

case later than October 15, the minimum annual (seasonal) charge will be assessed.

(2) At the close of the irrigation season the meter will be read and the total seasonal energy use (kilowatt-hours) will be computed and billed. The bills shall be due and payable within 30 calendar days after date of issue.

(3) If an account becomes delinquent, the Project Engineer shall have the option of canceling the contract, removing the Project's facilities, and demand payment of all delinquent bills plus any penalties provided in the contract for premature termination of the contract.

(4) For a delinquent account to be reconnected, payment of all delinquent bills will be required, plus the estimated energy charge for the coming season, plus the annual seasonal charge of \$10.00 per horsepower.

(5) An adjustment for power factor will be made by increasing the seasonal charge for the kilowatt-hours by one (1) percent or major fraction thereof by which the lagging power factor is less than 95%.

(6) Payment of the pump charge will be required by April 15 of each year. Pump routes will then be established for the purpose of energizing the pump services. Those who require a special time of connection or who pay after April 15 (excepting new pump installations) will be required to pay an additional fee in accordance with § 176.14(d).

5. Section 176.56 is revised to read as follows:

**§ 176.56 Rate schedule No. 6: Area lights.**

(a) *Application of schedule.* This schedule is available in the Project's service area where adequate capacity, phase and voltage are available for individual users of area lighting and for communities which desire a lighting system not exceeding 10 units. Service is from dusk to dawn, and the Project will own, operate and maintain the lights, including lamp and globe replacement and furnishing the necessary energy. Individual users of area lighting will be required to have another account under residential or general rate schedules.

(b) *Rate per unit.*

(1) Area light installed on existing pole or structure:

7,000 lumen unit, M.V.—\$6.10 per month  
20,000 lumen unit, M.V.—\$8.50 per month

9,000 lumen unit, H.P.S.—\$5.50 per month  
22,000 lumen unit, H.P.S.—\$7.50 per month

(2) Area light installed with new pole:

7,000 lumen unit, M.V.—\$7.60 per month

20,000 lumen unit, M.V.—\$10.00 per month

9,000 lumen unit, H.P.S.—\$7.00 per month

22,000 lumen unit, H.P.S.—\$9.00 per month

(c) *Special conditions.* (1) Where more than 150 feet of extension and/or one pole per unit are required, the customer will make a non-refundable contribution for the coverage at actual cost to the Project. Ownership of all facilities remains with the Project.

(2) The original term of contract shall be not less than three years. Should termination be requested by the customer within the contract minimum period, he/she shall be liable for the in and out costs, or the balance of the contract charges, whichever is the lesser.

6. A new § 176.57 is added to read as follows:

**§ 176.57 Rate schedule No. 7: Street lighting (un-metered).**

(a) *Application of schedule.* This schedule is available in the Project's service area where adequate capacity, phase and voltage are available for communities or municipalities which desire a lighting system. Service is from dusk to dawn and the Project will own, operate and maintain the lights, including lamp and globe replacement and furnishing the necessary energy.

(b) *Requirements.* The municipality or community will be required to have 10 or more lighting units under this rate schedule and will be subject to a negotiated contract with the Project Engineer.

7. A new § 176.58 is added to read as follows:

**§ 176.58 Rate schedule No. 8: Street lighting (metered).**

(a) *Application of schedule.* This schedule is available in the Project's service area where adequate capacity, phase and voltage are available, and where the service will be used exclusively for lighting public right-of-way. The Project will supply energy to a single metering point, and the customer will own and be responsible for maintaining and operating the lighting system.

(b) *Monthly rate.* The No. 2 general rate schedule in § 176.52 will apply.

8. A new § 176.59 is added to read as follows:

**§ 176.59 Rate adjustments due to purchased power cost changes.**

The rate schedules given in §§ 176.51, 176.52, 176.54, 176.55, 176.56, 176.57, and 176.58 shall be adjusted as necessary and appropriate to defray increases in costs of power and energy purchased

from the power supplier(s) of the Project. Rate adjustments pursuant to the provision in this section shall become effective upon unilateral action of the Area Director. When a rate adjustment is determined to be necessary, the Area Director shall give sufficient notice to customers and other interested parties.

