

*Example (3).* Veteran's organizations Y and X, both tax-exempt organizations, are organized under the laws of State N. State N has a statutory provision that permits bingo games to be conducted by tax-exempt organizations. In addition, State N permits bingo games to be conducted by for-profit organizations in city S, a resort community located in county R. Several for-profit organizations conduct nightly bingo games in city S. Y conducts weekly bingo games in city S. X conducts weekly bingo games in county R. Since State law confines the conduct of bingo games by for-profit organizations to city S, and since bingo games are regularly carried on there by those organizations, Y's bingo games conducted in city S constitute unrelated trade or business. However, X's bingo games conducted in county R outside of city S do not constitute unrelated trade or business.

(d) *Bingo game defined.* A bingo game is a game of chance played with cards that are generally printed with five rows of five squares each. Participants place markers over randomly called numbers on the cards in an attempt to form a preselected pattern such as a horizontal, vertical, or diagonal line, or all four corners. The first participant to form the preselected pattern wins the game. As used in this section, the term "bingo game" means any game of bingo of the type described above in which wagers are placed, winners are determined, and prizes or other property is distributed in the presence of all persons placing wagers in that game. The term "bingo game" does not refer to any game of chance (including, but not limited to, keno games, dice games, card games, and lotteries) other than the type of game described in this paragraph.

(e) *Effective date.* Section 513(f) and this section apply to taxable years beginning after December 31, 1969.

[FR Doc. 80-15609 Filed 5-20-80; 8:45 am]

BILLING CODE 4830-01-M

## 26 CFR Part 1

[T.D. 7698]

### Income Tax; Taxable Years Beginning After December 31, 1953; Exemption From Taxation of Certain Cemetery Companies and Crematoria; Exempt Title Holding Companies

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document provides final regulations under sections 501(c)(2) and 501(c)(13) of the Internal Revenue Code of 1954, relating to exempt title holding companies and to exempt cemetery companies and crematoria, respectively. These regulations make clerical changes in the regulations under section 501(c)(2), so as to reflect the revision of

section 514 by the Tax Reform Act of 1969 (Pub. L. 91-172, 83 Stat. 543) and to reflect changes made in section 501(c)(13) by the Act of December 31, 1970 (Pub. L. 91-618, 84 Stat. 1855), exempting certain crematoria from the corporate income tax. The regulations under section 501(c)(13) also clarify the standards for exemption from income tax and help identify when certain transfers to cemetery companies and crematoria are in exchange for equity interests rather than for debt obligations. Furthermore, the regulations correct two clerical errors contained in Treasury Decision 7229, published December 21, 1972, relating to unrelated debt-financed income of certain tax-exempt organizations. These regulations provide necessary guidance to the public for compliance with these Acts, and affect certain title holding companies and certain cemetery companies and crematoria that are exempt from taxation.

**DATE:** The regulations are effective for various taxable years as specified in the regulations.

**FOR FURTHER INFORMATION CONTACT:** Harry Beker of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:EE) (202-566-6212) (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 8, 1975, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 501(c)(2) and 501(c)(13) of the Internal Revenue Code of 1954 (40 FR 28613). The amendments were proposed to conform the regulations to the Tax Reform Act of 1969 (83 Stat. 543) and to the Act of December 31, 1970 (84 Stat. 1855). On November 29, 1978, the Federal Register published proposed amendments to the proposed regulations under section 501(c)(13) (43 FR 55797). A public hearing was held on March 29, 1979. After consideration of all comments regarding the proposed amendments, those amendments are adopted, as revised, by this Treasury decision.

The comments received with respect to the proposed amendments generally concerned three issues relating to exempt cemetery companies and crematoria. First, it was recommended that § 1.501(c)(13)-1(a) be revised to permit mutual cemeteries to be exempt even if operated for profit. As proposed on July 8, 1975, § 1.501(c)(13)-1(a) makes it clear that only nonprofit mutual

cemetery companies would be exempt. It has been concluded that the phrase "or which are not operated for profit" was added to section 501(c)(13) not as a separate qualification for exemption, but to take care of mutual cemetery companies that would not be operating "exclusively" for the benefit of members because of additional charitable activities, such as the burial of paupers. Additional support for this position is contained in section 170(c)(5), the counterpart to section 501(c)(13) for purposes of charitable contributions. Section 170(c)(5) reflects the emphasis placed by Congress on the "quasi charitable" nature of the type of organizations intended to be exempt under section 501(c)(13) by providing that only contributions to nonprofit mutual cemetery companies and nonprofit cemetery corporations are deductible. Accordingly, no change has been made to § 1.501(c)(13)-1(a) in the final regulations.

