged to the automobiles for the use of the bridge roadway. However, upon the discontinuance of operations of the railroad level of the bridge, the term would cease to include the automobile tolls. If excess steam from a steam plant operated primarily to supply steam to the terminal is sold to another business in the neighborhood, the term would include the income derived from such sale. However, because an oil or gas well or a mine constitutes a separate facility, the term "related terminal income" does not include income derived in any form from a deposit of oil, natural gas, or any other mineral located on property owned or leased by the terminal railroad corporation.

Similarly, while the term includes income derived from the rental of a small number of offices located in the terminal building (whether or not the lessees are railroad corporations), it does not include income derived from the leasing or operation, for the use of the general public, of a large number of offices or a large number of rooms for lodging, whether or not the space is physically part of the same structure as the terminal. Moreover, the term does not include income derived from the rental of offices to the general public in an addition to the terminal building constructed after October 23, 1962, unless the addition is primarily used for railroad purposes and the offices rented to the general public do not constitute a separate facility in the addition. Whether or not income from the addition is determined to be related terminal income, the income from the small number of offices which were included in the terminal building before the addition was constructed shall continue to be related terminal income.

(iv) From the United States in payment for facilities or services in connection with mail handling. The income must be derived directly from the U.S. Government, or any agency thereof (including for this purpose the U.S. Postal Service), through the receipt of payments for mail-handling facilities or services. Thus, the term would include income derived from the rental of space for a post office for use by the general public on the terminal premises or from the sorting of mail in a railroad box car.

(3) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. For its calendar year 1973, the R Company, a terminal railroad corporation, has taxable income of $36,000, before the application of section 281 and taking no account of section 277, determined as follows:

Gross income:	
Switching charges	$50,000
Express companies	2,000
Commuter line	4,000
U.S. mail handling	4,000
Railroad bridge tolls:	
From railroads	2,000
From automobiles	1,000
Total	3,000
Station and train charges	47,000
Terminal parking lot	4,000
Rent from terminal building:	
Passenger facilities (ground level)	8,000
Offices leased to railroads (2d floor)	3,000
Offices leased to others (2d floor)	1,000
Hotel open to public (3d through 6th floors)	14,000
Total	26,000
Interest received from bond investments	1,500
Dividends received from wholly owned subsidiary	10,000
Amount realized from sale of equipment	6,000
Less:	
Adjusted basis	1,000
Expenses of sale	500
	1,500
	4,500
	156,000
Allowable deductions:	
Dividend received deduction	8,500
Interest paid:	
On loan for hotel furnishings	1,500
On loan for rolling stock	2,000
	3,500
Maintenance, depreciation, management and other expenses:	
Attributable to hotel	3,000
Attributable to parking lot	1,000
Attributable to U.S. mail handling	1,000
All other	98,000
	103,000
Loss from sale of securities	3,000
Charitable contribution	500
Net operating loss deduction	1,500
	120,000
Taxable income before the application of sec. 281	36,000

The R Co.'s related terminal income for 1973 is $24,000, computed as follows:

Taxable income (before the application of sec. 281)	$36,000
Less:	
Dividend received	10,000
Minus dividend received deduction	8,500
	1,500
Interest received	1,500
Amount realized from sale of equipment	6,000
Less:	
Adjusted basis	1,000
Expense of sale	500
	1,500
	4,500
Hotel income	14,000
Less:	
Interest paid on loan for hotel	1,500
Other hotel expenses	3,000
	4,500
	9,500
	17,000
	19,000
Add:	
Loss from sale of securities	3,000
Charitable contribution	500
Net operating loss deduction	1,500
	5,000
Related terminal income	24,000

(c) *Related terminal services.* The term "related terminal services" means only the services or the use of facilities, provided by the terminal railroad corporation, which are taken into account in computing related terminal income. Thus, the term includes the providing of terminal and switching services, the furnishing of terminal and switching facilities including the furnishing of terminal trackage, and the operation of bridges and ferries for railroad purposes. For example, upon the facts of the example in the preceding paragraph, the charges for related terminal services are $126,000, determined as follows:

Switching charges	$50,000
Express companies	2,000
Commuter line	4,000
U.S. mail handling	4,000
Railroad bridge tolls	3,000
Station and train charges	47,000
Terminal parking lot	4,000
Rent from:	
Passenger facilities	8,000
Offices	4,000
Total	126,000

(d) *Agreement.* As used in section 281 and § 1.281–2 the term "agreement" means a written contract, entered into before the beginning of the terminal railroad corporation's taxable year in question, to which all shareholders of the terminal railroad corporation are parties. The fact that other railroad corporations or persons are also parties will not disqualify an agreement. Section 281 applies only if, and to the extent that, the reduction of the liability or charge that would be made, as described in paragraph (c) of § 1.281–2, results from the agreement. Thus, where the other conditions of the statute are met, section 281 applies if a written agreement, to which all of the shareholders were parties and which was entered into prior to the beginning of the terminal railroad corporation's taxable year, provides that the net revenues of the terminal railroad corporation are to be applied as a reduction of what would otherwise be the charge for the taxable year for related terminal services provided to the shareholders. Similarly, section 281 applies, where its other requirements are fulfilled, if the agreement provides that the net revenues are to be credited against rental obligations resulting from related terminal services furnished to shareholders. However, section 281 does not apply where the agreement provides that the net revenues are to be divided among the shareholders and distributed to them in cash or held subject to their unconditional right of withdrawal instead of being applied to the computation of charges, or in reduction of liabilities incurred, for related terminal services.

(e) *Railroad corporation.* For purposes of section 281, § 1.281–2, and this section, the term "railroad corporation" means any corporation (regardless of whether it is a shareholder of the terminal railroad corporation) that is engaged as a common carrier in the furnishing or sale of transportation by railroad, or is a lessor of railroad equipment or facilities. For purposes of the preceding sentence, a corporation is a lessor of railroad equipment or facilities only if (1) it is subject to part I of the Interstate Commerce Act, (2) substantially all of its railroad properties have been leased to a railroad corporation or corporations, (3) each lease is for a term of more than 20 years, and (4) 80 percent or more of its gross income for the taxable year is derived from such lease.

§ 1.281–4 Taxable years affected.

