Fairfax County in Virginia because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Fairfax County, Virginia, on April 7, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected area.

**EFFECTIVE DATE:** April 11, 1980.

**FOR FURTHER INFORMATION CONTACT:** C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8093.

**SUPPLEMENTARY INFORMATION:** This amendment quarantines a portion of Fairfax County in Virginia because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of Virginia and a new paragraph (a)(1) relating to the State of Virginia is added to read:

**§ 82.3 Areas quarantined.**

(a) * * *

(1) *Virginia.* The premises of Kevin Smith, 4548 Eisenhower Avenue, Alexandria, Fairfax County.

* * * * *

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

This amendment imposes certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C, this 11th day of April 1980.

J. K. Atwell,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 80-11676 Filed 4-17-80; 8:45 am]

BILLING CODE 3410-34-M

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## 9 CFR Part 92

## Importation of Horses From Mexico for Immediate Slaughter; Correction and Receipt of Petition

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of correction and receipt of petition.

**SUMMARY:** This document withdraws amended § 92.39(b) of the regulations concerning the importation of horses from Mexico for immediate slaughter. This action is necessary because comments received during the 60-day comment period concerning the importation of animals from Mexico for immediate slaughter were inadvertently omitted from consideration in the final rulemaking procedure and the discussion of the rule change in the notice of proposed rulemaking was not accurate. The effect of this action is to leave the provisions of the regulations concerning the importation of horses from Mexico as they were prior to issuance of the new regulations on March 4, 1980 (45 FR 14017-14019) and to consider the comments a petition to require horses imported from Mexico for immediate slaughter to be detained at the port of entry and to be tested as required for all other horses imported into the United States from Mexico.

The purpose of publishing this notice of petition is to give interested persons an opportunity to provide views, data, and other information regarding such detention and testing to the Department so that the Department can determine whether or not such a regulation should be proposed.

**DATES:** 9 CFR 92.39(b) is withdrawn and 9 CFR 92.34(c) is reinstated effective April 4, 1980.

Comments on the petition should be received on or before June 17, 1980.

**ADDRESS:** Written comments to Deputy Administrator, USDA, APHIS, VS, Room 815, Federal Building, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 815, Hyattsville, Maryland 20782. (301) 436-8170.

On Tuesday, August 28, 1979, there was published in the **Federal Register** (44 FR 50351-50353) a proposed amendment to the regulations (9 CFR Part 92) concerning the importation of animals from Mexico. The proposal had many parts to it, including provisions relating to the entry of horses from Mexico into the United States for immediate slaughter.

The proposal published Tuesday, August 28, 1979, provided a 60-day comment period for receipt of comments which expired October 29, 1979. On Tuesday, March 4, 1980, there was published in the **Federal Register** (45 FR 14017-14019) the final rule based on the proposal. The Department reported a total of two comments received. However, two additional comments received during the comment period, through a filing error, were inadvertently omitted from consideration. Both comments expressed concern that untested horses imported from Mexico for slaughter could be substituted with other horses after entry into the United States and, through such substitution, horses possibly affected with a disease could be entered into the United States horse population. Additionally, one of the respondents also stated that there are those who believe that horses in Mexico are as disease free as horses are in the United States, however, there are areas in Mexico that have a lot of horses that no one knows anything about.

The Department wishes to make clear that the requirements for the importation of horses for immediate slaughter from Mexico were not amended by the proposal or final rule. Prior to the formulation of the proposed rule, the Department became aware of some confusion at ports of entry on test requirements for horses from Mexico for immediate slaughter. While the information provided in the proposal was meant to clarify the requirements of the regulation concerning such importation, unfortunately, the wording of the proposal did indicate that horses for immediate slaughter from Mexico are presently subject to testing as a condition of entry.

The regulations presently do not require testing of such horses. The test requirement for horses in general from Mexico is contained in § 92.34(c) of the regulations. However, § 92.40 permits the entry of horses from Mexico intended for immediate slaughter subject to satisfying certain conditions. None of these conditions include a test requirement. Consequently, the regulations (9 CFR 92.40) exempts horses for immediate slaughter imported from Mexico into the United States from meeting the general test requirement in § 92.34(c), (9 CFR 92.34(c)) provided the requirements in § 92.40 are satisfied.

Consequently, due to the confusion over the matter, the Department will consider the comments received opposing the deletion of a test requirement which presently does not exist, as a petition to require the testing of slaughter horses from Mexico. Further, the Department will withdraw that part of the final rule which concerned amending the provisions of the regulations concerning the importation of horses for immediate slaughter from Mexico.

The final rule published Tuesday, March 4, 1980, provided that § 92.34(c) of the regulations (9 CFR 92.34(c)) be redesignated § 92.39(b) and be amended to read:

(b) Horses intended for importation from Mexico, except horses certified for immediate slaughter, shall be quarantined at a port designated in § 92.3 until they qualify for release from such quarantine. In order to qualify for such release, all horses while so detained shall test negative to an official test for dourine, glanders, equine, piroplasmosis, equine infectious anemia, and such other tests that may be required by the Deputy Administrator to determine their freedom from other communicable diseases. Such horses shall also be subjected to such other inspections and disinfections deemed necessary by the Deputy Administrator to prevent the introduction of communicable disease and they shall be released from quarantine only if found to be free from communicable disease upon inspection.

