Internal Revenue
bulletin

Bulletin No. 1997–32
August 11, 1997

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 97–31, page 4.

International operation of ships and aircraft; income exempt from tax. Those countries that currently provide exemptions from tax to U.S. persons for income from the international operation of ships and aircraft through income tax conventions, diplomatic notes, or the country's domestic law are listed. Rev. Rul. 89–42 supplemented.

EMPLOYEE PLANS

REG–107644–97, page 24.

Proposed regulations under section 411 of the Code permit an amendment to a qualified plan that eliminates certain pre-retirement optional forms of benefit.

EXEMPT ORGANIZATIONS

Announcement 97–76, page 28.

A list is given of organizations now classified as private foundations.

ESTATE TAX

Ct.D. 2062, page 8.

Marital or charitable bequests. A taxpayer does not have to reduce the estate tax deduction for marital or charitable bequests by the amount of the administration expenses that were paid from income generated during administration by assets allocated to those bequests. Commissioner v. Estate of Hubert.

ADMINISTRATIVE

Announcement 97–75, page 28.

The version of Rev. Rul. 97–31 released for advance publication on July 22, 1997, has been corrected. The corrected version of is on page 4 of this Bulletin.

Finding Lists begin on page 31.

Department of the Treasury
Internal Revenue Service

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semiannual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Section 872. — Gross Income

(Also Section 883; 1.883–1; 894.)

International operation of ships and aircraft; income exempt from tax. Those countries that currently provide exemptions from tax to U.S. persons for income from the internaitonal operation of ships and aircraft through income tax conventions, diplomatic notes, or the country's domestic law are listed. Rev. Rul. 89–42 supplemented.

Rev. Rul. 97–31

PURPOSE

The purpose of this revenue ruling is to supplement Rev. Rul. 89–42, 1989–1 C.B. 234, by providing a current list of countries that grant United States persons equivalent exemptions from tax for income from the international operation of ships and aircraft for purposes of section 872(b) of the Internal Revenue Code, section 883 of the Code, and the shipping and air transport articles in United States income tax conventins.

A foreign country may grant an equivalent exemption from tax through an income tax convention or exchange of diplomatic notes, by not imposing a tax, or by a decree or specific statutory exemption if a tax is generally imposed. The following Table includes a current list of such countries and summarizes the types of income that qualify for examption.

Part I of the Table summarizes equivalent exemptions under shipping and aircraft articles and capital gains articles of income tax conventions to which the United States is a party. Part I includes a summary of the requirements for the exemption, such as whether the exemption is based solely on residence or has an additional requirement of documentation or registration. Part I generally does not set forth other benefities that may be provided under articles covering business profits, rentals and royalties, and other income.

Part II of the Table summarizes exemptions available in countries that have exchanged diplomatic notes with the United States that cover shipping and aircraft income.

Finally, Part III of the Table provides a list of the countries for which the Service has determined, upon examination of their laws, that an equivalent exemption is granted by statute or decree, or by not imposing a tax on such income.

This determination is made on a country by country basis and relies upon information submitted to the Internal Revenue Service by the foreign country regarding the foreign law in effect at the time of the submission. The date of the Service's review is reflected in the first column of Part III of the Table. Since its initial review, the Service has not attempted to determine whether any of the foreign laws of the countreis listed in Part III have been amended or repealed. Therefore, taxpayers should independently verify the accuracy of the information in Part III of the Table at such time that a determination is relevant.

In addition, this list does not represent an exclusive list of countries whose domestic law provides an equivalent exemption. Other countries that have not submitted the information necessary for the Service to make a determination also may grant an exemption. In those cases, a corporation organized in, or an individual resident of, such a soreign country may qualify for an exemption even though the Internal Revenue Service has not yet made a determination to include the country in Part III of the Table.

The Table is intended only as a summary. The full text of any relevant income tax convention, diplomatic note, or foreign law should be consulted. It may be necessary to consult the technical explanation of an income tax convention, a protocol, or a diplomatic note accompanying a convention to determine the items of income exempted. Income tax conventions and diplomatic notes are published in the Cumulative Bulletin. The Table will be updated periodically.

CHANGES TO REV. RUL. 89–42

The changes to the Table published in Rev. Rul. 89–42 are summarized as follows. In Part I, the following countries have been added to the list of countries that provide an exemption under an income tax convention: Czech Republic, India, Indonesia, Israel, Mexico, Portugal, the Russian Federation, the Slovak Republic, Spain, Sweden, and Tunisia. The following countries have entered into new income tax conventions with the United States that supersede prior income tax conventions reported in Rev. Rul. 89–42; Finland, France, Germany, Kazakhstan, and the Netherlands. The Income tax conventions between the United States and the Netherlands, as extended to the Netherlands Antilles and Aruba, and between the United States and Malta have been terminated, in relevant part, effective January 1, 1988, and January 1, 1997, respectively, and have been deleted from the list.

In Part II, new diplomatic notes have been exchanged with Chile, Hong Kong, India, Isle of Man, Japan, Luxembourg, Malaysia, Malta, Marshall Islands, Norway, Pakistan, Peru, and St. Vincent and the Grenadines. After the publication of Rev. Rul. 89–42, Mexico entered into a diplomatic note with the United States effective retroactively to January 1, 1987.[1] This note, however, terminated on January 1, 1994, the general effective date of the new U.S. — Mexico Income Tax Convention. In addition, the Russian Federation entered into a diplomatic note effective retroactivity to January 1, 1991.[2] This note also terminated on January 1, 1994, the general effective date of the New U.S. — Russian Federation Income Tax Convention. Although a diplomatic not was signed with Boliva, that note has never entered into force. Therefore Boliva has been removed from the list.

In Part III, Antigua and Barbuda, Barbados, Ecuador (shipping only), Israel, Qata (aircraft only), Turks and Caicos, and the U.S. Virgin Islands have been added to the list of countries whose domestic law has been determined to provide an equivalent exemption.

Consistent with past practice, the Service will entertain a request from a foreign government to make a determination that the domestic law of the country provides an equivalent exemption. However, the Service will not accept requests from individual taxpayers; instead, taxpayers should seek to have the relevant foreign government request a determination that the particular country qualifies as an equivalent exemption jurisdiction.

[1]This note is published at 1990–2 C.B. 322.
[2]This note is published at 1996–36 I.R.B. 6.

Taxpayers claiming an exemption under the terms of an income tax convention, or under section 872(b) or section 883 of the Code, must file a return on Form 1040NR (U.S. Nonresident Alien Income Tax Return) or Form 1120F (U.S. Income Tax Return of a Foreign Corporation) and comply with the provisions of section 8 of Rev. Proc. 91–12, 1991–1 C.B. 473.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 89–42 is supplemented.

DRAFTING INFORMATION

The principal author of this revneue ruling is Patricia C. Bray of the Office of Associate Chief Counsel (International). For information regarding this revneuw ruling contact Ms. Bray on (202) 622–3880 (not a toll-free call).

TABLE

Countries Currently Granting Equivalent Exemptions for Income From the International Operation of Ships and Aircraft

	Basis for Exemption			*TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED*[2]				
Countries and Territories	Residence Based No Flag	Residence & Flag Reciprocal	Residence & Flag Unilateral	Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Container Rental	Capital Gains
PART I TREATIES[1]								
Australia	X			X	X[4]	X[27]	X[27]	X[5/6]
Austria	X			X[3]	—	—	—	—
Barbados	X			X	X[15]	X[15]	X	X
Belgium		X[7]		X	X[5]	X[5]	X[5]	X[5]
Canada	X			X	X	X	X	X
China[29] (Peoples Republic)	X			X	X[15]	X[15]	X	X
Cyprus	X			X	X[15]	X[15]	X	X
Czech Republic	X			X	X	X[5]	X	X
Denmark		X		X[3]	—	—	—	—
Egypt	X			X	X[5]	X[5]	X[5]	—
Finland[22]	X			X	X[5]	X[5]	X[28]	X
France	X			X	X	X[15]	X[5]	X[5]
Germany[22/24]	X			X	X	—	X	X
Greece		X		X[3]	—	—	—	—
Hungary	X			X	X[5]	X[5]	X	X
Iceland			X[8]	X	X[5]	X[5]	X[5]	X
India[22]	X			X	X[5]	X[5]	X	X[5/9]
Indonesia[22]	X			X	X	X[10]	X[5]	X
Ireland		X		X[3]	—	—	—	—
Israel	X			X	X[5]	X[5]	X[5]	X[5]
Italy[11]			X[8]	X	X[21]	X[5]	X	X[5]
Jamaica	X			X	X[15]	X[15]	X	X[5]
Japan[11]		X[12]		X	X[5]	X[5]	X[5]	X[5]
Kazakhstan	X			X	X	X[15]	X	X
Korea	X			X	X[13]	—	X[5]	—
Luxembourg		X		X[3]	—	—	—	—
Mexico[22]	X			X	X	X[28]	X	X
Morocco		X[7]		X[3]	—	—	—	X[5]
Netherlands[22]	X			X	X[5]	X[5]	—	X
New Zealand	X			X	X	X[5]	X[5]	X[6]
Norway[11]	X			X	X[13]	X[5]	X[5]	X
Pakistan[14]		X		X[3]	—	—	—	—

TABLE—CONTINUED

Countries and Territories	*Basis for Exemption*			*TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED*[2]				
	Residence Based No Flag	Residence & Flag Reciprocal	Residence & Flag Unilateral	Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Container Rental	Capital Gains
PART I TREATIES[1]								
Philippines[16]	X			—	—	—	—	X[5]
Poland			X[8]	X	X[5]	X[5]	X[5]	X
Portugal[22]	X			X	X	X[5]	—	X
Romania		X		X	X[5]	X[5]	X[5]	X
Russian[22] Federation	X			X	X	X[15]	X	X
Slovak Republic[22]	X			X	X	X[5]	X	X
Spain[22]	X			X	X	X[5]	X	X
Sweden[22]	X			X	X	X[5]	X	X
Switzerland		X		X[3]	—	—	—	—
Trinidad & Tobago			X[8]	X	X[5]	X[5]	—	X
Tunisia[22]	X			X	X[15]	X[15]	X[5]	X
USSR[25]		X		X[3]	—	—	—	X[5]
U.K.			X[8]	X	X	X[5]	X	X[5]

Countries and Territories	*Cumulative Bulletin Citation*	*TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED*[2]				
		Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Incidental Container Rental	Incidental Capital Gains
PART II EXCHANGE OF NOTES[23]						
Argentina	1988–1 C.B. 456	X	X	X	X	X
Bahamas	1988–1 C.B. 458	X	X	X	X	—
Belgium	1988–1 C.B. 459	X	X	—	X	—
Chile[14]	1991–1 C.B. 304	X	X	X[5]	X	—
Colombia	1988–1 C.B. 461	X	X	X	X	—
Cyprus	1989–2 C.B. 332	X	X	X	X	—
Denmark	1988–1 C.B. 462	X	X	X	X	—
El Salvador[14]	1988–1 C.B. 463	X	X	X	X	X
Fiji	1996–40 I.R.B. 8	X	X	X	X	X
Finland	1989–2 C.B. 334	X	X	X	X	—
Greece	1988–2 C.B. 366	X	X	X	X	—
Hong Hong[16/31]	1995–1 C.B. 228	X	X	X	X	X
India	1990–2 C.B. 316	X	X	X[5]	X	X
Isle of Man[16]	1990–2 C.B. 317	X	X	X	X	X
Japan	1990–2 C.B. 318	X	X	X	X	—
Jordan	1996–50 I.R.B. 8	X	X	X	X	—
Liberia	1988–1 C.B. 463	X	X	X	X	X
Luxembourg	1996–28 I.R.B. 36	X	X	X	X	—
Malaysia	1990–2 C.B. 319	X	X	X[5]	X	X
Malta	1997–17 I.R.B. 5	X	X	X	X	X
Marshall Islands	1990–2 C.B. 321	X	X	X	X	X
Norway	1991–1 C.B. 304	X	X	X	X	X
Pakistan[16]	1991–1 C.B. 305	X[3]	—	—	—	—

TABLE—CONTINUED

Countries and Territories	*Cumulative Bulletin Citation*	*TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED*[2]				
		Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Incidental Container Rental	Incidental Capital Gains
PART II EXCHANGE OF NOTES[23]						
Panama	1988–2 C.B. 366	X	X	X	X	—
Peru[16]	1989–2 C.B. 335	X	X	X[5]	X	—
St. Vincent & Grenadines	1989–2 C.B. 336	X	X	X	X	—
Singapore	1990–2 C.B. 323	X	X	—[30]	X	—
Sweden	1988–1 C.B. 466	X	X	X[5]	X	—
Taiwan	1989–2 C.B. 337	X	X	X	X	—
Venezuela	1988–1 C.B. 467	X	X	X[5]	X	X

Countries and Territories	Date Foreign Law Reviewed	*TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED*[2]				
		Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Incidental Container Rental	Incidental Capital Gains
PART III DOMESTIC LAW						
Antigua & Barbuda[16]	NOV 1991	X	X	X	X	X
Barbados	OCT 1989	X	X	X	X	X
Bermuda	NOV 1988	X	X	X	X	X
Brazil[18]	DEC 1988	X	X	X[5]	X	—
Bulgaria	— 1989	X	X	X	X	X
Cayman Islands[26]	JAN 1987	X	X	X	X	X
Chile[16]	OCT 1988	X	X	X	X	X
Ecuador[16/17]	DEC 1989	X	X	X[5]	X	X
Israel	FEB 1991	X	X	X	X	X
Netherlands	OCT 1988	X	X	X[5]	X	—
Netherlands Antilles	MAY 1988	X	X	X	X	X
Portugal[14] ships	JUNE 1989	X	X	X	—	—
aircraft	FEB 1989					
Qatar[14]	AUG 1994	X[3]	—	—	—	—
Spain[19]	DEC 1988	X	X	—	X	—
Turkey[20]	JAN 1987	X	—	—	X	—
Turks & Caicos[26]	FEB 1990	X	X	X	X	X
U.S. Virgin Islands	OCT 1988	X	X	X	X	X
Vanuatu	MAY 1987	X	X	X	X	X

[1]A reciprocal exemption based on treaty relief is limited to the circumstances in which the treaty itself would be available. In such cases the exemption is based on section 894 and the treaty itself, rather than on section 872(b) or section 883.
[2]Unless otherwise footnoted, an X indicates full exemption whether or not there is a permanent establishment.
[3]Operating income is not defined.
[4]Lessor must either regularly lease ships or aircraft on a full basis or operate them in international traffic.
[5]The U.S. tax exemption is available only if the income is incidental to operating income.
[6]Except to the extent depreciation has been allowed in the other country.
[7]In the case of aircraft only, the registration may be in the country of residence or in any country with a treaty providing for such exemption between such country and the country of residence.
[8]Documentation or registration required for ships or aircraft of United States residents only.
[9]This treaty exempts gains derived by an enterprise of a Contracting State if the ships, aircraft or containers are owned and operated by the enterprise and the income from them is taxable only in that State.