(a) *In general.* Except as provided in paragraph (b) of this section, the provisions of section 281 and §§ 1.281–2 and 1.281–3 shall apply to all taxable years to which either the Internal Revenue Code of 1954 or the Internal Revenue Code of 1939 apply.

(b) *Taxable years ending before October 23, 1962.* (1) (i) In the case of a taxable year of a terminal railroad corporation ending before October 23, 1962, section 281 (a) shall apply only to the extent that the terminal railroad corporation (*a*) computed its taxable income on its return for such taxable year as if the "reduced amount", described in paragraph (c) of § 1.281–2, were not received or accrued, and (*b*) did not decrease its otherwise allowable deductions for such taxable year on account of that "reduced amount". Similarly, in the case of a taxable year of a shareholder of a terminal railroad corporation ending before October 23, 1962, section 281 (b) shall apply only to the extent that such shareholder computed its taxable income on its return for such taxable year as if the shareholder had neither received or accrued as a dividend nor paid or incurred as an expense the "reduced amount" described in paragraph (c) of § 1.281–2. Such return must have been filed on or before the due date (including the period of any extension of time) for filing the return for the applicable taxable year. The fact that an amended return or claim for refund or credit of overpayment was subsequently filed, or a deficiency subsequently assessed, based upon a computation of taxable income which is incon-

sistent with the manner in which the taxable income was computed on the timely filed return, is immaterial.

(ii) The provisions of this paragraph may be illustrated by the following examples:

Example (1). The G Company is a terminal railroad corporation which in 1960 reduced the liabilities resulting from charges to its shareholders, pursuant to a 1947 written agreement, by its income from nonshareholder sources. For the calendar year 1960, the G Company's related terminal income was $24,000, of which $3,000 is attributable to income from the United States in payment for facilities and services in connection with mail handling. Although the shareholders' liabilities were reduced by $24,000 as a result of taking related terminal income earned during the taxable year into account, on its timely filed 1960 income tax return the G Company treated the $3,000 of liabilities which were reduced on account of income from mail handling as gross income received or accrued during the year. Assuming that the provisions of § 1.281-2 otherwise apply, their application to the determination of the 1960 tax liability of the G Company shall not extend to the entire "reduced amount" of $24,000, but shall be limited to $21,000 of that amount.

Example (2). Assume the same facts as in example (1), and the following additional facts. The G Company had three shareholders in 1960, and an equal discharge of liability of $8,000 resulted for each of them on account of related terminal income. Each shareholder treated, on its timely filed 1960 income tax return, $1,000 of its liabilities, which were so reduced and were attributable to income from the United States in payment for facilities and services in connection with mail handling, as if it had received $1,000 from the G Company as a dividend and paid that $1,000 to the G Company for services. Each shareholder treated the remaining $7,000 of its liabilities which were so reduced as if the liabilities which were reduced had never been incurred. Assuming that the provisions of § 1.281-2 otherwise apply, each shareholder shall not be considered to have received or accrued as a dividend, nor to have paid or incurred as an expense $7,000 (instead of $8,000).

(2) For any taxable year of a terminal railroad corporation ending before October 23, 1962, a claim for refund or credit of overpayment of income tax based upon section 281 may be filed, even though such refund or credit of overpayment was otherwise barred by operation of any law or rule of law on October 23, 1962, subject to the conditions set forth in paragraph (b)(2) (i) through (v) of this section.

(i) The claim for refund or credit of overpayment must not have been barred by a closing agreement (under either section 3760 of the Internal Revenue Code of 1939 or section 7121 of the Internal Revenue Code of 1954), or by a compromise (under section 3761 of the Internal Revenue Code of 1939 or section 7122 of the Internal Revenue Code of 1954);

(ii) The claim for refund or credit of overpayment shall be allowed only to the extent that the overpayment of income tax results from the recomputation of the terminal railroad corporation's taxable income in the manner described in paragraph (a) of § 1.281-2;

(iii) The claim for refund or credit of the overpayment must have been filed prior to October 23, 1963;

(iv) The claim for refund or credit of overpayment shall be allowed only to the extent that the manner in which the terminal railroad corporation's taxable income is recomputed is the manner in which the terminal railroad corporation's taxable income was computed on its timely filed income tax return for such taxable year; and

(v) Each railroad corporation which was a shareholder of the terminal railroad corporation during such taxable year must consent in writing to the assessment, within such period as may be agreed upon with the district director, of any deficiency for any year (even though assessment of the deficiency would otherwise be prevented by the operation of any law or rule of law at the time of filing the consent) to the extent that—

(A) The deficiency is attributable to the recomputation of the shareholder's taxable income in the manner described in paragraph (b) of § 1.281-2, and

(B) The deficiency results from the shareholder's allocable portion of the "reduced amount" (described in paragraph (c) of § 1.281-2) which gives rise to the refund or credit granted to the terminal railroad corporation under this subparagraph.

[FR Doc.75-14367 Filed 5-30-75;8:45 am]

[Income Tax Regs.; T.D. 7357]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Deduction for Amounts Paid or Permanently Set Aside by an Estate or Trust for a Charitable Purpose

By a notice of proposed rule making appearing in the FEDERAL REGISTER for July 8, 1971 (36 FR 12861), amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to conform such regulations to section 642(c) (other than section 642(c)(5)) of the Internal Revenue Code of 1954, as amended by section 201(b) of the Tax Reform Act of 1969 (83 Stat. 558), relating to charitable contributions by estates and trusts, and to section 201(c) of such Act (83 Stat. 560), relating to two-year charitable trusts. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed certain changes were made, and the proposed amendments of the regulations, subject to the changes indicated below, are adopted by this document.

Under § 1.642(c)-1, (a)(1) and (b)(1) it is made clear that the deduction allowed under section 642(c)(1) for amounts paid (or treated as paid) to a charity during a taxable year extends to items of gross income received in a previous taxable year and paid (or treated as paid) during the taxable year in question. However, no deduction will be allowed for such amounts if a deduction was allowed for such amounts in a previous year.

