

§53.4958-2 Definition of applicable tax-exempt organization.

(a) \* \* \*

(6) *Examples.* The following examples illustrate the principles of this section, which defines an applicable tax-exempt organization for purposes of section 4958:

*Example 1.* O is a nonprofit corporation formed under state law. O filed its application for recognition of exemption under section 501(c)(3) within the time prescribed under section 508(a). In its application, O described its plans for purchasing property from some of its directors at prices that would exceed fair market value. After reviewing the application, the IRS determined that because of the proposed property purchase transactions, O failed to establish that it met the requirements for an organization described in section 501(c)(3). Accordingly, the IRS denied O's application. While O's application was pending, O engaged in the purchase transactions described in its application at prices that exceeded the fair market value of the property. Although these transactions would constitute excess benefit transactions under section 4958, because the IRS never recognized O as an organization described in section 501(c)(3), O was never an applicable tax-exempt organization under section 4958. Therefore, these transactions are not subject to the excise taxes provided in section 4958.

*Example 2.* O is a nonprofit corporation formed under state law. O files its application for recognition of exemption under section 501(c)(3) within the time prescribed under section 508(a). The IRS issues a favorable determination letter in Year 1 that recognizes O as an organization described in section 501(c)(3). Subsequently, in Year 5 of O's operations, O engages in certain transactions that constitute excess benefit transactions under section 4958 and violate the proscription against inurement under section 501(c)(3) and §1.501(c)(3)-1(c)(2). The IRS examines the Form 990, "Return of Organization Exempt From Income Tax", that O filed for Year 5. After considering all the relevant facts and circumstances in accordance with §1.501(c)(3)-1(g), the IRS concludes that O is no longer described in section 501(c)(3) effective in Year 5. The IRS does not examine the Forms 990 that O filed for its first four years of operations and, accordingly, does not revoke O's exempt status for those years. Although O's tax-exempt status is revoked effective in Year 5, under the look-back rules in §53.4958-2(a)(1) and §53.4958-3(a)(1) of this chapter, for a period of five years prior to the excess benefit transactions that occurred in Year 5, O was an applicable tax-exempt organization and O's directors were disqualified persons as to O. Therefore, the transactions between O and its directors during Year 5 are subject to the appropriate excise taxes provided in section 4958.

\* \* \* \* \*

Mark E. Matthews,  
Deputy Commissioner for  
Services and Enforcement.

(Filed by the Office of the Federal Register on September 8, 2005, 8:45 a.m., and published in the issue of the Federal Register for September 9, 2005, 70 F.R. 53599)

**Section 1446 Regulations;  
Withholding on  
Effectively-Connected Taxable  
Income Allocable to Foreign  
Partners; Hearing**

**Announcement 2005-74**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date of public hearing.

SUMMARY: This document changes the date of a public hearing on proposed regulations (REG-108524-00) relating to the circumstances under which a partnership may take partner-level deductions and losses into account in computing its withholding tax obligation with respect to a foreign partner's allocable share of effectively connected taxable income.

DATES: The public hearing originally scheduled for Monday, October 3, 2005, at 10 a.m. is rescheduled for Wednesday, November 16, 2005, at 10 a.m. Outlines of topics to be discussed at the public hearing were due by September 12, 2005.

ADDRESSES: The public hearing is being held in the IRS auditorium, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst, (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking (REG-108524-00, 2005-23 I.R.B. 1209) and notice of public hearing appearing in the **Federal Register** on Wednesday, May 18, 2005 (70 FR 28743), announced that a public hearing on proposed regulations relating to circumstances under which a partnership may take partner-level deductions and losses into account in computing its withholding tax obligation with respect to a foreign partner's allocable share of effectively connected taxable income would

be held on Monday, October 3, 2005, beginning at 10 a.m. in the IRS auditorium, 1111 Constitution Avenue, NW, Washington, DC.

The date of the hearing has changed. The hearing is scheduled for Wednesday, November 16, 2005, beginning at 10 a.m. in the IRS auditorium, 1111 Constitution Avenue, NW, Washington, DC. Because of the controlled access restrictions, attendants will not be admitted beyond the lobby area of the Internal Revenue Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia Grigsby,  
Acting Chief, Publications and  
Regulations Branch,  
Legal Processing Division,  
Associate Chief Counsel  
(Procedure and Administration).

(Filed by the Office of the Federal Register on September 30, 2005, 8:45 a.m., and published in the issue of the Federal Register for October 3, 2005, 70 F.R. 57523)

**Deletions From Cumulative  
List of Organizations  
Contributions to Which  
are Deductible Under Section  
170 of the Code**

**Announcement 2005-75**

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the

activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on October 17, 2005, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For

individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Alpha Kappa Psi Scholarship Fund  
Minneapolis, MN

Alphabets Childcare Center, Inc.  
Clarksville, TN

Inner City Development Foundation  
Los Angeles, CA

Rocky Road Incorporated  
Snowmass Village, CO

## Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

### Announcement 2005-76

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

## Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service,

may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Reagan, John	Cortland, NY	CPA	Indefinite from June 24, 2005
Harris, Alexander W.	Chicago, IL	Attorney	July 1, 2005 to December 31, 2005