[10]Income from the bareboat rental of aircraft used in international traffic is exempt. Income from the bareboat rental of ships is also exempt if the ship is operated in international traffic and if the lessee is not a resident of, or does not have a permanent establishment in, the other Contracting State.
[11]See also the diplomatic notes or protocol accompanying this treaty.
[12]With regard to residents of Japan, the ships or aircraft need not be registered in Japan if the ships or aircraft are leased by such a resident.
[13]As a result of correspondence, it was clarified that income from the international operation of ships or aircraft includes this category of income.
[14]This exemption applies to aircraft only.
[15]This exemption applies if the ships or aircraft are operated in international traffic by the lessee, or the rental income is incidental to the operation of ships or aircraft in international traffic by the lessor.
[16]This exemption applies to shipping only.
[17]This exemption is generally effective for all open years beginning on or after January 1, 1987.
[18]Brazilian and Portuguese laws exempt only companies.
[19]The Spanish statute exempts only corporations.
[20]See Rev. Rul. 87–18, 1987–1 C.B. 178.
[21]This exemption applies if the ship or aircraft is operated in international traffic or if the rental income is incidential to income from such international operation.
[22]The following income tax treaties were ratified after the publication of Rev. Rul. 89–42 and were generally effective on the following dates:

Czech Republic	January 1, 1993
Finland	January 1, 1991
France	January 1, 1996
Germany	January 1, 1990
India	January 1, 1991
Indonesia	January 1, 1990
Israel	January 1, 1995
Kazakhstan	January 1, 1996
Mexico	January 1, 1994
Netherlands	January 1, 1994
Portugal	January 1, 1996
Russian Federation	January 1, 1994
Slovak Republic	January 1, 1993
Spain	January 1, 1991
Sweden	January 1, 1996
Tunisia	January 1, 1990

[23]Notes signed prior to the Technical and Miscellaneous Revenue Act of 1988, will be interpreted in accordance with Technical Corrections.
[24]This treaty is effective for the eastern States of Germany (the former East Germany) from January 1, 1991.
[25]The U.S. — U.S.S.R. income tax treaty signed June 20, 1973, continues to apply to the countries of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.
[26]The country generally imposes no income tax.
[27]This exemption applies if the ships or aircraft are operated in international traffic by the lessee, and the rental income is incidental to the operation of ships or aircraft in international traffic by the lessor.
[28]The exemption applies except where the containers are used solely between places within the other Contracting State.
[29]Pursuant to Notice 97–40, 1997–28 I.R.B. 6 dated July 14, 1997, the treaty between the United States and the People's Republic of China (China) will continue to apply only to China and will not apply to the Hong Kong Special Administrative Region of the People's Republic of China.
[30]A dialogue is currently taking place between the Government of the United States and Singapore concerning the scope of the reciprocal exemption.
[31]This diplomatic note applies to Hong Kong before July 1, 1997, and pursuant to Notice 97–40, 1997–28 I.R.B. 6 dated July 14, 1997, to the Hong Kong Special Administrative Region of the People's Republic of China on or after July 1, 1997. The note does not apply with respect to the People's Republic of China, which will continue to be treated as a separate country for purposes of the Internal Revenue Code.

Section 2056.—Bequests, Etc., to Surviving Spouse

Ct.D. 2062

SUPREME COURT OF THE UNITED STATES

No. 95-1402

COMMISSIONER OF INTERNAL REVENUE v. ESTATE OF HUBERT, DECEASED, C & S SOVRAN TRUST CO. (GEORGIA) N.A., CO-EXECUTOR

520 U.S __

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

March 18, 1997

Syllabus

The executors of decedent Hubert's substantial estate filed a federal estate tax return about a year after his death. Subsequently, petitioner Commissioner of Internal Revenue issued a notice of deficiency, claiming underreporting of federal estate tax liability caused by the estate's asserted entitlement to marital and charitable deductions. While the estate's redetermination petition was pending in the Tax Court, interested parties settled much of the litigation surrounding the estate that had begun after Hubert's death. The agreement divided the estate's residue principal, assumed to be worth $26 million on the date of death, about equally between marital trusts and a charitable trust. It also provided that the estate would pay its administration expenses either from the principal or the income of the assets that would comprise the residue and the corpus of the trusts, preserving the executors' discretion to apportion such expenses. The estate paid about $500,000 of its nearly $2 million of administration expenses from principal and the rest from income. It then recalculated its tax liability, reducing the marital and charitable deductions by the amount of principal, but not the amount of income, used to pay the expenses. The Commissioner concluded that using income for expenses required a dollar-for-dollar reduction of the deductions. The Tax Court disagreed, finding that no reduction was required by reason of the executors' power, or the exercise of their power, to pay administration expenses from income. The Court of Appeals affirmed.

Held: The judgment is affirmed.

63 F. 3d 1083, affirmed.

JUSTICE KENNEDY, joined by THE CHIEF JUSTICE, JUSTICE STEVENS, and JUSTICE GINSBURG, concluded that a taxpayer does not have to reduce the estate tax deduction for marital or charitable bequests by the amount of the administration expenses that were paid from income generated during administration by assets allocated to those bequests. Pp. 4–16.

(a) Hubert's executors used the standard date-of-death valuation to determine the value of property included in the gross estate for estate tax purposes. The parties agree that, for purposes of the question presented, the charitable, 26 U. S. C. §2055, and marital, §2056, deduction statutes should be read to require the same answer, notwithstanding differences in their language. Since the marital deduction statute and regulation speak in more specific terms on this question than the charitable deduction statute, this plurality concentrates on the marital provisions, but the holding here applies to both deductions. Pp. 4–5.

(b) The marital deduction statute allows deduction for qualifying property only to the extent of the property's "value." So when the executors use date of death valuation for gross estate purposes, the deduction's value will be limited by that value. Marital deduction "value" is "net value," determined by the same principles as if the bequest were a gift to the spouse, 26 CFR §20.2056(b)–4(a), *i.e.,* present value as of the controlling valuation date, §25.2523(a)–1(e); see also §§20.2056(b)–4(d), 20.2055–2(f)(1). Although the question presented is not controlled by these provisions' exact terms, it is natural to apply the present-value principle here. Thus, assuming it were necessary for valuation purposes to take into account that income, this would be done by subtracting from the value of the bequest, computed as if the income were not subject to administration expense charges, the present value (as of the controlling valuation date) of the income expected to be used to pay administration expenses. Cf. *Ithaca Trust Co.* v. *United States,* 279 U. S. 151. There is no dispute the entire interests transferred in trust here qualify for the marital and charitable deductions; the question before the Court is one of valuation. Pp. 5–9.

(c) Only material limitations on the right to receive income are taken into account when valuing the property interest passing to the surviving spouse. 26 CFR §20.2056(b)–4(a). A provision requiring or allowing administration expenses to be paid from income "may" be deemed a "marterial limitation" on the spouse's right to income. For example, where the amount of the corpus, and the expected income from it, are small, the amount of the estate's anticipated administration expenses chargeable to income may be material as compared with the anticipated income used to determine the assets' date-of-death value. Whether a limitation is material will also depend in part on the nature of the spouse's interest in the assets generating income. An obligation to pay administration expenses from income is more likely to be material where the value of the trust to the spouse is derived solely from income, but is less likely to be material where, as here, the marital property is valued as being equivalent to a transfer of the fee. Pp. 10–12.

(d) The Tax Court found that, on the facts presented, the trustee's discretion to pay administration expenses out of income was not a material limitation on the right to receive income. There is no reason to reverse for the Tax Court's failure to specify the facts it considered relevant to the materiality inquiry. The anticipated expenses could have been thought immaterial in light of the income the trust corpus could have been expected to generate. P. 12.

(e) This approach to the valuation question is consistent with the language of 26 U. S. C. §2056(b), as interpreted in *United States* v. *Stapf,* 375 U. S. 118, 126, in which the Court held that the marital deduction should not exceed the "net economic interest received by the surviving spouse." There is no basis here for the Commissioner's argument that the reduction she seeks is necessary to avoid a "double deduction" for administration expenses in violation of 26 U. S. C. §642(g). Moreover, assuming that the marital deduction statute's legislative history would have relevance here, it does not support the Commissioner's position. Pp. 13–16.

JUSTICE O'CONNOR, joined by JUSTICE SOUTER and JUSTICE THOMAS, concluded that the relevant sources point to a test of quantitative materiality to determine whether allocation of administrative expenses to postmortem income reduces marital and charitable deductions, and that test is not met by the unusual factual record in this case. Pp. 1–12.

(a) Neither the Tax Code itself nor its legislative history supplies guidance on the question whether allocation of administrative expenses to postmortem income reduces the marital deduction always, sometimes, or not at all. However, the Commissioner's regulations and revenue rulings can be relied on to decide this issue. Title 26 CFR §20.2056(b)–(4)(a) directs the reader to ask whether the executor's right to allocate administrative expenses to the marital bequest's postmortem income is a "material limitation" upon the spouse's "right to income from the property," such that "account must be taken of its effect." Because the executor's power is undeniably a "limitation" on the spouse's right to income, the case hinges on whether that limitation is "material." In Revenue Ruling 93–48, the Commissioner ruled that §20.2056(b)–4(a)'s marital deduction is not "ordinarily" reduced when an executor allocates interest payments on deferred federal estate taxes to the spousal bequest's postmortem income. Such interest and the administrative expenses at issue here are so similar that they should be treated the same under §20.2056(b)–4(a). The Commissioner's treatment of interest in the Revenue Ruling also indicates that some, but not all, financial obligations will reduce the marital deduction. Thus, by virtue of the Ruling, the Commissioner has created a quantitative materiality rule for §20.2056(b)–4(a). This rule is consistent with the example set forth in §20.2056(b)–4(a), and the Commissioner's expressed preference for such a construction is entitled to deference. Pp. 2–10.

(b) The proper measure of materiality has yet to be decided by the Commissioner. In the absence of guidance from the Commissioner, the Tax Court's approach is as consistent with the Code as any other test, and provides no basis for reversal. Here, the Commissioner's litigation strategy effectively preempted the Tax Court from finding the $1.5 million diminution in postmortem income material under a quantitative materiality test, for she argued that *any* diversion of post-

mortem income was material and never presented any evidence or argued that this diminution was quantitatively material. Her failure to offer proof of materiality left the Tax Court with little choice but to reach its carefully crafted conclusion that the amount was not quantitatively material on the facts before it. Pp. 10-12.

KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which REHNQUIST, C.J., and STEVENS and GINSBURG, J.J., joined. O'CONNOR, J., filed an opinion concurring in the judgment, in which SOUTER and THOMAS, JJ., joined. SCALIA, J., filed a dissenting opinion, in which BREYER, J., joined. BREYER, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 95–1402

COMMISSIONER OF INTERNAL REVENUE, PETITIONER *v.* ESTATE OF OTIS C. HUBERT, DECEASED, C & S SOVRAN TRUST COMPANY (GEORGIA) N.A., CO-EXECUTOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[March 18, 1997]

JUSTICE KENNEDY announced the judgment of the Court and delivered an opinion, in which the CHIEF JUSTICE, JUSTICE STEVENS, and JUSTICE GINSBURG join.

In consequence of life's two certainties a decedent's estate faced federal estate tax deficiencies, giving rise to this case. The issue is whether the amount of the estate tax deduction for marital or charitable bequests must be reduced to the extent administration expenses were paid from income generated during administration by assets allocated to those bequests.

I

The estate of Otis C. Hubert was substantial, valued at more than $30 million when he died. Considerable probate and civil litigation ensued soon after his death. The parties to the various proceedings included his wife and children; his nephew; one of the estate's coexecutors, Citizens and Southern Trust Company (Georgia), N. A., the predecessor of respondent C & S Sovran Trust Company (Georgia), N. A.; the district attorney for Cobb County, Georgia, on behalf of certain charitable beneficiaries; and the Georgia State Revenue Commission. Hubert had made various wills and codicils, and the legal disputes for the most part concerned the distribution of estate assets; but they were not confined to this. In addition to will contests alleging fraud and undue influence, there were satellite civil suits including claims of slander and abuse of process. The principal proceedings were in the Probate and the Superior Courts of Cobb County, Georgia.

The estate attracted the attention of petitioner, the Commissioner of Internal Revenue. The executors filed the federal estate tax return in 1987, about a year after Hubert died. In 1990, the Commissioner issued a notice of deficiency, claiming underreporting of federal estate tax liability by some $14 million. The Commissioner's major challenge then was to the estate's claimed entitlement to two deductions. One was the marital deduction, under 68A Stat. 392, as amended, 26 U. S. C. §2056, for qualifying property passing from a decedent to the surviving spouse. The other was the charitable deduction, under §2055, for qualifying property passing from a decedent to a charity. The Commissioner's notice of deficiency asserted, for reasons not relevant here, that the property passing to Hubert's surviving wife and to charity did not qualify for the marital and charitable deductions. The estate petitioned the United States Tax Court for a redetermination of the deficiency.

Within days of the estate's petition in the Tax Court, much of the other litigation surrounding the estate settled. The settlement agreement divided the estate's residue principal between a marital and a charitable share, which we can assume for purposes of our discussion were worth a total of $26 million on the day Hubert died. The settlement agreement divided the $26 million principal about half to trusts for the surviving spouse and half to a trust for the charities. The Commissioner stipulated that the nature of the trusts did not prevent them from qualifying for the marital and charitable deductions. The stipulation streamlined the Tax Court litigation but did not resolve it.

The settlement agreement provided that the estate would pay its administration expenses either from the principal or the income of the assets that would comprise the residue and the corpus of the trusts, preserving the discretion Hubert's most recent will had given his executors to apportion administration expenses. The apportionment provisions of the agreement and the will were consistent for all relevant purposes with the law of Georgia, the State where the decedent resided. The estate's administration expenses, including attorney's fees, were on the order of $2 million. The estate paid about $500,000 in expenses from principal and the rest from income.

The estate recalculated its estate tax liability based on the settlement agreement and the payments from principal. The estate did not include in its marital and charitable deductions the amount of residue principal used to pay administration expenses. The parties here have agreed throughout that the marital or charitable deductions could not include those amounts. The estate, however, did not reduce its marital or charitable deductions by the amount of the income used to pay the balance of the administration expenses. The Commissioner disagreed and contended that use of income for this purpose required a dollar-for-dollar reduction of the amounts of the marital and charitable deductions.

In a reviewed opinion, the Tax Court, with two judges concurring in part and dissenting in part, rejected the Commissioner's position. 101 T. C. 314 (1993). The court noted it had resolved the same issue against the Commissioner in *Estate of Street* v. *Commissioner,* T. C. Mem. 1988–553, 1988 WL 128662 (T. C. 1988). The Court of Appeals for the Sixth Circuit had reversed this aspect of *Estate of Street,* see 974 F. 2d 723, 727–729 (1992), but in the instant case the Tax Court adhered to its view and said, given all the circumstances here, no reduction was required by reason of the executors' power, or the exercise of their power, to pay administration expenses from income. The Court of Appeals for the Eleventh Circuit affirmed the Tax Court, adopting the latter's opinion and noting the resulting conflict with the Sixth Circuit's decision in *Street* and with the

Court of Appeals for the Federal Circuit's decision in *Burke* v. *United States*, 994 F. 2d 1576, cert. denied, 510 U. S. 990 (1993). See 63 F. 3d 1083, 1084–1085 (CA11 1995). We granted certiorari, 517 U. S.__(1996), and, in agreement with the Tax Court and the Court of Appeals for the Eleventh Circuit, we now affirm the judgment.