Section 1.642(c)-1(b) of the proposed regulations provided that the election made under section 642(c)(1) to treat contributions as paid in the preceding taxable year beginning after December date of the return for the succeeding taxable year beginning after December 31, 1969, or by June 8, 1970, if later. A new rule permits the election to be made for each taxable year and provides that the election must be made by the due date of the succeeding taxable year. The election becomes irrevocable after such due date, but consent of the Commissioner of Internal Revenue may be obtained to revoke certain elections made on or before June 8, 1970. The statement in respect of contributions of property other than money has been dropped.

Section 642(c)(2) provides for a set-aside deduction for amounts set aside for charitable purposes by an estate, a pooled income fund, or certain other qualifying trusts. Section 1.642(c)-2 contains the rules in respect of this deduction. An amendment has been made in the "to be used exclusively" provision of § 1.642(c)-2 (a)(2) and (b)(1) to make clear that an estate or qualifying trust is allowed a set-aside deduction for amounts of gross income to be used for charitable purposes outside the United States or any of its possessions. Proposed § 1.642(c)-2(b)(2)(i) (now § 1.642(c)-2(b)(3)(i)) continues to apply to the transfer of an irrevocable remainder interest to or for the use of a domestic or possessions corporation described in section 170(c).

A provision conforming to section 642(c)(2) has been added in § 1.642(c)-2(b)(1) to emphasize that a set-aside deduction for a qualifying trust is allowable only to a trust which is required by the terms of its governing instrument to set amounts aside.

A new rule in § 1.642(c)-2(b)(2) provides that income, gains, and losses derived from amounts transferred to a qualifying trust on or before October 9, 1969, will be included in determining the set-aside deduction of the trust and that assets received upon investment or reinvestment of qualifying transfers will be treated as qualifying transfers. This rule requires a separate accounting as to qualifying and nonqualifying transfers to the trust.

Section 642(c)(2)(A)(ii) allows a set-aside deduction to a trust created on or before October 9, 1969, if the grantor is under a mental disability at all times after that date to change the terms of the trust. The rule in proposed § 1.642(c)-2(b)(2)(ii) (now § 1.642(c)-2(b)(3)(ii)) requiring the attachment to the return of a certificate from a qualified physician, or a certified copy of a judgment or decree, has been changed to permit the subsequent use of a statement by the fiduciary during the period of mental incompetence.

Section 642(c)(2)(B) permits a set-aside deduction for amounts permanently set aside for charitable purposes by certain trusts established by a will executed on or before October 9, 1969.

Section 1.642(c)-2(b)(4) now contains rules to provide that such a trust does not include assets transferred to an existing trust by a will executed on or before October 9, 1969, or assets of an existing trust subject to a testamentary power of appointment that fails by reason of the testator's nonexercise of such power in a will executed on or before October 9, 1969.

A new rule in § 1.642(c)-2(b)(4)(iv) adopts in principle the rules of the Estate Tax Regulations under section 2055(e) of the Code for determining whether there has been an amendment of a dispositive provision of a will.

Proposed § 1.642(c)-2(c) has been revised technically, to limit the set-aside deduction under section 642(c)(3) to gross income earned with respect to amounts transferred to the fund after July 31, 1969, and to provide rules for separate accounting as to qualifying and non-qualifying transfers to the fund.

Four new examples have been added to proposed § 1.642(c)-3(c) to illustrate further the application of the adjustment required by section 642(c)(4) to a set-aside deduction of an estate, pooled income fund, or other qualifying trust. New example (2) is based upon the example in § 39.162-1(b)(1) of Regulation 118 under the Internal Revenue Code of 1939.

Proposed § 1.642(c)-4, relating to nonexempt private foundations, has been revised to make clear that the limited charitable deduction under section 170 applies only to a nonexempt private foundation and to a trust to which section 4947(a)(1) applies.

Section 1.642 (c)-1 (b) of the regulations hereby adopted supersedes those provisions of § 13.0 of this chapter (26 CFR Part 13) relating to section 642 (c) (1) of the Code which were prescribed by T.D. 7032, approved March 9, 1970 (35 FR 4330, 1970-1 C.B. 511). The regulations under section 642 (c) (5) of the Code, as added by section 201 (b) of the Tax Reform Act of 1969 (83 Stat. 558) were adopted by T.D. 7105, as published in the Federal Register for April 6, 1971 (36 FR 6477, 1971-1 C. B. 164).

In view of the foregoing, the amendments of the regulations as proposed are hereby adopted, subject to the changes set forth below.

PARAGRAPH 1. Section 1.642(c)-1, as set forth in paragraph 2 of the notice of proposed rule making, is changed to read as set forth below.

PAR. 2. Section 1.642(c)-2, as set forth in paragraph 3 of the notice of proposed rule making, is changed to read as set forth below.

PAR. 3. Section 1.642(c)-3, as set forth in paragraph 4 of the notice of proposed rule making, is changed by revising paragraphs (b) and (c) to read as set forth below.

PAR. 4. Section 1.642(c)-4, as set forth in paragraph 5 of the notice of proposed rule making, is changed to read as set forth below.

PAR. 5. Section 1.642(c)-5 is amended by revising paragraph (a)(5)(vi) and by deleting paragraph (d), as set forth below.

(Sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917; (26 U.S.C. 7805))

[SEAL] DONALD C. ALEXANDER,
Commisisoner of Internal Revenue.

Approved: May 27, 1975.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

In view of the foregoing, the amendments of the regulations as proposed are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. There is inserted immediately after § 1.642(c) the following new section:

§ 1.642(c)-0 Effective dates.

The provisions of section 642(c) (other than section 642(c)(5)) and of §§ 1.642 (c)-1 through 1.642(c)-4 apply to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after December 31, 1969. The provisions of section 642(c)(5) and of §§ 1.642(c)-5 through 1.642(c)-7 apply to transfers in trust made after July 31, 1969. For provisions relating to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning before January 1, 1970, see 26 CFR 1.642(c) through 1.642(c)-4 (Rev. as of Jan. 1, 1971).

PAR. 2. Section 1.642(c)-1 is revised to read as follows:

§ 1.642(c)-1 Unlimited deduction for amounts paid for a charitable purpose.

(a) *In general.* (1) Any part of the gross income of an estate, or of a trust which (,) pursuant to the terms of the governing instrument is paid (or treated under paragraph (b) of this section as paid) during the taxable year for a purpose specified in section 170(c) shall be allowed as a deduction to such estate or trust in lieu of the limited charitable contributions deduction authorized by section 170(a). In applying this paragraph without reference to paragraph (b) of this section, a deduction shall be allowed for an amount paid during the taxable year in respect of gross income received in a previous taxable year, but only if no deduction was allowed for any previous taxable year for the amount so paid.

