(A) serves as an instrumentality of any State or any political subdivision of any State; and

(B) functions as a source of residential mortgage loan financing in that State.

(2) NONPROFIT ENTITY.—The term "nonprofit entity" means any not-for-profit corporation chartered under State law that is exempt from Federal taxation under section 501(c) of the Internal Revenue Code of 1986 and no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual (including any nonprofit entity established by the corporation established under title IX of the Housing and Urban Development Act of 1968).

(3) MORTGAGE-RELATED ASSETS.—The term "mortgage-related assets" means—

(A) residential mortgage loans secured by 1- to 4-family or multifamily dwellings; and

(B) real property improved with 1- to 4-family or multifamily residential dwellings,

which are located within the jurisdiction of the applicable State housing finance authority or within the geographical area served by the nonprofit entity.

(4) NET INCOME.—The term "net income" means income after deduction of all associated expenses calculated in accordance with generally accepted accounting principles.

SEC. 1302. AUTHORIZATION FOR STATE HOUSING FINANCE AGENCIES AND NONPROFIT ENTITIES TO PURCHASE MORTGAGE-RELATED ASSETS.

(a) AUTHORIZATION.—Notwithstanding any other provision of Federal or State law, a State housing finance authority or nonprofit entity may purchase mortgage-related assets from the Resolution Trust Corporation or from financial institutions with respect to which the Federal Deposit Insurance Corporation is acting as a conservator or receiver (including assets associated with any trust business), and any contract for such purchase shall be effective in accordance with its terms without any further approval, assignment, or consent with respect to that contract.

(b) INVESTMENT REQUIREMENT.—Any State housing finance authority or nonprofit entity which purchases mortgage-related assets pursuant to subsection (a) shall invest any net income attributable to the ownership of those assets in financing, refinancing, or rehabilitating low- and moderate-income housing within the jurisdiction of the State housing finance authority or within the geographical area served by the nonprofit entity.

TITLE XIV—TAX PROVISIONS

SEC. 1401. EARLY TERMINATION OF SPECIAL REORGANIZATION RULES FOR FINANCIAL INSTITUTIONS.

(a) GENERAL RULE.—

(1) REORGANIZATIONS.—Subparagraph (D) of section 368(a)(3) of the Internal Revenue Code of 1986 (as amended by section 4012 of the Technical and Miscellaneous Revenue Act of 1988) is amended to read as follows:

ıtality of any State or any polit-
ɛ; and
of residential mortgage loan fi-

term "nonprofit entity" means
ıartered under State law that is
ınder section 501(c) of the Inter-
no part of the net earnings of
ıy member, founder, contributor,
nprofit entity established by the
title IX of the Housing and

's.—The term "mortgage-related

oans secured by 1- to 4-family or

d with 1- to 4-family or multi-

jurisdiction of the applicable
or within the geographical area

ıet income" means income after
ɛenses calculated in accordance
ng principles.

HOUSING FINANCE AGENCIES AND
PURCHASE MORTGAGE-RELATED

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' PROVISIONS

CIAL REORGANIZATION RULES FOR

ragraph (D) of section 368(a)(3)
of 1986 (as amended by section
ellaneous ... ...ue Act of 1988)

"(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court."

(2) NET OPERATING LOSS RULES.—The last sentence of section 382(l)(5)(F) of such Code (as so amended) is amended by striking "after December 31, 1989" and inserting "on or after May 10, 1989".

(3) FINANCIAL ASSISTANCE.—

(A) Section 597 of such Code (as so amended) is amended to read as follows:

"SEC. 597. TREATMENT OF TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED.

"(a) GENERAL RULE.—The treatment for purposes of this chapter of any transaction in which Federal financial assistance is provided with respect to a bank or domestic building and loan association shall be determined under regulations prescribed by the Secretary.

"(b) PRINCIPLES USED IN PRESCRIBING REGULATIONS.—

"(1) TREATMENT OF TAXABLE ASSET ACQUISITIONS.—In the case of any acquisition of assets to which section 381(a) does not apply, the regulations prescribed under subsection (a) shall—

"(A) provide that Federal financial assistance shall be properly taken into account by the institution from which the assets were acquired, and

"(B) provide the proper method of allocating basis among the assets so acquired (including rights to receive Federal financial assistance).

"(2) OTHER TRANSACTIONS.—In the case of any transaction not described in paragraph (1), the regulations prescribed under subsection (a) shall provide for the proper treatment of Federal financial assistance and appropriate adjustments to basis or other tax attributes to reflect such treatment.

"(3) DENIAL OF DOUBLE BENEFIT.—No regulations prescribed under this section shall permit the utilization of any deduction (or other tax benefit) if such amount was in effect reimbursed by nontaxable Federal financial assistance.

"(c) FEDERAL FINANCIAL ASSISTANCE.—The purposes of this section, the term 'Federal financial assistance' means—

"(1) any money or other property provided with respect to a domestic building and loan association by the Federal Savings and Loan Insurance Corporation or the Resolution Trust Corporation pursuant to section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any other similar provision of law), and

"(2) any money or other property provided with respect to a bank or domestic building and loan association by the Federal Deposit Insurance Corporation pursuant to section 11(f) or 13(c) of the Federal Deposit Insurance Act (or under any other similar provision of law),

regardless of whether any note or other instrument is issued in exchange therefor.

"(d) DOMESTIC BUILDING AND LOAN ASSOCIATION.—For purposes of this section, the term 'domestic building and loan association' has the meaning given such term by section 7701(a)(19) without regard to subparagraph (C) thereof."