II

A necessary first step in calculating the taxable estate for federal estate tax purposes is to determine the property included in the gross estate, and its value. Though an alternative valuation date is authorized, the executors of the Hubert estate used the standard date-of death valuation. See 26 U. S. C. §§2031(a), 2051. A later step is to compute any claimed charitable or marital deductions. See §§2055 (charitable), 2056 (marital). Our inquiry here involves the relationship between valuation principles and those computations. The language of the charitable and marital deduction sections differs. For instance, §2056 requires consideration, in valuing a marital bequest, of obligations or encumbrances the decedent imposes on the bequest, "in the same manner as if the amount of a gift to such spouse of such interest were being determined." §2056(b)-(4). Section 2055 has no similar language. Treasury Regulation §20.2056(b)–4(a), 26 CFR §20.2056 (b)–4(a) (1996), moreover, has amplified aspects of the marital deduction statute, as we discuss. There is no similar regulation for the charitable deduction statute. These differences notwithstanding, the Commissioner and respondents agree that, for purposes of the question presented, the two deduction statutes should be read to require the same answer. We adopt this approach. For the issue we decide, the marital deduction statute and regulation speak in more specific terms than the charitable deduction statute, so we concentrate on the marital provisions. Our holding in the case applies to both deductions.

We begin with the language of the marital deduction statute. It allows an estate to deduct for federal estate tax purposes "an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate." 26 U. S. C. §2056(a).

The statute allows deduction for qualifying property only to the extent of the property's "value." So when the executors value the property for gross estate purposes as of the date of death, the value of the marital deduction will be limited by its date-of-death value. This is directed by the statutory language capping the deduction at "the value of any interest . . . included in determining the value of the gross estate." It is made explicit by Treas. Reg. §20.2056(b)–4(a), 26 CFR §20.2056(b)–4(a) (1996), which says "value, for the purpose of the marital deduction . . . is to be determined as of the date of the decedent's death [unless the estate uses the alternative valuation date]."

Regulation §20.2056(b)–4(a) provides that "value" for marital deduction purposes is "net value," determined by applying "the same principles . . . as if the amount of a gift to the spouse were being determined." Regulation §25.2523(a)–1, entitled "Gift to spouse; in general," includes a subsection (e), entitled "Valuation," which parallels §20.2056(b)–4(d); see also §20.2055–2(f)(1). It provides:

> "If the income from property is made payable to the donor or another individual for life or for a term of years, with remainder to the donor's spouse . . . the marital deduction is computed . . . with respect to the present value of the remainder, determined under [26 U. S. C. §] 7520. The present value of the remainder (that is, its value as of the date of gift) is to be determined in accordance with the rules stated in §25.2512–5 or, for certain prior periods, §25.2512–5A."

Section 7520, in turn, refers to present-value tables located in regulation §20.2031–7. The question presented here, involving date-of-death valuation of property or a principal amount, some of the income from which may be used to pay administration expenses, is not controlled by the exact terms of these provisions. For that reason, we do not attempt to force it into their detailed mold. It is natural, however, to apply the present-value principle to the question at hand, as we are directed to do by §20.2056(b)–4(a). In other words, assuming it were necessary for valuation purposes to take into account that income, see *infra*, at 10–12 (discussing materiality), this would be done by subtracting from the value of the bequest, computed as if the income were not subject to administration expense charges, the present value (as of the controlling valuation date) of the income expected to be used to pay administration expenses.

Our application of the present-value principle to the issue here is further supported by Justice Holmes' explanation of valuation theory in his opinion for the Court in *Ithaca Trust Co.* v. *United States*, 279 U. S. 151 (1929). The decedent there bequeathed the residue of his estate in trust to charity, subject to a particular life interest in his wife. After holding that the charitable bequest qualified for the charitable deduction under the law as it stood in 1929, the Court considered how to value the bequest. The Government argued the value should be reduced to reflect the wife's probable life expectancy as of the date the decedent died. The estate argued for a smaller reduction than the Government, because by the time of the litigation it was known that the wife had, in fact, lived for only six months after the decedent died. Justice Holmes wrote:

> "The first impression is that it is absurd to resort to statistical probabilities when you know the fact. But this is due to inaccurate thinking. . . . [Value] depends largely on more or less certain prophecies of the future; and the value is no less real at that time if later the prophecy turns out false than when it comes out true. . . . Tempting as it is to correct uncertain probabilities by the now certain fact, we are of opinion that it cannot be done. . . . Our opinion is not changed by the necessary exceptions to the general rule specifically made by the Act." *Id.*, at 155.

So the charitable deduction had to be valued based on the wife's probable life expectancy as of the date of death rather than the known fact that she died only six months after her husband.

It is suggested that regulation §20.2056(b)–4(a)'s direction to value the marital deduction as a spousal gift refers to a gift-tax qualification regulation, §25.2523(e)– l(f), and a revenue ruling interpreting it, Rev. Rul. 69–56, 1969–1 Cum. Bul. 224. *Post*, at 5–6 (O'CONNOR, J., concurring in judgment). The sugges-

tion misunderstands the regulations and the revenue ruling. Regulation §20.2056(b)–4(a) concerns how to determine the "value, for the purpose of the marital deduction, of any deductible interest." Before determining an interest's value under §20.2056(b)–4(a), one must decide the extent to which the interest qualifies as deductible.

There is a structural problem with interpreting §20.2056(b)–4(a) as directing reference to §25.2523(e)–1(f) for valuation purposes. Qualification and valuation are different steps. Regulation §25.2523(e)–1(f) prescribes conditions under which an interest transferred in trust qualifies for a marital deduction under the gift tax. It tracks the language of regulation §20.2056(b)–5(f), which prescribes the same conditions for determining whether an interest transferred in trust qualifies for a marital deduction under the estate tax. Any interest to which §25.2523(e)–1(f) would apply, were its principles understood to be incorporated into §20.2056(b)–4(a), would, of necessity, already have been analyzed under the same principles at the earlier, qualification stage of the estate-tax marital-deduction inquiry under §20.2056(b)–5(f). So under the suggested interpretation, whether or not an interest passed the qualification test, there would never be a need to value it. If it failed, there would be nothing to value; if it passed, its value would never be reduced at the valuation stage. The qualification step of the estate-tax marital-deduction inquiry would render the valuation step superfluous.

We do not think the Commissioner adopted this view of the regulations in Revenue Ruling 69–56. The revenue ruling held that a trustee's power to:

> "charge to income or principal, executor's or trustee's commissions, legal and accounting fees, custodian fees, and similar administration expenses . . . [does] not result in the disallowance or diminution of the marital deduction for estate and gift tax purposes unless the execution of such directions would, or the exercise of such powers could, cause the spouse to have less than substantially full beneficial enjoyment of the particular interest transferred." Rev. Rul. 69–56, 1969–1 Cum. Bul. 224.

The revenue ruling cites for this proposition §20.2056(b)–5(f)(1) and §25.2523(e)–1(f)(1), parts of the estate- and gift-tax qualification regulations discussed above. The qualification regulations provide that an interest may qualify as deductible only in part. Where that happens, the deduction need not be disallowed but it must be diminished. See, *e.g.*, §20.2056(b)–5(b); §25.2523(e)–1(b); see also 26 U. S. C. §§2056(b)(5), 2523(e). It is in this qualification context that the revenue ruling speaks of "diminution" of the marital deduction. There is no dispute the entire interests transferred in trust here qualify for the estate-tax marital and charitable deductions, respectively. The question before us is one of valuation. Regulations 25.2523(e)–1(f) and 20.2056(b)–5(f) and Revenue Ruling 69–56 do not bear on our inquiry.

The parties here agree that the marital and charitable deductions had to be reduced by the amount of marital and charitable residue principal used to pay administration expenses. The Commissioner contends that the estate must reduce its marital and charitable deductions by the amount of administration expenses paid not only from principal but also, and in all events, from income and by a dollar-for-dollar amount. The Commissioner cites the controlling regulation in support of her position. The regulation says:

> "The value, for the purpose of the marital deduction, of any deductible interest which passed from the decedent to his surviving spouse is to be determined as of the date of the decedent's death [unless the estate uses the alternative valuation date]. The marital deduction may be taken only with respect to the net value of any deductible interest which passed from the decedent to his surviving spouse, the same principles being applicable as if the amount of a gift to the spouse were being determined. In determining the value of the interest in property passing to the spouse account must be taken of the effect of any material limitations upon her right to income from the property. An example of a case in which this rule may be applied is a bequest of property in trust for the benefit of the decedent's spouse but the income from the property from the date of the decedent's death until distribution of the property to the trustee is to be used to pay expenses incurred in the administration of the estate." 26 CFR §20.2056(b)–4(a) (1996).

The regulation does not help the Commissioner. It says a limitation providing that income "is to be used" throughout the administration period to pay administration expenses "may" be material in a given case and, if it is, account must be taken of it for valuation purposes as if it were a gift to the spouse, as we have discussed, see *supra*, at 5–6. The Tax Court was quite accurate in its description of the regulation when it said:

> "That section is merely a valuation provision which requires material limitations on the right to receive income to be taken into account when valuing the property interest passing to the surviving spouse. The fact that income from property is to be used to pay expenses during the administration of the estate is not necessarily a material limitation on the right to receive income that would have a significant effect on the date-of-death value of the property of the estate." 101 T. C., at 324–325.

There is no indication in the case before us that the executor's power to charge administration expenses to income is equivalent to an express postponement of the spouse's right to income beyond a reasonable period of administration. Cf. 26 CFR §20.2056(b)–5(f)(9) (1996) (requiring valuation of express postponements of the spouse's right to income beyond a reasonable period of administration). By contrast, we have no difficulty conceiving of situations where a provision requiring or allowing administration expenses to be paid from income could be deemed a "material limitation" on the spouse's right to income. Suppose the decedent's other bequests account for most of the estate's property or that most of its assets are nonincome producing, so that the corpus of the surviving spouse's bequest, and the income she could expect to receive from it, would be quite small. In these circumstances, the amount of the estate's anticipated administration expenses chargeable to income may be material as compared with the anticipated income used to determine the assets' date-of-death value. If so, a provision requiring or allowing administration expenses to be charged to income would be a material limitation on the spouse's right to income, reducing the marital bequest's

date-of-death value and the allowable marital deduction.

Whether a limitation is "material" will also depend in part on the nature of the spouse's interest in the assets generating income. This analysis finds strong support in the text of regulation 20.2056(b)–4(a). The regulation gives an example of where a limitation on the right to income "may" be material—bequests "in trust" for the benefit of a decedent's spouse. The example suggests a significant difference between a bequest of income and an outright gift of the fee interest in the income-producing property. A fee in the same interest will almost always be worth much more. Where the value of the trust to the beneficiaries is derived solely from income, an obligation to pay administration expenses from that income is more likely to be "material." In the case of a specific bequest of income, for example, valued only for its future income stream, a diversion of that income would be more significant. The marital property in this case, however, comprising trusts involving either a general power of appointment (the GPA trust) or an irrevocable election (the QTIP trust), was valued as being equivalent to a transfer of the fee. See Brief for Petitioner 8–9, n. 1 ("[T]he corpus of both trusts is includable in the estate of the surviving spouse"). As a result, the limitation on the right to income here is less likely to be material. The inquiry into the value of the estate's anticipated administration expenses should be just as administrable, if not more so, than valuing property interests like going-concern businesses, see, *e.g.,* §20.2031–3, involving much greater complexity and uncertainty.

The Tax Court concluded here: "On the facts before us, we find that the trustee's discretion to pay administration expenses out of income is not a material limitation on the right to receive income." 101 T. C., at 325. The Tax Court did not specify the facts it considered relevant to the materiality inquiry. As we have explained, however, the Commissioner does not contend the estate failed to give adequate consideration to expected future administration expenses as of the date-of-death in determining the amount of the marital deduction. We have no basis to reverse for the Tax Court's failure to elaborate. Here, given the size and complexity of the estate, one might have expected it to incur substantial litigation costs. But the anticipated expenses could nonetheless have been thought immaterial in light of the income the trust corpus could have been expected to generate.

The major disagreement in principle between the Tax Court majority and dissenters involved the distinction between expected and actual income and expenses. Judge Halpern's opinion, joined by Judge Beghe, explained:

> "I believe the majority is undone by its view that income earned on estate property is not included in the gross estate. Once it is accepted that income earned on estate property (as anticipated at the appropriate valuation date) *is* included in the gross estate, the next question is whether, but for the use of such income to pay administration expenses, it would be received by the surviving spouse or charitable beneficiary. If the answer is yes, then it follows easily that, when such income is used for administration expenses, rather than received by the surviving spouse or charitable beneficiary, the value of the interest passing from the decedent to the surviving spouse or charitable beneficiary is decreased." *Id.*, at 342–343 (opinion concurring in part and dissenting in part).

The Tax Court dissenters recognized that only anticipated, not actual, income is included in the gross estate, as the gross estate is based on date-of-death value. See also *id.,* at 342, n. 5 (opinion of Halpern, J.) ("It is true, of course, that income actually earned on . . . property [included in valuing the gross estate] during the period of administration is not included in the gross estate. The gross estate, however, does include the discounted value of postmortem income expected to be earned during estate administration") (emphasis deleted). The dissenters failed to recognize that following their own logic, as a general rule, assuming compliance with regulation §20.2056(b)–4(a)'s limitation to relevant facts on the controlling valuation date, only anticipated administration expenses payable from income, not the actual ones, affect the date-of-death value of the marital or charitable bequests. The dissenters were, in a sense, a step closer to §25.2523(a)–l(e)'s present-value approach than the Commissioner, for they would have required the estate to reduce the marital or charitable deduction by only the discounted value of the actual administration expenses, whereas the Commissioner insists on a dollar-for-dollar reduction. The dissenters' wait-and-see approach to the valuation inquiry, however, is still at odds with the valuation inquiry required by the regulations: What is the net value of the marital or charitable bequest on the controlling valuation date, determined as if it were a gift to the spouse?

The Commissioner directs us to the language of §2056(b)(4), which says:

> "In determining . . . the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this section—
>
> . . . . .
>
> "(B) where such interest or property is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined."

We interpreted this language in *United States* v. *Stapf,* 375 U. S. 118 (1963). The husband's will there gave property to his wife, conditioned on her relinquishing other property she owned to the couple's children. We held that the husband's estate was entitled to a marital deduction only to the extent the value of the property the husband gave his wife exceeded the value of the property she relinquished to receive it. The marital deduction, we explained, should not exceed the "net economic interest received by the surviving spouse." *Id.,* at 126. The statutory language, as we interpreted it in *Stapf,* is consistent with our analysis here. Where the will requires or allows the estate to pay administration expenses from income that would otherwise go to the surviving spouse, our analysis requires that the marital deduction reflect the date-of-death value of the expected future administration expenses chargeable to income if they are material as compared with the date-of-death value of the expected future income. Using this approach to valuation, the estate will arrive at the "net economic

interest received by the surviving spouse." *Ibid.*

For the first time at oral argument, the Commissioner suggested that the reduction she seeks is necessary to avoid a "double deduction" in violation of 26 U. S. C. §642(g). Under §642(g), an estate may take an estate tax deduction for administration expenses under §2053(a)-(2), or it may take them, if deductible, off its taxable income, but it may not do both. The so-called double deduction argument is rhetorical, not statutory. As our colleagues in dissent recognize, "nothing in §642(g) *compels* the conclusion that the marital (or charitable) deduction must be reduced whenever an estate elects to deduct expenses from income." *Post,* at 12–13 (Scalia, J., dissenting) (emphasis in original). The Commissioner nevertheless suggests that, unless we reduce the estate's marital deduction by the amount of administration expenses paid from income and deducted on its income tax, the estate will receive a deduction for them on its income tax as well as a deduction for them on its estate tax in the form of inflated marital and charitable deductions. See Tr. of Oral Arg. 12, 15. The marital and charitable estate tax deductions do not include income, however. When income is used, consistent with state law and the will, to pay administration expenses, this does not require that the estate tax deductions be diminished. The deductions include asset values determined with reference to expected income, but under our analysis the values must also be reduced to reflect material expected administration expense charges to which that income may be subjected. As noted above, the Commissioner has not contended the estate's marital and charitable deductions fail to reflect such expected payments. So there is no basis for the double deduction argument. Our analysis is consistent with the design of the statute.