(2) In determining whether an amount is paid for a purpose specified in section 170(c)(2) the provisions of section 170 (c)(2)(A) shall not be taken into account. Thus, an amount paid to a corporation, trust, or community chest, fund, or foundation otherwise described in section 170(c)(2) shall be considered paid for a purpose specified in section 170 (c) even though the corporation, trust, or community chest, fund, or foundation is not created or organized in the United States, any State, the District of Columbia, or any possession of the United States.

(3) See section 642(c)(6) and § 1.642 (c)-4 for disallowance of a deduction under this section to a trust which is a private foundation (as defined in section 509(a) and the regulations thereunder) and not exempt from taxation under section 501(a).

(b) *Election to treat contributions as paid in preceding taxable year*—(1) *In general.* For purposes of determining the deduction allowed under paragraph (a) of this section, the fiduciary (as defined in section 7701(a)(6)) of an estate or trust may elect under section 642(c)(1) to treat as paid during the taxable year (whether or not such year begins before January 1, 1970) any amount of gross income received during such taxable year or any preceding taxable year which is otherwise deductible under such paragraph and which is paid after the close of such taxable year but on or before the the last day of the next succeeding taxable year of the estate or trust. The preceding sentence applies only in the case of payments actually made in a taxable year which is a taxable year beginning after December 31, 1969. No election shall be made, however, in respect of any amount which was deducted for any previous taxable year or which is deducted for the taxable year in which such amount is paid.

(2) *Time for making election.* The election under subparagraph (1) of this paragraph shall be made not later than the time, including extensions thereof, prescribed by law for filing the income tax return for the succeeding taxable year. Such election shall, except as provided in subparagraph (4) of this paragraph, become irrevocable after the last day prescribed for making it. Having made the election for any taxable year, the fiduciary may, within the time prescribed for making it, revoke the election without the consent of the Commissioner.

(3) *Manner of making the election.* The election shall be made by filing with the income tax return (or an amended return) for the taxable year in which the contribution is treated as paid a statement which—

(i) States the name and address of the fiduciary,

(ii) Identifies the estate or trust for which the fiduciary is acting,

(iii) Indicates that the fiduciary is making an election under section 642(c)(1) in respect of contributions treated as paid during such taxable year,

(iv) Gives the name and address of each organization to which any such contribution is paid, and

(v) States the amount of each contribution and date of actual payment or, if applicable, the total amount of contributions paid to each organization during the succeeding taxable year, to be treated as paid in the preceding taxable year.

(4) *Revocation of certain elections with consent.* An application to revoke with the consent of the Commissioner any election made on or before June 8, 1970, must be in writing and must be filed not later than September 2, 1975. No consent will be granted to revoke an election for any taxable year for which the assessment of a deficiency is prevented by the operation of any law or rule of law. If consent to revoke the

election is granted, the fiduciary must attach a copy of the consent to the return (or amended return) for each taxable year affected by the revocation. The application must be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224, and must indicate—

(i) The name and address of the fiduciary and the estate or trust for which he was acting,

(ii) The taxable year for which the election was made,

(iii) The office of the district director, or the service center, where the return (or amended return) for the year of election was filed, and

(iv) The reason for revoking the election.

PAR. 3. Section 1.642(c)-2 is revised to read as follows:

§ 1.642(c)-2 Unlimited deduction for amounts permanently set aside for a charitable purpose.

(a) *Estates.* Any part of the gross income of an estate which pursuant to the terms of the will—

(1) Is permanently set aside during the taxable year for a purpose specified in section 170(c), or

(2) Is to be used (within or without the United States or any of its possessions) exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit,

shall be allowed as a deduction to the estate in lieu of the limited charitable contributions deduction authorized by section 170(a).

(b) *Certain trusts*—(1) *In general.* Any part of the gross income of a trust to which either subparagraph (3) or (4) of this paragraph applies, that by the terms of the governing instrument—

(i) Is permanently set aside during the taxable year for a purpose specified in section 170(c), or

(ii) Is to be used (within or without the United States or any of its possessions) exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit,

shall be allowed, subject to the limitation provided in subparagraph (2) of this paragraph, as a deduction to the trust in lieu of the limited charitable contributions deduction authorized by section 170(a). The preceding sentence applied only to a trust which is required by the terms of its governing instrument to set amounts aside. See section 642(c)(6) and § 1.642(c)-4 for disallowance of a deduction under this section to a trust which is, or is treated under section 4947(a)(1) as though it were, a private foundation (as defined in section 509(a) and the regulations thereunder) that is not exempt from taxation under section 501(a).

(2) *Limitation of deduction.* Subparagraph (1) of this paragraph applies only to the gross income earned by a trust with respect to amounts transferred to the trust under a will executed on or before October 9, 1969, and satisfying the requirements of subparagraph (4) of this paragraph or transferred to the trust on or before October 9, 1969. For such purposes, any income, gains, or losses, which are derived at any time from the amounts so transferred to the trust shall also be taken into account in applying subparagraph (1) of this paragraph. If any such amount so transferred to the trust is invested or reinvested at any time, any asset received by the trust upon such investment or reinvestment shall also be treated as an amount which was so transferred to the trust. In the case of a trust to which this paragraph applies which contains (i) amounts transferred pursuant to transfers described in the first sentence of this subparagraph and (ii) amounts transferred pursuant to transfers not so described, subparagraph (1) of this paragraph shall apply only if the amounts described in subdivision (i) of this subparagraph, together with all income, gains, and losses derived therefrom, are separately accounted for from the amounts described in subdivision (ii) of this subparagraph, together with all income, gains, and losses derived therefrom. Such separate accounting shall be carried out consistently with the principles of paragraph (c)(4) of § 53.4947-1 of this chapter (Foundation Excise Tax Regulations), relating to accounting for segregated amounts of split-interest trusts.

(3) *Trusts created on or before October 9, 1969.* A trust to which this subparagraph applies is a trust, testamentary or otherwise, which was created on or before October 9, 1969, and which qualifies under either subdivision (i) or (ii) of this subparagraph.

