

## **HIGHLIGHTS OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### **INCOME TAX**

#### **Rev. Rul. 2008-14, page 578.**

**Fringe benefits aircraft valuation formula.** The Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the first half of 2008 are set forth for purposes of determining the value of noncommercial flights on employer-provided aircraft under section 1.61-21(g) of the regulations.

#### **Rev. Rul. 2008-16, page 585.**

**S corporations; charitable contributions.** This ruling provides guidance for S corporations that made charitable contributions of appreciated property during a taxable year beginning after December 31, 2005 and before January 1, 2008. The ruling provides that the amount of the charitable deduction the shareholder may claim may not exceed the sum of (i) the shareholder's *pro rata* share of the fair market value of the contributed property over the shareholder's *pro rata* share of the contributed property's adjusted tax basis, and (ii) the amount of the Code section 1366(d) loss limitation amount that is allocable to the contributed property's basis under regulations section 1.1366-2(a)(4).

#### **T.D. 9376, page 587.**

Final regulations under section 1502 of the Code provide guidance regarding the manner in which the items (including items described in section 381(c) but excluding intercompany items under regulations section 1.1502-13) of a liquidating corporation are succeeded to and taken into account in cases in which multiple members acquire the assets of the liquidating corporation in a complete liquidation to which section 332 applies. The regulations affect corporations filing consolidated returns.

#### **T.D. 9377, page 578.**

Final regulations under section 338 of the Code relate to the determination of the adjusted basis of amortizable section 197 intangible assets in the hands of an insurance company resulting from certain reinsurance transactions, increases in an insurance company's reserves after a deemed sale, and a carryover to the new (target) insurance company of an election to use the old (target) insurance company's historical payment pattern to discount unpaid losses. The final regulations apply to insurance companies.

#### **Notice 2008-31, page 592.**

This notice updates procedures for issuers of tax-exempt bonds and tax credit bonds to submit requests for voluntary closing agreements to resolve violations of the Code. Notice 2001-60 modified and superseded.

#### **Notice 2008-32, page 593.**

This notice provides interim guidance on the treatment under section 67 of the Code of investment advisory costs and other costs subject to the 2-percent floor under section 67(a) that are bundled as part of one commission or fee paid to the trustee or executor and are incurred by a trust other than a grantor trust or an estate.

**(Continued on the next page)**

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(b) *Additional Information for Requests.* CPM staff may require additional information depending on the facts and circumstances. All additional information must be submitted under penalty of perjury signed by the person who initially signed the submission or who would have been authorized to make the original submission.

(c) *Electronic Format.* All information submitted in support of a closing agreement request must be provided in an electronic format that is either emailed in PDF format or provided on a compact disc (“CD”) sent via regular mail to the address provided by this notice. Hard copies of the submissions can be provided but are not required.

(d) *Anonymous Closing Agreement Requests.* An issuer or its authorized representative may initiate discussions regarding the appropriate terms of a closing agreement on an anonymous basis. An anonymous request may be made on behalf of a group of similarly situated issuers. However, the execution of a closing agreement must be between the Service and a disclosed issuer, and all terms of a closing agreement must be consistent with section 7121 of the Code. Until the name of the bond issue is disclosed to the Service, a request for a closing agreement under TEB VCAP will not prevent the Service from beginning an examination of the bond issue. An issue for which a request has been submitted under this paragraph (d) that has been placed under examination prior to the date the issue is identified to the Service will no longer be eligible for TEB VCAP.

(e) *TEB VCAP Mailing Address.* TEB VCAP submissions should be mailed to:

Internal Revenue Service  
Attn: TEB VCAP  
1122 Town & Country Commons  
St. Louis, MO 63017

(f) *TEB VCAP E-Mail Address.* In the alternative, VCAP information may be submitted in PDF format to [TEBVCAP@irs.gov](mailto:TEBVCAP@irs.gov). TEB CPM will provide an acknowledgement of receipt of an email request.

## SECTION 6. CLOSING AGREEMENT TERMS

Closing agreements under TEB VCAP will generally follow the model closing agreement in IRM 4.81.1, Exhibit 9, as the same may be modified or changed. Specific closing agreement terms will depend on the facts and circumstances of the case, including the degree of diligence exercised by the issuer and any conduit borrower. Any standardized closing agreement terms that are developed for TEB VCAP will be set forth in the Internal Revenue Manual and/or other published guidance.

## SECTION 7. EFFECT OF CLOSING AGREEMENT EXECUTED UNDER TEB VCAP

A closing agreement properly executed by the issuer and the Service will protect bondholders from including in their gross income any interest on the bonds or from recapturing tax credits during the period specified in the agreement for any violation described in the agreement. A closing agreement executed under section 7121 of the Code shall be final and conclusive except that: (1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact; (2) it is subject to the sections of the Code that expressly provide that effect be given to their provisions (including any stated exception for section 7122 of the Code) notwithstanding any other law or rule of law; and (3) it is subject to any law, enacted after the date of the agreement, that applies to a tax period ending after the date of the agreement covered by the agreement.

## SECTION 8. REQUESTS FOR COMMENTS

We anticipated that TEB VCAP will continue to be expanded and refined over time based on experience and public comment. The Service welcomes comments regarding the format and operation of TEB VCAP, and suggestions with regard to the general framework of closing agreement terms including standardized closing agreement terms and amounts that may be specified for particular violations. Comments should be submitted in writing and should be emailed to

[Steven.A.Chamberlin@irs.gov](mailto:Steven.A.Chamberlin@irs.gov) or mailed to the following address:

Steven A. Chamberlin  
Manager, Tax Exempt Bonds  
Compliance & Program  
Management  
SE:T:GE:TEB:CPM  
1122 Town & Country Commons  
St. Louis, MO 63017

## SECTION 9. EFFECT ON OTHER DOCUMENTS

Notice 2001–60, 2001–2 C.B. 304, is modified and superseded.