The Commissioner also invites our attention to the legislative history of the marital deduction statute. Assuming for the sake of argument it would have relevance here, it does not support her position. The Senate Report accompanying the statute says:

> "The interest passing to the surviving spouse from the decedent is only such interest as the decedent can give. If the decedent by his will leaves the residue of his estate to the surviving spouse and she pays, or if the estate income is used to pay, claims against the estate so as to increase the residue, such increase in the residue is acquired by purchase and not by bequest. Accordingly, the value of any additional part of the residue passing to the surviving spouse cannot be included in the amount of the marital deduction." S. Rep. No. 1013, 80th Cong., 2d Sess., pt. 2, p. 6 (1948).

The Report supports our analysis. It underscores that valuation for marital deduction purposes occurs on the date of death.

The Commissioner's position is inconsistent with the controlling regulations. The Tax Court and the Court of Appeals were correct in finding for the taxpayer on these facts, and we affirm the judgment.

It is so ordered.

JUSTICE O'CONNOR, with whom JUSTICE SOUTER and JUSTICE THOMAS join, concurring in the judgment.

"Logic and taxation are not always the best of friends." *Sonneborn Brothers* v. *Cureton,* 262 U. S. 506, 522 (1923) (McReynolds, J., concurring). In cases like the one before us today, they can be complete strangers. That our tax laws can at times be in such disarray is a discomforting thought. I can understand why the plurality attempts to extrapolate a generalized estate tax valuation theory from one regulation and then to apply that theory to resolve this case, perhaps with the hope of making sense out of the applicable law. But where the applicability—not to mention the validity—of that theory is far from clear, the temptation to make order out of chaos at any cost should be resisted, especially when the question presented can be resolved—albeit imperfectly—by reference to more directly applicable sources. While JUSTICE SCALIA, JUSTICE BREYER, and I agree on this point, we disagree on the result ultimately dictated by these sources. I therefore write separately to explain why in my view the plurality's result, though not its reasoning, is correct.

I

When a citizen or resident of the United States dies, the Federal Government imposes a tax on "all [of his] property, real or personal, tangible or intangible, wherever situated." 26 U. S. C. §§2001(a), 2031(a). Specifically excluded from taxation, however, is certain property devised to the decedent's spouse or to charity. Such testamentary gifts may qualify for the marital deduction, §2056(a), or the charitable deduction, §2055(a). If they do, they are removed from the decedent's "gross estate" and exempted from the estate tax. §2051. Calculating the estate tax, however, takes time, as does marshaling the decedent's property and distributing it to the ultimate beneficiaries. During this process, the assets in the estate often earn income and the estate itself incurs administrative expenses. To deal with this eventuality, the Tax Code permits an estate administrator to choose between allocating these expenses to the assets in the estate at the time of death (the estate principal), or to the postmortem income earned by those assets. §642(g). Everyone agrees that when these expenses are charged against a portion of estate's principal devised to the spouse or charity, that portion of the principal is diverted from the spouse or charity and the marital and charitable deductions are accordingly "reduced" by the actual amount of expenses incurred. See *ante,* at 9 (plurality opinion); *post,* at 2 (SCALIA, J., dissenting); Brief for Petitioner 19; Brief for Respondent 6. The question presented here is what becomes of these deductions when the estate chooses the second option under §642(g) and allocates administrative expenses to the postmortem income generated by the property in the spousal or charitable devise.

The Tax Code itself supplies no guidance. Accord, *post,* at 6 (SCALIA, J., dissenting). The statute most relevant to this case, 26 U. S. C. §2056(b)(4)(B), provides:

> "where [any interest in property otherwise qualifying for the marital deduction] is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined."

Although an executor's power to burden the postmortem income of the marital be-

quest with the estate's administrative expenses is arguably an "encumbrance" or an "obligation imposed by the decedent with respect to the passing of such interest," the statute itself says only that the "encumbrance or obligation shall be taken into account." It does not explain how this should be done, however. In my view, it is not possible to tell from §2056(b)(4)(B) whether allocation of administrative expenses to postmortem income reduces the marital deduction always, sometimes, or not at all.

Nor does the Code's legislative history give shape to its otherwise ambiguous language. The discussion in the Senate Report of §2056(b)(4)(B)'s predecessor statute reads:

> "The interest passing to the surviving spouse from the decedent is only such interest as the decedent can give. If the decedent by his will leaves the residue of his estate to the surviving spouse and she pays, or *if the estate income is used to pay, claims against the estate so as to increase the residue, such increase in the residue is acquired by purchase and not by bequest. Accordingly, the value of any such additional part of the residue passing to the surviving spouse cannot be included in the amount of the marital deduction.*" S. Rep. No. 1013, 80th Cong., 2d Sess., pt. 2, p. 6 (1948) (emphasis added).

This italicized passage might be helpful if it explicitly referred to "administrative expenses" instead of"claims against the estate." But it is not at all clear from the Senate Report whether the latter term includes the former: The Report nowhere defines the term "claims against the estate," and the immediately preceding paragraph discusses §2056(b)(4)(B)'s language with reference to mortgages. *Ibid.* Because mortgages differ from administrative expenses in many ways (*e.g.*, mortgages pre-exist the decedent's death and are fixed in amount at that time), there is a reasonable argument that administrative expenses are not "claims against the estate." In sum, the Code's legislative history is not illuminating.

II

All that remains in this statutory vacuum are the Commissioner's regulations and revenue rulings, and it is on these sources that I would decide this issue. The key regulation is 26 CFR §20.2056(b)–4(a) (1996):

> "The value, for the purpose of the marital deduction, of any deductible interest which passed from the decedent to his surviving spouse is to be determined as of the date of the decedent's death.... The marital deduction may be taken only with respect to the net value of any deductible interest which passed from the decedent to his surviving spouse, the same principles being applicable as if the amount of a gift to the spouse were being determined. In determining the value of the interest in property passing to the spouse account must be taken of the effect of any material limitations upon her right to income from the property."

The text of the regulation leaves no doubt that, only the "net value" of the spousal gift may be deducted. There is also little doubt that, in assessing this "net value," one should examine how the spousal devise would have been treated if it were instead an *inter vivos* gift. See also 26 U. S. C. §2056(b)(4)(A) (also referring to treatment of gifts).

The plurality latches onto 26 CFR §25.2523(a)–1(e) (1996), and to the statutes and regulations to which it refers. *Ante*, at 5–6 (referring to 26 U. S. C. §7520; 26 CFR §20.2031–7 (1996)). In the plurality's view, these regulations define how to "tak[e] [account] of the effect of any material limitations upon [a spouse's] right to income from the property." 26 CFR §20.2056(b)–4(a) (1996). The plurality frankly admits that these regulations do not speak directly to the antecedent inquiry—when an executor's right to allocate administrative expenses to income constitutes a "material limitation." *Ante*, at 6. The plurality nevertheless believes that these regulations bear *indirectly* on this inquiry by implying an underlying estate tax valuation theory that, in the plurality's view, dovetails nicely with our decision in *Ithaca Trust Co.* v. *United States*, 279 U. S. 151 (1929). *Ante*, at 6–7, 13. It is on the basis of this valuation theory that the plurality is able to conclude that the Tax Court's analysis was wrong because that analysis did not, consistent with the plurality's theory, focus solely on *anticipated* administrative expenses and *anticipated* income. *Ante*, at 12–13. But, as JUSTICE SCALIA points out, the plurality's valuation theory is not universally applicable and, in fact, conflicts with the Commissioner's treatment of some other expenses. See 26 CFR §20.2056(b)–4(c) (1996); *post*, at 13–15. Because §25.2523(a)–1(e) and its accompanying provisions do no more than suggest an estate tax valuation theory that itself has questionable value in this context, these provisions do not in my view provide any meaningful guidance in this case.

The Tax Court, on the other hand, zeroed in on 26 CFR §§25.2523(e)–1(f)(3) and (4) (1996), the gift tax regulations which, read together, provide that a trustee's power to allocate the "trustees' commissions . . . and other charges" to the trust's income will not disqualify the trust from gift tax spousal deduction as long as the donee spouse receives "substantial beneficial enjoyment" of the trust property. 101 T. C. 314, 325 (1993); see also 26 CFR §20.2056(b)–5(f) (1996) (tracking language of §25.2523(e)–l(f)). The Commissioner interpreted this language in Revenue Ruling 69–56, and held that a trustee's power to

> "charge to income or principal, executor's or trustee's commissions, legal and accounting fees, custodian fees, and similar administration expenses . . . [does] not result in the disallowance or *diminution of the marital deduction for estate* and gift *tax purposes* unless the execution of such directions would or the exercise of such powers could, cause the spouse to have less than substantially full beneficial enjoyment of the particular interest transferred." Rev. Rul. 69–56, 1969–1 Cum. Bul. 224 (emphasis added).

Both the plurality and JUSTICE SCALIA argue that these gift regulations and rulings are inapposite because they address how the power to allocate expenses affects a trust's *qualification* for the marital deduction, and not how it affects the *trust's value*. *Ante*, at 7–9; *post*, at 4–5, 11–12. They further contend that the "material limitation" language in 26 CFR §20.2056(b)–4(a) (1996) would be rendered superfluous if a "material limitation" on the spouse's right to receive income existed only when that spouse lacked "substantial beneficial enjoyment" of the income. 101 T. C., at 325–326

(adopting this argument). Under this reading, there could be no such thing as a trust that qualified for the marital deduction but imposed a material limitation on the right to income because any trust failing the "substantial beneficial enjoyment" test would not qualify for the deduction at all. *Ante,* at 8; *post,* at 11. These are potent criticisms. But no matter how poorly drafted or ill conceived the Revenue Ruling might be, the fact remains that the Commissioner issued it and its plain language is hard to ignore. In the end, the conclusion one draws regarding how the marital and charitable trusts would be treated if they were *inter vivos* gifts depends on whether one takes the Commissioner at her word: If one does, the gift tax provisions, Revenue Ruling 69–56 in particular, favor respondents' position; if one does not, one is left with no guidance at all. Neither result is wholly satisfying.

Fortunately, §20.2056(b)–4(a) further directs the reader to consider a second method of determining the amount of the marital deduction:

> "In determining the value of the interest in property passing to the spouse account must be taken of the effect of any material limitations upon her right to income from the property."

From this we ask whether the executor's right to allocate administrative expenses to the postmortem income of the marital bequest is a material limitation upon the spouse's "right to income from the property," such that "account must be taken of the effect." Because the executor's power is undeniably a "limitation" on the spouse's right to income, the case hinges on whether that limitation is "material." Accord, *post,* at 7 (SCALIA, J., dissenting) ("The beginning of analysis . . . is to determine what, in the context of §20.2056(b)–4(a), the word 'material' means").

We can quibble over which definition of "material"—"substantial" or "relevant"—precedes the other in the dictionary, see *ibid.*; The American Heritage Dictionary 772 (2d ed. 1985) ("substantial" precedes "relevant"), but this debate is beside the point. The Commissioner has already interpreted the language in §20.2056(b)–4(a). In Revenue Ruling 93–48, the Commissioner ruled that the marital deduction is not "ordinarily" reduced when an executor allocates interest payments on deferred federal estate taxes to the postmortem income of the spousal bequest. Rev. Rul. 93–48, 1993–2 Cum. Bul. 270 ("[T]he value of a residuary charitable [or marital] bequest is [not] reduced by the amount of [interest] expenses payable from the income of the residuary property"). JUSTICE SCALIA contends that Revenue Ruling 93–48 should be disregarded because it was promulgated by the Commissioner only after her attempts to prevail on the contrary position in federal court repeatedly failed. *Post,* at 9. To be sure, the Commissioner may not have whole-heartedly embraced Revenue Ruling 93–48, but the Ruling nevertheless issued and we may not totally ignore the plain language of a regulation or ruling because the entity promulgating it did not *really* want to have to adopt it. See *Connecticut Nat. Bank* v. *Germain,* 503 U. S. 249, 253–254 (1992) ("We have stated time and time again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there"); *West Virginia Univ. Hospitals, Inc.* v. *Casey,* 499 U. S. 83, 98 (1991) (rejecting argument that "the congressional purpose in enacting [a statute] must prevail over the ordinary meaning of statutory terms").

It is, as an initial matter, difficult to reconcile the Commissioner's treatment of interest under Revenue Ruling 93–48 with her position in this case. For all intents and purposes, interest accruing on estate taxes is functionally indistinguishable from the administrative expenses at issue here. By definition, neither of these expenses can exist prior to the decedent's death; before that time, there is no estate to administer and no estate tax liability to defer. Yet both types of expenses are inevitable once the estate is open because it is virtually impossible to close an estate in a day so as to avoid the deferral of estate tax payments or the incursion of some administration expenses. Although both can theoretically be avoided if an executor donates his time or pays up front what he estimates the estate tax to be, this will not often occur. Both types of expenses are, moreover, of uncertain amount on the date of death. Because these two types of expenses are so similar in relevant ways, in my view they should be treated the same under §20.2056(b)–4(a) and Ruling 93–48, despite the Commissioner's limitation on the applicability of Revenue Ruling 93–48 to interest on deferred estate taxes.

But more important, the Commissioner's treatment of interest on deferred estate taxes in Revenue Ruling 93–48 indicates her rejection of the notion that *every* financial burden on a marital bequest's postmortem income is a material limitation warranting a reduction in the marital deduction. That the Ruling purports to apply not only to *income* but also to *principal,* and may therefore deviate from the accepted rule regarding payment of expenses from principal, see, *supra,* at 2, does not undercut the relevance of the Ruling's implications as to *income. Post,* at 10 (SCALIA, J., dissenting). Thus, some financial burdens on the spouse's right to postmortem income will reduce the marital deduction; others will not. The line between the two does not, as JUSTICE SCALIA contends, depend upon the relevance of the limitation on the spouse's right to income to the value of the marital bequest, *post,* at 7–8, since interest on deferred estate taxes surely reduces, and is therefore relevant to, "the value of what passes." *Ibid.* (emphasis deleted). By virtue of Revenue Ruling 93–48, the Commissioner has instead created a quantitative rule for §20.2056(b)–4(a). That a limitation affects the marital deduction only upon reaching a certain quantum of substantiality is not a concept alien to the law of taxation; such rules are quite common. See, *e.g.,* Rev. Rul. 75–298, 1975–2 Cum. Bul. 290 (exempting from income tax the income of qualifying banks owned by foreign governments, as long as their participation in domestic commercial activity is *de minimis*); Rev. Rul. 90–60, 1990–2 Cum. Bul. 3 (establishing *de minimis* rule so that taxpayers who give up less than 33.3% of their partnership interest need not post a bond to enable them to defer payment of credit recapture taxes for low-income housing).

The Commissioner's quantitative materiality rule is consistent with the example set forth in 26 CFR §20.2056(b)–4(a) (1996):

> "An example of a case in which [the material limitation] rule may be applied is a bequest of property in trust for the benefit of the decedent's spouse but the income from the property from the date of the decedent's death until distribu-

tion of the property to the trustee is to be used to pay expenses incurred in the administration of the estate."