(i) *Transfer of irrevocable remainder interest to charity.* To qualify under this subdivision the trust must have been created under the terms of an instrument granting an irrevocable remainder interest in such trust to or for the use of an organization described in section 170(c). If the instrument granted a revocable remainder interest but the power to revoke such interest terminated on or before October 9, 1969, without the remainder interest having been revoked, the remainder interest will be treated as irrevocable for purposes of the preceding sentence.

(ii) *Grantor under a mental disability to change terms of trust.* (A) To qualify under this subdivision (ii) the trust must have been created by a grantor who was at all times after October 9, 1969, under a mental disability to change the terms of the trust. The term "mental disability" for this purpose means mental incompetence to change the terms of the trust, whether or not there has been an adjudication of mental incompetence and whether or not there has been an appointment of a committee, guardian, fiduciary, or other person charged with the care of the person or property of the grantor.

(B) If the grantor has not been adjudged mentally incompetent, the trustee must obtain from a qualified physician a certificate stating that the grantor of the trust has been mentally incompetent at all times after October 9, 1969, and that there is no reasonable probability that the grantor's mental capacity will ever improve to the extent that he will be mentally competent to change the terms of the trust. A copy of this certification must be filed with the first return on which a deduction is claimed by reason of this subdivision (ii) and subparagraph (1) of this paragraph. Thereafter, a statement referring to such medical opinion must be attached to any return for a taxable year for which such a deduction is claimed and during which the grantor's mental incompetence continues. The original certificate must be retained by the trustee of the trust.

(C) If the grantor has been adjudged mentally incompetent, a copy of the judgment or decree, and any modification thereof, must be filed with the first return on which a deduction is claimed by reason of this subdivision (ii) and subparagraph (1) of this paragraph. Thereafter, a statement referring to such judgment or decree must be attached to any return for a taxable year for which such a deduction is claimed and during which the grantor's mental incompetence continues. A copy of such judgment or decree must also be retained by the trustee of the trust.

(d) This subdivision (ii) applies even though a person charged with the care of the person or property of the grantor has the power to change the terms of the trust.

(4) *Testamentary trust established by will executed on or before October 9, 1969.* A trust to which this subparagraph applies is a trust which was established by will executed on or before October 9, 1969, and which qualifies under either subdivision (i), (ii), or (iii) of this subparagraph. This subparagraph does not apply, however, to that portion of any trust, not established by a will executed on or before October 9, 1969, which was transferred to such trust by a will executed on or before October 9, 1969. Nor does it apply to that portion of any trust, not established by a will executed on or before October 9, 1969, which was subject to a testamentary power of appointment that fails by reason of the testator's nonexercise of the power in a will executed on or before October 9, 1969.

(i) *Testator dying within 3 years without republishing his will.* To qualify under this subdivision the trust must have been established by the will of a testator who died after October 9, 1969, but before October 9, 1972, without having amended any dispositive provision of the will after October 9, 1969, by codicil or otherwise.

(ii) *Testator having no right to change his will.* To qualify under this subdivision the trust must have been established by the will of a testator who died after October 9, 1969, and who at no time after that date had the right to change any portion of such will pertaining to

such trust. This subdivision could apply, for example, where a contract has been entered into for the execution of wills containing reciprocal provisions as well as provisions for the benefit of an organization described in section 170(c) and under applicable local law the surviving testator is prohibited from revoking his will because he has accepted the benefit of the provisions of the will of the other contracting party.

(iii) *Testator under a mental disability to republish his will.* To qualify under this subdivision the trust must have been established by the will of a testator who died after October 8, 1972, without having amended any dispositive provision of such will before October 9, 1972, by codicil or otherwise, and who is under a mental disability at all times after October 8, 1972, to amend such will, by codicil or otherwise. The provisions of subparagraph (3)(ii) of this paragraph with respect to mental incompetence apply for purposes of this subdivision.

(iv) *Amendment of dispositive provisions.* The provisions of paragraph (e)(4) and (5) of § 20.2055-2 of this chapter (Estate Tax Regulations) are to be applied under subdivisions (i) and (iii) of this subparagraph in determining whether there has been an amendment of a dispositive provision of a will.

(c) *Pooled income funds.* Any part of the gross income of a pooled income fund to which § 1.642(c)-5 applies for the taxable year that is attributable to net long-term capital gain (as defined in section 1222(7)) which, pursuant to the terms of the governing instrument, is permanently set aside during the taxable year for a purpose specified in section 170(c) shall be allowed as a deduction to the fund in lieu of the limited charitable contributions deduction authorized by section 170(a). No deduction shall be allowed under this paragraph for any portion of the gross income of such fund which is (1) attributable to income other than net long-term capital gain (2) earned with respect to amounts transferred to such fund before August 1, 1969. However, see paragraph (b) of this section for a deduction (subject to the limitations of such paragraph) for amounts permanently set aside by a pooled income fund which meets the requirements of that paragraph. The principles of paragraph (b)(2) of this section with respect to investment, reinvestment, and separate accounting shall apply under this paragraph in the case of amounts transferred to the fund after July 31, 1969.

(d) *Disallowance of deduction for certain amounts not deemed to be permanently set aside for charitable purposes.* No amount will be considered to be permanently set aside, or to be used, for a purpose described in paragraph (a) or (b)(1) of this section unless under the terms of the governing instrument and the circumstances of the particular case the possibility that the amount set aside, or to be used, will not be devoted to such purpose or use is so remote as to be negligible. Thus, for example, where there is possibility of the invasion of the corpus of a charitable remainder trust, as defined in § 1.664-1(a)(1)(ii), in order to make payment of the annuity amount or unitrust amount, no deduction will be allowed under paragraph (a) of this section in respect of any amount set aside by an estate for distribution to such a charitable remainder trust.

For treatment of distributions by an estate to a charitable remainder trust, see paragraph (a)(5)(iii) of § 1.664-1.

PAR. 4. Section 1.642(c)-3 is revised to read as follows:

§ 1.642(c)-3 Adjustments and other special rules for determining unlimited charitable contributions deduction.

(a) *Income in respect of a decedent.* For purposes of §§ 1.642(c)-1 and 1.642(c)-2, an amount received by an estate or trust which is includible in its gross income under section 691(a)(1) as income in respect of a decedent shall be included in the gross income of the estate or trust.