(B) Subparagraph (B) of section 904(c)(2) of the Tax Reform Act of 1986 is hereby repealed.

(C) The table of sections for part II of subchapter H of chapter 1 of such Code is amended by striking the item relating to section 597 and inserting the following:

"Sec. 597. Treatment of transactions in which Federal financial assistance provided."

(b) TECHNICAL AMENDMENTS.—

(1) Section 904 of the Tax Reform Act of 1986 (other than subsection (c)(2)(B) thereof) is hereby repealed and the Internal Revenue Code of 1986 shall be applied as if the amendments made by such section had not been enacted.

(2) The last sentence of paragraph (3) of section 4012(c) of the Technical and Miscellaneous Revenue Act of 1988 is amended to read as follows:

"In the case of any bank or any institution treated as a domestic building and loan association for purposes of section 597 of the 1986 Code by reason of the amendment made by subsection (b)(2)(B), the amendments made by this subsection shall also apply to any transfer before January 1, 1989, to which the amendments made by subsection (b)(2) apply."

(3) The last sentence of section 593(e)(1) of such Code is amended to read as follows: "This paragraph shall not apply to any transaction to which section 381 applies, or to any distribution to the Federal Savings and Loan Insurance Corporation (or any successor thereof) or the Federal Deposit Insurance Corporation in redemption of an interest in an association, if such interest was originally received by any such entity in exchange for assistance provided under a provision of law referred to in section 597(c).".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a)(1).—The amendment made by subsection (a)(1) shall apply to acquisitions on or after May 10, 1989.

(2) SUBSECTION (a)(2).—The amendment made by subsection (a)(2) shall apply to transactions on or after May 10, 1989.

(3) SUBSECTION (a)(3).—

(A) IN GENERAL.—The amendments made by subsection (a)(3) shall apply to any amount received or accrued by the financial institution on or after May 10, 1989, except that such amendments shall not apply to transfers on or after such date pursuant to an acquisition to which the amendment made by subsection (a)(1) does not apply.

(B) INTERIM RULE.—In the case of any payme[illegible] pu[illegible] to a transaction on or after May 10, 1989, an[illegible] date on which the Secretary of the Treasury [illegible] gate) takes action in exercise of his regula[illegible] under section 597 of the Internal Revenue Co[illegible] amended by subsection (a)(3)), the taxpayer m[illegible] legislative history for the amendments made [illegible] (a)(3) in determining the proper treatment of [illegible].

(4) Subsection (b)(1).—The provisions of subsection (b)(1) shall take effect on the date of the enactment of the Tax Reform Act of 1986.

(5) Subsection (b)(2).—The amendment made by subsection (b)(2) shall take effect on the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988.

(6) Subsection (b)(3).—The amendment made by subsection (b)(3) shall take effect on the date of the enactment of this Act.

(7) Clarification of prior law.—Any reference to the Federal Savings and Loan Insurance Corporation in section 597 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) shall be treated as including a reference to the Resolution Trust Corporation and the FSLIC Resolution Fund.

SEC. 1402. TAX EXEMPTION FOR RESOLUTION TRUST CORPORATION AND RESOLUTION FUNDING CORPORATION.

(a) General Rule.—Subsection (l) of section 501 of the Internal Revenue Code of 1986 (relating to government corporations exempt under subsection (c)(1)) is amended to read as follows:

"(l) Government Corporations Exempt Under Subsection (c)(1).—For purposes of subsection (c)(1), the following organizations are described in this subsection:

"(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

"(2) The Resolution Trust Corporation established under section 21A of the Federal Home Loan Bank Act.

"(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act."

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 1403. ANNUAL REPORTS ON TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED.

(a) In General.—The Secretary of the Treasury or his delegate shall submit to the Senate and to the Committee on Ways and Means of the House of Representatives annual reports on—

(1)(A) the transactions which occur during the year for which the report is made and with respect to which Federal financial assistance is provided;

(B) the aggregate amount of Federal financial assistance provided with respect to such transactions; and

(C) any tax benefits available by reason of such transactions; and

(2) the aggregate amount of Federal financial assistance provided during such year, and the aggregate tax benefits utilized during such year, which are attributable to such transactions in prior years.

(b) Definition.—For purposes of this section, the term "Federal financial assistance" means any assistance to which section 597 of the Internal Revenue Code of 1986 applies.

SEC. 1404. STUDIES OF RELATIONSHIP BETWEEN PUBLIC DEBT AND ACTIVITIES OF GOVERNMENT-SPONSORED ENTERPRISES.

(a) In General.—In order to better manage the bonded indebted-[illegible] of the United States, the Secretary shall conduct 2 annual

then fail to use such gasoline in the production of gasohol,

(3) they are liable for tax of 5.66 cents a gallon on gasoline that they buy at the reduced rate but use or sell without blending into gasohol, and

(4) they must file a Quarterly Federal Excise Tax Return (Form 720) each quarter and report the total volume of gasoline bought at the reduced rate and the total volume of gasohol produced by the blender during the period covered by the return.

CERTIFICATION

The gasohol blender's certification should take the following form:

"Date ________

"The undersigned buyer ("Buyer") hereby certifies under penalties of perjury that—

(1) the Buyer holds a valid Certificate of Registry as a gasohol blender with a registration number of _____ .

