

TABLE 1—APPLICABILITY—Continued

Manufacturer	Model	Serial Nos.
Raytheon (Mitsubishi) .....	Model MU-300 airplanes .....	A003SA through A091SA inclusive.

**Unsafe Condition**

(d) This AD results from reports of incomplete latching of the existing adjustment mechanism and cracked reinforcement assemblies, which could result in sudden shifting of a flightcrew seat. We are issuing this AD to prevent sudden shifting of a flightcrew seat, which could impair the flightcrew's ability to control the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Restatement of the Requirements of AD 96-03-07**

(f) For Hawker Beechcraft Model MU-300-10 airplanes and Model 400 and 400A series airplanes: Within 200 hours time-in-service after March 13, 1996 (the effective date of AD 96-03-07), install an improved adjustment mechanism on the flightcrew seat, and replace the existing aluminum seat reinforcement assemblies with steel assemblies, in accordance with Beechcraft Service Bulletin SB 2536, Revision 1, dated April 1995; or Raytheon Mandatory Service Bulletin SB 25-2536, Revision 2, dated March 2002.

**Existing Requirements for Additional Airplanes**

(g) For Raytheon (Mitsubishi) Model MU-300 airplanes: Within 200 flight hours or 12 months after the effective date of this AD, whichever occurs first, install an improved adjustment mechanism on the flightcrew seats, and replace the existing aluminum seat reinforcement assemblies with steel assemblies, in accordance with Raytheon Mandatory Service Bulletin SB 25-2536, Revision 2, dated March 2002.

**Note 1:** A note in the Accomplishment Instructions of Raytheon Mandatory Service Bulletin SB 25-2536, Revision 2, dated March 2002, instructs operators to contact Raytheon if any difficulty is encountered while accomplishing the actions specified in that service bulletin. However, any deviation from the instructions provided in Raytheon Mandatory Service Bulletin SB 25-2536, Revision 2, dated March 2002, must be approved as an alternative method of compliance (AMOC) under paragraph (h) of this AD.

**Alternative Methods of Compliance**

(h)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: William Griffith, Aerospace Engineer, Airframe Branch, ACE-118W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4116; fax (316) 946-4107; has the authority to approve AMOCs

for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on October 21, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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

**[REG-130342-08]**

**RIN 1545-BI10**

**Infrastructure Improvements Under Section 897**

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

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** This document describes issues that the IRS and the Treasury Department are considering addressing, in a notice of proposed rulemaking, under section 897 of the Internal Revenue Code (Code) regarding the definition of an interest in real property. The notice of proposed rulemaking would address certain rights granted by a governmental unit that are related to the lease, ownership, or use of real property. This document also invites comments from the public regarding these contemplated rules. All materials submitted will be available for public inspection and copying.

**DATES:** Written and electronic comments must be submitted by January 29, 2009.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-130342-08), room 5203, Internal Revenue Service, P.O. Box 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-130342-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS and REG-130342-08).

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposals, Jeffrey P. Cowan at (202) 622-3850; concerning submissions, Richard A. Hurst at (202) 622-7180 (TDD Telephone) (not toll-free numbers) and his e-mail address is [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov).

**SUPPLEMENTARY INFORMATION:****Overview**

This document describes issues that the IRS and the Treasury Department are considering addressing, in a notice of proposed rulemaking, regarding the definition of an interest in real property within the meaning of section 897(c) of the Code. The notice of proposed rulemaking would address certain rights granted by a governmental unit that are related to the lease, ownership, or use of toll roads, toll bridges, and certain other physical infrastructure. The proposed regulations would amend the § 1.897-1 regulations.

**Transactions at Issue**

In a typical transaction at issue, a domestic partnership (DP) leases or purchases from an unrelated party infrastructure assets and any land underlying these infrastructure assets (together, specified infrastructure) within the United States. The DP's partners include domestic corporations with foreign shareholders. Examples of specified infrastructure include a toll road or toll bridge.

Often, as a condition to operating the specified infrastructure and to collecting tolls for its use, DP is also required to obtain a governmental license, permit, franchise, or other similar right (governmental permit). The DP may also own or acquire property that would be used in the trade or business of operating the specified infrastructure, such as signs, snow plows, and electronic sensors.

The physical attributes of the specified infrastructure, for example, a relatively narrow roadway, and terms and conditions related to the specified infrastructure, for example, that the

lessee is required to maintain and operate a roadway, mean that in many cases there may practically be no potential alternative commercial uses for the specified infrastructure. In those cases, the value of the leasehold interest in the specified infrastructure derives from the right to charge and collect tolls.