## SECTION 10. EFFECTIVE DATE

TEB VCAP is effective February 27, 2008.

## SECTION 11. DRAFTING INFORMATION

The principal authors of this notice are Steven A. Chamberlin of Tax Exempt Bonds Compliance & Program Management, Tax Exempt & Government Entities, and Carla Young of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Steven Chamberlin at (636) 255–1290 or Carla Young at (202) 622–3980 (not toll-free calls).

## Section 67 Limitations on Estates or Trusts for Bundled Investment Management and Advisory Costs

### Notice 2008–32

This notice provides interim guidance on the treatment under § 67 of the Internal Revenue Code of investment advisory costs and other costs subject to the 2-percent floor under § 67(a) that are bundled as part of one commission or fee paid to the trustee or executor (“Bundled Fiduciary Fee”) and are incurred by a trust other than a grantor trust (nongrantor trust) or an estate.

## BACKGROUND

On January 16, 2008, the Supreme Court of the United States issued its decision in *Michael J. Knight, Trustee of*

*William L. Rudkin Testamentary Trust v. Commissioner*, 552 U.S. \_\_\_, 128 S. Ct. 782 (2008), holding that costs paid to an investment advisor by a nongrantor trust or estate generally are subject to the 2-percent floor for miscellaneous itemized deductions under § 67(a). The IRS and the Treasury Department expect to issue final regulations under § 1.67-4 of the Income Tax Regulations consistent with the Supreme Court's holding in *Knight*. The final regulations also will address the issue raised when a nongrantor trust or estate pays a Bundled Fiduciary Fee for costs incurred in-house by the fiduciary, some of which are subject to the 2-percent floor and some of which are fully deductible without regard to the 2-percent floor. The final regulations, however, will not be issued prior to the due date for filing 2007 income tax returns (determined without regard to extensions), and will apply only prospectively. Accordingly, in light of the Supreme Court's decision in *Knight*, the IRS and the Treasury Department are providing interim guidance that specifically addresses the treatment of a Bundled Fiduciary Fee.

#### INTERIM GUIDANCE

Taxpayers will not be required to determine the portion of a Bundled Fiduciary Fee that is subject to the 2-percent floor under § 67 for any taxable year beginning before January 1, 2008. Instead, for each such taxable year, taxpayers may deduct the full amount of the Bundled Fiduciary Fee without regard to the 2-percent floor. Payments by the fiduciary to third parties for expenses subject to the 2-percent floor are readily identifiable and must be treated separately from the otherwise Bundled Fiduciary Fee.

The IRS and the Treasury Department anticipate that final regulations under § 1.67-4 will be published without delay after the extended comment period granted in this notice. The final regulations may contain one or more safe harbors for the allocation of fees and expenses between those costs that are subject to the 2-percent floor and those that are not. Any safe harbors in the final regulations for determining the allocation of a bundled fiduciary fee between costs subject to the 2-percent floor and those not subject to the 2-percent floor may be available for tax-

payers to use for taxable years beginning on or after January 1, 2008.

#### REQUESTS FOR COMMENTS

Interested parties are invited to submit comments on this notice and § 1.67-4 of the proposed regulations published in the **Federal Register** of July 27, 2007 (REG-128224-06, 2007-36 I.R.B. 551 [72 FR 41243-01]) by May 27, 2008.

The IRS and the Treasury Department are considering various modifications to § 1.67-4 of the proposed regulations that may include safe harbors for determining the allocation of a Bundled Fiduciary Fee between costs subject to the 2-percent floor and those that are not. The IRS and the Treasury Department request comments on whether safe harbors would be helpful and request suggestions on how the safe harbors may be formulated. Comments are specifically requested on reasonable estimates of the percentage(s) of the total costs of administering a nongrantor trust or estate that is attributable to costs subject to the 2-percent floor including, but not limited to, costs for investment management and advice. Comments are also requested on whether the safe harbors should reflect the nature or value of the assets in the nongrantor trust or estate, and/or the number of beneficiaries of the nongrantor trust or estate.

Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2008-32), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Alternatively, comments may be hand delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to: CC:PA:LPD:PR (Notice 2008-32), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Comments may also be submitted electronically via the following e-mail address: [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include Notice 2008-32 in the subject line of any electronic submissions.

#### EFFECTIVE DATE

This notice is effective February 27, 2008.

#### CONTACT INFORMATION

The principal author of this notice is Jennifer N. Keeney of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jennifer N. Keeney at (202) 622-3060 (not a toll-free call).

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*26 CFR 601.601: Rules and regulations.*  
(Also Part 1, §§ 25, 103, 143; 1.25-4T, 1.103-1, 6a.103A-2.)

## Rev. Proc. 2008-19

### SECTION 1. PURPOSE

This revenue procedure provides guidance with respect to the United States and area median gross income figures that are to be used by issuers of qualified mortgage bonds, as defined in § 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in § 25(c), in computing the housing cost/income ratio described in § 143(f)(5).

### SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(e) provides that the term "qualified bond" includes any private activity bond that (1) is a qualified mortgage bond, (2) meets the applicable volume cap requirements under § 146, and (3) meets the applicable requirements under § 147.

.02 Section 143(a)(1) provides that the term "qualified mortgage bond" means a bond that is issued as part of a "qualified mortgage issue". Section 143(a)(2)(A) provides that the term "qualified mortgage issue" means an issue of one or more bonds by a state or political subdivision thereof, but only if (i) all proceeds of the issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences; (ii) the issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7) of § 143; (iii) the issue does not