(Sec. 7, 62 Stat. 273; 5 U.S.C. 301)

John W. Fritz,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 82-30801 Filed 11-9-82; 8:45 am]

BILLING CODE 4310-02-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 5f

[T.D. 7850]

#### Temporary Income Tax Regulations Under the Tax Equity and Fiscal Responsibility Act of 1982; Special Transitional Rules and Related Matters Concerning Safe Harbor Leases

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document provides temporary regulations regarding transitional rules and related matters concerning safe harbor leases. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982 ("TERFA"). These regulations provide guidance to persons executing lease agreements under section 168(f)(8) of the Internal Revenue Code of 1954.

**DATE:** In general, the regulations apply with respect to certain safe harbor leases executed after July 1, 1982.

**FOR FURTHER INFORMATION CONTACT:** The Corporation Tax Division (Attention: LR-252-82), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington D.C. 20224 (202-566-4406), not a toll-free call.

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains temporary regulations regarding the transition rules and related matters under section 208(d) of TEFRA (Pub. L. 97-248, 96 Stat. 439) concerning certain safe harbor leases executed after July 1, 1982. Since these transitional rules generally apply only to property placed in service before January 1, 1983, and since certain facilities may include both "transitional

rule" safe harbor lease property and property which does not qualify under such rules, there is a need for immediate guidance relating to these provisions so taxpayers leasing certain property under section 168(f)(8) of the Internal Revenue Code of 1954 can comply with these new provisions. These regulations will remain in effect until superseded by final regulations on this subject.

#### Explanation of Provisions

Section 208 of TEFRA imposes certain additional limitations and requirements relating to safe harbor leases executed under section 168(f)(8) of the Internal Revenue Code of 1954; these new rules generally apply to certain property placed in service and safe harbor leases executed after July 1, 1982. However, section 208(d) of TEFRA provides transitional rules which for a limited time period permit certain property to be leased under the provisions of Code section 168(f)(8) which were in effect prior to the enactment of TEFRA.

These temporary regulations, presented in question and answer format, are intended to provide guidelines upon which taxpayers may rely to resolve questions specifically set forth herein. However, no inference should be drawn regarding issues not raised herein or reasons certain questions, and not others, are included in these regulations.

#### Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

#### Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

#### 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 the Treasury Department participated in developing the regulations on matters of both substance and style.

#### List of Subjects in 26 CFR Part 5f

Income tax, Deductions, Leasing, Tax Equity and Fiscal Responsibility Act of 1982.

#### Adoption of amendments to the regulations.

Accordingly, a new Part 5f consisting of § 5f.168(f)(8)-1 is added to Title 26 of the Code of Federal Regulations. The new provision reads as follows:

#### PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

##### § 5f.168 (f) (8)-1 Questions and answers concerning transitional rules and related matters regarding certain safe harbor leases.

The following questions and answers concern the transitional rules and related matters regarding certain safe harbor leases under section 208(d) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248) ("TEFRA"):

Q-1: If a lessee, prior to the period beginning after December 31, 1980, and ending before July 2, 1982 (the "window period"), enters into a binding contract to acquire property and the property is delivered to the lessee during the window period, is the property eligible for the transitional rule provided in section 208(d)(3) of TEFRA which applies the safe harbor leasing rules of section 168(f)(8) of the Internal Revenue Code of 1954 as in effect before the enactment of TEFRA?

A-1: Yes, assuming all other requirements of the TEFRA transitional rules are met. Section 208 (d) (3) (A) (i) and (ii) of TEFRA provide alternative tests under which an item of property may constitute "transitional safe harbor lease property" for purposes of the transitional rules under the modifications to the safe harbor lease provisions of section 168(f)(8). The tests are:

- (i) The lease entered into a binding contract to acquire the property;
- (ii) The lessee entered into a binding contract to construct the property;
- (iii) The property was acquired by the lessee; or
- (iv) Construction of the property was commenced by or for the lessee.

These tests are stated in the alternative, and, accordingly, property may be eligible for pre-TEFRA safe harbor leasing if any one of the tests is satisfied. Thus, if a lessee acquired property during the window period, the property may be eligible for pre-TEFRA safe harbor leasing even though a binding contract to acquire the property was executed before the window period. Similarly, if construction of property commences during the window period, the property may be eligible for pre-TEFRA safe harbor leasing even though a binding contract to construct the property was executed before the window period.