### Background

Section 897(a)(1) of the Code treats the gain or loss of a nonresident alien or foreign corporation from the disposition of a U.S. real property interest (USRPI) as if the taxpayer were engaged in a trade or business in the United States, and as if such gain or loss were effectively connected with such trade or business under sections 871(b) or 882. In general, a USRPI includes an interest in real property located in the United States or the Virgin Islands, and any interest (other than an interest solely as a creditor) in a domestic corporation unless the taxpayer establishes that the corporation was at no time a U.S. real property holding corporation (USRPHC) within the period described in section 897(c)(1)(A)(ii). Section 897(c)(1)(A).

Real property includes land and unsevered natural products of the land, improvements, and personal property associated with the use of real property. Section 1.897-1(b)(1). Section 1.897-1(b)(1) provides that local law definitions will not be controlling for purposes of determining the meaning of the term "real property" as it is used under section 897 and the regulations thereunder. The regulations define an "improvement" as a building, any other inherently permanent structure, or the structural components of either. Section 1.897-1(b)(3). For this purpose an inherently permanent structure includes any property not otherwise described in § 1.897-1(b)(3) that is affixed to real property and that will ordinarily remain affixed for an indefinite period of time. Further, § 1.897-1(b)(3)(iii)(B) provides that an inherently permanent structure includes, for example, pavements and bridges.

The Code defines an "interest in real property" to include fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon. Section 897(c)(6)(A). Section 1.897-1(c)(1) further provides that the term USRPI also includes any interest, other than an interest solely as a creditor, in real property located in the United States or the Virgin Islands. Section 1.897-1(d)(2)(i) provides that an interest in

real property other than an interest solely as a creditor includes any direct or indirect right to share in the appreciation in the value, or in the gross or net proceeds or profits generated by, the real property.

A USRPHC is generally defined as a corporation the fair market value of whose USRPIs equals or exceeds 50 percent of the fair market value of its worldwide interests in real property, including its USRPIs, plus its other assets which are used or held for use in a trade or business. Section 897(c)(2). For this purpose, assets used or held for use in a trade or business include, among other things, certain intangible property described in § 1.897-1(f)(1)(ii).

For purposes of determining whether any corporation is a USRPHC, assets held by a partnership, trust, or estate are generally treated as held proportionately by its partners or beneficiaries. Section 897(c)(4)(B) and § 1.897-2(e)(2). The interest in the entity itself is disregarded when a proportionate share of the entity's assets are attributed to the interest-holder. Section 1.897-2(e)(2). Further, any asset treated as held by a partner or beneficiary by reason of this rule which is used or held for use by the partnership, trust, or estate in a trade or business is treated as so used or held by the partner or beneficiary. Section 897(c)(4)(B) and § 1.897-2(e)(2). The proportionate ownership rules of Section 897(c)(4)(B) and § 1.897-2(e)(2) apply successively upward through a chain of ownership. Section 1.897-2(e)(2).

### Explanation of Contemplated Regulations

The IRS and the Treasury Department are aware that in the transactions at issue taxpayers may be taking the position that for purposes of section 897 the governmental permit is not a USRPI within the meaning of section 897(c). Instead, these taxpayers may take the position that the governmental permit is an asset used or held for use in a trade or business. Further, these taxpayers may take the position that a significant portion of the fair market value of a DP's assets is allocable to the governmental permit rather than to the assets comprising the specified infrastructure.

As noted in the Background section, under section 897(c)(2), a corporation is a USRPHC only if the fair market value of its USRPIs equals or exceeds 50 percent of the fair market value of its USRPIs plus its interests in real property located outside the United States, plus any other of its assets which are used or held for use in a trade or business. Therefore, if the fair market value of the governmental permit were

treated as an asset used or held for use in a trade or business, and not a USRPI, the governmental permit would be taken into account in the denominator, but not the numerator, of the calculation provided for in section 897(c)(2) in order to determine whether any domestic corporation that is a partner in a DP is a USRPHC. Accounting for the governmental permit in this manner for purposes of the section 897(c)(2) calculation reduces the likelihood that a domestic corporation to which such a right was attributed under section 897(c)(4)(B) would be treated as a USRPHC under section 897(c)(2).

The IRS and the Treasury Department, however, are of the view that in some of the transactions at issue the governmental permit may properly be characterized as a USRPI. Accordingly, the IRS and the Treasury Department are considering issuing proposed regulations regarding the definition of an interest in real property that would address certain licenses, permits, franchises, or other similar rights granted by a governmental unit (including, for purposes of section 897, an agency or instrumentality thereof) that are related to the value of the use or ownership of an interest in real property. The proposed regulations would address how the fair market value of such licenses, permits, franchises, or other similar rights should be taken into account when determining the fair market value of a corporation's USRPIs and interests in real property located outside the United States under section 897(c)(2).