(2) either (check one)

_____ (a) all the gasoline specified in the accompanying order, or on the reverse side hereof, or

_____ (b) all of the gasoline to be bought by the Buyer for a period beginning on (Date) ________ and ending ________ (period not to exceed one year)

will be used by the Buyer in the production of gasohol within 24 hours after it buys the gasoline, and

(3) the Buyer will not claim a credit or refund of tax under section 6427(f) of the Internal Revenue Code for gasoline it buys at the reduced rate of tax.

"The Buyer understands that any fraudulent use of this certification to buy any gasoline at the reduced rate of tax will subject the Buyer to penalties of perjury, which may include fine and/or imprisonment. Furthermore, the Buyer will pay a tax of 5.66 cents a gallon on gasoline it buys at the reduced rate but does not use to produce gasohol.

"Signature ________________

Title ________________

Address ________________

________________"

FAILURE TO PRODUCE GASOHOL WITHIN 24 HOURS AFTER PURCHASE OF THE GASOLINE

If a gasohol blender (1) buys gasoline at the reduced rate for gasohol production, and (2) uses such gasoline for gasohol production, but the blending occurs during a period other than the 24-hour period after which it bought the gasoline, then the gasohol blender's Certificate of Registry may be revoked or suspended by the district director if the district director determines that the blender shows a consistent pattern of failing to produce gasohol within the 24-hour period or that the revocation or suspension is necessary to protect the revenue. A blender's Certificate of Registry will not be revoked merely because of occasional failures to blend within the 24-hour period resulting from occurrences beyond the reasonable control of the blender (e.g., breakdown of a truck between the terminal and the place at which alcohol is bought).

EXAMPLES

The following examples illustrate the rules of this notice.

Example 1. *X*, a registered terminal operator, sells gasoline to *A*, a registered gasohol blender. At the time of sale, *A*, provides *X* with a proper gasohol blender's certification. *X* is liable for tax on its sale of gasoline to *A* at the rate of 3.44 cents a gallon.

Example 2. *B*, a registered gasohol blender, buys gasoline at the reduced rate for gasohol production for delivery into the tank body of its vehicle. As evidenced by documentation from the terminal where the gasoline is bought, this sale occurs at 2:00 p.m. on October 24, 1989. *B* then takes the gasoline to an alcohol seller and buys alcohol that is added to *B*'s tank of gasoline to produce gasohol. As evidenced by documentation from the alcohol seller, this sale of alcohol, which is simultaneous with the production of the gasohol, occurs after 2:00 p.m. on October 25, 1989. Although *B* is not liable for any tax, it may have its Certificate of Registry suspended or revoked by the district director with respect to future purchases of gasoline for gasohol production if the district director determines that the failure to blend within the 24-hour period is part of a consistent pattern, or that revocation or suspension is necessary to protect the revenue.

Example 3. *C*, a registered gasohol blender, buys gasoline at the reduced rate for gasohol production. However, instead of using the gasoline for gasohol production, *C* resells the gasoline. *C* is liable for tax at the rate of 5.66 cents a gallon of gasoline and it may have its Certificate of Registry suspended or revoked by the district director with respect to future purchases for gasohol production.

EFFECTIVE DATE

The rules of this notice are effective with respect to sales and removals of gasoline after September [illegible], 1989.

ADMINISTRATIVE PRONOUNCEMENT

This document serves as an "administrative pronouncement" as that term is described in section 1.6661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance

Notice 89-102[1]

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VIII. TREATMENT OF FEDERAL FINANCIAL ASSISTANCE IN

[1]On September 7, 1989, the Internal Revenue Service made public an advance copy of Notice 89-102, which inadvertently omitted two sentences. As printed here, Notice 89-102 incorporates the changes made by Notice 89-102A, page 443, this bulletin, to restore the omitted language.

THE CASE OF PRE-ACQUISITION ASSISTANCE TO TARGET

IX. RULES FOR APPLICATION OF OID RULES TO AGENCY DEBT ACQUIRED IN CONNECTION WITH AGENCY-ASSISTED TRANSACTIONS

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I. PURPOSE

The Internal Revenue Service intends to provide comprehensive regulations on the tax consequences of transactions involving the receipt of financial assistance from Federal agencies and the acquisition of Financially Troubled Institutions pursuant to the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (P.L. 101-73) (the Act). The primary purpose of this Notice is to provide preliminary guidance with respect to the tax treatment of common transactions involving the receipt of Federal financial assistance and to solicit comments on the need for further guidance in areas not covered by this Notice. The rules provided in this Notice may be relied upon by taxpayers as an administrative pronouncement of the Internal Revenue Service. To the extent these rules are modified by subsequently issued regulations, it is expected that such differing provisions will be effective on a prospective basis only.

II. BACKGROUND

The Act was signed into law on August 9, 1989. Section 1401 of the Act repeals certain tax rules that were originally enacted in the Economic Recovery Tax Act of 1981 (the 1981 Act), extended by the Tax Reform Act of 1986, and re-extended and modified by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). These rules generally permitted the relevant supervisory authorities to arrange mergers of Financially Troubled Institutions with healthy institutions at a tax-subsidized cost. The repeal of these provisions is effective for acquisitions occurring on or after May 10, 1989. The Act also clarifies the effective date of the TAMRA provisions as they apply to Agency assisted transactions involving financially troubled banks.

