§1.597–7(c), IF THE LIMITATIONS PERIOD WOULD EXPIRE EARLIER WITHOUT SUCH EXTENSION, FOR ANY ITEMS AFFECTED IN ANY TAXABLE YEAR BY THE FILING OF THIS ELECTION,'' and a declaration that either ''AMENDED RETURNS WILL BE FILED FOR ALL TAXABLE YEARS AFFECTED BY THE FILING OF THIS ELECTION WITHIN 180 DAYS OF MAKING THIS STATEMENT, UNLESS SUCH REQUIREMENT IS WAIVED IN WRITING BY THE DISTRICT DIRECTOR OR HIS DELEGATE'' or ''ALL RETURNS PREVIOUSLY FILED ARE CONSISTENT WITH THE PROVISIONS OF §§1.597–1 THROUGH 1.597–6,'' and be signed by an individual who is authorized to make the election under this paragraph (c) on behalf of the taxpayer. An election with respect to a consolidated group must be made by the common parent of the group, not Agency, and applies to all members of the group.

(ii) *Effect of elective disaffiliation.* To make the affirmative election described in §1.597–4(g)(5) for an Institution placed in Agency receivership in a taxable year ending before April 22, 1992, the consolidated group must send the affected Institution the statement described in §1.597–4(g)(5) on or before May 31, 1996. Notwithstanding the requirements of paragraph (c)(4)(i) of this section, a consolidated group sending such a statement is deemed to make the election described in, and to agree to the conditions contained in, this paragraph (c). The consolidated group must nevertheless attach the statement described in paragraph (c)(4)(i) of this section to its first annual income tax return filed on or after March 15, 1996.

(d) *Reliance on prior guidance*—(1) *Notice 89–102.* Taxpayers may rely on Notice 89–102, 1989–2 C.B. 436, to the extent they acted in reliance on that Notice prior to April 22, 1992. Such reliance must be reasonable and transactions with respect to which taxpayers rely must be consistent with the overriding policies of section 597, as expressed in the legislative history.

(2) *Notice FI–46–89*—(i) *In general.* Notice FI–46–89 was published in the FEDERAL REGISTER on April 23, 1992 (57 FR 14804). Taxpayers may rely on the provisions of §§1.597–1 through 1.597–6 of that notice to the extent they acted in reliance on those provisions prior to December 21, 1995. Such reliance must be reasonable and transactions with respect to which taxpayers rely must be consistent with the overriding policies of section 597, as expressed in the legislative history, as well as the overriding policies of notice FI–46–89.

(ii) *Taxable Transfers.* Any taxpayer described in this paragraph (d) that, under notice FI–46–89, would be a New Entity or Acquiring with respect to a Taxable Transfer on or after April 22, 1992, and before December 21, 1995, may apply the rules of that notice with respect to such transaction.

[T.D. 8641, 60 FR 66104, Dec. 21, 1995]

§1.597–8 Transitional rules for Federal financial assistance.

(a) *Scope.* This section provides transitional rules for the tax consequences of Federal financial assistance received or accrued on or after May 10, 1989, if the assistance payment relates to an acquisition that occurred before that date.

(b) *Transitional rules.* The tax consequences of any payment of Federal financial assistance received or accrued on or after May 10, 1989, are governed by the applicable provisions of section 597 that were in effect prior to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA'') if either—

(1) The payment—

(i) Is pursuant to an acquisition of a bank or domestic building and loan association before May 10, 1989,

(ii) Is provided pursuant to an assistance agreement executed before May 10, 1989,

(iii) Is provided to a party to that agreement or to such other party as the Commissioner may determine appropriate by letter ruling or other written guidance, and

(iv) Would, if provided before May 10, 1989, have been governed by applicable provisions of section 597 that were in effect prior to FIRREA; or

(2) The payment—

(i) Represents a prepayment of (or a payment in lieu of) a fixed or contingent right to Federal financial assistance that would have satisfied the conditions of paragraphs (b)(1)(i), (ii) and (iv) of this section, and

(ii) Is provided to a party described in paragraph (b)(1)(iii) of this section

(c) *Definition of Federal financial assistance.* Federal financial assistance for purposes of this section has the meaning prescribed by section 597(c) as amended by FIRREA.

(d) *Examples.* The following examples illustrate the provisions of this section:

Example 1. X corporation acquired Y, a domestic building and loan association on September 10, 1988. Pursuant to a written agreement executed at the time of the acquisition, Y received Federal financial assistance that included a note bearing a market rate of interest, the right to future payments if certain assets were sold at a loss, and the right to future payments if the income produced by certain assets was less than an agreed upon amount. On December 1, 1991, an agreement was executed in which Y relinquished its rights to Federal financial assistance under the September 10, 1988 agreement in return for a lump sum payment. The lump sum payment represented a prepayment of the principal and accrued but unpaid interest for the note, and the rights to the contingent future loss and income payments. The entire prepayment is excluded from the income of Y because it is a prepayment of Federal financial assistance and the assistance (i) would have been provided pursuant to an acquisition that occurred before May 10, 1989, would have been provided pursuant to an assistance agreement executed before May 10, 1989, and would, if it had been provided prior to May 10, 1989, have been governed by a pre-FIRREA version of section 597; and (ii) the prepayment is paid to a party to the assistance agreement.

Example 2. The facts are the same as those in *Example 1,* except that the note bears an above market rate of interest and part of the lump sum represents a premium payment for the note. The portion of the lump sum allocable to the premium payment is also excluded from the income of Y because the payment represents the present value of the right to future Federal financial assistance in the form of interest.

Example 3. The facts are the same as those in *Example 1,* except that a portion of the lump sum payment represents compensation for additional expenses Y may incur in the future because of termination of the September 10, 1988 agreement. The portion of the lump sum payment allocable to the compensation for additional expenses must be included in the income of Y because it is not a prepayment of Federal financial assistance provided for by a written agreement entered into prior to May 10, 1989.

Example 4. The facts are the same as those in *Example 1,* except that instead of a new assistance agreement, the September 10, 1988 assistance agreement was modified on December 1, 1991. The modified agreement provided new Federal financial assistance in addition to the amounts previously agreed to. None of the new Federal financial assistance is governed by this regulation because the new assistance was not provided for by a written agreement entered into prior to May 10, 1989. The modification does not, however, affect the tax treatment of assistance provided for by the agreement prior to its modification.

(e) *Effective Date.* This section is effective April 23, 1992 for assistance received or accrued on or after May 10, 1989 in connection with acquisitions before that date.

[T.D. 8406, 57 FR 14795, Apr. 23, 1992. Redesignated and amended by T.D. 8471, 58 FR 18149, Apr. 8, 1993]

BANK AFFILIATES

§ 1.601–1 Special deduction for bank affiliates.

(a) The special deduction described in section 601 is allowed:

(1) To a holding company affiliate of a bank, as defined in section 2 of the Banking Act of 1933 (12 U.S.C. 221a), which holding company affiliate holds, at the end of the taxable year, a general voting permit granted by the Board of Governors of the Federal Reserve System.

(2) In the amount of the earnings or profits of such holding company affiliate which, in compliance with section 5144 of the Revised Statutes (12 U.S.C. 61), has been devoted by it during the taxable year to the acquisition of readily marketable assets other than bank stock.

(3) Upon certification by the Board of Governors of the Federal Reserve System to the Commissioner that such an amount of the earnings or profits has been so devoted by such affiliate during the taxable year.

No deduction is allowable under section 601 for the amount of readily marketable assets in excess of what is required by section 5144 of the Revised