Second, it was recommended that § 1.501(c)(13)-1(c)(1), relating to the issuance of preferred stock, be withdrawn or substantially modified so that the use of preferred stock could continue to be available to tax-exempt cemeteries and crematoria. As proposed on November 29, 1978, § 1.501(c)(13)-1(c)(1) provides that a cemetery company or crematorium which issues preferred stock on or after November 28, 1978, will not be exempt from income tax. It has been concluded that the rule which permitted the issuance of preferred stock was inconsistent with the requirement of section 501(c)(13) that no part of the net earnings of an organization otherwise described in that section may inure to the benefit of any private shareholder or individual. The amendments, however, recognize the continued exempt status of cemeteries and crematoria which, prior to November 28, 1978, issued preferred stock meeting certain restrictions. The general prohibition on the issuance of preferred stock has been retained.

The comments relating to preferred stock also suggested that, if the amendment barring the use of preferred stock is adopted, § 1.501(c)(13)-1(c)(2) (the transitional rule) should be modified to include a clause protecting those cemeteries and crematoria which, prior to November 28, 1978, were in the process of issuing such stock. This recommendation has been adopted in new § 1.501(c)(13)-1(c)(3) which provides that a cemetery company or crematorium shall not fail to be exempt solely because it issues preferred stock on or after November 28, 1978, if such stock meets certain restrictions and is



issued pursuant to a plan which had been reduced to writing and adopted prior to November 28, 1978.

Third, it was recommended that § 1.501(c)(13)-1(d) be revised to indicate that where the vendor of property to a cemetery company does not control the cemetery, tax-exempt status should not be denied merely because the payments do not take the form of a traditional debt obligation. As proposed on July 8, 1975, § 1.501(c)(13)-1(d) provides that a cemetery company or crematorium is not exempt from income tax if property is transferred to such organization in exchange for an equity interest so long as the equity interest remains outstanding.

Section 1.501(c)(13)-1(d) previously listed several factors that would be considered in determining whether a bona fide debt obligation existed. The factors previously listed have been eliminated and paragraph (d) now simply provides that no person may have any interest in the net earnings of a tax-exempt cemetery company or crematorium, including any interest that constitutes equity under section 385 or the regulations thereunder.

Finally, minor technical clarifications have been made to reflect the fact that section 501(c)(13) does not grant exemption but merely describes organizations which are exempt under section 501(a).

#### Drafting Information

The principal author of these regulations is Harry Beker of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Section 1.501(c)(2)-1(a) is amended to read as follows:

#### § 1.501(c)(2)-1 Corporations organized to hold title to property for exempt organizations.

(a) A corporation described in section 501(c)(2) and otherwise exempt from tax under section 501(a) is taxable upon its unrelated business taxable income. For taxable years beginning before January 1, 1970, see § 1.511-2(c)(4). Since a corporation described in section 501(c)(2) cannot be exempt under section 501(a) if it engages in any business other than that of holding title

to property and collecting income therefrom, it cannot have unrelated business taxable income as defined in section 512 other than income which is treated as unrelated business taxable income solely because of the applicability of section 512(a)(3)(C); or debt financed income which is treated as unrelated business taxable income solely because of section 514; or certain interest, annuities, royalties, or rents which are treated as unrelated business taxable income solely because of section 512(b)(3)(B)(ii) or (13). Similarly, exempt status under section 501(c)(2) shall not be affected where certain rents from personal property leased with real property are treated as unrelated business taxable income under section 512(b)(3)(A)(ii) solely because such rents attributable to such personal property are more than incidental when compared to the total rents received or accrued under the lease, or under section 512(b)(3)(B)(i) solely because such rents attributable to such personal property exceed 50 percent of the total rents received or accrued under the lease.

\* \* \* \* \*

#### § 1.501(c)(13) [Deleted]

Par. 2. Section 1.501(c)(13) is deleted.