Even assuming that JUSTICE SCALIA is correct that the word "may" connotes "possibility rather than permissibility," *post*, at 10, the example still does not specify whether it applies when all the income, some of the income, or any of the income "from the property . . . is to be used to pay expenses incurred in the administration of the estate." Any of these constructions of the example's language is plausible, and the Commissioner's expressed preference for the second one is worthy of deference. *National Muffler Dealers Assn., Inc.* v. *United States*, 440 U. S. 472, 476 (1979).

That said, the proper measure of materiality has yet to be decided by the Commissioner. The Tax Court below compared the actual amount spent on administration expenses to its estimate of the income to be generated by the marital bequest during the spouse's lifetime. 101 T. C., at 325. One *amicus* suggests a comparison of the discounted present value of the projected income stream from the marital bequest when the actual administrative expenses are allocated to income with the projected income stream when the expenses are allocated to principal. App. to Brief American College of Trust and Estate Counsel as *Amicus Curiae* 1–2. The plurality, drawing upon its valuation theory, *supra*, at 5, looks to whether the "date-of-death value of the expected future administration expenses chargeable to income . . . [is] material as compared with the date-of-death value of the expected future income." *Ante*, at 14. None of these tests specifies with any particularity when the threshold of materiality is crossed. Cf. 26 U. S. C. §2503(b) (setting $10,000 annual minimum before gift tax liability attaches). The proliferation of possible tests only underscores the need for the Commissioner's guidance. In its absence, the Tax Court's approach is as consistent with the Code as any of the others, and provides no basis for reversal.

I share JUSTICE SCALIA's reluctance to find a $1.5 million diminution in postmortem income immaterial under any standard. *Post*, at 8. Were this Court considering the question of quantitative materiality in the first instance, I would be hard pressed not to find this amount "material" given the size of Mr. Hubert's estate. But the Tax Court in this case was effectively preempted from making such a finding by the Commissioner's litigation strategy. It appears from the record that the Commissioner elected to marshal all her resources behind the proposition that *any* diversion of postmortem income was material, and never presented any evidence or argued that $1.5 million was quantitatively material. See App. 58 (Stipulation of Agreed Issues) (setting forth Commissioner's argument); Brief for Respondent 47. Because she bore the burden of proving materiality (since her challenge to administrative expenses was omitted from the original Notice of Deficiency), Tax Court Rule 142(a), her failure of proof left the Tax Court with little choice but to reach its carefully crafted conclusion that $1.5 million was not quantitatively material on "the facts before [it]." 101 T. C., at 325. I would resist the temptation to correct the seemingly counterintuitive result in this case by protecting the Commissioner from her own litigation strategy, especially when she continues to adhere to that strategy and does not, even now, ask us to reconsider the Tax Court's finding on this issue.

This complex case has spawned four separate opinions from this Court. The question presented is simple and its answer should have been equally straightforward. Yet we are confronted with a maze of regulations and rulings that lead at times in opposite directions. There is no reason why this labyrinth should exist, especially when the Commissioner is empowered to promulgate new regulations and make the answer clear. Indeed, nothing prevents the Commissioner from announcing by regulation the very position she advances in this litigation. Until that time, however, the relevant sources point to a test of quantitative materiality, one that is not met by the unusual factual record in this case. I would, accordingly, affirm the judgment of the Tax Court.

JUSTICE SCALIA with whom JUSTICE BREYER joins, dissenting.

The statute and regulation most applicable to the question presented in this case are discussed in today's opinion almost as an afterthought. Instead of relying on the text of 26 U. S. C. §2056(b)(4)(B) and its interpretive regulation, 26 CFR §20.2056(b)–4(a) (1996), the plurality hinges its analysis on general principles of valuation which it mistakenly believes to inhere in the estate tax. It thereby creates a tax boondoggle never contemplated by Congress, and announces a test of deductibility virtually impossible for taxpayers and the IRS to apply. In my view, §2056(b)(4)(B) and §20.2056(b)–4(a) provide a straightforward disposition, namely that the marital (and charitable) deductions must be reduced whenever income from property comprising the residuary bequest to the spouse (or charity) is used to satisfy administration expenses. I therefore respectfully dissent.

I

Section 2056 of the Internal Revenue Code provides for a deduction from gross estate for marital bequests.[1] The Code places two limitations on the marital deduction which are relevant to this case. First, as would be expected, the marital deduction is limited to "an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate." 26 U. S. C. §2056(a). Thus, as the plurality correctly recognizes, and as both parties agree, if any portion of marital bequest principal is used to pay estate administration expenses, then the marital deduction must be reduced commensurately. Second, and more to the point, "where such interest or property [bequeathed to the spouse] is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined." §2056(b)(4)(B). Section 2056(b)(4)(B) controls this case and leads to the conclusion that the marital deduction must be reduced when estate income which would otherwise pass to the spouse is used to pay administration expenses of the estate.

[1]This case involves both the marital and the charitable deductions. I agree with the plurality's determination that the provisions governing the two should be read in *pari materia*, *ante*, at 4–5, and, like the plurality, I focus my attention on the marital deduction.

A

As the plurality implicitly recognizes, Mrs. Hubert's interest in the estate was burdened with the obligation of paying administration expenses. The settlement agreement resolving the will contest, like Mr. Hubert's most recent will, provided that the estate's administration expenses would be paid from the residuary trusts, with the discretion given to the executor to apportion expenses between the income and principal of the residue. The marital bequest, which makes up some 52% of the residue, was thus plainly burdened with the obligation of paying 52% of the administration expenses of the estate. (The charitable bequest accounted for the remaining 48% of the residue.)

Our task under §2056(b)(4)(B) is to determine how this obligation would affect the value of the marital bequest were the bequest an *inter vivos* gift. This seemingly rudimentary question proves difficult to answer. Both parties point to various provisions of the Internal Revenue Code and the Treasury Regulations, but these concern the quite different question whether a gift *qualifies* for the gift tax marital deduction; none discusses how the actual payment of administration expenses from income will affect the *value* of the gift tax marital deduction. See, *e.g.*, 26 CFR §25.2523(e)–1(f)(3) and (4) (1996) (inclusion of the power to a trustee to allocate expenses of a trust between income and corpus will not *disqualify* the gift from the marital deduction so long as the spouse maintains substantial beneficial enjoyment of the income). The plurality seeks to derive some support from Treasury Regulation §25.2523(a)–1(e), see *ante*, at 5–6, though it must acknowledge that "[t]he question presented here . . . is not controlled by the exact terms of [that regulation or the provisions to which it refers]," *ante*, at 6. Even going beyond its "exact terms," however, the regulation has no relevance. Like its counterparts in the estate tax provisions, see §§20.2031–1(b), 20.2031–7, it simply provides instruction on how to value the *assets* comprising the gift. It says nothing about how to take account of administration expenses. Indeed, the gross estate does not include anticipated administration expenses. As I discuss below, *infra*, at 13–14, the estate tax provisions provide for a deduction from the gross estate for administration expenses actually incurred. See 26 U.S.C. §2053(a)(2) and 26 CFR §20.2053–3(a) (1996). Were expected administration expenses taken into account in valuing the assets of the gross estate, as the plurality incorrectly suggests, then the estate tax deduction for actual administration expenses would in effect be a second deduction for the same charge.

Respondent's strongest argument is based on Rev. Rul. 69–56, 1969–1 Cum. Bul. 224, which held that inclusion in a marital trust of the power to charge administration expenses to either income or principal does not run afoul of that provision of the regulations which requires, in order for a life-estate trust to *qualify* for the gift and estate tax marital deductions, that settlor intend the spouse to enjoy "substantially that degree of beneficial enjoyment of the trust property during her life which the principles of the law of trust accord to a person who is unqualifiedly designated as the life beneficiary of a trust." 26 CFR §§2523(e)–1(f)(1), 2056(b)–5(f)(1) (1996). Although the Revenue Ruling was an interpretation of qualification regulations, it also purported to "h[o]ld" that inclusion of the "powe[r]" to allocate expenses between income and principal "does not result in the disallowance or *diminution* of the marital deduction" (emphasis added). I agree with the Commissioner that this Revenue Ruling is inapposite because it deals with the effect of the mere *existence* of the power to allocate expenses against income; it speaks not at all to the question of how the actual *exercise* of that power will affect the valuation of the estate tax marital deduction. If the ruling is construed to mean that *exercise* of the power does not reduce the marital deduction, then actually using principal to pay the expenses should not reduce the marital deduction, a result which everyone agrees is incorrect, see, *e.g.*, *ante*, at 9 (plurality opinion); *ante*, at 2 (O'CONNOR, J., concurring in the judgment), *supra*, at 2, and which plainly conflicts with §2056(a). It seems to me obvious that the Commissioner was simply not addressing the issue before us today when she issued Revenue Ruling 69–56, a conclusion confirmed by the fact that the Commissioner's longstanding view—which antedates Revenue Ruling 69–56—is that use of marital bequest income to pay administration expenses requires that the marital deduction be reduced, see, *e.g.*, Brief for Government Appellee, in *Ballantine* v. *Tomlinson*, No. 18,736 (CA5 1961), p. 18; Brief for Government Appellee, in *Alston* v. *United States*, No. 21,402 (CA5 1965), p. 15.

B

The Commissioner contends that Treasury Regulation §20.2056(b)–4(a), which interprets §2056(b)(4)(B), mandates the conclusion that payment of administration expenses from marital bequest income reduces the marital deduction. Section 20.2056(b)–4(a) provides:

> "The value, for the purpose of the marital deduction, of any deductible interest which passed from the decedent to his surviving spouse is to be determined as of the date of the decedent's death, [unless the executor elects the alternate valuation date]. The marital deduction may be taken only with respect to the net value of any deductible interest which passed from the decedent to his surviving spouse, the same principles being applicable as if the amount of a gift to the spouse were being determined. In determining the value of the interest in property passing to the spouse account must be taken of the effect of any *material* limitations upon her right to income from the property. An example of a case in which this rule may be applied is a bequest of property in trust for the benefit of the decedent's spouse but the income from the property from the date of decedent's death until distribution of the property to the trustee is to be used to pay expenses incurred in the administration of the estate." (Emphasis added.)

This text was issued pursuant to explicit authority given the Secretary of the Treasury to promulgate the rules and regulations necessary to enforce the Internal Revenue Code. See 26 U. S. C. §7805(a). As this Court has repeatedly acknowledged, judicial deference to the Secretary's handiwork "helps guarantee that the rules will be written by 'masters of the subject.' " *National Muffler Dealers Assn., Inc.* v. *United States*, 440 U. S. 472, 477 (1979), quoting *United States* v. *Moore*, 95 U. S. 760, 763 (1878). Thus, when a provision of the Internal Revenue

Code is ambiguous, as §2056(b)(4)(B) plainly is, this Court has consistently deferred to the Treasury Department's interpretive regulations so long as they " ' "implement the congressional mandate in some reasonable manner." ' " *National Muffler Dealers Assn., Inc., supra,* at 477, quoting *United States* v. *Cartwright,* 411 U. S. 546, 550 (1973), in turn quoting *United States* v. *Correll,* 389 U. S. 299, 307 (1967). See also *Cottage Savings Assn.* v. *Commissioner,* 499 U. S. 554, 560–561 (1991).

As the courts below recognized, the crucial term of the regulation for present purposes is "material limitations." Curiously enough, however, neither the Commissioner nor the respondents come forward with a definition of this term, the former simply contending that "it is the burden of paying administration expenses *itself* that constitutes the 'material' limitation," Brief for Petitioner 31, and the latter simply contending that that burden is for various reasons not substantial enough to qualify. Today's plurality opinion also takes the latter approach, never defining the term but displaying by its examples that "material" must mean "relatively substantial." If, it says, a spouse's bequest represents a small portion of the overall estate and could be expected to generate little income, the estate's anticipated administration expenses "'may' be material" when compared to the anticipated income. *Ante,* at 10–11. But, it says, the mere fact that an estate incurs (or as I discuss below, under the plurality's approach, expects to incur) "substantial litigation costs" is insufficient to make a limitation material. *Ante,* at 12.

The beginning of analysis, it seems to me, is to determine what, in the context of §20.2056(b)–4(a), the word "material" means. In common parlance, the word sometimes bears the meaning evidently assumed by respondents: "substantial," or "serious" or "important." See 1 The New Shorter Oxford English Dictionary 1714 (1993) (def. 3); Webster's New International Dictionary 1514 (2d ed. 1950) (def. 2a). It would surely bear that meaning in a regulation that referred to a "material diminution of the value of the spouse's estate." Relatively small diminutions would not count. But where, as here, the regulation refers to "material limitations upon [the spouse's] right to receive income," it seems to me that the more expansive meaning of "material" is naturally suggested—the meaning that lawyers use when they move that testimony be excluded as "immaterial": Not "insubstantial" or "unimportant," but "*irrelevant*" or "*inconsequential*." See American Heritage Dictionary 1109 (3d ed. 1992) (def. 4: defining "material" as "[b]eing both relevant and consequential," and listing "relevant" as a synonym). In the context of §20.2056(b)–4(a), which deals, as its first sentence recites, with "[t]he *value,* for the purpose of the marital deduction, of any deductible interest which passed from the decedent to his surviving spouse" (emphasis added), a "*material* limitation" is a limitation that is relevant or consequential *to the value* of what passes. Many limitations are not—for example, a requirement that the spouse not spend the income for five years, or that the spouse be present at the reading of the will, or that the spouse reconcile with an alienated relative.

That this is the more natural reading of the provision is amply demonstrated by the consequences of the alternative reading, which would leave it to the taxpayer, the Commissioner, and ultimately the courts, to guess whether a particular decrease in value is "material" enough to qualify—without any hint as to what might be a "ballpark" figure, or indeed any hint as to whether there is such a thing as "absolute materiality" (the two million dollars at issue here, for instance) or whether it is all relative to the size of the estate. One should not needlessly impute such a confusing meaning to a regulation which readily bears another interpretation that is more precise. Moreover, the Commissioner's interpretation of her own regulation, so long as it is consistent with the text, is entitled to considerable deference, see *National Muffler Dealers Assn., Inc., supra,* at 488–489; *Cottage Savings Assn., supra,* at 560–561.

The concurrence contends that the other (more unnatural) reading of "material" must be adopted—and that no deference is to be accorded the Commissioner's longstanding approach of reducing the marital deduction for *any* payment of administrative expenses out of marital-bequest income—because of a recent Revenue Ruling in which the Commissioner acquiesced in lower court holdings that the marital deduction is not reduced by the payment from the marital bequest of interest on deferred estate taxes. *Ante,* at 8–9 (discussing Rev. Rul. 93–48). The concurrence asserts that interest accruing on estate taxes "is functionally indistinguishable" from administrative expenses, so that Revenue Ruling 93–48 "created a quantitative rule" shielding some financial burdens from affecting the calculation of the marital deduction. *Ante,* at 8–9. I think not. The Commissioner issued Revenue Ruling 93–48 only after her contention, that §20.2056(b)–4(a) required the marital deduction to be reduced by payment of estate-tax interest from the marital bequest, was repeatedly rejected by the Tax Court and the Courts of Appeals. See, *e.g., Estate of Street* v. *Commissioner,* 974 F. 2d 723 (CA6 1992); *Estate of Whittle* v. *Commissioner,* 994 F. 2d 379 (CA7 1993); *Estate of Richardson* v. *Commissioner,* 89 T. C. 1193 (1987). Rather than continuing to expend resources in litigation that seemed likely to bring little or no income to the Treasury, the Commissioner chose, in Revenue Ruling 93–48, to "adopt the result" of thenrecent court decisions regarding interest on taxes. It is impossible to think that this suggested her view on the proper treatment of administrative expenses had changed. Indeed, the Ruling itself expressly indicates continued adherence to the Commissioner's longstanding position by reaffirming Revenue Ruling 73–98, which held that the charitable deduction must be reduced by the amount of charitable bequest income and principal consumed to pay administrative expenses, modifying it only insofar as it applies to payment of interest on taxes. Moreover, the Courts of Appeals whose results the Commissioner adopted *themselves distinguished* administrative expenses. In *Estate of Street,* for example, the court reasoned that while administrative expenses accrue at death interest on taxes accrues after death, and noted that the example in Treasury Regulation §2056(b)–4(a) specifically required a reduction of the marital deduction for payment of administrative expenses, but was silent as to interest on taxes. 974 F. 2d, at 727, 729. While the concurrence may be correct that the distinctions advanced by the Courts of Appeals are not wholly persuasive (the Commissioner herself argued

that to no avail), I hardly think they are so irrational that it was arbitrary or capricious for the Commissioner to maintain her longstanding prior position on administrative expenses once Revenue Ruling 93–48 was issued; and it is utterly impossible to think that Revenue Ruling 93–48 was, or was understood to be, an indication that the Commissioner had *changed* her prior position on administrative expenses. That eliminates the only two grounds on which Revenue Ruling 93–48 could be relevant.