Q-2: How do the transitional rules apply to components of an integrated manufacturing, production, or extraction process, none of which would be considered "placed in

service" until all of the components are placed in service?

A-2: (i) The transitional rules regarding acquisition, binding contracts, and commencement of construction are applied to each separate item of property which is part of a manufacturing, production, or extraction process. What constitutes a separate item will be determined on a case-by-case basis, taking into account all relevant factors. In general, a discrete component capable of performing a function which is separate from or in addition to the function of other components to which it may be related is a separate item of property; but an item that is integrated into a component which performs a function separate from other components to which it is related is not itself a separate item of property. For example, a bolt or a nut that is used to construct a machine does not constitute a separate item of property. On the other hand, the transitional rules will not be applied to an entire facility as a whole, as was the case under the investment tax credit transition rule of section 50 in *Hawaiian Independent Refinery, Inc. v. United States*, 49 AFTR 2d 675 (Ct. Cl. Tr. Judge 1982), where the taxpayer was held to have constructed a property which consisted of an entire refinery complex. Thus, for example, for purposes of these transitional rules, an oil or gas well, storage tanks, and pipeline located on a lease would not be considered a single item of property. Although each item is related to the production of oil or gas, each is discrete and each is capable of performing a separate function from the other. In addition, in the case of an integrated manufacturing, production, or extraction process, commencement of construction of one item of property within the process would not be considered construction of any other item of property that is part of the process.

(ii) If property qualifies as transitional safe harbor lease property, all direct and indirect costs allocable to the property (except for those described in § 5c.168(f)(8)-6 (a) (2) (ii)) and required to be capitalized for Federal income tax purposes will also qualify as transitional safe harbor lease property to the extent such costs are incurred on or before the date on which the property is leased under section 168(f)(8).

Q-3: What test will be applied in determining whether an item of property is constructed or acquired by the lessee?

A-3: Except as expressly provided in section 208(d)(3)(D) or (E) of TEFRA, the determination of whether and when any such events occurred with respect to an item of property will generally be made in accordance with the principles and precedents prior to TEFRA under the investment tax credit and depreciation allowance transitional provisions. See §§ 1.48-2(b)(8) and 1.167(c)-1 (a)(2), which provide definitions of the term "acquired", and §§ 1.48-2(b)(1) and 1.167(c)-1(a)(1), which provide definitions of the term "constructed by". Also see Rev. Rul. 80-312, 1980-2 C.B. 21, which discusses the factors to be considered in determining when a taxpayer has control over a project being constructed.

In general, for purposes of TEFRA section 208(d)(3), construction of an item of property is considered to have commenced when physical work of a significant nature has begun with respect to the property. Thus, construction does not begin when parts or components which enter into construction are acquired. If property is assembled from purchased parts or components, the commencement of construction occurs when actual assembly of the property begins. If a taxpayer manufactures a major part or component of an item of property for itself, construction will be considered to have begun when the manufacturing of that part or component commences. However, construction of an item of property will not be considered as begun if physical work by the taxpayer relates to minor parts or components. Clearing and grading of land will be considered in determining when construction begins on an item of property only if they are directly associated with the construction of the property.

Q-4: Under section 168(f)(8)(j), the at-risk rules are liberalized for closely held lessors that engage in safe harbor leasing. These rules apply "in the case of property placed in service after the date of enactment of this subparagraph," namely, after September 3, 1982.

Do the liberalized at-risk rules apply in the case where otherwise qualified property is placed in service by a lessee in August of 1982 but is leased by a corporate lessor subject to the at-risk rules after September 3, 1982?

A-4: The liberalized at-risk rule in section 168(f)(8)(j) is applicable in this case because, in determining whether property is placed in service before or after the date of enactment of section 168(f)(8)(j), the relevant date is the date the property is placed in service by the lessor. Additionally, a closely held corporate lessor, which is not a personal service corporation, may lease transitional safe harbor lease property placed in service after September 3, 1982, under the liberalized at-risk rule.

Q-5: Is it necessary for property placed in service by a lessee in December of 1982 to be leased before January 1, 1983, in order to qualify under the general transitional rule of section 208(d)(3)(A) of TEFRA, which requires that the property be placed in service before January 1, 1983?