Par. 3. Section 1.501(c)(13)-1 is amended to read as follows:

#### § 1.501(c)(13)-1 Cemetery companies and crematoria.

(a) *Nonprofit mutual cemetery companies.* A nonprofit cemetery company may be entitled to exemption if it is owned by and operated exclusively for the benefit of its lot owners who hold such lots for bona fide burial purposes and not for the purpose of resale. A mutual cemetery company which also engages in charitable activities, such as the burial of paupers, will be regarded as operating in conformity with this standard. Further, the fact that a mutual cemetery company limits its membership to a particular class of individuals, such as members of a family, will not affect its status as mutual so long as all the other requirements of section 501(c)(13) are met.

(b) *Nonprofit cemetery companies and crematoria.* Any nonprofit corporation, chartered solely for the purpose of the burial, or (for taxable years beginning after December 31, 1970) the cremation of bodies, and not permitted by its charter to engage in any business not necessarily incident to that purpose, is exempt from income tax, provided that no part of its net earnings inures to the benefit of any private shareholder or individual.

(c) *Preferred stock—(1) In general.* Except as provided in subparagraph (3) of this paragraph, a cemetery company or crematorium is not described in section 501(c)(13) if it issues preferred stock on or after November 28, 1978.

(2) *Transitional rule for preferred stock issued prior to November 28, 1978.* In the case of preferred stock issued prior to November 28, 1978, a cemetery company or crematorium which issued such stock shall not fail to be exempt from income tax solely because it issued preferred stock which entitled the holders to dividends at a fixed rate, not exceeding the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, if its articles of incorporation require:

(i) That the preferred stock be retired at par as rapidly as funds therefor become available from operations, and

(ii) That all funds not required for the payment of dividends upon or for the retirement of preferred stock be used by the company for the care and improvement of the cemetery property.

The term "legal rate of interest" shall mean the rate of interest prescribed by law in the State of incorporation which prevails in the absence of an agreement between contracting parties fixing a rate.

(3) *Transitional rule for preferred stock issued on or after November 28, 1978.* In the case of preferred stock issued on or after November 28, 1978, a cemetery company or crematorium shall not fail to be exempt from income tax if its articles of incorporation and the preferred stock meet the requirements of subparagraph (2) and if such stock is issued pursuant to a plan which has been reduced to writing and adopted prior to November 28, 1978. The adoption of the plan must be shown by the acts of the duly constituted responsible officers and appear upon the official records of the cemetery company or crematorium.

(d) *Sales to exempt cemetery companies and crematoria.* Except as provided in paragraph (c)(2) or (c)(3) of this section (relating to transitional rules for preferred stock), no person may have any interest in the net earnings of a tax-exempt cemetery company or crematorium. Thus, a cemetery company or crematorium is not exempt from tax if property is transferred to such organization in exchange for an interest in the net earnings of the organization so long as such interest remains outstanding. An interest in a cemetery company or crematorium that constitutes an equity interest within the



meaning of section 385 will be considered an interest in the net earnings of the cemetery. However, an interest in a cemetery company or crematorium that does not constitute an equity interest within the meaning of section 385 may nevertheless constitute an interest in the net earnings of the organization. Thus, for example, a bond or other evidence of indebtedness issued by a cemetery company or crematorium which provides for a fixed rate of interest but which, in addition, provides for additional interest payments contingent upon the revenues or income of the organization is considered an interest in the net earnings of the organization. Similarly, a convertible debt obligation issued by a cemetery company or crematorium after July 7, 1975, is considered an interest in the net earnings of the organization.

#### § 1.514(c)-1 [Amended]

Par. 4. Section 1.514(c)-1 is amended by striking out from the second sentence of paragraph (f) "section 221(d)(3) (12 U.S.C. 1715(d)(3)) or section 236 (12 U.S.C. 1715x-1)" and inserting in lieu thereof "section 221(d)(3) (12 U.S.C. 1715 (f)(d)(3)) or section 236 (12 U.S.C. 1715z-1)".

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: April 25, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 80-15610 Filed 5-20-80; 8:45 am]

BILLING CODE 4830-01-M

#### 26 CFR Part 301

[T.D. 7697]

#### Offshore Oil Pollution Compensation Fund

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the collection of fees for the purpose of funding an Offshore Oil Pollution Compensation Fund. Changes to the applicable law were made by the Outer Continental Shelf Lands Act Amendments of 1978. The regulation will provide the public with the guidance needed to comply with the portion of the Act that relates to the collection of fees and will affect all owners of oil obtained from the Outer Continental Shelf.