**§ 92.34 [Amended]**

By withdrawing the above amendment § 92.34(c) will remain unchanged and will read:

* * * * *

(c) Horses intended for importation from Mexico shall be quarantined at a port designated in § 92.3 until they qualify for release from such quarantine. In order to qualify for such release, all horses while so detained shall test negative to an official test for dourine, glanders, equine piroplasmosis, equine infectious anemia, and such other tests that may be required by the Deputy Administrator to determine their freedom from other communicable diseases. Such horses shall also be subjected to such other inspections and disinfections deemed necessary by the Deputy Administrator, and they shall be released from quarantine only if found to be free from any communicable disease upon inspection.

As stated previously, the Department is regarding the comments concerned with the testing of slaughter horses from Mexico as a petition to amend 9 CFR 92.40 to require test of such horses, as is required for all other horses from Mexico in 9 CFR 92.34(c).

In order to provide for meaningful comment, the Department offers the following information:

The Department pursuant to 9 CFR 92.23 and 92.40 requires that all imported slaughter animals including horses from Mexico be consigned only to slaughter establishments specifically approved by the Department to slaughter such animals. The vehicles transporting the animals are sealed with USDA seals by the port veterinarian at the port of entry. The seals are broken upon arrival at the specifically approved establishment by a Federal or State meat inspector or an employee of the plant designated by both the meat inspector and plant management to break the seals. The animals are held by the operators at the specifically approved establishment in designated pens separate from other animals until slaughtered.

Additionally, procedures specified in 9 CFR 92.33 require that all horses, including slaughter horses imported from Mexico, be inspected at the port of entry and be found free of fever tick infestation and communicable diseases and exposure thereto, and are subject to a precautionary treatment with a tickcide solution.

Accordingly, § 92.39 is withdrawn and § 92.34(c) will not be amended as was provided in **Federal Register** Docket 80-8587, filed on 3-3-80, and published in the **Federal Register** on March 4, 1980, at 45 FR 14017-14019.

This notice sets forth the contents of the petition. However, its publication does not represent any agency position on the merits of the petition. After consideration of the available data and comments received in response to this notice, the Department will determine whether to initiate a rulemaking proceeding based upon the petition.

If rulemaking is appropriate, a notice of proposed rulemaking containing regulatory proposals will be issued by the Department.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 823, Hyattsville, MD, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the **Federal Register.**

Done at Washington, D.C., this 4th day of April 1980.

**J. K. Atwell,**

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 80-12142 Filed 4-17-80; 8:45 am]

**BILLING CODE 3410-34-M**

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 229

**[Subpart A; Docket No. R-0284]**

### Consumer Credit Restraint

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** On April 2, 1980, the Board amended its consumer credit restraint regulation (45 FR 24444, April 10, 1980) to permit covered creditors to change certain terms relating to certain credit accounts if two conditions were met. First, the creditor would have to mail or deliver a written notice of the proposed change to each affected accountholder at least 30 days before the effective date of the change. Second, the creditor would have to allow the accountholder to repay the balance outstanding on the effective date according to the existing terms unless the consumer made a credit purchase or obtained a credit advance on or after that date; in which case, the new terms would apply to the outstanding balance plus new credit.

The Board is now making two technical amendments to its April 2 amendment. The first makes clear that the change in terms requirements apply not only to open-end credit accounts where the consumer may pay the balance due in installments subject to a finance charge, but also to open accounts (such as so-called 30-day accounts referred to at 45 FR 17928) where the consumer may make credit purchases or obtain credit advances from time to time, yet is expected to pay in full upon being billed. The intent of

the April 2 amendment was to cover both types of account.

The second technical amendment clarifies that the change in terms provision does not affect the maximum finance charge rate permitted by state law or, for depository institutions, the maximum rate allowed by Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96–221). It makes clear, however, that federal finance charge limitations for other covered creditors, such as the Department of Energy's regulations governing oil company credit programs, are superseded by § 229.6(a) of the credit restraint regulation to the extent that that provision authorizes an action otherwise prohibited by federal law. That was the intent of the April 2 amendment as indicated in the **Federal Register** supplementary information (45 FR 24444).

**EFFECTIVE DATE:** April 14, 1980.

**FOR FURTHER INFORMATION CONTACT:** Nathaniel E. Butler, Associate Director, or David A. Myers, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202–452–3000).

**SUPPLEMENTARY INFORMATION:** Since the two amendments that are being made to the consumer credit restraint regulation are merely interpretative in nature and do not change the substance of the regulation, the Board finds that publication of the changes for public comment or a delay in their effectiveness is neither necessary nor required under 5 U.S.C. § 553(b). Therefore, pursuant to its authority under the Credit Control Act (12 U.S.C. §§ 1901–1909), as implemented by Executive Order 12201, the Board hereby amends 12 CFR Part 229, Subpart A, §§ 229.6 (a) and (b)(1), effective April 14, 1980, as follows:

**§ 229.6 Change in terms of open-end credit accounts.**

* * * * *

(a) Notwithstanding the terms of any credit agreement or the provision of any other law, a covered creditor, with respect to its open-end or other open credit accounts, may (1) impose or increase any finance or other charge, (2) change the method of computing the balance upon which charges are imposed, or (3) increase the required minimum periodic payment, if the following two conditions are met.

* * * * *

(b)(1) This section does not authorize a covered creditor to impose a rate of interest or finance charge in excess of the maximum permitted by state law, nor does it authorize a depository institution (as defined in section 19(b) of the Federal Reserve Act as amended by the Monetary Control Act of 1980) to impose a rate of interest or finance charge in excess of the maximum permitted by federal law.

* * * * *

Board of Governors of the Federal Reserve System, April 14, 1980.

