

NOTE 2 TO § 800.1103(h)(2): See § 802.1103(d)(4) regarding consideration for a contingent equity interest where the interest has been converted to equity.

(i) Examples:

(1) *Example 1.* Corporation A, a foreign person, enters into an agreement for the purchase of a parcel of covered real estate (Parcel X) from Corporation B. In exchange for ownership of Parcel X, Corporation A forgives a debt owed to it by Corporation B that is valued at \$5,000,000 and pays \$35,000,000 to Corporation B. Assuming no other relevant facts, the value of the transaction is \$40,000,000, and the filing fee is \$7,500.

(2) *Example 2.* Corporation A, a foreign person, enters into an agreement to lease a parcel of covered real estate from Corporation B. Pursuant to the agreement, Corporation A will pay Corporation B a fixed annual payment of \$300,000 for a term of three years, with an option to renew the lease at the end of the term. Assuming no other relevant facts, the value of the transaction is \$900,000, and the filing fee is \$750.

(3) *Example 3.* Corporation A, a foreign person, proposes to enter into a concession agreement with a U.S. public entity for the right to use certain covered real estate for the purpose of developing and operating terminal infrastructure at a covered port. The concession agreement is for a five-year term. Under the concession agreement, Corporation A will pay the U.S. public entity a use charge of \$450,000 per year starting in the second year. The concession agreement also requires Corporation A to pay utility fees and common area maintenance charges of \$5,000 per month for the full concession term. Assuming no other relevant facts, the value of the transaction is \$2,100,000, based on the \$1,800,000 use charge and \$300,000 in utility fees. The filing fee is \$750.

(4) *Example 4.* Corporation A, a foreign person, proposes to enter into an oil, gas and mineral lease with a U.S. public entity. Under the terms of the lease, Corporation A pays a lease bonus of \$1,000 per acre as an inducement to execute the lease with respect to a 10-acre parcel of covered real estate. The lease has a 10-year term. Corporation A

must pay a royalty of 12.5 percent with respect to oil or gas production from the leased parcel. In the absence of such production, the foreign person is obligated to pay a rental fee of \$1,000 per acre per year for the first five years and \$2,000 per acre thereafter. Assuming no other relevant facts, the value of the transaction is \$160,000 and there is no filing fee.

(5) *Example 5.* Corporation A, a foreign person, proposes to purchase Plot X and Plot Y. The transaction will be completed in two phases. Corporation A will first acquire Plot X for \$30,000,000 (phase 1). One month later, Corporation A will acquire Plot Y for another \$30,000,000 (phase 2). Assuming no other relevant facts, the value of the consideration is \$60,000,000 (the total consideration for both phases), and the filing fee is \$75,000.

(6) *Example 6.* Corporation A, a foreign person, proposes to purchase Plot X and acquire an option to purchase Plot Y. Corporation A will acquire Plot X and the option related to Plot Y in exchange for \$30,000,000. Corporation A informs its shareholders that within two months, it will exercise the option to purchase Plot Y in exchange for another \$30,000,000. Because the option to convert is imminent and in the control of Corporation A, and the consideration can be reasonably determined, the value of the transaction includes the consideration to be paid in connection with the conversion. Assuming no other relevant facts, the value of the consideration is \$60,000,000 (the total consideration for the purchase of Plot X and the option to purchase Plot Y), and the filing fee is \$75,000.

(j) The determination of the value of the transaction for purposes of calculating the filing fee in no way limits the Committee's jurisdiction or its authority to review, investigate, mitigate, impose penalties regarding, or take any other action regarding any covered real estate transaction.

§ 802.1104 Manner of payment.

Parties to a transaction must pay any filing fee by electronic payment. The filing fee must be paid in U.S. dollars. Instructions for paying filing fees

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are available on the Committee's section of the Department of the Treasury website.

§ 802.1105 Refunds.

(a) Except as provided in paragraphs (b) and (c) of this section, the Department of the Treasury shall not refund a filing fee in whole or in part.

(b) If the Committee determines that the transaction is not a covered real estate transaction, the filing fee shall be refunded.

(c) In response to a petition by a party, if the Staff Chairperson determines, based on the information and representations contained in the formal written notice, as well as any other information provided by the parties, that a party or the parties to a transaction paid a filing fee in an amount greater than required at the time of filing, the Department of the Treasury shall refund the amount of overpayment to the party or parties who paid the filing fee.

§ 802.1106 Waiver.

If the Staff Chairperson determines that extraordinary circumstances relating to national security warrant, the Staff Chairperson may waive the filing fee in whole or in part and will notify the parties in writing. No waiver shall be implied, even where the Staff Chairperson does not reject a voluntary notice under § 802.1108 for failure to pay the required filing fee.

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§ 802.1107 Refilings.

The parties to a transaction shall not be required to pay an additional filing fee in the event that the Staff Chairperson permits the parties to withdraw and refile a notice under § 802.509(c)(2), unless the Staff Chairperson determines that a material change to the transaction has occurred, or a material inaccuracy or omission was made by the parties in information provided to the Committee, that requires the Committee to consider new information, in which case the Staff Chairperson will inform the parties in writing.

§ 802.1108 Rejection of voluntary notice.

The Staff Chairperson may reject a voluntary notice under § 802.504(a)(3) upon a determination that the amount of the filing fee paid by the parties was insufficient under this subpart. Prior to rejecting a notice under § 802.504(a)(3), the Staff Chairperson shall inform the parties in writing of the insufficiency of payment and provide the parties three business days to pay the remainder of the filing fee. If the Staff Chairperson does not reject a voluntary notice under § 802.504(a)(3) upon a determination that the amount of the filing fee payment paid by the parties was insufficient under this section, the balance of the fee remains payable unless the Staff Chairperson notifies the parties in writing that the payment has been waived in whole or in part.

APPENDIX A TO PART 802—LIST OF MILITARY INSTALLATIONS AND OTHER U.S. GOVERNMENT SITES

Site name	Location
Part 1	
Adelphi Laboratory Center	Adelphi, MD.
Air Force Maui Optical and Supercomputing Site	Maui, HI.
Air Force Office of Scientific Research	Arlington, VA.
Andersen Air Force Base	Yigo, Guam.
Army Futures Command	Austin, TX.
Army Research Lab—Orlando Simulations and Training Technology Center	Orlando, FL.
Army Research Lab—Raleigh Durham	Raleigh Durham, NC.
Arnold Air Force Base	Coffee County and Franklin County, TN.
Beale Air Force Base	Yuba City, CA.
Biometric Technology Center (Biometrics Identity Management Activity)	Clarksburg, WV.
Buckley Air Force Base	Aurora, CO.
Camp MacKall	Pinebluff, NC.
Cape Cod Air Force Station	Sandwich, MA.
Cape Newenham Long Range Radar Site	Cape Newenham, AK.