

**Subpart G—Advance Construction of Federal-Aid Projects**

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**Subpart G—Advance Construction of Federal-Aid Projects****§ 630.701 Purpose.**

The purpose of this subpart is to prescribe procedures for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the State.

**§ 630.703 Eligibility.**

(a) The State Highway Agency (SHA) may proceed with a highway substitute, congestion mitigation and air quality improvement program, surface transportation program, bridge replacement and rehabilitation, or planning and research project in accordance with this subpart, provided the SHA:

(1) Has obligated all funds apportioned or allocated to it under 23 U.S.C. 103(e)(4)(H), 104(b)(2), 104(b)(3), 104(f), 144, or 307, as the case may be for the proposed project, or

(2) Has used all obligation authority distributed to it, or

(3) Demonstrates that it will use all obligation authority distributed to it.

(b) The SHA may proceed with a National Highway System (NHS) or Interstate project in accordance with this subpart without regard to apportionment or obligation authority balances. Interstate projects include Interstate construction and Interstate maintenance.

**§ 630.705 Procedures.**

(a) An advance construction project shall meet the same requirements and be processed in the same manner as a regular Federal-aid project, except,

(1) The FHWA authorization does not constitute any commitment of Federal funds on the project, and

(2) The FHWA shall not reimburse the State until the project is converted under § 630.709.

(b) Project numbers shall be identified by the letters "AC" preceding the regular project number prefix.

(c) If the SHA plans to claim bond interest costs under § 630.711, it shall include in its request for authorization the estimated federally participating bond interest cost.

(d) The SHA shall submit a final voucher to the FHWA upon completion

of the project even though the project has not been converted. If the SHA is claiming bond interest costs under § 630.711, it shall certify on the final voucher that the bond proceeds were expended in the construction of the project and shall include a computation of the eligible interest costs.

**§ 630.707 Limitation.**

A request to approve an advance construction project is limited to a State's expected apportionment of authorized funds which are eligible to finance the project.

**§ 630.709 Conversion to a regular Federal-aid project.**

(a) The SHA may submit a written request to the FHWA that a project be converted to a regular Federal-aid project at any time provided that sufficient Federal-aid funds and obligation authority are available.

(b) Subsequent to FHWA approval the SHA may claim reimbursement for the Federal share of project costs incurred, provided the project agreement has been executed. If the SHA has previously submitted a final voucher, the FHWA will process the voucher for payment.

**§ 630.711 Payment of bond interest.**

(a) For Interstate projects authorized by the FHWA after January 6, 1983, and for Interstate 4R, Interstate maintenance, primary and NHS projects authorized by the FHWA after April 2, 1987, interest earned and payable on bonds issued by a State is an eligible cost of construction as follows:

(1) Participating interest cost is based on the actual expenditure of bond proceeds on the Federal-aid project. The interest on the bonds is applied to the amount of bond proceeds expended on the project from the date of expenditure.

(2) The amount of interest determined in paragraph (a)(1) of this section shall not exceed the estimated increase in the physical construction cost of the project which would have occurred had the project been authorized on the date of conversion. The estimated increase in the physical construction cost is determined by applying the increase, if any, in the national construction cost index in effect on the date of conversion over the index in effect on the date of the FHWA authorization, to the actual cost of physical construction.

(b) For Interstate projects under physical construction on January 1, 1983, and converted to a regular Federal-aid project after January 1, 1983, bond interest is eligible in accordance with paragraph (a)(1) of this section.

The restriction in paragraph (a)(2) of this section does not apply.

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 8601]

RIN 1545-AS71

**Definition of Club**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations relating to the definition of a *club organized for business, pleasure, recreation, or other social purpose* for purposes of the disallowance of a deduction for club dues. The regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 and affect persons who pay or incur club dues.

**DATES:** These regulations are effective July 19, 1995.

For dates of applicability, see § 1.274-2 (a) and (e).

**FOR FURTHER INFORMATION CONTACT:** Michael L. Gompertz, (202) 622-4910 (not a toll-free number).

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

This document provides final and temporary Income Tax Regulations (26 CFR part 1) under section 274(a)(3) of the Internal Revenue Code of 1986 (Code). This provision was added by section 13210 of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 469).

On August 12, 1994, the IRS published a notice of proposed rulemaking defining *club* in the **Federal Register** (59 FR 41414). No public hearing on the proposed regulations was requested or held, but written comments were received. After consideration of all the comments, the proposed regulations are adopted by this Treasury decision with one minor editorial change in § 1.274-2(a)(2)(iii)(b).