**Theodore E. Allison,**

*Secretary of the Board.*

[FR Doc. 80-12021 Filed 4-17-80; 8:45 am]

**BILLING CODE 6210-01-M**

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## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Food and Drug Administration

## 21 CFR Part 184

## [Docket No. 78N-0013]

## Sulfuric Acid and Ammonium, Calcium, Potassium, and Sodium Sulfates; Correction

**AGENCY:** Food and Drug Administration.

**ACTION:** Correction.

**SUMMARY:** In FR Doc. 80–2037 appearing at page 6084 in the **Federal Register** of Friday, January 25, 1980, the following correction is made in the first column of page 6086: In § 184.1230(a), the first CAS Reg. No., "778–18–9", is changed to read "7778–18–9."

**FOR FURTHER INFORMATION CONTACT:** Agnes Black, Federal Register Writer (HFC–11), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

Dated: April 9, 1980.

**William F. Randolph,**

*Acting Asociate Commissioner for Regulatory Affairs.*

[FR Doc. 80-11451 Filed 4-14-80; 8:45 am]

**BILLING CODE 4110-03-M**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1, 7

## [T.D. 7692]

## Income Tax; Homeowners Associations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document provides final regulations relating to homeowners associations. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations provide necessary guidance to the public to determine whether a particular organization qualifies as a homeowners association. If an organization qualifies as a homeowners association, its tax liability may be reduced as a result of the new provision under the Act.

**DATE:** The regulations are effective for taxable years beginning after December 31, 1973.

**FOR FURTHER INFORMATION CONTACT:** Phoebe A. Mix of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202–566–3671, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 9, 1979, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 528 of the Internal Revenue Code of 1954 (44 FR 1985). The amendments were proposed to conform the regulations to section 2101(a) of the Tax Reform Act of 1976 (90 Stat. 1897). After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

### Explanation of the Regulations

For taxable years beginning after December 31, 1973, homeowners associations described in section 528 of the Code may elect to be subject to the tax imposed by section 528 and to be otherwise exempt from Federal income taxes. To be considered a homeowners association an organization must be either a condominium management association or a residential real estate management association and must meet a number of specific additional requirements. Cooperative housing corporations are not eligible to be treated as homeowners associations.

For an organization to qualify as a homeowners association it must be organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property. In addition, a homeowners association must meet both a source of income test (which generally requires that at least 60 percent of its gross income consist of membership dues, fees, or assessments from members of the association) and an expenditure test (which generally requires that at least 90 percent of its expenditures be in furtherance of its exempt purposes). If an association meets the required tests and makes the election under section 528, it will not be taxable on that portion of its income which consists of dues, fees, and assessments from its members. To the extent that a homeowners association does have taxable income, it will be taxed (with certain modifications described in section 528 and these regulations) as a corporation taxable under section 11.

**Additional Considerations**

These regulations are needed in order to provide guidance to the public as well as government employees responsible for the implementation of section 528 of the Internal Revenue Code of 1954. Considering both the direct and indirect effects of these regulations, it is believed that they satisfactorily implement section 2101(a) of the Tax Reform Act of 1976. These regulations do not institute new record-keeping or recording burdens. Evaluation of the effectiveness of the regulations after issuance will be based upon comments received from offices within the Internal Revenue Service and the Treasury Department, other govermental agencies, State and local governments, and the public.

**Public Comments**

A number of comments were received which suggested that the provisions relating to the use for residential purposes are too restrictive. This has not resulted in any change to the regulations because it is felt that such a change would be in conflict with the statute.

A suggestion was made that § 1.528-8(e) should be amended to provide that organizations exempt under section 501(c)(4) may not have their exempt status revoked retroactively, just prospectively. The standards for revoking an organization's exempt status are beyond the scope of the proposed regulations. Section 1.528-8(e) simply permits an organization whose exempt status has been revoked retroactively to make a timely election under section 528.

Another criticism of the proposed regulations was that they did not adequately take into account the existence of separate subdivisions within the same homeowners association. The final regulations permit the use of association property to be allocated to certain members of the association provided that all members are treated in an equitable manner and have access to comparable facilities. The final regulations require equal access to the same or comparable property because the legislative history indicates that this was the intent of Congress.

Comments were also received which suggested that the final regulations provide that investment income and income from unrelated activities not be taxed. The final regulations do not reflect these suggestions because to do so would be inconsistent with the statute.

Finally, comments were received which suggested changes that either conflicted with the express statutory language or would have made the regulations unreasonably long and complex. Those suggestions were rejected.

**Drafting Information**

The principal author of these regulations is Phoebe A. Mix of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

*Adoption of the regulations*

After careful consideration, the proposed amendments to the regulations (44 FR 1985) are adopted subject to the following changes:

**Paragraph 1.** Section 1.528-1 is amended by adding ", residences," after the word "units" in the fifth sentence of paragraph (a), by adding a new sentence at the end of paragraph (a), by deleting paragraph (b) and inserting in its place a new paragraph (b), and by adding a new paragraph (d). The new sentence and paragraphs read as follows:

§ *1.528-1 Homeowners associations.*

(a) *In general.* * * * However, if the membership of an organization consists of other homeowners associations, the owners of units, residences, or lots who are members of such other homeowners associations will be treated as the members of the organization for the purposes of the regulations under section 528.

