

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2008-0434/Airspace Docket No. 08-ASW-6." The postcard will be date/time stamped and returned to the commenter.

#### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Document's Web page at <http://www.access.gpo.gov/nara>.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

#### The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by establishing a Class D airspace area for IFR operations at Victoria Regional Airport, Victoria, TX. The establishment of an air traffic control tower has made this action necessary. The area would be depicted on appropriate aeronautical charts.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a significant regulatory action" under Executive Order 12866; (2) is not a "significant

rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Victoria Regional Airport, Victoria, TX.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

##### ASW TX D Victoria, TX (New)

Victoria Regional Airport, TX  
(Lat. 28°51'09" N., long. 96°55'07" W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.7-mile radius of Victoria Regional

Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

Issued in Fort Worth, TX on May 5, 2008.

**Donald R. Smith,**

*Manager, System Support Group, ATO  
Central Service Center.*

[FR Doc. E8-10953 Filed 5-16-08; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-100798-06]

RIN 1545-BF28

#### Contributed Property

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** These proposed regulations under section 704(c) of the Internal Revenue Code (Code) provide that the section 704(c) anti-abuse rule takes into account the tax liabilities of both the partners in a partnership and certain direct and indirect owners of such partners. The proposed regulations further provide that a section 704(c) allocation method cannot be used to achieve tax results inconsistent with the intent of subchapter K of the Code. The proposed regulations affect partnerships and their partners.

**DATES:** Written or electronic comments and requests for a public hearing must be received by August 18, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-100798-06), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-100798-06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-100798-06).

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Laura Fields or Steven A. Schmoll at (202) 622-3050; concerning submissions of comments, and hearing requests, e-

mail  
*Richard.A.Hurst@irscounsel.treas.gov*,  
 (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under section 704(c), a partnership must allocate items of income, gain, loss and deduction attributable to contributed property to take into account any variation between the property's adjusted tax basis and its fair market value at the time of contribution. Section 1.704-3(a) permits the use of any reasonable allocation method that is consistent with the purposes of section 704(c). Section 1.704-3 provides three allocation methods that are generally reasonable and consistent with the purposes of section 704(c): The traditional method, the traditional method with curative allocations and the remedial method.

Section 1.704-3(a)(10) provides that an allocation method (or combination of methods) is not reasonable if the contribution of property (or event that results in reverse section 704(c) allocations) and the corresponding allocation of tax items with respect to the property are made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability (the anti-abuse rule).

In 2003, the Staff of the Joint Committee on Taxation (JCT) prepared *The Report of Investigation of Enron Corporation and Related Entities Regarding Federal Tax and Compensation Issues, and Policy Recommendations* (JCS-3-03), February 2003 (Enron Report). As part of the Enron Report, the JCT considered a transaction identified as "Project Condor." See Enron Report, pgs. 208-221. Responding to the Enron Report, Congress enacted section 755(c) in the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418) to address the unwarranted tax benefits for transactions similar to Project Condor.

In addition to the legislative recommendation, the Enron Report states that the rules of section 704(c) should not be used by related parties to shift basis among assets in the manner attempted in Project Condor. Although the Enron Report noted that the anti-abuse rule of § 1.704-3(a)(10) " \* \* \* should apply to preclude the tax benefits Project Condor purported to generate," the Enron Report recommended strengthening the anti-abuse rule relating to " \* \* \* partnership allocations for property contributed to a partnership, especially in the case of partners that are members

of the same consolidated group to ensure that the allocation rules are not used to obtain unwarranted tax benefits." See Enron Report, pg. 220.

These proposed regulations address the JCT recommendation by clarifying certain aspects of the anti-abuse rule. These clarifications are consistent with the general principles of sections 701 and 704, and make conforming changes to those that were recently adopted in § 1.704-1(b)(2)(iii).

**Explanation of Provisions**

Under the anti-abuse rule, an allocation method (or combination of methods) is not reasonable if the contribution of property and the corresponding allocation of tax items with respect to the property are made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability. Failing to consider a substantial reduction in the present value of an indirect partner's tax liability when analyzing the reasonableness of an allocation method would be inconsistent with the purposes of section 704(c) because it would allow a partnership to adopt a tax-advantaged allocation method if the tax advantages of the method accrued to an indirect partner, rather than a direct partner. Accordingly, § 1.704-3(a)(10) is amended to provide that, for purposes of applying the anti-abuse rule, the tax effect of an allocation method (or combination of methods) on both direct and indirect partners is considered. The proposed regulations provide that an indirect partner is any direct or indirect owner of a partnership, S corporation, or controlled foreign corporation (as defined in section 957(a) or 953(c)), or direct or indirect beneficiary of a trust or estate, that is a partner in the partnership, and any consolidated group of which the partner in the partnership is a member (within the meaning of section 1.1502-1(h)). However, an owner of a controlled foreign corporation is treated as an indirect partner only with respect to the allocation of items that enter into the computation of a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, enter into any person's income attributable to a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, or would enter into the computations described in this paragraph if such items were allocated to the controlled foreign corporation.