On December 16, 1994, the IRS published a notice of proposed rulemaking in the **Federal Register** (59 FR 64909) relating, in part, to the tax treatment of payment by an employer of an employee's club dues. This Treasury decision has no effect on the notice of

proposed rulemaking published on December 16, 1994. Final regulations on this subject will be published at a later date.

#### Explanation of Provisions

Section 274(a)(3) of the Code disallows a deduction for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.

Under the final regulations, the dues disallowance provisions of section 274(a)(3) apply to any membership organization a principal purpose of which is to conduct entertainment activities for members or their guests or to provide members or their guests with access to entertainment facilities. The membership organizations subject to dues disallowance under the final regulations include, but are not limited to, country clubs, golf and athletic clubs, airline clubs, hotel clubs, and clubs operated to provide meals under circumstances generally considered to be conducive to business discussion. The dues disallowance provisions of section 274(a)(3) do not, in general, apply to (1) civic or public service organizations such as Kiwanis, Lions, Rotary, Civitan, and similar organizations; (2) professional organizations such as bar associations and medical associations; and (3) certain organizations similar to professional organizations, specifically, business leagues, trade associations, chambers of commerce, boards of trade, and real estate boards.

Under the final regulations, the three exceptions from dues disallowance listed above do not apply if a principal purpose of the organization is to conduct entertainment activities for members or their guests or to provide members or their guests with access to entertainment facilities.

A commentator on the proposed regulations requested clarification of the terms *entertainment* and *a principal purpose*. The term *entertainment* is defined in existing § 1.274-2(b)(1) and that definition applies for purposes of these final dues disallowance regulations. The final regulations do not provide any additional guidance with respect to determining whether a principal purpose of an organization is to conduct entertainment activities or provide access to entertainment facilities.

Two commentators objected to the proposed regulations' disallowance of all deductions for airline club dues. The commentators indicated that these clubs are used for business purposes, and little or no personal benefit is derived from airline club membership. However,

the legislative history of section 274(a)(3) specifically provides that deductions are not allowed for airline club dues. Therefore, the final regulations do not change the proposed rule concerning airline clubs.

One commentator stated that the proposed regulations would permit taxpayers to deduct, as a business expense, dues paid to certain organizations described in section 501(c)(8) because the organizations are civic or public service organizations. The commentator requested that the regulations be amended to preclude a business expense deduction for these dues because the organizations are not formed for a business purpose but, rather, to promote charitable, philanthropic, patriotic, and educational activities.

The IRS and the Treasury believe that the regulations, as proposed, adequately address the commentator's concern. Section 274 and these regulations do not expand the category of items that are deductible as business expenses. Rather, section 274 disallows certain business expense deductions that would otherwise be allowable under section 162. If dues paid to certain section 501(c)(8) organizations are not deductible under section 162 because they are not ordinary and necessary business expenses, section 274 and these regulations do not make the dues deductible.

The final regulations are effective with respect to amounts paid or incurred after December 31, 1993.

#### 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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis 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 Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Michael L. Gompertz, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.274-2 is amended as follows:

1. Paragraph (a)(2)(ii) is revised.
2. Paragraph (a)(2)(iii) is added.
3. Paragraph (a)(3)(iii) is revised.
4. The heading of paragraph (e) and text for paragraph (e)(1) are revised.
5. Paragraph (e)(3)(ii) is revised.

The additions and revisions read as follows:

#### § 1.274-2 Disallowance of deductions for certain expenses for entertainment, amusement, or recreation.

(a) \* \* \*

(2) \* \* \*

(ii) *Expenditures paid or incurred before January 1, 1979, with respect to entertainment facilities, or paid or incurred before January 1, 1994, with respect to clubs—(a) Requirements for deduction.* Except as provided in this section, no deduction otherwise allowable under chapter 1 of the Internal Revenue Code shall be allowed for any expenditure paid or incurred before January 1, 1979, with respect to a facility used in connection with entertainment, or for any expenditure paid or incurred before January 1, 1994, with respect to a club used in connection with entertainment, unless the taxpayer establishes—

(1) That the facility or club was used primarily for the furtherance of the taxpayer's trade or business; and

(2) That the expenditure was directly related to the active conduct of that trade or business.

(b) *Amount of deduction.* The deduction allowable under paragraph (a)(2)(ii)(a) of this section shall not exceed the portion of the expenditure directly related to the active conduct of the taxpayer's trade or business.