(b) *Condominium.* The term "condominium" means an interest in real property consisting of an undivided interest in common in a portion of a parcel of real property (which may be a fee simple estate or an estate for years, such as a leasehold or subleasehold) together with a separate interest in space in a building located on such property. An interest in property is not a condominium unless the undivided interests in the common elements are vested in the unit holders. In addition, a condominium must meet the requirements of applicable state or local law relating to condominiums or horizontal property regimes.

* * * * *

(d) *Tenants.* Tenants will not be considered members for purposes of meeting the source of income test under section 528(c)(1)(B) and § 1.528-5. However, the fact that tenants of members of an homeowners association are permitted to be members of the association will not disqualify an association under section 528(c)(1) if it otherwise meets the requirements of section 528(c) and these regulations.

**Par. 2.** Section 1.528-2 is amended by deleting from the last sentence in paragraph (a) "The term 'articles of association' " and inserting in its place "The term 'articles of organization' ".

**Par. 3.** Section 1.528-3 is amended by adding a sentence immediately after the second sentence in paragraph (a), by deleting the word "and" and inserting in its place the word "or" in the second sentence of paragraph (c), and by amending paragraph (c)(1). Paragraph (c)(1), and the added sentence to paragraph (a), read as follows:

§ *1.528-3 Association property.*

(a) *Property owned by the organization* * * * If two or more facilities or items of property of a similar nature are owned by a homeowners association, and if the use of any particular facility or item is restricted to fewer than all association members, such facilities or items nevertheless will be considered association property if all association members are treated equitably and have similar rights with respect to comparable items or facilities.

* * * * *

(c) *Privately owned property.* * * *

(1) There is a covenant or similar requirement relating to exterior appearance or maintenance that applies on the same basis to all such property (or to a reasonable classification of such property);

* * * * *

**Par. 3.** Section 1.528-4(b) is amended by inserting "swimming pools, tennis courts," after the words "laundry areas," in the last sentences.

**Par. 4.** Section 1.528-6(c) is amended by adding "(but are not limited to)" immediately after "may include", by redesignating §§ 1.528-6(c)(10) and 1.528-6(c)(11) as §§ 1.528-6(c)(12) and 1.528-6(c)(13) respectively, by amending § 1.528-6(c)(5) and by adding new §§ 1.528-6(c)(10) and 1.528-6(c)(11). Sections 1.528-6(c) (5), (10), and (11) read as follows:

§ *1.528-6 Expenditure test.*

* * * * *

(c) *Examples of qualifying expenditures.* * * *

(5) Legal fees; * * *

(10) Insurance premiums on association property;

(11) Accountant's fees; * * *

**Par. 5.** Section 1.528-9 is amended by adding "or from tenants of residential units owned by members (notwithstanding § 1.528-1(d))" after the words "from members" in paragraph (d) and deleting the last sentence in paragraph (a) and inserting in its place two new sentences. The two new sentences read as follows:

*§ 1.528-9 Exempt function income.*

(a) *General rule.* * * * However, if such excess assessments are applied to a future year's assessments, they will be considered gross income and exempt function income for that future year. In addition, assessments in a taxable year, such as an assessment for a capital improvement, which are not treated as gross income do not enter into the determination of whether the organization meets the source of income test for that taxable year.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

**Jerome Kurtz,**
*Commissioner of Internal Revenue.*

Approved: March 31, 1980.

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

*Adoption of the Regulations*

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

The amendments to 26 CFR Part 1 and Part 7 are as follows:

Paragraph 1. The following sections are added to read as follows:

**Homeowners Associations**

**§ 1.528-1 Homeowners associations.**

(a) *In general.* Section 528 only applies to taxable years of homeowners associations beginning after December 31, 1973. To qualify as a homeowners association an organization must either be a condominium management association or a residential real estate management association. For the purposes of Section 528 and the regulations under that section, the term "homeowners association" shall refer only to an organization described in section 528. Cooperative housing corporations and organizations based on a similar form of ownership are not eligible to be taxed as homeowners associations. As a general rule, membership in either a condominium management association or a residential real estate management association is confined to the developers and the owners of the units, residences, or lots. Furthermore, membership in either type of association is normally required as a condition of such ownership. However, if the membership of an organization consists of other homeowners associations, the owners of units, residences, or lots who are members of such other homeowners associations will be treated as the members of the organization for the purposes of the regulations under section 528.

(b) *Condominium.* The term "condominium" means an interest in real property consisting of an undivided interest in common in a portion of a parcel of real property (which may be a fee simple estate or an estate for years, such as a leasehold or subleasehold) together with a separate interest in space in a building located on such property. An interest in property is not a condominium unless the undivided interest in the common elements are vested in the unit holders. In addition, a condominium must meet the requirements of applicable state or local law relating to condominiums or horizontal property regimes.

(c) *Residential real estate management association.* Residential real estate management associations are normally composed of owners of single-family residential units located in a subdivision, development, or similar area. However, they may also include as members, owners of multiple-family dwelling units located in such areas. They are commonly formed to administer and enforce covenants relating to the architecture and appearance of the real estate development as well as to perform certain maintenance duties relating to common areas.

(d) *Tenants.* Tenants will not be considered members for purposes of meeting the source of income test under section 528(c)(1)(B) and § 1.528-5. However, the fact that tenants of members of a homeowners association are permitted to be members of the association will not disqualify an association under section 528(c)(1) if it otherwise meets the requirements of section 528(c) and these regulations.