A-5: The legislative intent of this transitional rule was to provide a 3-month period after property is placed in service by a lessee in which a safe harbor lease could be entered into. Cf. section 209(c) of TEFRA (3-month window applies to true leases entered into after 1983). The legislative intent further was to permit property to qualify as transitional safe harbor lease property if it was placed in service by the end of 1982 by a lessee. Accordingly, transitional safe harbor lease property placed in service in 1982 by a lessee may be leased in a safe harbor lease transaction within 3 months after it is placed in service by the lessee without losing its status as transitional safe harbor lease property.

However, for all other purposes of the Code other than section 168(f)(8)(i), section 168(f)(8)(D)(viii)(II) will apply and the

property will be treated as originally placed in service not earlier than the date that the property is used under the lease. Thus, for example, if transitional safe harbor lease property is placed in service in December of 1982 and leased under section 168(f)(8) in January of 1983, the property will not lose its status as transitional safe harbor lease property, but the basis adjustment rules of section 48(g) will apply with respect to the property.

Q-6: Will a contract to acquire property be considered "binding" for purposes of section 208(d)(3)(A)(i) of TEFRA if the contract contains no liquidated damages clause?

A-6: Generally, an irrevocable contract which contains no provision for liquidated damages in the event of breach or cancellation would be considered binding. Moreover, in determining the amount of the lessee's potential liability, the fair market value of the property will not be taken into account. For example, if a lessee entered into an irrevocable contract to purchase an asset for \$100 and the contract contained no provision for liquidated damages, the contract would be considered binding notwithstanding the fact that the property at all times after July 1, 1982, had a value of \$99 and under local law the seller could only recover the difference in the event the lessee failed to perform. On the other hand, if the contract by its terms provided for liquidated damages of less than 5 percent of the purchase price which is in lieu of any damages allowable by law, in the event of breach or cancellation, the contract would not be considered binding.

Q-7: How does the 50-percent limitation on lessors in section 168(i)(1) and the 45-percent limitation on lessees in section 168(f)(8)(ii) apply to corporations which are part of an affiliated group filing consolidated returns?

A-7: Both the 50-percent limitation on lessors and the 45-percent limitation on lessees will be applied on a consolidated basis for corporations filing consolidated returns.

Q-8: Section 168(f)(8)(j) liberalized the at-risk rules for safe harbor leasing and provides that in cases where the safe harbor lessee would be considered the owner of the property without regard to the safe harbor lease, the lessor is considered to be at risk with respect to the property in an amount equal to the amount the lessee is considered at risk with respect to such property as determined under section 465.

Will a corporate lessor that would ordinarily be subject to the at-risk rules under section 465 be exempt from such rules under section 168(f)(8)(j) in a situation where acquisition of the leased property is financed with nonrecourse debt by a lessee that is not subject to the at-risk rules?

A-8: Yes. The liberalized at-risk rules of section 168(f)(8)(j) will apply in cases where the lessee's ACRS deductions and investment tax credit with respect to the property would not have been limited under the at-risk rules had the parties not elected treatment under section 168(f)(8).

Q-9: Section 168(f)(8)(j)(ii) excepts certain service corporations from the liberalized at-risk rules of section 168(f)(8)(j)(i). Does the exception in subdivision (ii) also extend to

subsidiaries of such service corporations that file consolidated returns?

A-9: Yes. The liberalized at-risk rules of section 168(f)(8)(j)(i) will not apply to any subsidiary filing a consolidated return with a service organization described in section 168(f)(8)(j)(ii).

Q-10: Will property lose its status as transitional safe harbor lease property under section 208(d)(3) of TEFRA solely by reason of the fact that the person who is a party to a binding contract to acquire the property assigns his rights in the contract to another person?

A-10: When a person who is a party to a binding contract transfers his rights in the contract (or the property covered by the contract) to another person and the transferor (or a corporation which is a member of the same affiliated group as the transferor) will use the property under a lease for a period not less than 50 percent of the appropriate recovery period for the leased property under section 168(c), then to the extent of the transferred rights, this other person will succeed to the position of the transferor with respect to the binding contract and the property. Accordingly, under these circumstances, property will not lose its status as transitional safe harbor lease property.