### Proposed Effective Date

The IRS and the Treasury Department anticipate that the proposed regulations would apply for transactions occurring on or after the date of publication in the **Federal Register** as final or temporary regulations. No inference is intended as to how these arrangements are treated or characterized under current law.

### Request for Comments

Before the notice of proposed rulemaking is issued, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. All comments will be available for public inspection and copying.

The IRS and Treasury Department specifically request comments on:

1. The scope of this regulatory project, the types of licenses, permits, franchises, or other similar rights granted by a governmental unit with respect to specified infrastructure that might be treated as related to the value

of the lease, ownership, or use of an interest in real property, and what characteristics should be taken into account in making that determination.

2. Whether this regulatory project should address the allocation of the consideration paid for the lease or purchase of a specified infrastructure and the license, permit, franchise, or other similar right to operate that specified infrastructure for purposes of determining the fair market value of such property.

In regard to the allocation of purchase price, comments are also sought as to whether, for purposes of allocating the consideration paid for a lease of the specified infrastructure and the license, permit, franchise, or other similar right to operate that specified infrastructure, the length of the lease (including whether the lease is for the useful life of the property) should be taken into account.

**L.E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-164370-05]

RIN 1545-BF27

#### Section 108(e)(8) Application to Partnerships

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to the application of section 108(e)(8) of the Internal Revenue Code (Code) to partnerships and their partners. These regulations provide guidance regarding the determination of discharge of indebtedness income of a partnership that transfers a partnership interest to a creditor in satisfaction of the partnership's indebtedness (debt-for-equity exchange). The proposed regulations also provide that section 721 applies to a contribution of a partnership's recourse or nonrecourse indebtedness by a creditor to the partnership in exchange for a capital or profits interest in the partnership. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by January 29, 2009. Outlines of topics to be discussed at the public hearing scheduled for February 19, 2009, must be received by January 27, 2009.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-164370-05), Room 5203, Internal Revenue Service, PO Box 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-164370-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-164370-05). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Megan A. Stoner, Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 622-3070; concerning submission of comments, the hearing, and/or placed on the building access list to attend the hearing, Richard Hurst, (202) 622-2949 (TDD Telephone) (not toll-free numbers) and his e-mail address is [Richard.A.Hurst@irsounsel.treas.gov](mailto:Richard.A.Hurst@irsounsel.treas.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains proposed amendments to 26 CFR Part 1 under sections 108 and 721 of the Code relating to the application of section 108(e)(8) to partnerships.

Section 108(e)(8) was amended by section 896 of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1648), to include discharges of partnership indebtedness occurring on or after October 22, 2004. Prior to the amendment, section 108(e)(8) only applied to discharges of corporate indebtedness. Section 108(e)(8), as amended, provides that for purposes of determining income of a debtor from discharge of indebtedness (COD income), if a debtor corporation transfers stock or a debtor partnership transfers a capital or profits interest in such partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of a partnership, any COD income

recognized under section 108(e)(8) shall be included in the distributive shares of the partners in the partnership immediately before such discharge.

**Explanation of Provisions**

*1. Valuation of Partnership Interest Transferred in Satisfaction of Partnership Debt*

Section 108(e)(8) provides that for purposes of determining COD income of a debtor partnership, the partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the interest transferred to the creditor. The amount by which the indebtedness exceeds the fair market value of the partnership interest transferred is the amount of COD income required to be included in the distributive shares of the partners in the debtor partnership immediately before the discharge.

The IRS and the Treasury Department believe that provided certain requirements are satisfied, it is appropriate to allow the partnership and the creditor to value the partnership interest transferred to the creditor in a debt-for-equity exchange (debt-for-equity interest) based on liquidation value. For this purpose, liquidation value equals the amount of cash that the creditor would receive with respect to the debt-for-equity interest if, immediately after the transfer, the partnership sold all of its assets (including goodwill, going concern value, and any other intangibles associated with the partnership's operations) for cash equal to the fair market value of those assets, and then liquidated. If a partnership maintains capital accounts in accordance with the capital accounting rules of § 1.704-1(b)(2)(iv), the amount by which the creditor's capital account is increased as a result of the debt-for-equity exchange will equal the fair market value of the indebtedness exchanged. See § 1.704-1(b)(2)(iv)(b) and (d).

Accordingly, the proposed regulations provide that for purposes of applying section 108(e)(8), the fair market value of a debt-for-equity interest is the liquidation value of that debt-for-equity interest, if (i) the debtor partnership determines and maintains capital accounts of its partners in accordance with the capital accounting rules of § 1.704-1(b)(2)(iv), (ii) the creditor, debtor partnership, and its partners treat the fair market value of the indebtedness as being equal to the liquidation value of the debt-for-equity interest for purposes of determining the tax consequences of the debt-for-equity exchange, (iii) the debt-for-equity