(b) *Reduction of charitable contributions deduction by amounts not included in gross income.* (1) If an estate, pooled income fund, or other trust pays, permanently sets aside, or uses any amount of its income for a purpose specified in section 642(c)(1), (2) or (3) and that amount includes any items of estate or trust income not entering into the gross income of the estate or trust, the deduction allowable under § 1.642(c)-1 or § 1.642(c)-2 is limited to the gross income so paid, permanently set aside, or used. In the case of a pooled income fund for which a deduction is allowable under paragraph (c) of § 1.642(c)-2 for amounts permanently set aside, only the gross income of the fund which is attributable to net longterm capital gain (as defined in section 1222(7)) shall be taken into account.

(2) In determining whether the amounts of income so paid, permanently set aside, or used for a purpose specified in section 642(c)(1), (2), or (3) include particular items of income of an estate or trust not included in gross income, the specific provision controls if the governing instrument specifically provides as to the source out of which amounts are to be paid, permanently set aside, or used for such a purpose.

In the absence of specific provisions in the governing instrument, an amount to which section 642(c)(1), (2) or (3) applies is deemed to consist of the same proportion of each class of the items of income of the estate or trust as the total of each class bears to the total of all classes. See paragraph (b) of § 1.643(a)-5 for the method of determining the allocable portion of exempt income and foreign income.

(3) For examples showing the determination of the character of an amount deductible under § 1.642(c)-1 or § 1.642(c)-2, see examples (1) and (2) in § 1.662(b)-2 and paragraph (e) of the example in § 1.662(c)-4.

(4) For the purpose of this paragraph, the provisions of section 116 are not to be taken into account.

(c) *Capital gains included in charitable contribution.* Where any amount of the income paid, permanently set aside, or used for a purpose specified in section 642(c)(1), (2), or (3), is attributable to net long-term capital gain (as defined in section 1222(7)), the amount of the deduction otherwise allowable under § 1.642(c)-1 or § 1.642(c)-2, must be adjusted for any deduction provided in section 1202 of 50 percent of the excess, if any, of the net long-term capital gain over the net short-term capital loss. For determination of the extent to which the contribution to which § 1.642(c)-1 or § 1.642(c)-2 applies is deemed to consist of net long-term capital gains, see paragraph (b) of this section. The application of this paragraph may be illustrated by the following examples:

Example.—(1) Under the terms of the trust instrument, the income of a trust described in § 1.642(c)-2(b)(3)(i) is currently distributable to A during his life and capital gains are allocable to corpus. No provision is made in the trust instrument for the invasion of corpus for the benefit of A. Upon A's death the corpus of the trust is to be distributed to M University, an organization described in section 501(c)(3) which is exempt from taxation under section 501(a). During the taxable year ending December 31, 1970, the trust has long-term capital gains of $100,000 from property transferred to it on or before October 9, 1969, which are permanently set aside for charitable purposes. The trust includes $100,000 in gross income but is allowed a deduction of $50,000 under section 1202 for the long-term capital gains and a charitable contributions deduction of $50,000 under section 642(c)(2) ($100,000 permanently set aside for charitable purposes less $50,000 allowed as a deduction under section 1202 with respect to such $100,000).

Example (2). Under the terms of the will, $200,000 of the income (including $100,000 capital gains) for the taxable year 1972 of an estate is distributed, one-quarter to each of two individual beneficiaries and one-half to N University, an organization described in section 501(c)(3) which is exempt from taxation under section 501(a). During 1972 the estate has ordinary income of $200,000, long-term capital gains of $100,000, and no capital losses. It is assumed that for 1972 the estate has no other items of income or any deductions other than those discussed herein. The entire capital gains of $100,000 are included in the gross income of the estate for 1972, and N University receives $100,000 from the estate in such year. However, the amount allowable to the estate under section 642(c)(1) is subject to appropriate adjustment for the deduction allowable under section 1202. In view of the distributions of $25,000 of capital gains to each of the individual beneficiaries, the deduction allowable to the estate under section 1202 is limited by such section to $25,000 [($100,000 capital gains less $50,000 capital gains includible in income of individual beneficiaries under section 662) x 50%]. Since the whole of this $25,000 deduction under section 1202 is attributable to the distribution of $50,000 of capital gains to N University, the deduction allowable to the estate in 1972 under section 642(c)(1) is $75,000 [$100,000 (distributed to N) less $25,000 (proper adjustment for section 1202 deduction)].

Example (3). Under the terms of the trust instrument, 30 percent of the gross income (exclusive of capital gains) of a trust described in § 1.642(c)-2(b)(3)(i) is currently distributed to B, the sole income beneficiary. Net capital gains and undistributed

ordinary income are allocable to corpus. No provision is made in the trust instrument for the invasion of corpus for the benefit of B. Upon B's death the remainder of the trust is to be distributed to M Church. During the taxable year 1972, the trust has ordinary income of $100,000, long-term capital gains of $15,000, short-term capital gains of $1,000, long-term capital losses of $5,000, and short-term capital losses of $2,500. It is assumed that the trust has no other items of income or any deductions other than those discussed herein. All the ordinary income and capital gains and losses are attributable to amounts transferred to the trust before October 9, 1969. The trust includes in gross income for 1972 the total amount of $116,000 [$100,000 (ordinary income) + $16,000 (total capital gains determined without regard to capital losses)]. Pursuant to the terms of the governing instrument the trust distributes to B in 1972 the amount of $30,000 ($100,00 x 30%). The balance of $78,500 [($116,000 less $7,500 capital losses) —$30,000 distribution] is available for the set-aside for charitable purposes. In determining taxable income for 1972 the capital losses of $7,500 ($5,000 + $2,500) are allowable in full under section 1211(b)(1). The net capital gain of $8,500 ($16,000 less $7,500) is the excess of the net long-term capital gain of $10,000 ($15,000 less $5,000) over the net short-term capital loss of $1,500 ($2,500 less $1,000). The deduction under section 1202 is $4,250 ($8,500 x 50%), all of which is attributable to the set-aside for charitable purposes. Accordingly, for 1972 the deduction allowable to the trust under section 642(c)(2) is $74,250 [$78,500 (set-aside for M) less $4,250 (proper adjustment for section 1202 deduction)].