In addition, property will not be disqualified as transitional safe harbor lease property solely by reason of a transfer by a person of his rights in a contract (or the property covered by the contract) in a transaction in which the basis of the property in the hands of the transferee is determined by reference to its basis in the hands of the transferor (e.g., transfers governed by sections 332, 351, 361, 721, and 731). Thus, for example, if a corporation entered into a binding contract for the construction or acquisition of property prior to July 1, 1982, and after such date assigned the contract to a corporation within the same affiliated group which files consolidated returns, the assignee will be entitled to treat the property acquired pursuant to the contract as transitional safe harbor lease property, assuming the property would have so qualified in the hands of the transferor. Similarly, if a joint venture or partnership between two corporations entered into a binding contract or commenced construction of property before July 2, 1982, but dissolved and distributed its assets to the partners or joint venturers after July 2, 1982, the joint venturers or partners may treat the assets as transitional safe harbor lease property, assuming the property would have so qualified had the joint venture or partnership remained in existence.

Q-11: During 1982, Corporation Y placed in service section 38 property with a total cost of \$100X. On August 15, 1982, Corporation Y placed in service the last component of an entire facility within the meaning of § 5c.168(f)(8)-6(b)(2). The facility had a total cost basis of \$40X, of which \$30X was transitional safe harbor lease property within the meaning of section 208(d)(3) of TEFRA and \$10X was not transitional safe harbor lease property. On November 1, 1982, Corporation Y sold and leased back under a section 168(f)

(8) lease the \$30X of transitional safe harbor lease property in the facility.

Will the entire facility rule in § 5c.168(f)(8)-6(b)(2) apply in this situation where the taxpayer has not leased all of the section 38 property in the facility?

A-11: No. The placed in service date, for purposes of the rule requiring that property be leased within 3 months after such property was placed in service by the lessee, would be determined under the entire facility rule in § 5c.168(f)(8)-6(b)(2) only if Corporation Y had leased all the qualified leased property in the facility. Since Corporation Y leased only the \$30X of transitional section 38 property, of the facility and did not lease the \$10X of nontransitional property, Corporation Y may not rely on the entire facility rule of § 5c.168(f)(8)-6(b)(2) for purposes of determining the placed in service date for the property under the section 168(f)(8) lease.

Q-12: Assume the same facts as in Q-11, except that Corporation Y had also placed in service by August 15, 1982, \$30X of miscellaneous machinery and equipment all of which was transitional safe harbor lease property within the meaning of section 208(d)(3) of TEFRA. On November 1, 1982, in addition to the \$30X of transitional property in the facility, Corporation Y also sold and leased back under a separate section 168(f)(8) lease the \$30X of miscellaneous machinery and equipment.

Will the entire facility rule in § 5c.168(f)(8)-6(b)(2) apply in this situation to the \$30X of transitional property in the facility?

A-12: Yes. Since Corporation Y leased \$30X of transitional machinery and equipment and the \$30X of the facility which consisted of transitional property, Corporation Y can lease none of the nontransitional property in the facility because, by reason of the 45-percent cap on lessees contained in section 168(f)(8)(D)(ii) and (iii) and (I), it is not qualified leased property for purposes of section 168(f)(8). Thus, on the facts, Corporation Y has leased all the qualified leased property in the facility.

Q-13: Corporation X constructed a manufacturing complex consisting of three integrated operational components, each with a different ADR present class life midpoint, which together constitute an "entire facility" within the meaning of § 5c.168(f)(8)-6(b)(2). The last components of the facility were placed in service on August 15, 1982. On October 1, 1982, Corporation X sold to Corporation Z and leased back under section 168(f)(8) all the qualified leased property of the facility.

For purposes of the rule requiring that property be leased within 3 months after such property was placed in service by the lessee, will the leased components of the entire facility be considered placed in service by the lessee on August 15, 1982, the date the last components were placed in service, if the components are leased at one time pursuant to documents consisting of three section 168(f)(8) leases with different terms to reflect the different ADR midpoint lives of the qualified leased property in the facility?

