Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 96–45

Notice 88–73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103–465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for August 1996 is 6.84 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 108% Permissible Range	90% to 110% Permissible Range
September	1996	6.91	6.22 to 7.46	6.22 to 7.60

DRAFTING INFORMATION

The principal author of this notice is Donna Prestia of the Employee Plans Division. For further information regarding this notice, call (202) 622–6076 between 2:30 and 4:00 p.m. Eastern time (not a toll-free number). Ms. Prestia's number is (202) 622–7377 (also not a toll-free number).

Excise Taxes on Excess Benefit Transactions Engaged in by Certain Tax-Exempt Organizations

Notice 96–46

This notice summarizes certain aspects of Taxpayer Bill of Rights 2 related to excise taxes on excess benefit transactions involving organizations described in § 501(c)(3) (except private foundations) and § 501(c)(4). Taxpayer Bill of Rights 2, Pub. L. No. 104–168, 110 Stat. 1452, (TBOR2) was enacted July 30, 1996. This notice also provides guidance with respect to the filing of returns for these excise taxes, and solicits comments to be considered in drafting future guidance. See Notice 96–47, page 8, this Bulletin, for aspects of TBOR2 related to the express prohibition of private inurement for § 501(c)-(4) organizations, and Notice 96–48, page 9 , this Bulletin, for disclosure requirements for, and increases in certain penalties on, exempt organizations generally.

I. In General

Section 1311(a) of TBOR2 creates new § 4958, which imposes excise taxes on excess benefit transactions. An **excess benefit transaction** subject to tax under § 4958 is any transaction in which an economic benefit is provided by an organization described in § 501(c)(3) (except for a private foundation) or § 501(c)(4) directly or indirectly to, or for the use of, any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing the benefit. A **disqualified person** is any person who was, at any time during the 5-year period ending on the date of the excess benefit transaction, in a position to exercise substantial influence over the affairs of the organization. Disqualified persons also include family members and certain entities in which at least 35 percent of the control or beneficial interests are held by persons described in the preceding sentence. An **organization manager** is an officer, director, trustee, or any individual having powers or responsibilities similar to those of an officer, director, or trustee.

Section 4958 imposes three taxes. The first tax is equal to 25 percent of the excess benefit amount, and is to be paid by any disqualified person who engages in an excess benefit transaction (§ 4958(a)(1)). The second tax is equal to 200 percent of the excess benefit amount, and is to be paid by any disqualified person if the excess benefit transaction is not corrected within the taxable period (§ 4958(b)). The third tax is equal to 10 percent of the excess benefit amount, and is to be paid by any organization manager who knowingly participates in an excess benefit transaction (§ 4958(a)(2)). With respect to any one excess benefit transaction, the maximum amount of this third tax may not exceed $10,000.

II. Effective Date for Excise Taxes

The new § 4958 excise taxes apply to excess benefit transactions occurring on or after September 14, 1995. They do not apply, however, to any benefit arising from a transaction pursuant to any written contract that was binding on September 13, 1995, and continued in force through the time of the transaction.

III. Returns for Payment of Excise Taxes

Charities and other persons liable for certain Chapter 41 or Chapter 42 excise taxes must file returns on Form 4720 to calculate and report the taxes due. The Treasury Department will issue regulations providing that disqualified persons and organization managers (or their 35 percent controlled entities) liable for § 4958 excise taxes on excess benefit transactions are required to file an annual return on Form 4720. For excess benefit transactions that occurred after September 13, 1995, in a taxable year ending before December 31, 1996, the persons liable for payment of the excise taxes must use the 1995 Form 4720 to calculate and report those taxes. The Service will revise Form 4720 for taxable years ending on or after December 31, 1996.

The Treasury Department will also issue regulations which will provide that returns on Form 4720 for taxable years ending after September 13, 1995, and on or before July 30, 1996 (the date of TBOR2's enactment), will be due on December 15, 1996. Returns for taxable years ending after July 30, 1996, will be due on the 15th day of the fifth month following the close of that taxable year.

The person filing should clearly mark the top of the 1995 Form 4720 that it is for payment of § 4958 excise taxes. Use Part II–A, columns (a), (b), and (h) to report information about the person(s) liable and the amount of the tax; use

Schedule A columns (b), (c), (e), and (f) (if a transaction with a disqualified person, using the 25 percent tax rate), or (b), (c), (e), and (g) (if a transaction with an organization manager, using the 10 percent tax rate) to provide other information requested about the transaction.