Prior to the effective date of the Act, sections 368(a)(3)(D) and 382(l)(5)(F) of the Internal Revenue Code provided special rules regarding the availability of tax-free reorganization status for, and the applicability of the loss limitation rules of section 382 following, certain Agency supervised restructurings of financial institutions described in section 581 or section 591. Section 597 generally provided that Agency assistance paid to or on behalf of a Financially Troubled Institution was excluded from gross income, but required the reduction of certain tax attributes in an aggregate amount equal to 50 percent of the amount of assistance received. Repeal of these prior law rules generally subjects such transactions to the generally applicable rules of sections 368 and 382, subject to the special rules described in this Notice, and generally requires that Federal financial assistance be accounted for as gross income, as described more fully below.

III. SCOPE

This Notice is intended to provide specific guidance for the application of new section 597 to certain transactions, including taxable acquisitions of Financially Troubled Institutions, that involve the receipt of Federal financial assistance. This Notice also provides guidance for the tax consequences of other aspects of certain acquisitive transactions, including the effect of the creation of an interim financial institution on the tax attributes of a Financially Troubled Institution, special rules for the application of sections 338, 382, and 1060, the application of the original issue discount provisions to Agency debt instruments, and the application of certain provisions of the consolidated return regulations.

This Notice does not address the tax treatment of insured deposit transfers. This Notice also does not address the tax treatment of transactions that do not involve the payment of Federal financial assistance by Agency to or on behalf of a financial institution, including transactions involving the voluntary supervisory conversion of solvent or marginally insolvent mutual institutions into stock institutions. The position of the Internal Revenue Service with respect to the treatment of the conversion of mutual institutions into stock form in cases not involving Federal financial assistance is published in Rev. Rul. 80–105, 1980–1 C.B. 78, and is not affected by this Notice. In the case of an institution that has been transferred to a Bridge Bank, Rev. Rul. 80–105 may apply only if the institution was a mutual institution before the transfer. This Notice also generally does not address the circumstances under which the reorganization provisions of the Code may be available to arrange tax-free acquisitions of Financially Troubled Institutions. The Internal Revenue Service will consider requests for private rulings on the tax consequences of Agency assisted acquisitions not described in this Notice.

IV. EFFECTIVE DATES

The guidance contained in this Notice is generally effective for Federal financial assistance received or accrued on or after May 10, 1989, in connection with Agency assisted acquisitions of Financially Troubled Institutions on or after May 10, 1989. However, in the case of Taxable Asset Acquisitions (or deemed asset acquisitions), the legislative history of the Act provides interim guidance relating to the repeal of section 597 upon which taxpayers who completed acquisitions or entered into binding contracts before September 8, 1989, are entitled to rely. See H. Rep. No. 101–54 (Part 2), 101st Cong., 1st Sess. 27 (1989); 135 Cong. Rec. No. 109 (Part 2) H5299 (daily ed. August 4, 1989) (Conference Report). For purposes of applying the effective date rules of the Act, the time of an acquisition is the time at which Acquiring (not Agency or Bridge Bank) acquires the assets and assumes the liabilities of Target. Accordingly, Federal financial assistance received or accrued by a Bridge Bank that was formed prior to May 10, 1989 will be subject to new section 597 if such assistance is received or accrued on or after May 10, 1989. The time of an acquisition depends on all the facts and circumstances. If no acquisition

has occurred on the date that Agency closes the institution, then an acquisition by Acquiring at a later date does not relate back to the date the institution was closed.

V. DEFINITIONS

Acquiring—The term "Acquiring" refers to a corporation (other than Bridge Bank) that receives assets and assumes liabilities of a Target in an Agency assisted asset acquisition or the person that acquires control of a Target by reason of an Agency assisted stock acquisition.

Agency assisted—An "Agency assisted" transaction is any transaction in which Federal financial assistance is provided to a party to the transaction.

Agency—The term "Agency" means the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, and any instrumentality, subsidiary, or any predecessor or successor of the foregoing, including the Federal Savings and Loan Insurance Corporation.

Bridge Bank—The term "Bridge Bank" refers to (i) a national bank organized by Agency and chartered by the Comptroller of the Currency pursuant to section 11(n) of the Federal Deposit Insurance Act (12 U.S.C. 1821) or section 21A(b)(11)(A)(v) of the Federal Home Loan Bank Act (12 U.S.C. 1421 et. seq.) for the purpose of holding assets and liabilities of a Target and continuing the operation of Target's business pending its acquisition; or (ii) a Federal savings association organized by Agency and chartered by the Director of the Office of Thrift Supervision pursuant to section 21A(b)(11)(A)(iv) of the Federal Home Loan Bank Act for the purpose of holding assets and liabilities of a Target and continuing the operation of Target's business pending its acquisition.

Federal financial assistance—The term "Federal financial assistance" has the same meaning as is provided in section 597(c) of the Code, which refers to any money or property provided by Agency with respect to a Financially Troubled Institution pursuant to section 406(f) of the National Housing Act, section 21A of the Federal Home Loan Bank Act, section 11(n) or 13(c) of the Federal Deposit Insurance Act, or "any other similar provision of law." Federal financial assistance includes, but is not limited to, Net Worth Assistance and amounts paid pursuant to Loss Guarantees, Yield Maintenance Agreements, or reimbursement arrangements.

Financially Troubled Institution—The term "Financially Troubled Institution" refers to any financial institution that is transferred to a Bridge Bank or with respect to which Federal financial assistance is provided.

Loss Guarantee—The term "Loss Guarantee" refers to an arrangement by Agency to guarantee Acquiring, Target, or any successor a certain price upon disposition of identified assets, a right to "put" assets at a specified price, or any similar arrangement.