A-13: Yes. If the entire facility rule in § 5c.168(f)(8)-6(b)(2) applies, the facility components which were placed in service

prior to August 15, 1982, will be treated as placed in service by the lessee on August 15, 1982, for purposes of the 3-month rule. This rule will apply if all the qualified leased property of the facility is leased at one time. The documentation may be in the form of multiple, simultaneously executed agreements or maybe in the form of an agreement comprised of one or more parts or schedules. Each of the multiple agreements, or each of the parts or schedules of an agreement, may have different lease terms for property with different ADR midpoint lives, so long as each such agreement or part of schedule individually would be treated as a lease under section 168(f)(8), taking into account the entire facility rule, with lease terms commencing on the same date. A single transaction effected by multiple agreements or by an agreement with one or more parts or schedules will meet the maximum lease term requirement of § 5c.168(f)(8)-5(b) so long as each agreement or each part or schedule of an agreement meets the maximum lease term requirement.

Q-14: Under § 5c.168(f)(8)-6(b)(2), the special rule for facilities applies only if the entire facility is leased under a section 168(f)(8) lease.

Will a transaction not qualify under section 168(f)(8) if the parties, acting in good faith, omit an insubstantial portion of the qualified lease property from the lease?

A-14: No. The facility rule of § 5c.168(f)(8)-6(b)(2) will apply if the parties, acting in good faith, substantially comply with its terms.

Q-15: When will construction of an aircraft be considered to have begun after June 25, 1981, and before February 20, 1982, for purposes of TEFRA Section 208(d)(3)(D)?

A-15: Construction of an aircraft will be considered to have begun after June 25, 1981, and before February 20, 1982, if during such period any of the following events occurred:

(i) Construction or reconstruction of a subassembly designated for the aircraft was commenced;

(ii) Construction of a lot increment of subassemblies (one or more of which was designated for the aircraft) was commenced; or

(iii) The stub wing join occurred.

Q-16: Does the definition of assets used in the manufacture or production of steel for purposes of TEFRA section 208(d)(2)(F) include all assets used in this function (such as electrical and steam generators and distribution equipment, coke oven by-product equipment) although not necessarily includible in the former ADR guideline class for primary steel mill products?

A-16: Yes, all assets that are used, in their primary function, as an integral part of the steel manufacturing or production process are included. Cf. § 1.43-1(d)(4). However, the steel manufacturing or production process does not include processing beyond the production of primary ferrous metals (as defined by the ADR Class for Manufacture of Primary Ferrous Metals).

Q-17: Where a qualified mass commuting vehicle meets the requirements for both the TEFRA section 208(d)(2) transitional rule and the TEFRA section 208(d)(5) special rule for

mass commuting vehicles, which provision will control?

A-17: The general transitional rule of TEFRA section 208(d)(2) will apply. Thus, pursuant to TEFRA section 208(d)(2)(B), the provisions of section 168(f)(8)(j), but not the provisions of section 168(i)(1), will apply only to such property. If the general transitional rule does not apply to a specific mass commuting vehicle, the provision of section 168(i)(1) applies to the lessor who leases such vehicle.

Q-18: Does the definition of a qualified mass commuting vehicle include component parts of a qualified mass commuting vehicle—such as an undercarriage of a subway car or the costs of rehabilitation or reconstruction of a mass commuting vehicle (or component part thereof)?

A-18: Yes.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

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)

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: November 5, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 82-30918 Filed 11-5-82; 5:05 pm]

BILLING CODE 4830-01-M

## 26 CFR Parts 20 and 301

[T.D. 7847]

### Special Lien for Additional Estate Tax Attributable to Farm, Etc.; Special Use Valuation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule.

**SUMMARY:** This document contains final regulations implementing the special lien for additional estate tax imposed under section 2032A(c) of the Internal Revenue Code that was added by the Tax Reform Act of 1976. The regulation reflects changes made by the Technical Corrections Act of 1979 and the Economic Recovery Tax Act of 1981 and affects qualified heirs of decedents whose estates elect to come within the special use valuation provisions of section 2032A.