**DATE:** The regulations at §§ 301.9001-1, 301.9001-2, and 301.9001-3 are effective on July 25, 1979, at 7:00 a.m., local time. If, however, the established practice has been to gauge oil production at a time other than 7:00 a.m. the effective date is July 25, 1979, at the time production has been gauged.

**FOR FURTHER INFORMATION CONTACT:** Kyllikki Kusma of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 20, 1979, the Federal Register published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301). The amendments were proposed to conform the regulations to section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 672). After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

##### Explanation of the Regulations

Section 302 of the Outer Continental Shelf Lands Act Amendments of 1978 (Act) establishes an Offshore Oil Pollution Compensation Fund (Fund). Under section 302(d) of the Act, this fund consists of money generated by a fee of not more than 3 cents per barrel imposed on oil obtained from the Outer Continental Shelf (OCS), and is to be paid by the owner of the oil as defined in § 301.9001-1(a)(2) of these regulations. Failure to pay the fee subjects the owner of the oil to a civil penalty. These regulations describe the collection procedure which is to be used in collecting this fee.

##### Owner of Oil

The proposed regulations stated that the owner of oil is the person in whom is vested ownership of the oil as it is produced at the wellhead without regard to the existence of contractual arrangements for the sale or other disposition of the oil. Under this rule, the Federal government is not an owner of oil at the time of production with respect to its entitlement to royalty oil. Several commentators suggested that the final regulations be amended to treat the Federal government as part owner of the OCS oil when it is produced and to exclude the portion of the OCS production that is attributable to the Federal government entitlement to royalty oil from calculations determining

the amount of the fee to be paid by the owner of the oil.

This suggestion is not adopted. Under the Act, the Coast Guard has the major responsibility for establishing policies, procedures, and administrative practices regarding the overall management and general operation of the Fund. Their final regulations, which were promulgated prior to publication of this notice of proposed rulemaking, specify that the per barrel fee applies at the time OCS oil is produced and state that the Federal Government is not the owner of the oil at the time of production. See 33 CFR 135.103. Similar questions were raised by commentators with respect to the Coast Guard's position on this issue but were not adopted. See 44 FR 16860 for the Coast Guard's discussion of the issue.

##### Condensate

One commentator believed that the term "oil" should not include condensate. Once again 33 CFR 135.5(b)(6) includes condensate in the definition of "oil". See 44 CFR 16861 for the Coast Guard's discussion of this question.

##### Barrels Subject to the Fee

Two commentators suggested that a sentence be added to the regulations which would clarify that the data found on Form 9-153 (Monthly Report of Sales and Royalty) is the information to be utilized in computing the number of barrels subject to the fee. The final regulations reflect this comment at § 301.9001-1(a)(1) with the addition of a new sentence between sentence 2 and sentence 3.

##### Semimonthly Deposit

Under the proposed regulations a semimonthly deposit of fees was required if the owner of oil is liable for more than \$2,000 of fees for any month of a calendar quarter. Many commentators stated that this proposal creates numerous accounting problems because reliable data normally is not available. This means that two reports must be prepared in which estimated production data must be utilized. Because the semimonthly deposit requirement is consistent with Treasury policy in related collection areas, the final regulations are not changed to reflect these comments.

##### Power of Attorney

The regulations at § 301.9001-1(d) state that the fee must be paid either by the owner of the oil or by a person authorized to act for the owner under an acceptable power of attorney. Several of the commentators stated that the



requirement of obtaining and filing a power of attorney with the Internal Revenue Service would be duplicative since the provisions of operating agreements between operators and nonoperator owners of oil-producing properties authorize the operator to make payments on behalf of nonoperator owners of oil. In accordance with these comments, the final regulations permit an operating agreement to be considered an acceptable power of attorney if it authorizes the payment by the operator of the fee imposed by the Act.

#### Drafting Information

The principal author of this regulation is Kyllikki Kusma of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service, Treasury Department, and Coast Guard participated in developing the regulation, both on matters of substance and style.

#### Adoption of amendments to the regulations

Accordingly, the proposed amendments to the regulations (26 CFR Part 301) as published in the *Federal Register* on July 20, 1979 (44 FR 42719) are adopted with changes as set forth below:

**Paragraph 1.** Section 301.9001-1 is amended as follows:

(a) A new sentence is added to § 301.9001-1(a)(1) between the second and third sentences to read as stated below.

(b) The phrase "Gulf of Mexico" is added to the third sentence from the end between the words "Shelf" and "Order" at § 301.9001-1(a)(1).