IV. Reporting Requirements for § 4958 Excise Taxes

Section 1312(a) of TBOR2 amends § 6033(b) to require § 501(c)(3) organizations to report the amounts of the taxes paid under § 4958 with respect to excess benefit transactions involving the organization, as well as any other information the Secretary may require concerning those transactions. Section 6033(f) is also amended to impose the same filing requirements on § 501(c)(4) organizations. These amendments only apply to returns for taxable years beginning after July 30, 1996. Accordingly, affected organizations do not have to include information on taxes paid under § 4958, or any other information that may be required with respect to excess benefit transactions, on their returns for taxable years beginning before July 31, 1996.

V. Comments on Future Guidance Invited

The Service invites comments on the amendments made by § § 1311(a) and 1312 of TBOR2 (new § 4958 and reporting requirements related to those excise taxes). The Service will consider these comments in drafting future guidance. In order to issue this guidance promptly, the Service requests that written comments be submitted by December 12, 1996. Send submissions to: CC:DOM:CORP:R (Notice 96–46), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Notice 96–46), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

The principal author of this notice is Phyllis Haney of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice contact Ms. Haney on (202) 622–4290 (not a toll-free call).

Private Inurement Expressly Prohibited for Section 501(c)(4) Organizations

Notice 96–47

This notice summarizes an important aspect of Taxpayer Bill of Rights 2 related to the amendment to § 501(c)(4) of the Internal Revenue Code. Taxpayer Bill of Rights 2, Pub. L. No. 104–168, 110 Stat. 1452, (TBOR2) was enacted July 30, 1996. See Notice 96–46, page 7, this Bulletin, for aspects of TBOR2 related to excise taxes on excess benefit transactions engaged in by § 501(c)(4) organizations and § 501(c)(3) organizations (except private foundations), and Notice 96–48, page 9 , this Bulletin, for disclosure requirements for, and increases in certain penalties on, exempt organizations generally.

Private Inurement Expressly Prohibited for § 501(c)(4) Organizations

TBOR2 amends § 501(c)(4) to expressly prohibit inurement of any part of the net earnings of an entity otherwise described in that section to the benefit of any private shareholder or individual. That amendment applies to inurement occurring on or after September 14, 1995. The amendment does not apply, however, to inurement occurring prior to January 1, 1997, if that inurement results from a written contract that was binding on September 13, 1995, and continued in force through the time that the inurement occurred.

Comments on Future Guidance Invited

The Service invites comments on the amendments made by § 1311(b) of TBOR2 (the amendment to § 501(c)-(4)). The Service will consider these comments in drafting future guidance. In order to issue this guidance promptly, the Service requests that written comments be submitted by December 12, 1996. Send submissions to: CC:DOM:CORP:R (Notice 96–47), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Notice 96–47), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

The principal author of this notice is Phyllis Haney of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice contact Ms. Haney on (202) 622–4290 (not a toll-free call).

Tax-Exempt Organization Information Returns—Requirement to Provide Copies to the Public and Increases in Certain Penalties

Notice 96–48

This notice summarizes certain aspects of Taxpayer Bill of Rights 2 related to (1) inspection requirements for exempt organizations and (2) increases in certain penalties on exempt organizations. Taxpayer Bill of Rights 2, Pub. L. No. 104–168, 110 Stat. 1452, (TBOR2) was enacted July 30, 1996.

This notice also describes a provision of the Small Business Job Protection Act of 1996, Pub. L. No. 104–188, 110 Stat. 1755, enacted August 20, 1996, that increases certain penalties on exempt organizations for failing to satisfy inspection requirements.

This notice also solicits comments to be considered in drafting future guidance. See Notice 96–46, page 7, this Bulletin, for aspects of TBOR2 related to excise taxes on excess benefit transactions engaged in by certain tax-exempt organizations, and Notice 96–47, page 8, this Bulletin, for aspects of TBOR2 related to the express prohibition of private inurement for § 501(c)-(4) organizations.

I. Inspection Requirements Related to Annual Information Returns

Section 1313(a) of TBOR2 amends § 6104(e) with regard to the manner in which an exempt organization, other than a private foundation, must allow inspection by the public of its annual information returns and its application for exemption. Section 6104(e), as amended, provides that if a request is made, in person or in writing, for a copy of certain documents, an organization must provide the copies to the requester without charge, other than a reasonable fee for any reproduction and mailing costs. The documents that may be requested under § 6104(e) are (1)