Net Worth Assistance—The term "Net Worth Assistance" refers to any money or property (including Net Worth Notes) that is provided by Agency at the time of the acquisition as an integral part of an acquisition of the stock or assets and liabilities of a Target. Agency's agreement to provide assistance in the form of Loss Guarantees, Yield Maintenance or expense reimbursements is not considered property provided by Agency.

Net Worth Note—The term "Net Worth Note" refers to a fixed principal amount debt instrument that Agency provides as Net Worth Assistance. For this purpose, an Agency debt instrument will be considered to have a fixed principal amount notwithstanding an agreement to adjust the amount of the debt after its issuance.

Target—The term "Target" refers to a Financially Troubled Institution or a Bridge Bank, the assets and liabilities or stock of which is acquired in an Agency assisted acquisition.

Taxable Asset Acquisition—The term "Taxable Asset Acquisition" refers to a deemed or actual Agency assisted transfer of assets and liabilities of Target in a transaction in which Target recognizes gain or loss with respect to such assets.

Yield Maintenance Agreement—The term "Yield Maintenance Agreement" refers to an arrangement or agreement by the Agency to guarantee a certain yield or income level with respect to assets covered by the agreement, or any [illegible] ment, such as a cost of [illegible] bursement arrangement.

VI. TAX CONSEQUENCES OF THE PAYMENT OF FEDERAL FINANCIAL ASSISTANCE

New Section 597

Under new section 597, the treatment of any transaction in which Federal financial assistance is provided with respect to a bank or [illegible] building and loan association will be determined under Treasury regulations, which are to be based on the general principle that, in the absence of the exclusion provided by [illegible] law section 597, Federal financial assistance is gross income properly taken into account by the Financially Troubled Institution.

Pursuant to the authority granted to the Treasury Department by the Act, this Notice sets forth rules the Internal Revenue Service will apply in determining the tax consequences of the receipt of Federal financial assistance. Different rules apply in certain cases for Taxable Asset Acquisitions and for carryover basis and stock purchase acquisitions. The receipt (or deemed receipt) of Federal financial assistance will not be characterized as a contribution to capital even if Agency receives an equity interest in the Financially Troubled Institution.

Overview of the Effects of New Section 597

This section provides an overview of the treatment of Federal financial assistance under new section 597. The explanation in this section is necessarily general. If statements in this section are modified by statements in the more detailed sections that follow, the latter statements control.

The following rules apply to Federal financial assistance provided in connection with a Taxable Asset Acquisition. In the case of Net Worth Assistance, the Target generally will be required to account for such assistance as ordinary income recognized immediately before the acquisition. Such assistance is then treated as an asset in Target's hands with a basis equal to the income recognized. In the case of an arrangement to provide Federal financial assistance in the form of a Loss Guarantee, Agency's

agreement to make such payments generally will be viewed as a component of the value of the assets covered by such an arrangement in allocating the amount realized by Target on the sale of its assets. Agency's agreement to make such payments will also be reflected in the value of assets transferred to Acquiring for purposes of allocating basis to such assets. When actually paid to Acquiring upon the disposition of covered assets, Loss Guarantee payments are taken into account by Acquiring as amounts realized (in whole or in part) on the disposition of such assets.

The foregoing and the guidance contained in this Notice assume, unless specifically stated to the contrary, that Acquiring is treated as the owner of the assets covered by a Loss Guarantee. However, general Federal tax principles, based upon an analysis of the benefits and burdens of ownership, will apply to determine who is the owner of assets covered by a Loss Guarantee. Accordingly, property covered by a Loss Guarantee under which Agency, rather than Acquiring, has the benefits and burdens of ownership will be considered owned by Agency. Generally Acquiring, rather than Agency, will be deemed to own assets covered by a Loss Guarantee if the agreements with Agency do not limit the rights of Acquiring to all of the income from and all of the benefit of any increase in the value of the covered assets.

In the case of carryover basis and stock purchase acquisitions (unless the purchaser elects to treat the transaction as a Taxable Asset Acquisition), the following rules apply. Net Worth Assistance will be treated as ordinary income of Target received immediately prior to the acquisition. For purposes of the built-in gain and loss calculations under section 382(h)(3) of the Code and section 1.1502-15 of the Income Tax Regulations, a Net Worth Note will be taken into account as an asset of Target with a fair market value and basis equal to its deemed issue price, determined as described below. Assets covered by a Loss Guarantee will be treated as having a fair market value at least equal to the amount of the Loss Guarantee, but the basis of such assets will not be affected by the existence of the Loss Guarantee. The effect of any Loss Guarantee on the value of covered assets is taken into account for purposes of determining the amount of any built-in gain or built-in loss at the time of the acquisition for purposes of section 382(h) of the Code and section 1.1502-15 of the Income Tax Regulations, and in determining worthlessness, in whole or in part, with respect to bad debts for purposes of sections 166, 585, 593 and 595. Any Federal financial assistance received pursuant to a Loss Guarantee will be treated as an amount realized from the sale or exchange of assets covered by such Loss Guarantee, provided the recipient is considered to be the owner of such assets.

As described below, there are exceptions to the general rule that Federal financial assistance must be accounted for by Target to the extent the assistance is in the nature of compensation to Acquiring for the use of money or services or, in the case of amounts paid pursuant to a yield maintenance or cost of funds reimbursement agreement, is in the nature of an income subsidy. For example, Acquiring rather than Target will be required to include in income interest accrued with respect to a Net Worth Note. Similarly, a Yield Maintenance Agreement is not taken into account by Target as income nor are anticipated income payments pursuant to such an agreement treated as a built-in gain item of Target, but such payments are accounted for as income to the recipient when properly accrued.