**DATES:** The regulations are effective for the estates of decedents dying after December 31, 1976.

**FOR FURTHER INFORMATION CONTACT:**

Fred E. Grundeman 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) 566-3287, not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On May 24, 1982, the *Federal Register* published proposed amendments to the Estate Tax Regulations (26 CFR Part 20) under section 6324B of the Code relating to the special lien for additional estate tax arising when property is valued at its special use value for Federal estate tax purposes (47 FR 22388). Under section 2032A of the Code certain qualified real property may, for estate tax purposes, be valued at its special use value rather than its fair market value. Section 6324B of the Code, enacted by section 2003(b) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1861), imposes a special lien on the qualified real property in the amount of the estate tax savings. Section 6324B was amended by section 108(d) of the Technical Corrections Act of 1979 (Pub. L. 96-222, 94 Stat. 228), which extended the special lien to qualified replacement property, and by section 421(d)(2)(B) of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34, 95 Stat. 309), which extended the special lien to cover qualified exchange property. The regulation implements the special lien provisions and grants authority to district directors to allow adequate security to be substituted for the special lien. One comment from the public was received requesting that certain material included in the proposed regulation by cross reference be set out in full and that rules be included to clarify the treatment of property held indirectly by a partnership, corporation or trust. After careful consideration it was determined that incorporation by reference was sufficient and that the issues involving indirect ownership should properly be considered in regulations under section 2032A. Accordingly the requested changes were not adopted.

**Regulatory Flexibility Act and Executive Order 12291**

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Furthermore, although the notice of proposed rulemaking solicited public comment, the Internal Revenue Service has concluded that these regulations are interpretative and that the notice and public procedure

requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

**Drafting Information**

The principal author of these regulations is Fred E. Grundeman 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 the Treasury Department participated in developing the regulations, both on matters of substance and style.

**List of Subjects**

*26 CFR Part 20*

Estate taxes.

*26 CFR Part 301*

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

**Adoption of Amendments to the Regulations**

Accordingly, the proposed amendments to the Estate Tax Regulations (26 CFR Part 20) and the Procedure and Administration Regulations (26 CFR Part 301) as published in the *Federal Register* on May 24, 1982, [47 FR 22388], are adopted without change, as follows:

**PART 20—[AMENDED]**

**Paragraph 1.** There is inserted immediately after § 20.6324A-1 the following new section:

**§ 20.6324B-1 Special lien for additional estate tax attributable to farm, etc., valuation.**

(a) *General rule.* In the case of an estate of a decedent dying after December 31, 1976, which includes any interest in qualified real property, if the executor elects to value part or all of such property pursuant to section 2032A, a lien arises in favor of the United States on the property to which the election applies. The lien is in the amount equal to the adjusted tax difference attributable to such interest (as defined by section 2032A(c)(2)(B)). The term "qualified real property" means qualified real property as defined in section 2032A(b), qualified replacement property within the meaning of section 2032A(h)(3)(B), and

qualified exchange property within the meaning of section 2032A(i)(3). The rules set forth in the regulations under section 2032A shall apply in determining whether this section is applicable to otherwise qualified real property held by a partnership, corporation or trust.

(b) *Period of lien.* The lien shall arise at the time the executor files an election under section 2032A. It shall remain in effect until one of the following occurs:

(1) The liability for the additional estate tax under section 2032A(c) with respect to such interest has been satisfied; or

(2) Such liability has become unenforceable by reason of lapse of time; or

(3) The district director is satisfied that no further liability for additional estate tax with respect to such interest may arise under section 2032A(c), i.e., the required time period has elapsed since the decedent's death without the occurrence of an event described in section 2032A(c)(1), or the qualified heir (as defined in section 2032A(e)(1)) had died.

For procedures regarding the release or subordination of liens or discharge of property from liens, see § 301.6325-1 of this chapter (Regulations on Procedure and Administration).

(c) *Substitution of security for lien.* The district director may, upon written application of the qualified heir (as defined in section 2032A(e)(1)) acquiring any interest in qualified real property to which a lien imposed by section 6324B attaches, issue a certificate of discharge of any or all property subject to such lien, after receiving a bond or other security in an amount or value determined by the district director as sufficient security for the maximum potential liability for additional estate tax with respect to such interest. Any bond shall be in the form and with the security prescribed in § 301.7101-1 of this chapter.

(d) *Special rules.* The rules set forth in section 6324A(d) (1), (3), and (4), and the regulations thereunder, shall apply with respect to a lien imposed by section 6324B as if it were a lien imposed by section 6324A.