**§ 1.528-2 Organized and operated to provide for the acquisition, construction, management, maintenance and care of association property.**

(a) *Organized and operated*—(1) *Organized.* To be treated as a homeowners association an organization must be organized and operated primarily for the purpose of carrying on one or more of the exempt functions of a homeowners association. For the purposes of section 528 and these regulations, the exempt functions of a homeowners association are the acquisition, construction, management, maintenance, and care of association property. In determining whether an organization is organized and operated primarily to carry on one or more exempt functions, all the facts and circumstances of each case shall be considered. For example, when an organization provides in its articles of organization that its sole purpose is to carry on one or more exempt functions, in the absence of other relevant factors it will be considered to have met the organizational test. (The term "articles of organization" means the organization's corporate charter, trust instruments, articles of association or other instrument by which it is created.)

(2) *Operated.* An organization will be treated as being operated for the purpose of carrying on one or more of the exempt functions of a homeowners association if it meets the provisions of §§ 1.528-5 and 1.528-6.

(b) *Terms to be interpreted according to common meaning and usage.* As used in section 528 and these regulations, the terms acquisition, construction, management, maintenance, and care are to be interpreted according to their common meaning and usage. For example, maintenance of association property includes the painting and repairing of such property as well as the gardening and janitorial services associated with its upkeep. Similarly, the term "construction" of association property includes covenants or other rules for preserving the architectural and general appearance of the area. The term also includes regulations relating to the location, color and allowable building materials to be used in all structures. (For the definition of association property see § 1.528-3.)

**§ 1.528-3 Association property.**

(a) *Property owned by the organization.* "Association property" includes real and personal property owned by the organization or owned as tenants in common by the members of the organization. Such property must be available for the common benefit of all members of the organization and must be of a nature that tends to enhance the beneficial enjoyment of the private residences by their owners. If two or more facilities or items of property of a similar nature are owned by a homeowners association, and if the use of any particular facility or item is restricted to fewer than all association members, such facilities or items nevertheless will be considered association property if all association members are treated equitably and have similar rights with respect to comparable items or facilities. Among the types of property that ordinarily will be considered association property are swimming pools and tennis courts. On the other hand, facilities or areas set aside for the use of nonmembers, or in fact used primarily by nonmembers, are not association property for the purposes of this section. For example, property owned by an organization for the purpose of leasing it to groups consisting primarily of nonmembers to be used as a meeting place or a retreat will not be considered association property.

(b) *Property normally owned by a governmental unit.* "Association property" also includes areas and facilities traditionally recognized and accepted as being of direct governmental concern in the exercise of the powers and duties entrusted to governments to regulate community health, safety and welfare. Such areas and facilities would normally include roadways, parklands, sidewalks, streetlights and firehouses. Property described in this paragraph will be considered association property regardless of whether it is owned by the organization itself, by its members as tenants in common or by a governmental unit and used for the benefit of the residents of such unit including the members of the organization.

(c) *Privately owned property.* "Association property" may also include property owned privately by members of the organization. However, to be so included the condition of such property must affect the overall appearance or structure of the residential units which make up the organization. Such property may include the exterior walls and roofs of privately owned residences as well as the lawn and shrubbery on privately owned land and any other privately owned property the appearance of which may directly affect the appearance of the entire organization. However, privately owned property will not be considered association property unless—

(1) There is a covenant or similar requirement relating to exterior appearance or maintenance that applies on the same basis to all such property (or to a reasonable classification of such property);

(2) There is a pro rata mandatory assessment (at least once a year) on all members of the association for maintaining such property; and

(3) Membership in the organization is a condition of ownership of such property.

**§ 1.528-4 Substantially test.**

(a) *In general.* In order for an organization to be considered a condominium management association or a residentail real estate management association (and therefore in order for it to be considered a homeowners association), substantially all of its units, lots or buildings must be used by individuals for residences. For the purposes of applying paragraph (b) or (c) of this section, and organization which has attributes of both a condominium management association and a residential real estate management association shall be considered that association which, based on all the facts and circumstances, it more closely resembles. In addition, those paragraphs shall be applied based on conditions existing on the last day of the organization's taxable year.

(b) *Condominium management associations.* Substantially all of the units of a condominium management association will be considered as used by individuals for residences if at least 85% of the total square footage of all units within the project is used by individuals for residential purposes. If a completed unit has never been occupied, it will nonetheless be considered as used for residential purposes if, based on all the facts and circumstances, it appears to have been constructed for use as a residence. Similarly, a unit which is not occupied but which has been in the past will be considered as used for residential purposes if, based on all the facts and circumstances, it appears that it was constructed for use as a residence, and the last individual to occupy it did in fact use it as a residence. Units which are used for purposes auxiliary to residential use (such as laundry areas, swimming pools, tennis courts, storage rooms and areas used by maintenance personnel) shall be considered used for residential purposes.

(c) *Residential real estate management associations.* Substantially all of the lots or buildings of a residential real estate managment association (including unimproved lots) will be considered as used by individuals as residences if at least 35% of the lots are zoned for residential purposes. Lots shall be treated as zoned for residential purposes even if under such zoning lots may be used for parking spaces, swimming pools, tennis courts, schools, fire stations, libraries, churches and other similar purposes which are auxiliary to residential use. However, commercial shopping areas (and their auxiliary parking areas) are not lots zoned for residential purposes.

(d) *Exception.* Notwithstanding any other provision of this section, a unit, or building will not be considerd used for residential purposes, if for more than one-half the days in the association's taxable year, such unit, or building is occupied by a person or series of persons, each of whom so occupies such unit, or building for less than 30 days.

**§ 1.528-5 Source of income test.**

An organization cannot qualify as a homeowners association under section 528 for a taxable year unless 60 percent or more of its gross income for such taxable year is exempt function income as defined in § 1.528-9. The determiniation of whether an organization meets the provisions of this section shall be made after the close of the organization's taxable year.