(c) The first sentence of § 301.9001-1(a)(2) is amended by deleting the words "these regulations" and by adding "§§ 301.9001-1, 301.9001-2, and 301.9001-3," to replace the deleted words.

(d) The word "reserved" is deleted and two new sentences are added at § 301.9001-1(a)(5) to read as stated below.

(e) Section 301.9001-1(c)(2) is amended by adding the phrase, "or a person authorized to act for the owner" between the words "owner" and "may".

(f) Section 301.9001-1(c)(3) is amended first by adding the phrase, "or a person authorized to act for the owner" between the words "owner" and "must" and is amended secondly by adding the phrase "following the month of production," after the word "month" at the end of the sentence.

(g) A new sentence is added after the sentence currently at § 301.9001-1(d)(1) to read as stated below.

#### § 301.9001-1 Collection of fee.

(a) *Imposition of fee—(1) In general.* \* \* \* The barrels subject to the fee shall be those barrels reported by the owner of the oil (§ 301.9001-1(a)(2)), or a person authorized to act for the owner, on the monthly royalty reports, Form 9-153, filed with the U.S. Geological Survey as required by 30 CFR 250.94.

(5) *Effective date.* The provisions of §§ 301.9001-1, 301.9001-2, and 301.9001-3 are effective on July 25, 1979, at 7:00 a.m., local time. If, however, the established practice has been to gauge oil production at a time other than 7:00 a.m., the effective date is July 25, 1979, at the time production has been gauged.

(d) *Responsibility for payment of fee—(1) In general.* \* \* \* For the purposes of the regulations at § 301.9001-1, 301.9001-2, and 301.9001-3, an operating agreement between the operator of the oil-producing facility and the owner of the oil is considered an acceptable power of attorney if the operating agreement expressly states that the operator is authorized to pay the fee imposed by section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978.

**Par. 2.** Section 301.9001-2 is amended as follows:

(a) The first sentence of § 301.9001-2 is amended by deleting the words "these regulations" and by adding "§§ 301.9001-1, 301.9001-2, and 301.9001-3" to replace the deleted words.

This Treasury decision is issued under the authority contained in section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 672) and in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: May 2, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

#### PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The following new sections are inserted to follow § 301.9000-1:

##### § 301.9001 Statutory provisions; Outer Continental Shelf Lands Act Amendments of 1978.

Section 302 of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629) provides as follows:

Sec. 302. (a) There is hereby established in the Treasury of the United States an Offshore Oil Pollution Compensation Fund in an amount not to exceed \$200,000,000, except that such limitation shall be increased to the

extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary<sup>1</sup> and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

(b) The Fund shall be composed of—

(1) All fees collected pursuant to subsection (d) of this section; and

(2) All other moneys recovered or collected on behalf of the Fund under section 308 or any other provision of this title.

(c) The Fund shall be immediately available for—

(1) Removal costs described in section 301(22);

(2) The processing and settlement claims under section 307 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

(3) Subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

(d)(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the *Federal Register*. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than \$100,000,000 and not more than \$200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

(3)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed \$10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General

<sup>1</sup> Secretary wherever used in this section means the Secretary of Transportation.



may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

(2) The Secretary of the Treasury may invest any excess in the Fund above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

(f) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

#### § 301.9001-1 Collection of fee.

(a) *Imposition of fee—(1) In general.* Under section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978 (Act), the Internal Revenue Service is authorized to collect

a fee of not more than 3 cents per barrel on oil that is obtained from the Outer Continental Shelf. This fee is established by the Commandant, United States Coast Guard, and is imposed on the owner of the oil as defined in paragraph (a)(2) of this section. The barrels subject to the fee shall be those barrels reported by the owner of the oil (§ 301.9001-1 (a) (2)), or a person authorized to act for the owner, on the monthly royalty reports, Form 9-153, filed with the U.S. Geological Survey as required by 30 CFR 250.94. For the purpose of computing this fee, the owner of the oil shall measure the Outer Continental Shelf oil production by employing the criteria of the U.S. Geological Survey contained in 30 CFR 250.60 and Outer Continental Shelf Gulf of Mexico Order 13. No reduction in the amount due will be permitted by reason of theoretical or actual oil lost in transit. To ensure that the Fund is maintained at a level of not less than \$100,000,000 and not more than \$200,000,000, the Commandant, United States Coast Guard, may modify the amount of this fee.