**PART 301—[AMENDED]**

**Par. 2.** Section 301.6325-1 is amended by inserting a new sentence immediately after the second sentence of paragraph (c)(1), by redesignating paragraph (d)(3) as (d)(4), and by inserting a new paragraph (d)(3). These amended and added provisions read as follows:

**§ 301.6325-1 Release of lien or discharge of property.**

(c) *Estate or gift tax liability fully satisfied or provided for.*—(1) *Certificate of discharge.* \* \* \* If a lien has arisen under section 6324B (relating to special lien for additional estate tax attributable to farm, etc., valuation) and the district director determines that the liability for additional estate tax has been fully secured in accordance with § 20.6324B-1(c) of this chapter, the district director may issue a certificate of discharge of the real property from the section 6324B lien. \* \* \*

(d) *Subordination of lien.* \* \* \*

(3) *Subordination of section 6324B lien.* The district director may issue a certificate of subordination with respect to a lien imposed by section 6324B if the district director determines that the interests of the United States will be adequately secured after such subordination. For example, A, a qualified heir of qualified real property, needs to borrow money for farming purposes. If the current fair market value of the real property is \$150,000, the amount of the claim to which the special lien is to be subordinated is \$40,000, the potential liability for additional tax (as defined in section 2032A(c)) is less than \$55,000, and there are no other facts to indicate that the interest of the United States will not be adequately secured, the district director may issue a certificate of subordination. The result would be the same if the loan were for bona fide purposes other than farming.

The regulations are adopted under the authority contained in sections 6324B (90 Stat. 1861, 26 U.S.C. 6324B) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Code.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: October 27, 1982.

David G. Glickman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 82-30829 Filed 11-9-82; 8:45 am]

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**26 CFR Part 53**

[T.D. 7849]

**Minimum Investment Return of Private Foundations**

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the excise tax

imposed by section 4942 on the undistributed income of private foundation. These regulations clarify the treatment of future interests created by the private foundation. The regulations provide guidance to foundations that may be subject to this tax.

**DATES:** The regulations are effective for taxable years beginning after December 31, 1969.

**FOR FURTHER INFORMATION CONTACT:** George B. Baker of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:EE-69-80, 202-566-3422 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:****Background**

On January 26, 1982, the Federal Register published proposed amendments to the Foundation and Similar Excise Tax Regulations (26 CFR Part 53) under section 4942 of the Internal Revenue Code of 1954 (47 FR 3558). The amendments were proposed to clarify the regulations relating to the excise tax imposed by section 4942 on the undistributed income of a private foundation. No written comments on the proposal were received, and no public hearing was held. Therefore, the proposals are adopted without change (other than one clerical change) as final regulations.

**Regulatory Flexibility Act**

No general notice of proposed rule making is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

**Non-Applicability of Executive Order 12291**

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

**Drafting Information**

The principal author of these regulations is George B. Baker of the Employee Plans and Exempt Organizations 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.

**List of Subjects in 26 CFR Part 53.4942(a)-2**

Excise taxes, Foundations, Investments, Minimum investment return.

**Adoption of Amendments to the Regulations**

Accordingly, the proposed amendments to the Foundation and Similar Excise Tax Regulations (26 CFR Part 53) under section 4942, as published in the Federal Register (47 FR 3558), are adopted as proposed except that paragraph 2 of the notice of proposed rulemaking is revised to read as follows:

"Par. 2. The last sentence of paragraph (2) of § 53.4942(a)-3(d) and the last sentence of paragraph (2) of § 53.4942(a)-3(c) are removed."

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).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: October 13, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

**PART 53—FOUNDATION AND SIMILAR EXCISE TAXES**

**Paragraph 1.** Section 53.4942(a)-2(c)(2)(i) introductory text is revised to read as follows:

**§ 53.4942(a)-2 Computation of undistributed income.**

(c) *Minimum investment return.* \* \* \*  
(2) *Certain assets excluded.* \* \* \*

(i) Any future interest (such as a vested or contingent remainder, whether legal or equitable) of a foundation in the income or corpus of any real or personal property, other than a future interest created by the private foundation after December 31, 1969, until all intervening interests in, and rights to the actual possession or enjoyment of, such property have expired, or, although not actually reduced to the foundation's possession, until such future interest has been constructively received by the foundation, as where it has been credited to the foundation's account, set apart for the foundation, or otherwise made available so that the foundation may acquire it at any time or could have acquired it if notice of intention to acquire had been given:

**§ 53.4942 [Amended]**

**Par. 2.** The last sentence of subparagraph (2) of § 53.4942(a)-3(d)