The concurrence's reading of Revenue Ruling 93–48 suffers from an additional flaw. Revenue Ruling 93–48 is not limited to payment from marital bequest *income,* but rather extends to payment from marital bequest *principal* as well. Thus, under the concurrence's view of that Ruling, even substantial administrative expenses paid out of marital bequest principal may not require a reduction of the marital deduction. This result, is, of course, inconsistent with the statute, see 26 U. S. C. §2056(a), and with what appears to be (as I noted earlier, *supra*, at 4–5) the concurrence's view, *ante,* at 2.

Respondents assert that some inquiry into "substantiality" is necessarily implied by the fact that the last sentence of the regulation describes an income-to-pay-administration-expenses limitation as "[a]n example of a case in which this rule [of taking account of material limitations] *may* be applied," 26 CFR §20.2056(b)–4(a) (1996) (emphasis added). The word "may" implies, the argument goes, that in some circumstances under those same facts the rule would *not* be applied—namely (the argument posits) when the administration expenses are not "substantial." But the latter is not the only explanation for the "may." Assuming it connotes possibility rather than permissibility (as in, "My boss said that I may go to New York"), the contingency referred to could simply be the contingency that there be some income which is used to pay administration expenses.

The Tax Court (in analysis adopted verbatim by the Eleventh Circuit and seemingly adopted by the concurrence, *ante,* at 10–11) took yet a third approach to "material limitation," which I must pause to consider. The Tax Court relied on Treas. Reg. §25.2523(e)–1(f)(3), 26 CFR §25.2523(e)–1(f)(3) (1996), which, it stated, provides that so long as the spouse has substantial beneficial enjoyment of the income of a trust, the bequest will not be disqualified from the marital gift deduction by virtue of a provision allowing the trustee to allocate expenses to income, and the spouse will be deemed to have received all the income from the trust. The Tax Court concluded that: "If Mrs. Hubert is treated as having received all of the income from the trust, there can be no material limitation on her right to receive income." 101 T. C. 314, 325–326 (1993). This reasoning fails for a number of reasons. First, §25.2523(e)–1(f)(3) is a *qualification* provision; it does not purport to instruct on how to value the bequest. Second, and more fundamentally, the Tax Court's approach renders the "material limitation" phrase in §20.2056(b)–4(a) superfluous. Under that view, a limitation is material only if it deprives the spouse of substantial beneficial enjoyment of the income. However, if the spouse does not have substantial beneficial enjoyment of the income, the trust does not qualify for the marital deduction and whether the limitation is material is irrelevant. That "material limitation" is not synonymous with "substantial beneficial enjoyment" is further suggested by the regulations governing the qualification of trusts for the marital estate tax deduction, which are virtually identical to the gift tax provisions relied upon by the Tax Court. See 26 C.F.R. §20.2056(b)–5(f) (1996). Section 20.2056(b)–5(f)(9) provides that a spouse will not be deemed to lack substantial beneficial enjoyment of the income merely because the spouse is not entitled to the income from the estate assets for the period reasonably required for administration of the estate. However, that section expressly provides: "As to the *valuation* of the property interest passing to the spouse in trust where the right to income is expressly postponed, see *§20.2056(b)–4.*" *Ibid.* (emphasis added).

C

My understanding of §20.2056(b)–4(a) is the only approach consistent with the statutory requirement that the marital deduction be limited to the value of property which passes to the spouse. See 26 U. S. C. §2056(a). As the plurality and the concurrence acknowledge, one component of an asset's value is its discounted future income. See, *e.g.*, *Maass* v. *Higgins,* 312 U. S. 443, 448 (1941); 26 CFR §20.2031–l(b) (1996). (This explains why post-mortem income earned by the estate is not added to the date-of-death value in computing the gross estate: projected income was already included in the date-of-death value.) The plurality and the concurrence also properly acknowledge that if residuary principal is used to pay administration expenses, then the marital deduction must be reduced commensurately because the property does not pass to the spouse. See *ante,* at 9 (plurality opinion); *ante,* at 2 (O'CONNOR, J., concurring in the judgment); 26 U. S. C. §2056(a). The plurality and the concurrence decline, however, to follow this reasoning to its logical conclusion. Since the future stream of income is one part of the value of the assets at the date of death, use of the income to pay administration expenses (which were not included in calculating the assets' values) in effect reduces the value of the interest that passes to the spouse. As succinctly explained by a respected tax commentator:

> "Beneficiaries are compensated for the delay in receiving possession by giving them the right to the income that is earned during administration. . . . [I]t is only the combination of the two rights—that to the income and that to possess the property in the future—that gives the beneficiary rights at death that are equal to value of the property at death. If the beneficiary does not get the income, what the beneficiary gets is less than the deathtime value of the property." Davenport, A *Street* Through *Hubert*'s Fog, Tax Notes, 1107, 1110 (1996).

If the beneficiary does not receive the income generated by the marital bequest principal, she in effect receives at the date of death less than the value of the property in the estate, in much the same way as she receives less than the value of the property in the estate when principal is used to pay expenses.

II

Besides giving the word "material" the erroneous meaning of something in excess of "substantial," the plurality's opinion adopts a unique methodology for determining materiality. Consistent with its apparent view that the estate tax provi-

sions prohibit examination of any events following the date of death, the plurality concludes that whether a limitation is material, and the extent of any reduction in the marital deduction, are determined solely on the basis of the information available at the date of death—a position espoused by neither litigant, none of the *amici*, and none of the courts to have considered this issue since it arose some 35 years ago. The plurality appears to have been misled by its view that the estate tax demands symmetry: Since only anticipated income is included in the gross estate, only anticipated administration expenses can reduce the marital deduction. See *ante*, at 6–7, 11–13. The provisions of the estate tax clearly reject such a notion of symmetry and do not sharply discriminate between date-of-death and postmortem events insofar as the allowance of deductions for claims against and obligations of the estate are concerned. In this very case, for example, in calculating the taxable estate the executors deducted $506,989 of actual administration expenses pursuant to 26 U. S. C. §2053(a)-(2). App. to Pet. for Cert. 3a. The regulations governing such deductions provide that "[t]he amounts deductible . . . as 'administration expenses' . . . are limited to such expenses as are *actually* and *necessarily*, incurred in the administration of the decedent's estate," §20.2053–3(a) (emphasis added), and expressly prohibit taking a deduction "upon the basis of a vague or uncertain estimate," 26 CFR §20.2053–1(b)(3) (1996). Since such common administration expenses as litigation costs will be impossible to ascertain with any exactitude as of the date of death, the plurality's approach flatly contradicts the provisions of these regulations.[2]

The marital deduction itself is calculated on the basis of actual rather than anticipated expenditures from the marital bequest. The regulations governing 26 U. S. C. §2056(b)(4)(A), the provision requiring the marital deduction to be reduced to take account of the effect of estate and inheritance taxes, make it clear that the *actual* amounts of those taxes control. See 26 CFR §20.2056(b)–4(c) (1996). (With respect to the charitable deduction, the requirement that actual amounts be used is apparent on the face of the statute itself, see 26 U. S. C. §2055(c).) Moreover, the language of §2056(b) (4)(A) is quite similar to the language of the regulation at issue here, §20.2056(b)–4(a), suggesting that the latter, like the former, should be interpreted to require consideration of *actual*, rather than merely expected, administration expenses. Compare 26 U. S. C. §2056(b) (4)(A) ("[T]here shall be taken into account the *effect* which the tax imposed by section 2001, or any estate [tax], has on the *net* value to the surviving spouse of such interest" (emphasis added)) with 26 CFR §20.2056(b)–4(a) (1996) ("The marital deduction may be taken only with respect to the *net* value of any deductible interest which passed from the decedent to his surviving spouse . . . . In determining the value of the interest in property passing to the spouse account must be taken of *the effect of* any material limitations upon [the spouse's] right to income" (emphasis added)).

In short, the plurality's general theory concerning valuation is contradicted by provisions of both the Code and regulations. It is also plagued by a number of practical problems. Most prominently, the plurality's rule is simply unadministrable. It requires the Internal Revenue Service and courts to engage in a peculiar, *nunc pro tunc*, three-stage investigation into what would have been believed on the date of death of the decedent. This highly speculative inquiry begins, I presume, with an examination of the various possible administration expenditures multiplied by the likelihood that they would actually come into being (for example, estimating the chances that a will contest would develop). Next, one must calculate the expected future income from the bequest. Finally, one must determine if, in light of the expected income, the anticipated expenses are such that a willing buyer would deem them to be a "material [*i.e.*, substantial] limitation" on the right to receive income.

Just how a court, presiding over a tax controversy many years after the decedent's death, is supposed to blind itself to later-developed facts, and gauge the expected administration expenses and anticipated income just as they would have been gauged on the date of death, is a mystery to me. In most cases, it is nearly impossible to estimate administration expenses as of the date of death; much less is it feasible to reconstruct such an estimation five or six years later. The plurality's test creates tremendous uncertainty and will undoubtedly produce extensive litigation. We should be very reluctant to attribute to the Code or the Secretary's regulations the intention to require this sort of inherently difficult inquiry, especially when the key regulation is best read to require that account be taken of *actual* expenses.

The plurality's test also leads to rather peculiar results. One example should suffice: Assume a decedent leaves his entire $30 million estate in trust to his wife and that as of the date of death a hypothetical buyer estimates that the estate will generate administration expenses on the order of $5 million because the decedent's estranged son has publicly stated that he is going to wage a fight over the will. Further, assume that the will provides that either income or principal may be used to satisfy the estate's expenses. Finally, assume that a week after the decedent's death, mother and son put aside their differences and that the money passes to the spouse almost immediately with virtually no administration expenses. Under the plurality's test, since "only anticipated administration expenses payable from income, not the actual ones, affect the date-of-death value of the marital or charitable bequests," *ante*, at 13, the marital deduction will be limited to approximately $25 million, and, despite generating almost no income and having very few administration expenses, the estate will be required to pay an estate tax on some five million dollars even though the entire estate passed to the spouse. The plurality's test creates taxable estates where none exist. The proper result under §2056(b)(4)(B) and §20.2056 (b)–4(a) is that the marital deduction is thirty million dollars and the estate pays no estate tax.

I have one final concern with the plurality's approach: It effectively permits an estate to obtain a double deduction from tax for administration expenses, a tax windfall which Congress could never have intended. Title 26 U. S. C. §642(g) provides that administration expenses, which are allowed as a deduction in com-

[2]The plurality's reference to *Ithaca Trust Co.* v. *United States*, 279 U. S. 151 (1929), is unhelpful. That case holds that date-of-death valuation is applicable to bequeathed assets, not that it is applicable to claims and obligations that are to be satisfied out of those assets.

puting the taxable estate of a decedent, see §2053, may be deducted from income (provided they fall within an income tax deduction) if the estate files a statement with the Secretary stating that such amounts have not been taken as deductions from the gross estate. Here, respondent elected to deduct some $1.5 million of its administration expenses on its fiduciary income tax returns and was prohibited from taking these expenses as a deduction from the gross estate. Notwithstanding §642(g), however, the plurality's holding effectively permits the respondent to deduct the $1.5 million of administration expenses on the estate tax return under the guise of a marital or charitable deduction. Of course, the estate could have avoided the estate tax by electing to deduct its administration expenses on its estate tax return, but then it would have had no income-tax deduction; Congress gave estates a choice, not a road map to a double deduction. I recognize that nothing in §642(g) *compels* the conclusion that the marital (or charitable) deduction must be reduced whenever an estate elects to deduct expenses from income. However, by enacting §642 to prohibit a double deduction, Congress seemingly anticipated that if an estate elected to deduct administration expenses against income, its potential estate tax liability would increase commensurately. The plurality's holding today defeats this expectation.

III

The plurality today virtually ignores the controlling authority and instead decides this case based on a novel vision of the estate tax system. Because 26 CFR §20.2056(b)–4(a) (1996), which is a reasonable interpretation of 26 U. S. C. §2056(b)(4)(B), squarely controls this case and requires that the marital (and charitable) deductions be reduced whenever marital (or charitable) bequest income is used to pay administration expenses, I would reverse the judgment of the Eleventh Circuit. There is some dispute as to how exactly to calculate the reduction in the marital and charitable deductions. The dissenting judges in the Tax Court, on the one hand, contended that the marital and charitable deductions should be reduced by the date-of-death value of an annuity charged against the residuary interest which would be sufficient to pay the actual administration expenses charged to income. See 101 T. C., at 348–349 (Beghe, J., dissenting). The Commissioner, on the other hand, contends that the marital and charitable deductions must be reduced on a dollar-for-dollar basis, reasoning that this is the same way that all claims and obligations of the estate are treated. Since this dispute was not adequately briefed by the parties, nor passed upon by the Eleventh Circuit or the majority of judges in the Tax Court, I would remand the case to allow the lower courts to consider this issue in the first instance.

* * * * *

JUSTICE BREYER, dissenting.

I join JUSTICE SCALIA's dissent. This case turns on whether a payment of administration expenses out of income generated by estate assets constitutes a "material limitation" on the right to receive income from those assets. 26 CFR §20.2056(b)–4(a) (1996). The Commissioner has long, and consistently, argued that such a payment does reduce the value of the marital deduction. See, *e.g., Ballantine* v. *Tomlinson,* 293 F. 2d 311 (CA5 1961); *Alston* v. *United States,* 349 F. 2d 87 (CA5 1965); *Estate of Street* v. *Commissioner of Internal Revenue,* 974 F. 2d 723 (CA6 1992); *Estate of Roney,* 33 T. C. 801 (1960), aff'd *per curiam,* 294 F. 2d 774 (CA5 1961); Reply Brief for United States 15. JUSTICE SCALIA explains why the Commissioner's interpretation is consistent with the regulation's language and the statute it interprets. I add a brief explanation as to why I believe that it is consistent with basic statutory and regulatory tax law objectives as well.