Target (or a successor corporation) must file a Federal income tax return for the taxable year including an Agency assisted acquisition, reporting any net tax liabilities attributable to the transaction. Section 7507 of the Code will not apply to a Target, or any other Financially Troubled Institution, to prevent the assessment or collection of Federal tax liabilities attributable to the receipt of Federal financial assistance. However, as provided below, pursuant to the exercise of regulatory authority granted by the Act, the Internal Revenue Service will not seek to collect any net tax liability resulting from a Taxable Asset Acquisition if, at the time of the acquisition, Target was not a member of an affiliated group making a consolidated return or was the common parent of such a group and such liability otherwise would be borne, directly or indirectly, by Agency. Furthermore, if a Target (whether or not a member of an affiliated group making a consolidated return) is acquired in a Taxable Asset Acquisition, no uncollected tax liability of the Target will be assessed against Acquiring as transferee of the Target. However, if a Target is acquired in an Agency assisted transaction that is not a Taxable Asset Acquisition, Target (or Target's successor) will have continued liability for any Federal tax liability, whether attributable to the receipt of Federal financial assistance or otherwise.

Rules for Application of New Section 597 in the Case of Taxable Acquisition of Assets of Target

An Agency assisted acquisition of the liabilities and assets of Target by Acquiring that is a Taxable Asset Acquisition will be subject to the generally applicable rules of Federal taxation, including section 1060 of the Code, with modifications described below to take specific account of the treatment of Federal financial assistance provided in connection with the transaction. Accordingly, Target will recognize gain or loss on the sale of assets and Acquiring will have a cost basis in the assets received. Subject to the rules set forth below, Target and Acquiring must allocate the consideration among the assets sold in accordance with the requirements of section 1060 to determine Target's amount realized and Acquiring's basis.

Treatment of Target

Net Worth Assistance. Net Worth Assistance provided at the time of the acquisition in the form of cash or Net Worth Notes will be treated as having been paid to Target immediately before the acquisition of Target's assets by Acquiring. Such amounts will constitute ordinary income to Target. In the case of Net Worth Notes, the amount that constitutes income is the issue price of the instrument, determined in accordance with the principles of the original issue discount (OID) provisions of the Code, as described in Section IX of this Notice. In the case of a subsequent, retroactive adjustment to the amount of a Net Worth Note to account for a

discrepancy between the estimated and actual deficit in the net worth of Target, the adjustment will be given effect and reflected in Target's return for the taxable year including the acquisition as if the resulting terms were included in the original instrument, provided such adjustment is made within 180 days of the date of the acquisition. Adjustments made more than 180 days after the date of the acquisition will not affect Target.

Loss Guarantee. In the case of Target assets that are covered by a Loss Guarantee, Agency's agreement to make such payments will affect the value of the assets transferred. Thus, for purposes of allocating the amount realized among Target's assets in order to compute Target's gain or loss on the sale or deemed sale of its assets (whether Agency or Acquiring is the owner of such assets after the transfer), the fair market value of assets covered by a Loss Guarantee will be treated as not less than the guaranteed value, or, in the case of assets subject to a "put," the highest price at which the assets can be put. (The existence of a Loss Guarantee will not, however, preclude assets from having a greater fair market value than the guaranteed value or "put" price.)

Treatment of Acquiring

In General. Subject to the rules set forth below, Acquiring's basis in the purchased assets generally is determined in accordance with the regulations under section 1060 of the Code. Federal financial assistance (whether provided to Target or Acquiring) does not increase Acquiring's basis in the Target assets and does not constitute consideration paid by Acquiring. In making the allocation under section 1.1060–1T(d) of the Income Tax Regulations, after reducing consideration by the amount of Class I assets (including the amount of any Net Worth Assistance provided in cash), Acquiring must allocate consideration first to any non-cash Net Worth Assistance and then to any group of assets covered or created by a Loss Guarantee, to the extent of value, as if such groups of assets constituted separate asset classes, before allocating consideration to Class II through Class IV assets.

Net Worth Assistance. For purposes of allocating consideration among the assets acquired, the value of Net Worth Assistance provided as a Net Worth Note is the issue price (as provided below) of such debt. Acquiring is required to include interest with respect to a Net Worth Note in income as properly accrued. If Agency adjusts the amount of a Net Worth Note retroactively to account for errors or omissions in the value or existence of the assets transferred, such adjustment will be given effect and reflected in Acquiring's return for the taxable year including the acquisition, as if the resulting terms were included in the original instrument, provided the adjustment is made within 180 days of the date of the acquisition. However, an adjustment to the amount of a Net Worth Note to account for errors or omissions in the value or existence of the assets transferred that occurs more than 180 days following the acquisition date will be treated as creating a new, separate debt instrument evidencing a new obligation of Agency to provide assistance. The income consequences of such assistance are borne solely by Acquiring. Any other adjustment to account for a new obligation of Agency will be treated as creating a new, separate debt instrument, the consequences of which depend upon the circumstances of the issuance. For example, the amount of an upward adjustment to reflect Agency's obligation on account of the deferred payment of amounts due to Acquiring after exercise of a "put" right will be taken into account as a new debt instrument issued for property to which section 1274 applies.