**§ 1.528-6 Expenditure test.**

(a) *In general.* An organization cannot qualify as a homeowners association under section 528 for a taxable year unless 90 percent or more of its expenditures for such taxable year are qualifying expenditures as defined in paragraphs (b) and (c) of this section. The determination of whether an organization meets the provisions of this section shall be made after the close of the organization's taxable year. Investments or transfers of funds to be held to meet future costs shall not be taken into account as expenditures. For example, transfers to a sinking fund account for the replacement of a roof would not be considered an expenditure for the purposes of this section even if the roof is association property. In addition, excess assessments which are either rebated to members or applied against the members' following year's assessments will not be considered an expenditure for the purposes of this section.

(b) *Qualifying expenditures.* Qualifying expenditures are expenditures by an organization for the acquisition, construction, management, maintenance, and care of the organization's association property. They include both current operating and capital expenditures on association property. Qualifying expenditures include expenditures on association property despite the fact that such property may produce income which is not exempt function income. Thus expenditures on a swimming pool are qualifying expenditures despite the fact that fees from guests of members using the pool are not exempt function income. Where expenditures by an organization are used both for association property as well as other property, an allocation shall be made between the two uses on a reasonable basis. Only that portion of the expenditures which is properly allocable to the acquisition, construction, management, maintenance or care of association property, shall constitute qualifying expenditures.

(c) *Examples of qualifying expenditures.* Qualifying expenditures may include (but are not limited to) expenditures for—

(1) Salaries of an association manager and secretary;

(2) Paving of streets;

(3) Street signs;

(4) Security personnel;

(5) Legal fees;

(6) Upkeep of tennis courts;

(7) Swimming pools;

(8) Recreation rooms and halls;

(9) Replacement of common buildings, facilities, air conditioning, etc;

(10) Insurance premiums on association property;

(11) Accountant's fees;

(12) Improvement of private property to the extent it is association property; and

(13) Real estate and personal property taxes imposed on association property by a State or local government.

**§ 1.528-7 Inurement.**

An organization is not a homeowners association if any part of its net earnings inures (other than as a direct result of its engaging in one or more exempt functions) to the benefit of any private person. Thus, to the extent that members receive a benefit from the general maintenance, etc., of association property, this benefit generally would not constitute inurement. If an organization pays rebates from amounts other than exempt function income, such rebates will constitute inurement. In general, in determining whether an organization is in violation of this section, the principles used in making similar determinations under Section 501(c) will be applied.

**§ 1.528-8 Election to be treated as a home-owners association.**

(a) *General rule.* An organization wishing to be treated as a homeowners association under section 528 and this section for a taxable year must elect to be so treated. Except as otherwise provided in this section such election shall be made by the filing of a properly completed Form 1120-H (or such other form as the Secretary may prescribe). A separate election must be made for each taxable year.

(b) *Taxable years ending after December 30, 1976.* For taxable years ending after December 30, 1976, the election must be made not later than the time, including extensions, for filing an income tax return for the year in which the election is to apply.

(c) *Taxable years ending before December 31, 1976, for which a return was filed before January 31, 1977.* For taxable years ending before December 31, 1976, for which a return was filed before January 31, 1977, the election must be made not later than the time provided by law for filing a claim for credit or refund of overpayment of taxes for the year in which the election is to apply. Such an election shall be made by filing an amended return on Form 1120-H (or such other form as the Secretary may prescribe).

(d) *Taxable years ending before December 31, 1976, for which a return was not filed before January 31, 1977.* For taxable years ending before December 31, 1976, for which a return was not filed before January 31, 1977, the election must be made by October 20, 1980. Instead of making such an election in the manner described in paragraph (a) of this section, such an election may be made by a statement attached to the applicable income tax return or amended return for the year in which the elections made. The statement should identify the election being made, the period for which it applies and the taxpayer's basis for making the election.

(e) *Revocation of exempt status.* If an organization is notified after the close of a taxable year that its exemption for such taxable year under section 501(a) is being revoked retroactively, it may make a timely election under section 528 for such taxable year. Notwithstanding any other provisions of this section, such an election will be considered timely if it is made within 6 months after the date of revocation. The preceding sentence shall apply to revocations made after April 18, 1980. If the revocation was made on or before April 18, 1980, the election will be considered timely if it is made before the expiration of the period for filing a claim for credit or refund for the taxable year for which it is to apply.

(f) *Effect of election*—(1) *Revocation.* An election to be treated as an organization described in section 528 is binding on the organization for the taxable year and may not be revoked without the consent of the Commissioner.

(2) *Exception.* Notwithstanding paragraph (f)(1) of this section, an election under this section may be revoked prior to July 18, 1980. Such a revocation shall be made by filing a statement with the director of the Internal Revenue Service Center with whom the return of the organization for the year in which the revocation is to apply was filed. The statement shall include the following information.

(i) The name of the organization.

(ii) The fact that it is revoking an election made under section 528.

(iii) The taxable year for which the revocation is to apply.