The Treasury Department and IRS believe that this amendment merely confirms the proper application of the anti-abuse rule contained in the existing regulations. This clarifying addition is consistent with the recent modification to § 1.704-1(b)(2)(iii) (substantiality test) confirming that, for purposes of the substantiality test, the tax consequences to an owner of a look-through entity that is a partner in the partnership must be taken into account when evaluating an allocation to such partner.

These proposed regulations further provide that the principles of section 704(c), together with the allocation methods described in § 1.704-3, paragraphs (b), (c) and (d), apply only with respect to the contributions of property to the partnership. In that regard, the anti-abuse rule of § 1.701-2(b) provides that, if a partnership is formed or availed of in connection with a transaction a principal purpose of which is to reduce substantially the present value of the partners' Federal tax liability in a manner inconsistent with the intent of subchapter K, the IRS may recast the transaction for federal tax purposes as appropriate to achieve tax results that are consistent with the intent of subchapter K. Thus, even though a transaction may satisfy the literal words of the statute or regulations, the IRS may recast a transaction as appropriate to avoid tax results that are inconsistent with the intent of subchapter K, including but not limited to: (i) Disregarding purported partnerships, in whole or part, so that partnership assets are treated as owned by the partner; (ii) disregarding one or more contributions or (iii) disregarding one or more purported partners. The proposed regulations also provide that, in determining if a purported contribution of property to a partnership should be recast to avoid results that are inconsistent with subchapter K, one factor that may be relevant is the use of the remedial method in which allocations of remedial items of income, gain, loss or deduction are made to one partner and allocations of offsetting remedial items are made to a related partner.

**Proposed Effective Date**

These regulations are proposed to apply for taxable years beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. No inference should be drawn from this effective date with respect to prior law.

## Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 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) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

## Drafting Information

The principal authors of these proposed regulations are Laura Fields and Steven A. Schmoll, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. 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.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 1.704-3 is amended by:

1. Adding five sentences to paragraph (a)(1) at the end of the last sentence and revising paragraph (a)(10) to read as follows.

The revisions and additions read as follows:

#### § 1.704-3 Contributed property.

(a) \* \* \* (1) \* \* \* The principles of this paragraph (a)(1), together with the methods described in paragraphs (b), (c) and (d) of this section, apply only to contributions of property that are otherwise respected. See § 1.701-2. Accordingly, even though a partnership's allocation method may be described in the literal language of paragraphs (b), (c) or (d) of this section, based on the particular facts and circumstances, the Commissioner can recast the contribution as appropriate to avoid tax results inconsistent with the intent of subchapter K. One factor that may be considered by the Commissioner is the use of the remedial allocation method by related partners in which allocations of remedial items of income, gain, loss or deduction are made to one partner and the allocations of offsetting remedial items are made to a related partner. The preceding four sentences are effective for taxable years beginning after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

\* \* \* \* \*

(10) *Anti-abuse rule*—(i) *In general.* An allocation method (or combination of methods) is not reasonable if the contribution of property (or event that results in reverse section 704(c) allocations) and the corresponding allocation of tax items with respect to the property are made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability. For purposes of this paragraph (a)(10), the tax effect of an allocation method (or combination of methods) on direct and indirect partners is considered.

(ii) *Definition of indirect partner.* An indirect partner is any direct or indirect owner of a partnership, S corporation, or controlled foreign corporation (as defined in section 957(a) or 953(c)), or direct or indirect beneficiary of a trust or estate, that is a partner in the partnership, and any consolidated group of which the partner in the partnership is a member (within the meaning of § 1.1502-1(h)). An owner (whether directly or through tiers of entities) of a controlled foreign corporation is treated as an indirect partner only with respect to allocations of items of income, gain,

loss, or deduction that enter into the computation of a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, enter into any person's income attributable to a United States shareholder's inclusion under section 951(a) with respect to the controlled foreign corporation, or would enter into the computations described in this sentence if such items were allocated to the controlled foreign corporation.

(iii) *Effective/applicability date.* The last sentence of paragraph (a)(10)(i), and paragraph (a)(10)(ii) of this section are effective for taxable years beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

\* \* \* \* \*

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8-11174 Filed 5-16-08; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2008-OS-0053]

### 32 CFR Part 322

#### Privacy Act; Implementation

**AGENCY:** National Security Agency/Central Security Services, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The National Security Agency/Central Security Services (NSA/CSS) is proposing to add an exemption rule for the system of records GNSA 23, "NSA/CSS Operations Security Support Program and Training Files" when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the record when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records.

**DATES:** Comments must be received on or before July 18, 2008 to be considered by this agency.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.