

## § 1.597-6

## 26 CFR Ch. I (4-1-04 Edition)

than \$80,000 each, because even if the properties are worthless, Agency will reimburse 80 percent of the loss. Although Institution could obtain payments under the Loss Guarantee if the properties are worth more, it is not guaranteed that it will realize more than \$80,000. Accordingly, \$80,000 is the highest guaranteed value of the three parcels. Institution N will allocate basis to the Class II assets up to their fair market value. For this purpose, the fair market value of the three parcels is not less than \$80,000 each. Section 1.597-5(d)(2)(ii); § 1.597-5(c)(3)(ii).

[T.D. 8641, 60 FR 66101, Dec. 21, 1995, as amended by T.D. 8858, 65 FR 1237, Jan. 7, 2000; T.D. 8940, 66 FR 9929, Feb. 13, 2001]

### § 1.597-6 Limitation on collection of income tax.

(a) *Limitation on collection where tax is borne by Agency.* If an Institution without Continuing Equity (or any of its Consolidated Subsidiaries) is liable for income tax that is attributable to the inclusion in income of FFA or gain from a Taxable Transfer, the tax will not be collected if it would be borne by Agency. The final determination of whether the tax would be borne by Agency is within the sole discretion of the Commissioner. In determining whether tax would be borne by Agency, the Commissioner will disregard indemnity, tax-sharing, or similar obligations of Agency, an Institution, or its Consolidated Subsidiaries. Collection of the several income tax liability under § 1.1502-6 from members of an Institution's consolidated group other than the Institution or its Consolidated Subsidiaries is not affected by this section. Income tax will continue to be subject to collection except as specifically limited in this section. This section does not apply to taxes other than income taxes.

(b) *Amount of tax attributable to FFA or gain on a Taxable Transfer.* For purposes of paragraph (a) of this section, the amount of income tax in a taxable year attributable to the inclusion of FFA or gain from a Taxable Transfer in the income of an Institution (or a Consolidated Subsidiary) is the excess of the actual income tax liability of the Institution (or the consolidated group in which the Institution is a member) over the income tax liability of the Institution (or the consolidated group in which the Institution is a member) determined without regard to

FFA or gain or loss on the Taxable Transfer.

(c) *Reporting of uncollected tax.* A taxpayer must specify on the front page of Form 1120 (U.S. Corporate Income Tax Return), to the left of the space provided for "Total Tax," the amount of income tax for the taxable year that is potentially not subject to collection under this section. If an Institution is a subsidiary member of a consolidated group, the amount specified as not subject to collection is zero.

(d) *Assessments of tax to offset refunds.* Income tax that is not collected under this section will be assessed and, thus, used to offset any claim for refund made by or on behalf of the Institution, the Consolidated Subsidiary or any other corporation with several liability for the tax.

(e) *Collection of taxes from Acquiring or a New Entity—(1) Acquiring.* No income tax liability (including the several liability for taxes under § 1.1502-6) of a transferor in a Taxable Transfer will be collected from Acquiring.

(2) *New Entity.* Income tax liability (including the several liability for taxes under § 1.1502-6) of a transferor in a Taxable Transfer will be collected from a New Entity only if stock that was outstanding in the Old Entity remains outstanding as stock in the New Entity or is reacquired or exchanged for consideration.

(f) *Effect on section 7507.* This section supersedes the application of section 7507, and the regulations thereunder, for the assessment and collection of income tax attributable to FFA.

[T.D.8641, 60 FR 66103, Dec. 21, 1995]

### § 1.597-7 Effective date.

(a) *FIRREA effective date.* Section 597, as amended by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101-73, is generally effective for any FFA received or accrued by an Institution on or after May 10, 1989, and for any transaction in connection with which such FFA is provided, unless the FFA is provided in connection with an acquisition occurring prior to May 10, 1989. See § 1.597-8 for