(iii) *Expenditures paid or incurred after December 31, 1993, with respect to a club—(a) In general.* No deduction otherwise allowable under chapter 1 of the Internal Revenue Code shall be allowed for amounts paid or incurred after December 31, 1993, for membership in any club organized for business, pleasure, recreation, or other

social purpose. The purposes and activities of a club, and not its name, determine whether it is organized for business, pleasure, recreation, or other social purpose. Clubs organized for business, pleasure, recreation, or other social purpose include any membership organization if a principal purpose of the organization is to conduct entertainment activities for members of the organization or their guests or to provide members or their guests with access to entertainment facilities within the meaning of paragraph (e)(2) of this section. Clubs organized for business, pleasure, recreation, or other social purpose include, but are not limited to, country clubs, golf and athletic clubs, airline clubs, hotel clubs, and clubs operated to provide meals under circumstances generally considered to be conducive to business discussion.

(b) *Exceptions.* Unless a principal purpose of the organization is to conduct entertainment activities for members or their guests or to provide members or their guests with access to entertainment facilities, business leagues, trade associations, chambers of commerce, boards of trade, real estate boards, professional organizations (such as bar associations and medical associations), and civic or public service organizations will not be treated as clubs organized for business, pleasure, recreation, or other social purpose.

(3) \* \* \*  
 (iii) "Expenditures paid or incurred before January 1, 1979, with respect to entertainment facilities or before January 1, 1994, with respect to clubs", see paragraph (e) of this section, and

(e) *Expenditures paid or incurred before January 1, 1979, with respect to entertainment facilities or before January 1, 1994, with respect to clubs—*

(1) *In general.* Any expenditure paid or incurred before January 1, 1979, with respect to a facility, or paid or incurred before January 1, 1994, with respect to a club, used in connection with entertainment shall not be allowed as a deduction except to the extent it meets the requirements of paragraph (a)(2)(ii) of this section.

(3) \* \* \*  
 (ii) *Club dues—(a) Club dues paid or incurred before January 1, 1994.* Dues or fees paid before January 1, 1994, to any social, athletic, or sporting club or organization are considered expenditures with respect to a facility used in connection with entertainment. The purposes and activities of a club or organization, and not its name, determine its character. Generally, the

phrase *social, athletic, or sporting club or organization* has the same meaning for purposes of this section as that phrase had in section 4241 and the regulations thereunder, relating to the excise tax on club dues, prior to the repeal of section 4241 by section 301 of Public Law 89-44. However, for purposes of this section only, clubs operated solely to provide lunches under circumstances of a type generally considered to be conducive to business discussion, within the meaning of paragraph (f)(2)(i) of this section, will not be considered social clubs.

(b) *Club dues paid or incurred after December 31, 1993.* See paragraph (a)(2)(iii) of this section with reference to the disallowance of deductions for club dues paid or incurred after December 31, 1993.

\* \* \* \* \*

**§ 1.274-5T [Amended]**

**Par. 3.** In § 1.274-5T, the first two sentences of paragraph (c)(6)(iii) are amended by removing the language "at any time" in each sentence and adding the language "before January 1, 1994," in its place.

**Margaret M. Richardson,**  
*Commissioner of Internal Revenue.*

Approved: June 21, 1995.

**Leslie Samuels,**  
*Assistant Secretary of the Treasury.*  
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**26 CFR Parts 1 and 602**

[TD 8599]

RIN 1545-AN55

**Deductions for Transfers of Property**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations concerning deductions for transfers of property. The regulations amend the special rule that required an employer to deduct and withhold income tax as a prerequisite for claiming a deduction for property transferred to an employee in connection with the performance of services. Under the former regulation, employers that failed to deduct and withhold income tax were denied a deduction even where the employee reported the income and paid the tax. The new rules permit service recipients to claim a deduction for the amount included in the service provider's gross income. The service provider will be deemed to have

included an amount in gross income if the service recipient provides a timely Form W-2 or 1099, as appropriate. These regulations apply to all service recipients who transfer property in connection with the performance of services.

**DATES:** These regulations are effective July 19, 1995.

For dates of applicability, see § 1.83-6(a)(5).

**FOR FURTHER INFORMATION CONTACT:** Charles T. Deliee, telephone 202-622-6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1448. The estimated annual burden of reporting will be reflected in the reporting requirements for Form 1099-MISC.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Background**

On December 5, 1994, the IRS published in the **Federal Register** (59 FR 62370) proposed amendments to the income tax regulations (26 CFR part 1) under section 83(h) of the Internal Revenue Code (Code), which permits a deduction for property transferred in connection with the performance of services.

Three written comments were received from the public on the proposed regulations. No public hearing was held. After consideration of the written comments received, the proposed regulations are adopted by this Treasury decision with one technical clarification.

**Explanation of Provisions**

Under section 83(h) of the Code, in the case of a transfer of property to which section 83(a) applies, the person for whom services were provided may deduct an amount equal to the amount included in the service provider's gross income. In light of the difficulty that a service recipient may have in demonstrating that an amount has