Loss Guarantee. For purposes of allocating basis to assets covered by a Loss Guarantee that are owned by Acquiring, such assets may not be treated as having a fair market value that is less than the guaranteed value or, in the case of assets subject to a "put," the highest price at which the assets can be put. Amounts paid to Acquiring pursuant to the Loss Guarantee will be treated as realized in exchange for assets covered by the Loss Guarantee. If, under general Federal tax principles, Agency is considered the owner of the assets covered by the Loss Guarantee, basis is allocated to Acquiring's right to receive proceeds from the assets, including payments pursuant to the Loss Guarantee, in an amount equal to the guaranteed value [illegible] or, in the case of assets [illegible] "put," the highest price [illegible] assets can be put. Amounts [illegible] by Acquiring with respect [illegible] assets will be treated as a [illegible] basis to the extent of basis. [illegible] received by Acquiring in excess [illegible] basis will be treated as Federal [illegible]cial assistance which must be [illegible]ed for as ordinary income.

Yield Maintenance Agreement. Amounts received by Acquiring under a Yield Maintenance Agreement are treated as income from the [illegible] pool of assets to which such payments relate. Generally such amounts will constitute interest income. The right to receive such payments [illegible] a separate asset to which basis [illegible] be allocated. Acquiring must include amounts payable pursuant to a Yield Maintenance Agreement in income when such amounts are properly accrued.

Expense Reimbursements and Indemnity Payments. Expense reimbursements and indemnity payments refer to amounts received by (or on behalf of) Acquiring under an arrangement with Agency to reimburse Acquiring for certain costs or expenses incurred in or by reason of the transaction or in maintaining or disposing of acquired (or managed) assets. The right to receive such payments is not an asset to which basis may be allocated. Reimbursements paid or accrued pursuant to such an arrangement are not included in income but Acquiring may not deduct, or otherwise take into account (by, for example, including it in the basis of an asset), the item of cost or expense to which the expense reimbursement or indemnity payment relates.

Coordination with the Consolidated Return Regulations

If Target is a subsidiary within an affiliated group of corporations making a consolidated return, the tax consequences to the group of tax events affecting Target will be determined in accordance with the consolidated return regulations.

Collection of Tax Liabilities

Section 7507 of the Code will not apply to a Financially Troubled Institution or Bridge Bank to prevent the

assessment or collection of Federal tax liabilities attributable to the receipt of Federal financial assistance. However, pursuant to the exercise of regulatory authority granted by the Act, Federal tax liability may be waived under certain circumstances, as described below. If substantially all of Target's assets are transferred in a Taxable Asset Acquisition and the Target was not includible in any consolidated return for the period that includes the acquisition date (or was the common parent of a group making a consolidated return), any net tax liability that results from a Taxable Asset Acquisition will not be assessed or collected if such net tax liability otherwise would be borne directly or indirectly by Agency. See 135 Cong. Rec. No. 109 (Part 2) H5299, (daily ed. August 4, 1989) (Conference Report). If Target is a subsidiary within an affiliated group of corporations making a consolidated return, the tax liability of the group, including any liability that results from a Taxable Asset Acquisition, will be assessed and collected from the group.

Transferee Liability. If a Target is acquired in a Taxable Asset Acquisition, then no uncollected tax liability of the Target will be assessed against Acquiring as transferee of the Target.

Rules for Applying Section 597 in Carryover Basis and Stock Purchase Acquisitions

If Acquiring acquires (within a twelve-month period) stock of Target that meets the requirements of section 1504(a)(2) of the Code in an Agency assisted acquisition and if Acquiring is a corporation, Acquiring will be treated as eligible to make the election described in section 338(g) to treat such purchase as a Taxable Asset Acquisition. For this purpose the term "purchase" means any acquisition of stock that would constitute a "purchase" as defined in section [illegible](3) of the Code, without regard to whether section 351 applies to the transaction. Accordingly, notwithstanding section 338(h)(3)(A)(ii), a "purchase" for purposes of this Notice may include a transaction to which section 351 applies. If Acquiring makes a section 338 election, the taxation of amounts received as Federal financial assistance (including the determination of the amount and allocation of basis in Target assets under the modified rules under section 1060) will be determined as described above for the treatment of Acquiring in a Taxable Asset Acquisition. All other aspects of the taxation of Acquiring and Target will be determined in accordance with the regulations under section 338 of the Code, except that the consistency rules of such section will not apply. If Target is a member of an affiliated group of corporations making a consolidated return, Acquiring will be permitted to join in an election described in section 338(h)(10). In the case of any carryover basis or stock purchase transaction that is not treated as a Taxable Asset Acquisition, Federal financial assistance will be taxed in the following manner:

Treatment of Target

Net Worth Assistance. Net Worth Assistance will be taxed to Target as if Target had received such assistance immediately before the acquisition in the same manner as if Target had been acquired in a Taxable Asset Acquisition. Such Net Worth Assistance is treated as an asset of Target immediately before the acquisition with a basis equal to the amount of income recognized. The consequences to Target after the acquisition with respect to the receipt of Net Worth Assistance are the same as those described above with respect to Acquiring under Taxable Asset Acquisitions. The interest on a Net Worth Note will not be considered built-in gain for purposes of the built-in gain and loss calculations under section 382(h) of the Code and section 1.1502-15 of the Income Tax Regulations.