**§ 1.528-9 Exempt function income.**

(a) *General rule.* For the purposes of section 528 exempt function income consists solely of income which is attributable to membership dues, fees, or assessments of owners of residential units or residential lots. It is not necessary that the source of income be labeled as membership dues, fees, or assessments. What is important is that such income be derived from owners of residential units or residential lots in their capacity as owner-members rather than in some other capacity such as customers for services. Generally, for the membership dues, fees, or assessments with respect to a residential unit or lot to be exempt function income, the unit must be used for (or the unit or lot must be expected to be used) for residential purposes. However, dues, fees, or assessments paid to an organization by a developer with respect to unfinished or finished but unsold units or lots shall be exempt function income even though the developer does not use the units or lots. If an assessment is more in the nature of a fee for the provision of services in the course of a trade or business than a fee for a common activity undertaken by a collective group of owners for the purpose of enhancing or maintaining the value of their residences, the assessment will not be considered exempt function income to the organization. Furthermore, income attributable to dues, fees, or assessments will not be considered exempt function income unless each member's liability for payment arises solely from membership in the association. Dues, fees, or assessments that are based on the extent, if any, to which a member avails him or herself of a facility or facilities are not exempt function income. For the purposes of section 528, dues, fees, or assessments which are based on the assessed value or size of property will be considered as arising solely as a result of membership in the organization. Regardless of the organization's method of accounting, excess assessments during a taxable year which are either rebated to the members or applied to their future assessments are not considered gross income and therefore will not be considered exempt function income for such taxable year. However, if such excess assessments are applied to a future year's assessments, they will be considered gross income and exempt function income for that future year. In addition, assessments in a taxable year, such as an assessment for a capital improvement, which are not treated as gross income do not enter into the determination of whether the organization meets the source of income test for that taxable year.

(b) *Examples of exempt function income.* Assessments which are considered more in the nature of a fee for common activity than for the providing of services and which will therefore generally be considered exempt function income include assessments made for the purpose of—

(1) Paying the principal and interest on debts incurred for the acquisition of association property;

(2) Paying real estate taxes on association property;

(3) Maintaining association property;

(4) Removing snow from public areas; and

(5) Removing trash.

(c) *Examples of receipts which are not exempt function income.* Exempt function income does not include—

(1) Amounts which are not includible in the organization's gross income other than by reason of section 528 (for example, tax-exempt interest);

(2) Amounts received from persons who are not members of the association;

(3) Amounts received from members for special use of the organization's facilities, the use of which is not available to all members as a result of having paid the dues, fees or assessments required to be paid by all members;

(4) Interest earned on amounts set aside in a sinking fund;

(5) Amounts received for work done on privately owned property which is not association property; or

(6) Amounts received from members in return for their transportation to or from shopping areas, work location, etc.

(d) *Special Rule.* Notwithstanding paragraphs (a) and (c)(3) of this section, amounts received from members or tenants of residential units owned by members (notwithstanding § 1.528-1(d)) for special use of an association's facilities will be considered exempt function income if—

(1) The amounts paid by the members are not paid more than once in any 12 month period; and

(2) The privilege obtained from the payment of such amounts lasts for the entire 12 month period or portion thereof in which the facility is commonly in use.

Thus, amounts received as the result of payments by members of a yearly fee for use of tennis courts or a swimming pool shall be considered exempt function income. However, amounts received for the use of a building for an evening, weekend, week, etc., shall not be considered exempt function income.

**§ 1.528-10 Special rules for computation of homeowners association taxable income and tax.**

(a) *In general.* Homeowners association taxable income shall be determined according to the provisions of section 528(d) and the rules set forth in this section.

(b) *Limitation on capital losses.* If for any taxable year a homeowners association has a net capital loss, the rules of sections 1211(a) and 1212(a) shall apply.

(c) *Allowable deductions*—(1) *In general.* To be deductible in computing the unrelated business taxable income of a homeowners association, expenses, depreciation and similar items must not only qualify as items of deduction allowed by chapter 1 of the Code but must also be directly connected with the production of gross income (excluding exempt function income). To be "directly connected with" the production of gross income (excluding exempt function income), an item of deduction must have both proximate and primary relationship to the production of such income and have been incurred in the production of such income. Items of deduction attributable solely to items of gross income (excluding exempt function income) are proximately and primarily related to such income. Whether an item of deduction is incurred in the production of gross income (excluding exempt function income) is determined on the basis of all the facts and circumstances involved in each case.

(2) *Dual use of facilities or personnel.* Where facilities are used both for exempt functions of the organization and for the production of gross income (excluding exempt function income), expenses, depreciation and similar items attributable to such facilities (for example, items of overhead) shall be allocated between the two uses on a reasonable basis. Similarly where personnel are employed both for exempt functions and for the production of gross income (excluding exempt function income), expenses and similar items attributable to such personnel (for example, items of salary) shall be allocated between the two activities on a reasonable basis. The portion of any such item so allocated to the production of gross income (excluding exempt function income) is directly connected with such income and shall be allowable as a deduction in computing homeowners association taxable income to the extent that it qualifies as an item of deduction allowed by chapter 1 of the Code. Thus, for example, assume that X, a homeowners association, pays its manager a salary of $10,000 a year and that it derives gross income other than exempt function income. If 10 percent of the manager's time during the year is devoted to deriving X's gross income (other than exempt function income), a deduction of $1,000 (10 percent of $10,000) would generally be allowable for purposes of computing X's homeowners association taxable income.

(d) *Investment credit.* A homeowners association is not entitled to an investment credit.

(e) *Cross reference.* For the definition of exempt function income, see § 1.528-9.

## PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

**§ 7.0 [Revoked]**

Par. 2. Section 7.0 of this chapter (26 CFR Part 7), promulgated by Treasury Decision 7459, is hereby revoked to the extent it applies to elections under section 528.