Example (4). During the taxable year a pooled income fund, as defined in § 1.642(c)-5, has in addition to ordinary income long-term capital gains of $150,000, short-term capital gains of $15,000, long-term capital losses of $100,000, and short-term capital losses of $10,000. Under the Declaration of Trust and pursuant to State law net long-term capital gain is allocable to corpus and net short-term capital gain is to be distributed to the income beneficiaries of the fund. All the capital gains and losses are attributable to amounts transferred to the fund after July 31, 1969. In view of the distribution of the net short-term capital gain of $5,000 ($15,000 less $10,000) to the income beneficiaries, the deduction allowed to the fund under section 1202 is limited by such section to $25,000 [($150,000 (long-term capital gains) less $100,000 (long-term capital losses)) x 50%]. Since the whole of this deduction under section 1202 is attributable to the set-aside for charitable purposes, the deduction of $50,000 ($150,000 less $100,000) otherwise allowable under section 642(c)(3) is subject to appropriate adjustment under section 642(c)(4) for the deduction allowable under section 1202. Accordingly, the amount of the set-aside deduction is $25,000 [$50,000 (set-aside for public charity) less $25,000 (proper adjustment for section 1202 deduction)].

Example (5). The facts are the same as in example (4) except that under the Declaration of Trust and pursuant to State law all the net capital gain for the taxable year is allocable to corpus of the fund. The fund would thus include in gross income total capital gains of $165,000 ($150,000+$15,000). In determining taxable income for the taxable year the capital losses of $110,000 ($100,000+$10,000) are allowable in full under section 1211(b)(1). The net capital gain of $55,000 ($165,000 less $110,000) is available for the set-aside for charitable purposes under section 642(c)(3) only in the amount of the net long-term capital gain of $50,000 ($150,000 long-term gains less $100,000 long-term losses). The deduction under section 1202 is $25,000 ($50,000×50%), all of which is attributable to the set-aside for charitable purposes. Accordingly, the deduction allowable to the fund under section 642(c)(3) is $25,000 [$50,000 (set-aside for public charity) less $25,000 (proper adjustment for section 1202 deduction)]. The $5,000 balance of net capital gain is taken into account in determining taxable income of the pooled income fund for the taxable year.

(d) *Disallowance of deduction for amounts allocable to unrelated business income.* In the case of a trust, the deduction otherwise allowable under § 1.642(c)-1 or § 1.642(c)-2 is disallowed to the extent of amounts allocable to the trust's unrelated business income. See section 681(a) and the regulations thereunder.

(e) *Disallowance of deduction in certain cases.* For disallowance of certain deductions otherwise allowable under section 642(c) (1), (2), or (3), see sections 508(d) and 4948(c)(4).

(f) *Information returns.* For rules applicable to the annual information return that must be filed by trusts claiming a deduction under section 642(c) for the taxable year, see section 6034 and the regulations thereunder.

PAR. 5. Section 1.642(c)-4 is revised to read as follows:

§ 1.642(c)-4 Nonexempt private foundations.

(a) In the case of a trust which is, or is treated under section 4947 (a) (1) as though it were, a private foundation (as defined in section 509(a) and the regulations thereunder) that is not exempt from taxation under section 501(a) for the taxable year, a deduction for amounts paid or permanently set aside, or used for a purpose specified in section 642 (c)(1), (2), or (3) shall not be allowed under § 1.642(c)-1 or § 1.642(c)-2, but such trust shall, subject to the provisions applicable to individuals, be allowed a deduction under section 170 for charitable contributions paid during the taxable year. Section 642 (c) (6) and this section do not apply to a trust described in section 4947 (a) (1) unless such trust fails to meet the requirements of section 508 (e). However, if on October 9, 1969, or at any time thereafter, a trust is recognized as being exempt from taxation under section 501 (a) as an organization described in section 501 (c) (3), if at such time such trust is a private foundation, and if at any time thereafter such trust is determined not to be exempt from taxation under section 501 (a) as an organization described in section 501 (c) (3), section 642 (c) (6) and this section will apply to such trust. See § 1.509 (b)-1 (b).

PAR. 6. Section 1.642(c)-5 is amended by revising paragraph (a)(5)(vi) and by deleting paragraph (d), as follows:

§ 1.642(c)-5 Definition of pooled income fund.

(a) *In general.* * * *

(5) *Definitions.* * * *

(vi) The term "determination date" means each day within the taxable year of a pooled income fund on which a valuation is made of the property in the fund. The property in the fund shall be valued on the first day of the taxable year of the fund and on at least 3 other days within the taxable year. The period between any two consecutive determination dates within the taxable year shall not be greater than 3 calendar months. In the case of a taxable year of less than 12 months, the property in the fund shall be valued on the first day of such taxable year and on such other days within such year as occur at successive intervals of no greater than 3 calendar months. Where a valuation date falls on a Saturday, Sunday, or a legal holiday (as defined in section 7503 and the regulations thereunder), the valuation may be made on the next succeeding day which is not a Saturday, Sunday, or a legal holiday.

* * * * *

(d) [Deleted]

PAR. 7. Section 1.643(a)-3 is amended by revising paragraph (c) to read as follows:

§ 1.643(a)-3 Capital gains and losses.

* * * * *

(c) The deduction under section 1202 (relating to capital gains) is taken into account in computing distributable net income to the extent that it is allocable to capital gains which are paid, permanently set aside, or to be used for the purposes specified in section 642(c). See the regulations under section 642(c) to determine the extent to which the amount so paid, permanently set aside, or to be used consists of capital gains. The deduction for capital gains provided in section 1202 insofar as it is allocable to the remainder of the capital gains is not taken into account.

* * * * *

PAR. 8. Section 1.643(a)-7 is amended to read as follows:

§ 1.643(a)-7 Dividends.

Dividends excluded from gross income under section 116 (relating to partial exclusion of dividends received) are included in distributable net income. For this purpose, adjustments similar to those required by § 1.643(a)-5 with respect to expenses allocable to tax-exempt income and to income included in amounts paid or set aside for charitable purposes are not made. See the regulations under section 642(c).