(2) *Owner of oil.* For the purposes of §§ 301.9001-1, 301.9001-2, and 301.9001-3, the owner of oil is the person in whom is vested ownership of the oil as it is produced at the wellhead without regard to the existence of contractual arrangements for the sale or other disposition of the oil between such a person and third parties. Under this rule, the Federal government entitlement to royalty oil does not constitute ownership of oil by the Federal government at the time of production.

(3) *Example.* The provisions of paragraph (a)(2) of this section may be illustrated by the following example:

*Example.* X is the owner of oil produced on the Outer Continental Shelf. During one reporting period, 10,000 barrels of oil were obtained from this location. X will use a portion of this oil to make a royalty payment to the United States government. X also has a contract with Y to sell Y the remaining barrels of oil. For the purpose of the Act, X is the owner of the oil and must pay a fee of 3 cents per barrel on all 10,000 barrels of oil.

(4) *Cross-references.* See § 301.9001-2(a) for the definition of barrel, § 301.9001-2(b) for the definition of oil, and § 301.9001-2(c) for the definition of person.

(5) *Effective Date.* The provisions of §§ 301.9001-1, 301.9001-2, and 301.9001-3 are effective on July 25, 1979, at 7:00 a.m., local time. If, however, the established practice has been to gauge oil production at a time other than 7:00 a.m., the effective date is July 25, 1979, at the time production has been gauged.

(b) *Collection of fee.* The Internal Revenue Service shall collect the fee imposed by section 302(d) of the Act. Administrative procedures for the collection of this fee shall be prescribed from time to time by the Commissioner. The Commissioner may designate the reasonably necessary records and documents to be kept by the person or persons from whom the fee is collected. See also the regulations under 33 CFR 135.103 for additional rules relating to the implementation of the Act.

(c) *Time and place for payment of the fee—(1) In general.* Payment of the fee shall be made in accordance with the rules established in paragraph (c)(2), (3) and (4) of this section. When a deposit is required by these rules, it must be filed with the Internal Revenue Service Center, Austin, Texas 73301 using Form 6008, Fee Deposit for Offshore Oil. Adjustments required in the amount paid during the calendar quarter to reflect the actual amount due for the quarter shall be made on Form 6009, Quarterly Report of Fees Due. Form 6009 must be filed on or before the last day of the month following the end of the calendar quarter with the Austin Service Center. The rules under section 7502, relating to the treatment of timely mailing as timely filing and paying, and section 7503, relating to the time for performance of acts where the last day falls on Saturday, Sunday, or legal holiday are applicable to the filing of Form 6009.

(2) *\$100 or less of fees.* If the owner of oil is liable in any calendar quarter for \$100 or less of fees, the owner or a person authorized to act for the owner may either deposit this amount or pay the full amount of the fee when Form 6009 is filed.

(3) *More than \$100 of fees.* If the owner of oil is liable in the first or second month of the calendar quarter for more than \$100 of fees and is not required to make a semimonthly deposit (see paragraph (c)(4) of this section), the owner or a person authorized to act for the owner must deposit the amount on or before the last day of the following month following the month of production.

(4) *More than \$2000 of fees.* The owner of oil who is liable for more than \$2000 of fees for any month of a calendar quarter must deposit fees for the following quarter (regardless of amount) on a semimonthly basis. The deposit must be made on or before the ninth day following the semimonthly period for which it is reportable. The first deposit for a month may be reasonably estimated when an accounting of oil production is normally done by the month. Under these



circumstances, the second for that month deposit should be adjusted to reflect the total barrels produced in that month.

(d) *Responsibility for payment of fee*—(1) *In general.* Form 6009, Quarterly Report of Fees Due, must be filed and the fee must be paid either by the owner of the oil (§ 301.9001-1(a)(2)) or by a person authorized to act for the owner of the oil under an acceptable power of attorney filed with the Austin Service Center. For the purposes of the regulations at §§ 301.9001-1, 301.9001-2, and 301.9001-3, an operating agreement between the operator of the oil-producing facility and the owner of oil is considered an acceptable power of attorney if the operating agreement specifically states that the operator is authorized to pay the fee imposed by section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978.