The regulation, which speaks of the "net value" of what passes to the spouse, requires a realistic valuation of the interest left to the spouse as of the date of the decedent's death. Assume, for example, that a decedent leaves his entire estate to his wife in trust, with the proviso that the administrator pay 25% of the income earned by the estate assets during the period of administration to the decedent's son. Assume that the period of administration lasts several years and that the estate generates several million dollars in income during that time. On these assumptions, the son will have received an important asset (included in the estate's date-of-death value) that the surviving spouse did not receive, namely, the right to a portion of the estate's income over a period of several years. Were estate tax law to fail to take account of this fact (that the son, not the wife, received that asset), it would permit a valuable asset (the right to that income) to pass to the son without estate tax. But estate tax law does seem realistically to appraise the "net value" of what passes to the wife in such circumstances. See 26 CFR §§20.2056(b)–5(f)(9), 20.2056(b)–4(a) (1996); 4 A. Casner & J. Pennell, Estate Planning §13.11, pp. 138–139, and §13.14.6, n. 18 (5th ed. 1988); cf. *Estate of Friedberg,* 63 TCM 3080 (1992), ¶92, 310 P–H Memo TC (delay in payment of a specific bequest to a surviving spouse reduces its marital deduction value). And that being so, why would it not take account of the similar limitation on the right to income at issue here? The fact that the administrator uses estate income to pay administration expenses, rather than to make a bequest to the son, makes no difference from a marital deduction perspective, for, as the regulations state, the marital deduction focuses upon the "net value" of the "interest which passed from the decedent to his surviving spouse." §20.2056(b)–4(a) (1996); see *United States* v. *Stapf,* 375 U. S. 118, 125 (1963).

The Commissioner's position also treats economic equals as equal. The time when the administrator writes the relevant checks, and not the account to which he debits them, determines economic impact. Thus $100,000 in administration expenses incurred by a $1 million estate open for one year, paid by check on the year's last day will (assuming 10% simple interest and assuming away here-irrelevant complexities) leave $1 million for the spouse at year's end, whether the administrator pays the expenses out of estate principal or from income. On these same assumptions, a commitment to pay, say, $100,000 in administration expenses out of income will reduce the value of principal by an amount identical to the reduction in value that would flow from a commitment to pay a similar amount out of principal. This economic similarity argues for similar estate tax treatment.

I recognize that the statute permits estates to deduct administration and certain other expenses either from the estate tax

or from the estate's income tax. 26 U. S. C. 642(g); cf. *ante*, at 2 (O'CONNOR, J., concurring in judgment). But I do not read that statute as allowing a spouse to escape payment both of the estate tax (through a greater marital deduction) and also of income tax (through the deduction of the administration expenses from income). One can easily read the provision's language as simply granting the estate the advantage of whichever of the two tax rates is the more favorable, while continuing to require the estate to pay at least one of the two potential taxes. To read the "election" provision in this way makes of it a less dramatic departure from a Tax Code that otherwise sees what passes to heirs not as the full value of what the testator left, but, rather, as that value minus a set of permitted deductions. 26 U. S. C. §2053(a) (specifying deductions).

Although respondents argue that the Commissioner's interpretation will sometimes produce an unjustified "shrinking" of the marital deduction, I do not see how that is so. I concede that unfairness could occur were the Commissioner to readjust the marital deduction *every time* the administrator deducted from the estate's income tax *every* expense necessary to produce that income. But regulations guard against her doing so. Those regulations distinguish between (a) "expenditures . . . essential to the proper settlement of the estate," and (b) expenses "incurred for the individual benefit of the heirs, legatees, or devisees." 26 CFR §20.2053–3(a) (1996). The former are "administration expenses;" the latter are not. Deducting expenses in the latter category from the estate's income tax should not affect the marital deduction; and, as long as that is so, the Commissioner's interpretation will simply permit estates to use their administration expense deductions to best tax advantage. It will not lead to a marital deduction that to the spouse's overall disadvantage somehow shrinks, or disappears.

The Commissioner's insistence upon reducing the date of death value of the trust dollar-for-dollar poses a more serious problem. Payment of $100,000 in administration expenses from future income should reduce the date of death value of assets left to a wife in trust not by $100,000, but by $100,000 discounted to reflect the fact that the $100,000 will be paid in the future, earning interest in the meantime. (Assuming a 10% interest rate and payment one year after death, the reduction in value would be about $91,000, not $100,000.) Nonetheless, the Commissioner's practice of reducing the marital deduction dollar-for-dollar might reflect the simplifying assumption that discount calculations do not make a sufficiently large difference sufficiently often to warrant the administrative burden of authorizing them. Or it might reflect the fact that when administration expenses are taken as a deduction against the estate tax, their value is not discounted. Were the Commissioner to defend the dollar-for-dollar position in some such way, her approach might prove reasonable. And this Court will defer to longstanding interpretations of the Code and Treasury Regulations, see *supra*, at 1, that reasonably "implement the congressional mandate." *United States* v. *Correll*, 389 U. S. 299, 307 (1967); see *National Muffler Dealers Assn., Inc.* v. *United States*, 440 U. S. 472, 488 (1979). Regardless, I would not decide this matter now, for it has not been argued to us.

Finally, although I agree with much that JUSTICE O'CONNOR has written, I cannot agree that the amount at issue—almost $1.5 million of administration expenses deducted from income—is insignificant hence immaterial; and I can find no concession to that effect in the courts below.

For these reasons and those set forth by JUSTICE SCALIA, I would reverse the Court of Appeals.

Notice of Proposed Rulemaking and Notice of Public Hearing

Permitted Elimination of Preretirement Optional Forms of Benefit

REG–107644–97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would permit an amendment to a qualified plan that eliminates certain preretirement optional forms of benefit. These regulations affect employers that maintain qualified plans, plan administrators of qualified plans and participants in qualified plans. This document provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of the topics to be discussed at the public hearing must be received by September 30, 1997. A public hearing is scheduled for October 28, 1997.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–107644–97), Room 5228, 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 (REG–107644–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. A public hearing is scheduled to be held in the Auditorium, Internal Revenue Building, 111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622-6050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget,** Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service,** Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by September 2, 1997. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service,** including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collectin of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §1.411(d)–4. This information is required for a taxpayer who wants to amend a qualified plan to eliminate certain preretirement optional forms of benefit. This information will be used to determine whether taxpayers have amended a qualified plan. The collection of information is voluntary to obtain a benefit. The likely recordkeepers are businesses or other for-profit organizations and non-profit institutions.

Estimated total recordkeeping burden: 48,800 hours.

Estimated average burden per recordkeeper: For Master and Prototype Plan Employers: 10 minutes. For Master and Prototype Plan Sponsors: 30 minutes. For Employers with Individually Designed Plans: 30 minutes.

Estimated number of recordkeepers: 135,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This notice contains proposed amendments to the income tax regulations (26 CFR Part 1) under section 411(d) of the Internal Revenue Code of 1986.

Section 411(d)(6) generally provides that a plan will not be treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Under section 411(d)(6)(B), a plan amendment that eliminates an optional form of benefit will be treated as reducing accrued benefits to the extent that the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. However, section 411(d)(6)-(B) also permits the Secretary to provide in regulations that this rule will not apply to an amendment that eliminates an optional form of benefit.

Section 401(a)(9) provides that, in order for a plan to be qualified under section 401(a), distributions from the plan must commence no later than the "required beginning date." Prior to 1997, section 401(a)(9)(C) generally provided that the required beginning date is April 1 following the calendar year in which the employee attains age 70½. Consequently, in order to satisfy section 401(a)(9), qualified plans, other than certain church and governmental plans, have provided for distributions to commence no later than April 1 following the calendar year that

an employee attains age 70½. These distributions commence without regard to whether the employee has retired from employment with the employer maintaining the plan.

Section 1404 of the Small Business Job Protection Act of 1996, Public Law 104–188 (SBJPA), amended the definition of required beginning date that applies to an employee who is not a 5-percent owner. Section 401(a)(9)(C)(i), as amended, provides that, in the case of such an employee, the required beginning date is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires. Accordingly, except for 5-percent owners, a plan is no longer required to provide for distributions that commence prior to retirement in order to satisfy section 401(a)(9).

The right to commence benefit distributions in any form at a particular time is an optional form of benefit within the meaning of section 411(d)(6)(B) and §1.411(d)–4 Q&A–1(b). In enacting section 1404 of the SBJPA, Congress did not alter the application of section 411(d)(6). Thus, except to the extent authorized by regulations, a plan amendment that eliminates the right to commence preretirement benefit distributions in a plan after age 70½ (or restricts the right by adding an additional condition) violates section 411(d)(6) if the amendment applies to benefits accrued as of the later of the adoption or effective date of the amendment.

Notice 96–67 (1996–53 I.R.B. 12) provided questions and answers addressing certain issues relating to the amendment of section 401(a)(9)(C) by the SBJPA and requested comments concerning the extent to which relief from section 411(d)(6) would be appropriate for plan amendments that eliminate preretirement distributions after age 70½ (e.g., by limiting section 411(d)(6) protection to employees above a certain age).

Overview

1. Permitted Elimination of Preretirement Distributions After Age 701/2

The legislative history to section 1404 of the SBJPA indicates that the reason for amending the definition of required beginning date was that it is inappropriate to require all participants to commence distributions by age 70½ without regard to whether the participant is still employed by the employer. Because section 1404 did not alter the application of section 411(d)(6) to plan provisions allowing or requiring preretirement distributions after age 70½, an employer's choices for amending its plan to implement the SBJPA change to the definition of required beginning date are limited unless the IRS and Treasury grant relief from section 411(d)(6).

As one choice, in accordance with the guidance in Announcement 97–24 (1997–11 I.R.B. 24) March 13, 1997, the employer may give employees the option of commencing distributions at age 70½ or deferring commencement until after retirement. As a second alternative, the employer may amend the plan to eliminate the right to preretirement distributions solely with respect to future accruals. However, under this second approach, each current participant would retain the right to receive preretirement distributions after age 70½ with respect to a portion of his or her accrued benefit.

The IRS and Treasury recognize the potential complexity of administering plans (particularly defined benefit plans) that adopt either of these choices. In addition, an employer may not have voluntarily chosen to offer preretirement distributions to employees who have attained age 70½ but instead may have included these provisions in its plan solely to comply with section 401(a)(9) prior to its amendment by the SBJPA. Therefore, after consideration of the comments received in response to Notice 96–67 and subject to the conditions described below, the proposed regulations would provide relief from section 411(d)(6) for certain plan amendments that eliminate preretirement distributions commencing at age 70½.

2. Conditions on the Relief From Section 411(d)(6)

a. Protection for Employees Who Are Near Age70½

Under the proposed regulation, an amendment to eliminate a preretirement age 70½ distribution option may apply only to benefits with respect to employees who attain age 70½ in or after a calendar year, specified in the amendment, that begins after the later of December 31, 1998, or the adoption date of the amendment. The relief from section 411(d)(6) is limited to distributions to employees who attain age 70½ after calendar year 1998 because employees who were near age 70½ at the time of enactment of the SBJPA may have had an expectation of receiving preretirement distributions in the near future and may have made plans that took into account these expected distributions.

b. Optional Forms of Benefit for Participants Retiring After Age 70½

A plan using this relief generally may not preclude an employee who retires after the calendar year in which the employee attains age 70½ from receiving an optional form of benefit that would have been available if the employee had retired in the calendar year in which the employee attained age 70½ .

c. Timing of Plan Amendment

An amendment to eliminate a preretirement age 70½ distribution option may be adopted no later than the last day of any remedial amendment period that applies to the plan for changes under the SBJPA. However, in no event will the deadline for adopting such a plan amendment be before December 31, 1998. The relief provided is available only to employers that adopt the amendment within this specified time period because the relief is being provided to simplify the implementation of section 401(a)(9), as amended by the SBJPA, for employers that do not voluntarily provide preretirement distributions for an extended period after the enactment of the SBJPA.

3. Circumstances Under Which No Relief Is Required

Many employers do not need relief under section 411(d)(6) in order to implement the SBJPA change in the definition of required beginning date in their plans. The regulation includes an example of such a plan, a profit-sharing plan that permits an employee to elect distribution after age 59½ at any time and in any amount. The example illustrates that this plan may be amended to implement the SBJPA change in the definition of re-

quired beginning date without violating section 411(d)(6). In this example, the section 411(d)(6) relief proposed in this regulation is not required because the optional forms of benefit in the plan that reflect the pre-SBJPA mandatory distribution requirements of section 401(a)(9) are encompassed by the optional forms of benefit provided under the general elective distribution provisions. The right to commence distributions at age 70½ continues to be available under the plan even after the plan is amended to implement the SBJPA change in the required beginning date.

Effective Date

The guidance in these proposed regulations will only be effective after the date that final regulations are adopted and will only apply to amendments adopted and effective after that date. In order to provide employers with ample time to craft the appropriate plan amendment to implement the relief from section 411(d)(6) that would be provided when these regulations are finalized, the IRS and the Treasury intend to finalize these regulations on an expedited schedule after consideration of the comments received.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. The burden imposed by the collection of information is the burden of amending a plan to modify the provisions reflecting section 401(a)(9). The cost of the amendment varies depending upon whether the small entity involved maintains an individually designed plan or uses a master or prototype plan. For an individually designed plan, the small entity maintaining the plan will be responsible for arranging to have the amendment made. Most small entities with individually designed plans will have the amendment done by a skilled outside service provider, such as a consulting firm or law firm. The time required to make such an amendment is estimated at 30 minutes, which is not a significant economic impact, even for a very small entity. Moreover, most very small entities that maintain a qualified plan use a master or prototype plan. For master and prototype plans, the plan sponsor drafts a single amendment for all of the employers participating in the plan. The average time required for the amendment per employer participating in a master or prototype plan is estimated to be 10 minutes, which certainly is not a substantial economic impact. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 28, 1997, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral arguments at the hearing must submit written comments and an outline of the topics to be discussed at the time devoted to each topic by September 30, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of speakers will be prepared after deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Cheryl Press, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for §1.411(d)–4 to read as folows:

Authority: 26 U.S.C. 7805. * * *

§1.411(d)–4 also issued under 26 U.S.C. 411(d)(6).* * *

Par. 2. Section 1.411(d)–4 is amended by adding Q&A–10 to read as follows:

§1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

Q–10. If a plan provides for an age 70½ distribution option that commences prior to retirement from employment with the employer maintaining the plan, to what extent may the plan be amended to eliminate this distribution provision?

A–10. (a) *In general.* The right to commence benefit distributions in a particular form and at a particular time prior to retirement from employment with the employer maintaining the plan is a separate optional form of benefit within the meaning of section 411(d)(6)(B) and Q&A–1 of this section, even if the plan provision creating this right was included in the plan solely to comply with section 401(a)(9), as in effect for years before January 1, 1997. Therefore, except as otherwise provided in paragraph (b) of this A–10, a plan amendment violates section 411(d)(6) if it eliminates an age 70½ distribution option (within the meaning of paragraph (c) of this A–10) to the extent that it applies to benefits accrued as of the later of the adoption date or effective date of the amendment.

(b) *Permitted elimination of optional form.* An amendment of a plan will not violate the requiremnts of section 411(d)(6)

merely because the amendment eliminates an age 70½ distribution option to the extent that the option provides for distribution to an employee prior to retirement from employment with the employer maintaining the plan, provided that—

(1) The amendment eliminating this optional form of benefit applies only to benefits with respect to employees who attain age 70½ in or after a calendar year, specified in the amendment, that begins after the later of—

(i) December 31, 1998; or

(ii) The adoption date of the amendment;

(2) The plan does not, except to the extent required by section 401(a)(9), preclude an employee who retires after the calendar year in which the employee attains age 70½ from receiving benefits in any of the same optional forms of benefit (except for the difference in the timing of the commencement of payments) that would have been available had the employee retired in the calendar year in which the employee attained age 70½; and

(3) The amendment is adopted no later than the last day of any remedial amendment period that applies to the plan for changes under the Small Business Job Protection Act of 1996 (110 Stat. 1755) (but in no event will the adoption of the amendment be required before December 31, 1998).