PAR. 9. Section 1.673(a)-1 is amended by revising paragraph (a)(2) to read as follows:

§ 1.673(a)-1 Reversionary interests; income payable to beneficiaries other than certain charitable organizations; general rule.

(a) * * *

(2) Except in the case of transfers in trust made after April 22, 1969, a reversionary interest in a charitable trust meeting the requirements of section 673 (b) (see § 1.673(b)-1),

* * * * *

PAR. 10. Section 1.673(b) is amended by adding the following historical note:

§ 1.673(b) Statutory provisions; estates and trusts; grantors and others treated as substantial owners; charitable beneficiaries.

* * * * *

[Sec. 673(b) before repeal by sec. 201(c), Tax Reform Act 1969 (83 Stat. 560)]

PAR. 11. Section 1.673(b)–1 is amended by revising the heading and adding the following new paragraph:

§ 1.673(b)–1 Income payable to charitable beneficiaries (before amendment by Tax Reform Act of 1969).

* * * * *

(d) This section does not apply to transfers in trust made after April 22, 1969.

[FR Doc.75–14372 Filed 5–30–75;8:45 am]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[Regulations on Procedure and Administration; T.D. 7359]

PART 301—PROCEDURE AND ADMINISTRATION

Delegation of Authority To Administer Oaths and Certify

This document contains an amendment to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7622 of the Internal Revenue Code of 1954 in order to revise the rules with respect to the delegation of authority to administer oaths and certify certain papers.

The current regulations provide that those employees authorized by the Commissioner to issue summons are authorized to administer oaths and certify certain papers. The purpose of the amendment is to make it clear that the Commissioner may delegate the authority to administer oaths and certify to any officer or employee of the Internal Revenue Service.

Adoption of amendments to the regulations. In view of the foregoing, § 301.7622–1 of the Regulations on Procedure and Administration (26 CFR Part 301) is revised to read as follows:

§ 301.7622–1 Authority to administer oaths and certify.

The officers and employees of the Internal Revenue Service whom the Commissioner has designated are authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the internal revenue laws or regulations issued thereunder, except that the authority to certify shall not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive.

Because this Treasury decision amends regulations only with respect to administrative procedure and practice, it is found to be unnecessary to issue it with notice and public procedure thereon under section 553(b) of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805.)

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: May 27, 1975.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc.75–14368 Filed 5–30–75;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Correction

In FR Doc. 75–2361, appearing on page 3982 in the issue for Monday, January 27, 1975, the section reference in the second line of the note following the table should read "§ 1910.106(d)(2)".

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—GENERAL

[CGD 75–085]

PART 1—GENERAL PROVISIONS

Fees for Services for the Public

The purpose of these amendments to the user fee regulations is to reflect the Department of Transportation's revised rules governing the public availability of information.

In the February 24, 1975 issue of the FEDERAL REGISTER (37 FR 7915), the Department of Transportation issued regulations that implement the Freedom of Information Act, 5 U.S.C. 552, as amended by Pub. L. 93–502, 88 Stat. 1565. These regulations recodified the provisions for fees from Subpart H, including §§ 7.81–7.91, to Subpart I, including §§ 7.91–7.101.

In 33 CFR 1.25–40, references are made to 49 CFR Subpart H and specific regulations in that subpart. The amendments in this document are made to reflect the revisions made to that subpart by the Department of Transportation in 37 FR 7915.

Since the amendments in this document are only editorial changes, public rulemaking procedures are unnecessary and they may be made effective June 2, 1975.

In consideration of the foregoing, § 1.25–40 of Title 33, Code of Federal Regulations is amended as follows:

§ 1.25–40 [Amended]

1. By amending paragraph (a) by striking in the first sentence the words "Subpart H" and inserting "Subpart I" in place thereof, by striking in the second sentence the citation "49 CFR 7.85" and inserting "49 CFR 7.95" in place thereof, and by striking in the third sentence the citation "49 CFR 7.83" and inserting "49 CFR 7.93" in place thereof.

2. By amending the first sentence in paragraph (b) by striking the words "In accordance with 49 CFR 7.85(1)," and by striking the citation "49 CFR 7.85" and inserting "49 CFR 7.95" in place thereof.

(Sec. 501, 65 Stat. 290 (31 U.S.C. 483a); 14 U.S.C. 633; sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1); 49 CFR 1.46(b)))

Effective date. These amendments are effective on June 2, 1975.

Dated: May 16, 1975.

E. L. PERRY,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc.75–14319 Filed 5:30–75;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAM

[FRL 365–4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

New York State Implementation Plan Revision

An August 29, 1974, the Commissioner of the New York State Department of Environmental Conservation (NYSDEC) submitted a proposed revision to the New York State implementation plan which consisted of a revised part 225 (Fuel Composition and Use), of Subchapter A, chapter III, title 6 of New York's Official Compilation of Codes, Rules and Regulations (6 NYCRR). Additional information received on October 11, 1974 supports the contention that this regulation will not prevent the attainment and maintenance of national standards for sulfur oxides.

Revised Part 225, which was adopted by the State Environmental Board on July 17, 1974 and became effective on September 26, 1974, replaces existing Parts 225, 226 and 230 of 6 NYCRR. This regulation was subject to New York State public hearings during the period November 14–19, 1973. The regulation removes Suffolk County from the sulfur limitations in effect for the New York City Metropolitan Area (0.3 percent for residual oil, 0.2 percent for distillate oil and 0.2 lbs/10^6 Btu for solid fuel) and maintains the prior sulfur in fuel limitation for distillate oil at 0.2 percent in effect for the New York City Metropolitan Area. In Eastern Suffolk County the previous limitations of 0.37 percent for residual oil and 0.2 lbs/10^6 Btu for solid fuel in effect for the New York City Metropolitan Area were revised to an allowable maximum sulfur limitation of 2.0 percent for all types of oil and a 3-month average of 1.9 lbs/10^6 Btu for solid fuel while in Western Suffolk County the maximum sulfur content changes from 0.37 percent for residual oil and 0.2 lbs/10^6 Btu for solid fuel to 1.0 percent for all oil and 0.6 lbs/10^6 Btu for solid fuel. In addition, the regulation accomplishes the following:

(1) It provides for consistency with the New York City regulation dealing with sulfur in fuel limitations for residual oil;