(2) *Example.* The provisions of this paragraph may be illustrated by the following example:

*Example.* W, X, Y, and Z are oil companies that own equal interests in oil produced on the Outer Continental Shelf. W was selected to be the operator of the offshore facility. Additionally, X, Y, and Z authorized W to file Form 6009 and to pay the fee imposed by section 302(d) of the Act on the oil produced at this facility. Pursuant to this authorization, W paid a fee of \$16,600. Since the ownership of the oil is divided equally among W, X, Y, and Z, each company's share of the fee is \$4,150.

(e) *Penalty and Interest.* Failure to collect or pay the fee shall result in a civil penalty assessed by the Secretary of the Treasury. The amount of the penalty is not to exceed \$10,000 in addition to the fee and the interest on the unpaid fee that would have been earned if paid when due and invested in the special Treasury securities which are to be purchased by the fund. The computation of the rate of interest to be levied on underpayment of fees shall be based on the average interest rate earned by the interest-bearing special obligations of the United States in the fund for each calendar quarter for which there is underpayment. Unless it can be shown that the failure to collect or pay the fee is due to reasonable cause and not due to the willful neglect, the amount of the penalty is the lesser of—

- (1) \$10,000 or
- (2) The amount of the fee.

#### § 301.9001-2 Definitions.

The terms enumerated in this section are to be defined for the purposes of §§ 301.9001-1, 301.9001-2, and 301.9001-3 in the following manner:

(a) "Barrel" means 42 United States gallons at 60 degrees Fahrenheit.

(b) "Oil" means petroleum, including crude oil or any fraction or residue therefrom, and natural gas condensate, except that the term does not include natural gas.

(c) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity.

(d) "Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of title 43 and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

#### § 301.9001-3 Cross reference.

See the Coast Guard regulations under 33 CFR Parts 135 and 136 for rules relating to the implementation of the Act.

**Note.**—This Treasury decision is issued under the authority contained in section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 672) and in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[FR Doc. 80-15612 Filed 5-20-80; 8:45 am]

BILLING CODE 4830-01-M

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 19

[T.D. ATF-69]

### Distilled Spirits Plants—Reduced Bond Penal Sums for Limited Distilled Spirits Operations

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Temporary rule (Treasury decision).

**SUMMARY:** This temporary rule relates to the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96-39). This temporary rule provides for reduced operations bond penal sums for distilled spirits plant proprietors conducting certain limited distilled spirits operations.

**EFFECTIVE DATE:** The effective date of this temporary regulation is May 21, 1980.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Sheehan, E. J. Ference, John V. Jarowski, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, Telephone: 202-566-7626.

**SUPPLEMENTARY INFORMATION:** This temporary rule revises 27 CFR 19.245 to provide for reduced maximum

operations bond penal sums for distilled spirits plant proprietors conducting certain limited distilled spirits operations (i.e., storage operations or storage and processing operations). Section 19.245 was published in its entirety in the *Federal Register* (44 FR 71612) as both a temporary rule, T.D. ART-62, and a notice of proposed rulemaking for final regulations, Notice No. 329. This temporary regulation as revised by this document will remain in effect until superseded by final regulations. In addition, Notice No. 329, a notice of proposed rulemaking for final regulations providing for submission of written comments, applies to this revised temporary regulation.

#### New Provision

Prior to January 1, 1980, 27 CFR 201.211(b) (2) and (3) provided for reduced maximum bond penal sums for distilled spirits plant proprietors conducting certain limited distilled spirits operations. However, under current temporary regulations, § 19.245 provides that the maximum operations bond penal sums for storage operations and for storage and processing operations are \$200,000 and \$250,000, respectively, regardless of the size of operations. This Treasury decision revises § 19.245(a)(1) (ii) and (v) by providing a lower maximum operations bond penal sum of \$50,000 for limited storage operations or limited storage and processing operations. This regulation should provide relief for small distilled spirits plant proprietors who may have difficulty in obtaining operations bonds at the higher penal sums previously required by § 19.245.

#### Drafting Information

The principal author of this document is Edward J. Sheehan of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Bureau and from the Treasury Department participated in developing this document, both on matters of substance and style.

#### Effective Date

Issuance of this Treasury decision as a temporary rule with notice and public procedure under 5 U.S.C. 553(b) and in compliance with the effective date limitation in 5 U.S.C. 553(d) is impracticable and not in the public interest because revisions in the bonding provisions, 27 CFR, Part 19, Subpart H, have created unintended hardships and inequities for small distilled spirits plants conducting certain limited distilled spirits operations. The Bureau has been advised that such