(c) *Age 70½ distribution option.* For purposes of this Q&A–10, an age 70½ distribution option is an optional form of benefit under which benefits payable in a particular distribution form (including any modifications that may be elected after benefit commencement) commence at a time during the period that begins on or after January 1 of the calendar year in which an employee attains age 70½ and ends April 1 of the immediately following calendar year.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Plan A, a defined benefit plan, provides each participant with a qualified joint and survivor annuity (QJSA) that is available at any time after the later of age 65 or retirement. However, in accordance with section 401(a)(9) as in effect prior to January 1, 1997, Plan A provides that if an employee does not retire by the end of the calendar year in which the employee attains age 70½, then the QJSA commences on the following April 1. On October 1, 1998, Plan A is amended to provide that, for an employee who is not a 5-percent owner and who attains age 70½ after 1998, benefits may not commence before the employee retires but must commence no later than the April 1 following the later of the calendar year in which the employee retires or the calendar year in which the employee attains age 70½. This amendment satisfies this Q&A–10 and does not violate section 411(d)(6).

Example 2. Plan B, a money purchase pension plan, provides each participant with a choice of a QJSA or a single sum distribution commencing at any time after the later of age 65 or retirement. In addition, in accordance with section 401(a)(9) as in effect prior to January 1, 1997, Plan B provides that benefits will commence in the form of a QJSA on April 1 following the calendar year in which the employee attains age 70½, except that, with spousal consent, a participant may elect to receive annual installment payments equal to the minimum amount necessary to satisfy section 401(a)(9) (calculated in accordance with a method specified in the plan) until retirement, at which time a participant may choose between a QJSA and a single sum distribution (with spousal consent). On June 30, 1998, Plan B is amended to provide that, for an employee who is not a 5-percent owner and who attains age 70½ after 1998, benefits may not commence prior to retirement but benefits must commence no later than April 1 after the later of the calendar year in which the employee retires or the calendar year in which the employee attains age 70½. The amendment further provides that the option described above to receive annual installment payments prior to retirement will not be available under the plan to an employee who is not a 5-percent owner and who attains age 70½ after 1998. This amendment satisfies this Q&A–10 and does not violate section 411(d)(6).

Example 3. Plan C, a profit-sharing plan, contains two distribution provisions. Under the first provision, in any year after an employee attains age 59½, the employee may elect a distribution of any specified amount not exceeding the balance of the employee's account. In addition, the plan provides a secion 401(a)(9) override provision under which, if, during any year following the year that the employee attains age 70½, the employee does not elect an amount at least equal to the minimum amount necessary to satisfy section 401(a)(9) (calculated in accordance with a method specified in the plan), Plan C will distribute the difference by December 31 of that year (or for the year the employee attains age 70½, by April 1 of the following year). On December 31, 1996, Plan C is amended to provide that, for an employee other than an employee who is a 5-percent owner in the year that the employee attains age 70½, in applying the section 401(a)(9) override provision, the later of the year of retirement, or year of attainment of age 70½, is substituted for the year that the employee attains age 70½. After the amendment, Plan C still permits each employee to elect to receive the same amount as was available before the amendment. Because this amendment does not eliminate an optional form of benefit, the amendment does not violate section 411(d)(6). Accordingly, the amendment is not required to satisfy the conditions of paragraph (b) of this A–10.

(e) This Q&A–10 applies to amendments adopted and effective after the publication of final regulations in the **Federal Register.**

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on July 1, 1997, 8:45 a.m., and published in the issue of the Federal Register for July 2, 1997, 62 F.R. 35752)

Part IV. Items of General Interest

Corrections to Rev. Rul. 97–31: International Operation of Ships and Aircraft; Income Exempt From Tax

Announcement 97–75

Rev. Rul. 97–31, which was "dropped" on July 22, 1997, omitted Kazakhstan from Part I of the Table. Part I of the Table provides a list of countries that have an income tax convention in effect with the United States containing an exemption for income of United States persons that are engaged in the international operation of ships or aircraft.

The corrected version of Rev. Rul. 97–31 includes Kazakhstan in Part I of the Table and adds Kazakhstan to footnote 22 and removes it from footnote 25. Rev. Rul. 97–31 as corrected is published in this Bulletin, I.R.B. 1997–32 dated August 11, 1997.

Contacts

For further information or assistance regarding this announcement, please contact Patricia Bray, Office of the Associate Chief Counsel (International) at (202) 622-3880 (not a toll-free call) or FAX (202) 622-4408.

Foundations Status of Certain Organizations

Announcement 97–76

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Aztec Educational Foundation, Shawnee, KS
Baby Safe Haven Inc., Philadelphia, PA
Barga County Chip, Lanse, MI
Cardiovascular Pharmacotherapy Symposium, Minneapolis, MN
C & M Development Association, Joliet, IL
Coalition for a National Memorial to Mahatma Gandhi, Potomac, MD
Community Valley Community Outreach Corp., Bryn Athon, PA
Comunidad en Accion, Inc., New Britain, CT
CTC Swan Medical Fund Inc., Columbus, OH
Dudley Ministries Inc, Milwaukee, WI
Evergreen Living Foundation, Inc., Detroit, MI
Evy Lessin Fund for Ovarian Cancer Research, Gladwynne, PA
Friends of the Homeless Corp., Bayonne, NJ
Hardy County Extension Service Foundation, Inc., Moorefield, WV
Health Commons Institute, Falmouth, ME
Heyoka Foundation, Inchellium, WA
Hidden Talents Therapeutic Riding Inc., Fredonia, WI
Horse Lovers United Inc., Salisbury, MD
Hospice of Wythe Bland Inc., Wytheville, VA
Houston Trial Lawyers Foundation, Houston, TX
Jaga Learning Center, Little Rock, AR
Josh Gottheil Memorial Fund for Lymphoma Research, Urbana, IL
Joshua Richwine Memorial Fund, Norwood, MA
Karl Pilsl Ministries Inc., Tulsa, OK
Laulima Kokua Okamanawa, Hilo, HI
Levitical Ministries Inc., Brunswick, TN
Licking Valley Family "Y" Association, Cynthiana, KY
Lily Fields Inc., Knoxville, TN
Little Feet Child Care Center Inc., Farmington, NM
Little People Place, Blytheville, AR
Longmeadow Diamond Club, Springfield, MA
Love Horizons, Inc., Country Club Hills, IL
Lowndes County Public Schools Foundation, Hayneville, AL
Macks Loving Day Care Center Inc., Baltimore, MD
Maryland Foundation for Research and Economic Education Inc., Baltimore, MD
Melody Foundation A New Jersey Non-Profit Corporation, Princeton, NJ
Metaphysical Alternative Group Inc., Royal Oak, MI
Metropolitan Police Education Foundation, Inc., Nashville, TN
Michelle McLean Children Trust, Inc., Washington, DC
Midwest Funding Corporation, Overland Park, KS
Midwest Missouri Youth Sports Association Inc., Raytown, MO
Ministry of El Shaddai, Enterprise, AL
Minnesota Agri-Growth Foundation, Inc., Bloomington, MN
Minnesota Blades Hockey Club, Wayzata, MN
Mt. Olive Development Corporation, Buffalo, NY
A Museum in the Hudson Valley at Newburgh, Newburgh, NY
Mutual Housing Group of Yonkers, Yonkers, NY
NDI Management Corporation, Bronx, NY
NEDP, Inc., Tupper Lake, NY
New Choreographers Forum, Inc., Arlington, MA
New Ebony Community Association, Inc., New York, NY
New England Council for Middle East Studies, Inc., Providence, RI
New Era Alternative Treatment Center Inc., Highland Park, MI
Neworks Theatre, Inc., Haverhill, MA
New York Charities, New York, NY
Ninas Gymnastics Foundation, Inc., Queens, NY
Nine Lives Productions, Inc., Flushing, NY
North Country Christian Radio Inc., Bemidiji, MN
Northeastern Native American Association, Inc., Jamaica, NY
Northeast Resources, Inc., Minneapolis, MN
Novak-Cullen Athletic Club, Omaha, NE
NY Gulf War Fund, New York, NY
Odyssey Dance Co., Inc., Astoria, NY
Oekos A Foundation for Education, Inc., Harvard, MA
Operation Eagle, Inc., Shrewsbury, MA
Parents for a Better Playground, Derby, CT

Partners in Prevention, Inc., Weston, MA
Pastoral Counseling Center of the Dover-Rochester Area, Rochester, NH
Pen Club Vietnamese Writers of the Southern States of United States, Houston, TX
Picture Project, Inc., New York, NY
Playground Planners of Milton, Inc., Milton, MA
Polish Childrens Relief Fund, Inc., New York, NY
Princeton Task Force on Ethics in Business Government and the Professions, Princeton, NJ
Project Yad, Inc., Brookline, MA
Renaissance Development Enterprises Incorporated, Chicago, IL
Rancho Santa Fe Youth Soccer, Rancho Santa Fe, CA
Seniors Helping Seniors, Inc., Milford, OH
Webster City Community Foundation, Inc., Webster City, IA
Working Institute of Service Enfranchisement WISE, Harvey, LA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedral Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

Bulletins 1997–27 through 1997–31

Announcements:

97–61, 1997–29 I.R.B. *13*
97–67, 1997–27 I.R.B. *37*
97–68, 1997–28 I.R.B. *13*
97–69, 1997–28 I.R.B. *13*
97–70, 1997–29 I.R.B. *14*
97–71, 1997–29 I.R.B. *15*
97–72, 1997–29 I.R.B. *15*
97–73, 1997–30 I.R.B. *86*
97–74, 1997–31 I.R.B. *16*

Court Decisions:

2061, 1997–31 I.R.B. *5*

Delegation Orders:

172 (Rev. 5), 1997–28 I.R.B. *6*

Notices:

97–37, 1997–27 I.R.B. *4*
97–38, 1997–27 I.R.B. *8*
97–39, 1997–27 I.R.B. *8*
97–40, 1997–28 I.R.B. *6*
97–41, 1997–28 I.R.B. *6*
97–42, 1997–29 I.R.B. *12*
97–43, 1997–30 I.R.B. *9*
97–44, 1997–31 I.R.B. *15*

Railroad Retirement Quarterly Rate:

1997–28 I.R.B. *5*

Proposed Regulations:

REG–104893–97, 1997–29 I.R.B. *13*

Revenue Procedures:

97–32, 1997–27 I.R.B. *9*
97–33, 1997–30 I.R.B. *10*
97–34, 1997–30 I.R.B. *14*

Revenue Rulings:

97–27, 1997–27 I.R.B. *4*
97–28, 1997–28 I.R.B. *4*
97–29, 1997–28 I.R.B. *4*
97–30, 1997–31 I.R.B. *12*

Treasury Decisions:

8722, 1997–29 I.R.B. *4*
8723, 1997–30 I.R.B. *4*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

Finding List of Current Action on Previously Published Items[1]

Bulletins 1997–27 through 1997–31

*Denotes entry since last publication

Revenue Procedures:

96–36
Superseded by
97–34, 1997–30 I.R.B. *14*

96–42
Superseded by
97–27, 1997–27 I.R.B. *9*

[1] A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

Superintendent of Documents Publications and Subscriptions Order Form

New Deposit Account?

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of $50 or more, we will establish your GPO Deposit Account.

☐ YES! Open a Deposit Account for me so I can order future publications quickly and easily. I'm enclosing the $50.00 initial deposit.

Order processing code: *3119

Check here ☐

NOTE: All prices include regular domestic postage and handling. Subscription prices are subject to change at any time. International customers, please add 25%. To fax your orders (202) 512-2250

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Publications

Standing Order Service

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA, or MasterCard account. Or open a Deposit Account with an initial deposit of $50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped.

Qty.	Stock Number	Title	Price Each	Total Price
	021-000-00909-2	Subject Bibliography	FREE	FREE
		Listing Cum. Bulletins prior to 1988 SB-066		
	048-004-02277-0	Cum. Bulletin 1988-1 (Jan-June)	$42	
	048-004-02279-6	Cum. Bulletin 1988-2 (July-Dec)	$41	
	048-004-02291-5	Cum. Bulletin 1988-3	$40	
	048-004-02286-9	Cum. Bulletin 1989-1 (Jan-June)	$44	
	048-004-02292-3	Cum. Bulletin 1989-2 (July-Dec)	$40	
	048-004-02295-8	Cum. Bulletin 1990-1 (Jan-June)	$38	
	048-004-02300-8	Cum. Bulletin 1990-2 (July-Dec)	$41	
	048-004-02305-9	Cum. Bulletin 1991-1 (Jan-June)	$44	
	048-004-02309-1	Cum. Bulletin 1991-2 (July-Dec)	$45	
	048-004-02310-5	Cum. Bulletin 1992-1 (Jan-June)	$51	
	048-004-02317-2	Cum. Bulletin 1992-2 (July-Dec)	$47	
		Total for Publications		

FUTURE EDITIONS of Internal Revenue Cumulative Bulletins are available through "STANDING ORDER SERVICE." Get these future editions—automatically—without having to initiate a purchase order.

AUTHORIZATION FOR STANDING ORDER SERVICE

I hereby authorize the Superintendent of Documents to charge my:

☐ VISA, ☐ MasterCard, or ☐ Superintendent of Documents Deposit Account for the Standing Order item below selected and shipped to me.

Authorizing signature (Standing Orders not valid unless signed.)

Please print or type your name.

Office Phone Number (_____) _____

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

GPO DEPOSIT ACCOUNT

Subscriptions

Qty.	Listing ID	Title	Price Each	Total Price
	N-914	Priority Announcements for Accountants	FREE	FREE
	IRB	Internal Revenue Bulletin	$123	
		Optional—Add $50 to open new Deposit Account and please check box in upper right corner		
		Total Cost of Order		

Standing Orders remain in effect until canceled in writing (telephone cancellations are accepted but must be followed up with a written cancellation within 10 days) or canceled by the Superintendent of Documents. Service begins with the next issue released of each item selected. An acknowledgment card is sent for each Standing Order item selected.

FREE Priority Announcement Service

You can find out about new publications for tax practitioners and accountants—as they are released—through our FREE Priority Announcement Service. See above.

For privacy protection, check the box below:

☐ Do not make my name available to other mailers

Check method of payment:

☐ Check payable to Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) 4/93

Purchase Order No. _____

(If purchase order included.)

Please type or print

(Company or Personal Name)

(Additional address/attention line)

(Street address)

INTERNAL REVENUE BULLETIN

The Introduction on page 3 describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page (www.irs.ustreas.gov) or write to the IRS Bulletin Unit, T:FP:F:CD, Room 5560, 1111 Constitution Avenue NW, Washington, DC 20224. You can also leave a recorded message 24 hours a day, 7 days a week at 1–800–829–9043.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300

First Class Mail
Postage and Fees Paid
IRS
Permit No. G–48

INTERNAL REVENUE BULLETIN

The Introduction on page 3 describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page (www.irs.ustreas.gov) or write to the IRS Bulletin Unit, T:FP:F:CD, Room 5560, 1111 Constitution Avenue NW, Washington, DC 20224. You can also leave a recorded message 24 hours a day, 7 days a week at 1–800–829–9043.

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

First Class Mail
Postage and Fees Paid
GPO
Permit No. G–26

Official Business
Penalty for Private Use, $300