

Section 1.597-7 Effective Date

As proposed, these final regulations generally apply to taxable years ending on or after April 22, 1992. However, the provisions of these regulations do not apply to FFA received or accrued for taxable years ending after April 22, 1992, in connection with an Agency assisted acquisition that occurs before April 22, 1992. Taxpayers not subject to these regulations must comply with an interpretation of the statute that is reasonable in light of the legislative history and applicable administrative pronouncements. For this purpose, the rules contained in Notice 89-102 (1989-2 C.B. 436) apply to the extent provided in the Notice.

An irrevocable election is available to apply the regulations to taxable years prior to the general effective date. However, the election cannot be made if the Institution's statute of limitations has expired or a section 338 election was available but not made for the Institution. In addition, consistent treatment is required in "open bank" resolutions that would result under the regulations in deemed Taxable Transfers before April 22, 1992.

The proposed regulations required an electing taxpayer to extend the statute of limitations for all items for three years from the date of filing the election. The final regulations adopt a commentator's suggestion that the taxpayer extend the statute of limitations only for items affected by application of the regulations.

An Institution or consolidated group makes the election on its first annual income tax return filed on or after March 15, 1996. However, to make the affirmative election to disaffiliate under § 1.597-4(g)(5) for an Institution placed in Agency receivership in a taxable year ending before April 22, 1992, a consolidated group must send the affected Institution the required statement advising it of the elective disaffiliation on or before May 31, 1996. In that case, the consolidated group is deemed to have elected retroactive application of these regulations but must nevertheless attach the required statement to its first annual income tax return filed on or after March 15, 1996.

The final regulations provide that taxpayers may rely on the provisions of the proposed regulations to the extent they acted in reliance on the proposed regulations prior to December 21, 1995. Such reliance must be reasonable and transactions with respect to which such taxpayers rely must be consistent with the overriding policies of section 597, as expressed in the legislative history, as

well as the overriding policies of the proposed regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will generally only apply to certain financially troubled financial institutions and the consolidated groups, if any, to which they belong. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects**26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * *
Sections 1.597-1 through 1.597-7 also issued under 26 U.S.C. 597 and 1502.

Par. 2. Sections 1.597-1 through 1.597-7 are added to read as follows:

§ 1.597-1 Definitions.

For purposes of the regulations under section 597—

(a) Unless the context otherwise requires, the terms *consolidated group*, *member* and *subsidiary* have the meanings provided in § 1.1502-1; and

(b) The following terms have the meanings provided below—

Acquiring. The term *Acquiring* means a corporation that is a transferee in a Taxable Transfer, other than a deemed transferee in a Taxable Transfer described in § 1.597-5(b).

Agency. The term *Agency* means the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, any similar instrumentality of the United States government, and any predecessor or successor of the foregoing (including the Federal Savings and Loan Insurance Corporation).

Agency Control. An Institution or entity is under *Agency Control* if Agency is conservator or receiver of the Institution or entity, or if Agency has the right to appoint any of the Institution's or entity's directors.

Agency Obligation. The term *Agency Obligation* means a debt instrument that Agency issues to an Institution or to a direct or indirect owner of an Institution.

Bridge Bank. The term *Bridge Bank* means an Institution that is organized by Agency to hold assets and liabilities of another Institution and that continues the operation of the other Institution's business pending its acquisition or liquidation, and that is any of the following—

(1) A national bank chartered by the Comptroller of the Currency under section 11(n) of the Federal Deposit Insurance Act (12 U.S.C. 1821(n)) or section 21A(b)(10)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(10)(A)) or any successor sections;

(2) A Federal savings association chartered by the Director of the Office of Thrift Supervision under section 21A(b)(10)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(10)(A)) or any successor section; or

(3) A similar Institution chartered under any other statutory provisions.

Consolidated Subsidiary. The term *Consolidated Subsidiary* means a member of the consolidated group of which an Institution is a member that bears the same relationship to the Institution that the members of a consolidated group bear to their common parent under section 1504(a)(1).

Continuing Equity. An Institution has *Continuing Equity* for any taxable year if, on the last day of the taxable year, the