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**26 CFR Part 301**

**[T.D. 7693]**

## Administrative Review Procedure for Determination of a State Tax Agency's Failure to Safeguard Federal Tax Information

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document provides final regulations concerning procedures for administrative review of a Service determination that a State tax agency has failed to safeguard Federal tax returns or return information received from the Service. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulations provide State tax agencies with guidance needed to comply with that Act.

**EFFECTIVE DATE:** April 18, 1980.

**FOR FURTHER INFORMATION CONTACT:** John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3294).

**SUPPLEMENTARY INFORMATION:**

## Background

On October 2, 1979, the **Federal Register** published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 6103(p)(7) of the Internal Revenue Code of 1954 (44 FR 56715). These amendments were proposed to conform the regulations to certain provisions under section 1202 (a)(1) of the Tax Reform Act of 1976 (90 Stat. 1667). After consideration of all comments received in response to the notice of proposed rulemaking, those amendments are adopted by this Treasury decision as proposed.

## Explanation of Provisions

The final regulations provide procedures required by section 6103(p)(7) of the Internal Revenue Code for administrative review by the Commissioner of a determination by the Internal Revenue Service that a State tax agency has failed to safeguard Federal tax returns or return information in accordance with the requirements of section 6103(p)(4). Notwithstanding section 6103(d), such a determination may result in the Service's terminating the disclosure of Federal tax returns or return information to the State tax agency concerned.

The final regulations establish procedures under which a State tax agency may appeal the above-described adverse determination directly to the Commissioner within 30 days after receiving notice thereof. These amendments also provide that, within 45 days after receiving such an appeal, the Commissioner or Deputy Commissioner will personally hold a conference with representatives of the State tax agency.

Several comments were received in response to the notice published in the Federal Register for October 2, 1979. One commentator urged that the Service not discontinue disclosure until the Commissioner reaches a final determination. Another urged that the regulations impose a 45-day deadline within which the Commissioner must make the final determination. After consideration of these comments, the Service concluded that the suggested changes would be inappropriate. Under the final regulations, disclosure of Federal tax returns and return information will not be discontinued following a preliminary determination unless Federal tax administration would otherwise be seriously impaired, in which case disclosure clearly should not continue pending the Commissioner's final determination.

Evaluation of the effectiveness of these regulations will be based on comments received from offices within the Treasury and the Internal Revenue Service, other governmental agencies, State and local governments, and the public. These regulations will impose no new reporting or recordkeeping requirements.

## Drafting Information

The principal author of these regulations is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

*Adoption of amendments to the regulations*

Accordingly, the regulations proposed to be prescribed as final Regulations on Procedure and Administration (26 CFR Part 301) published as a notice of proposed rulemaking in the **Federal Register** for October 2, 1979 (44 FR 56715), are hereby adopted as proposed.

This Treasury decision is issued under the authority contained in sections 6103(p)(7) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1685, 26 U.S.C. 6103 (p)(7); 68A Stat. 917, 26 U.S.C. 7805).

**Jerome Kurtz,**
*Commissioner of Internal Revenue.*

Approved: April 7, 1980.

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

## Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

A new § 301.6103(p)(7)-1 is added immediately after § 301.6103(h)(2)-1 to read as follows:

**§ 301.6103(p)(7)-1 Procedures for administrative review of a determination that a State tax agency has failed to safeguard Federal tax returns or return information.**

(a) *Notice of Service's intention to terminate disclosure to a State tax agency.* Notwithstanding subsection (d) of section 6103, the Internal Revenue Service may terminate disclosure of Federal returns and return information to a State agency, body, or commission described in section 6103(d) (hereinafter in this section referred to as a State tax agency) if the Service makes a determination that:

(1) A State tax agency has made unauthorized disclosure of Federal returns or return information received from the Service and that the State tax agency has not taken adequate corrective action to prevent repetition of the unauthorized disclosure, or

(2) A State tax agency does not satisfactorily maintain the safeguards described in subsection (p)(4) of section 6103, and has made no adequate plan to improve its system to maintain those safeguards satisfactorily. Prior to terminating disclosure, the Service will notify the State tax agency in writing of the Service's preliminary determination and of the Service's intention to discontinue disclosure of Federal returns and return information to the State tax agency. Upon so notifying the State tax agency, the Service, if it determines that Federal tax administration would otherwise be seriously impaired, may suspend further disclosure of Federal returns and return information to the State tax agency pending a final determination by the Commissioner or Deputy Commissioner described in subparagraph (2) of paragraph (c) of this section.

(b) *State tax agency's right to appeal.* A State tax agency shall have 30 days from the date of receipt of a notice described in paragraph (a) of this section to appeal the preliminary determination described in paragraph (a) of this section. The appeal shall be made directly to the Commissioner.

(c) *Procedures for administrative review.* (1) To appeal a preliminary determination described in paragraph (a) of this section, the State agency shall send a written request for a conference to: Commissioner of Internal Revenue (Attention: C), 1111 Constitution Avenue, NW., Washington, D.C. 20224. The request must include a complete description of the State tax agency's present system of safeguarding Federal returns or return information received from the Service. The request must then state the reason or reasons that the State agency believes that such system, including improvements, if any, to such system expected to be made in the near future, is or will be adequate to safeguard Federal returns or return information received from the Service.

(2) Within 45 days of the receipt of a request made in accordance with the provisions of subparagraph (1) of this paragraph, the Commissioner or Deputy Commissioner will personally hold a conference with representatives of the State tax agency, after which the Commissioner or Deputy Commissioner will make a final determination with respect to the appeal.

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