Loss Guarantee. In any case in which the fair market value of Target's assets is relevant for Federal income tax purposes, such as sections 166, 382, 585, 593 and 595 of the Code and section 1.1502-15 of the Income Tax Regulations, the value of assets covered by a Loss Guarantee must be determined in the same manner as the value of assets covered by a Loss Guarantee is determined in a Taxable Asset Acquisition. Accordingly, if, under general Federal tax principles, Target is considered the owner of such assets, the fair market value of assets covered by the Loss Guarantee will be treated as not less than the guaranteed value or highest "put" price of such assets, and such value is treated as the value of such assets immediately before the ownership change for purposes of the built-in gain and loss calculations under section 382(h) of the Code and section 1.1502-15 of the Income Tax Regulations. If Agency is considered the owner of such assets, the assets will be treated as having been sold by Target to Agency immediately before the ownership change for an amount equal to the lesser of Target's basis in such assets or the guaranteed value or highest "put" price applicable to such assets. Target must recognize as additional Federal financial assistance any amounts in excess of basis that it is treated as receiving from Agency pursuant to the Loss Guarantee. Receipt by Target of amounts paid pursuant to the Loss Guarantee will be treated as described above under "Rules for Application of New Section 597 in the Case of Taxable Acquisition of Assets of Target—Treatment of Target—Loss Guarantee."

Yield Maintenance Agreement. Amounts received pursuant to a Yield Maintenance Agreement will be taxed the same as in a Taxable Asset Acquisition and will not constitute built-in gain for purposes of the calculations under section 382(h) of the Code and section 1.1502-15 of the Income Tax Regulations.

Expense Reimbursements and Indemnity Payments. Indemnity payments and amounts received pursuant to an expense reimbursement arrangement will be treated in the manner described above under Taxable Asset Acquisitions.

Transferee Liability

If a Target is acquired in an Agency assisted transaction that is not a Taxable Asset Acquisition, Target (or Acquiring as transferee) will have continued liability for any taxes of Target, whether attributable to the receipt of Federal financial assistance or otherwise.

VII. TREATMENT OF CREATION OF INTERIM FINANCIAL INSTITUTIONS

Pursuant to the exercise of the regulatory authority granted by the Act, the Internal Revenue Service will

treat the transfer by Agency of the assets and liabilities of a Financially Troubled Institution to a Bridge Bank as a carryover basis transaction in which the Bridge Bank succeeds to and takes into account, as of the close of the day of any transfer, the items of the Financially Troubled Institution described in section 381(c). Accordingly, no gain or loss will be recognized to a Financially Troubled Institution on the transfer of its assets and liabilities to a Bridge Bank. In addition, such transaction will not be treated as an ownership change for purposes of section 382 of the Code.

A Bridge Bank will be treated as a corporation within the meaning of section 7701(a)(3) for all purposes of the Code, subject to generally applicable rules of Federal taxation, including filing requirements, except as otherwise provided in this Notice.

If a Financially Troubled Institution is a subsidiary member of an affiliated group making a consolidated return immediately before the transaction, the transfer of the Institution's assets and liabilities to Bridge Bank will cause Bridge Bank to be treated as the transferor Institution's successor. Thus, Bridge Bank will continue as a member of the group and will succeed to the taxable year and taxpayer identification number of the transferor Institution. The group's basis (or excess loss account) in the stock of Bridge Bank will equal its basis (or excess loss account) in the stock of the transferor Institution. The Internal Revenue Service will provide special rules for adjusting the group's basis in the stock of the Bridge Bank and the transferor Institution if assets or liabilities are retained by the transferor Institution.

If a Financially Troubled Institution was a common parent, or was not a member, of an affiliated group of corporations making a consolidated return, the taxable year of the Financially Troubled Institution will not close on the transfer of its assets to a Bridge Bank (and the group, if any, will not terminate). In such a case, Bridge Bank is not required to obtain a new taxpayer identification number.

The rules described in the preceding four paragraphs are effective for transfers occuring on or after September 8, 1989. No inference should be drawn regarding the proper treatment of such transfers before that date. The rules described in the preceding two paragraphs assume that no assets of any other Financially Troubled Institution are transferred to the Bridge Bank. Special rules may apply in the case of the transfer of more than one Financially Troubled Institution into a Bridge Bank. The Internal Revenue Service invites comments with respect to such rules.

VIII. TREATMENT OF PRE-ACQUISITION FEDERAL FINANCIAL ASSISTANCE

In certain cases, Agency may be required to provide Federal financial assistance to a Financially Troubled Institution prior to arranging an acquisition. Such assistance frequently takes the form of direct payments of cash or notes or payment of cash or notes in exchange for certain assets of the institution. Such assistance may be received in a taxable year preceding the taxable year in which the Financially Troubled Institution is required to account for the consequences of its acquisition.

A Financially Troubled Institution generally must include Federal financial assistance in income when paid or accrued. Thus, Agency payments of cash or notes not in exchange for assets are treated as ordinary income to the Financially Troubled Institution with respect to which such amounts are paid. If Agency acquires assets from the Financially Troubled Institution in exchange for consideration and the amount of consideration is less than the Financially Troubled Institution's basis in such assets, the Financially Troubled Institution will be treated as recognizing a loss on the sale of such assets. If the amount of consideration exceeds the Financially Troubled Institution's basis in the assets, the Financially Troubled Institution will be treated as having sold the assets for an amount equal to their basis. Any amount in excess of such basis will be treated as Federal financial assistance includible as ordinary income.

If Agency intends to cause the later acquisition of a Financially Troubled Institution (or in the case of any Bridge Bank), the tax consequences of the pre-acquisition receipt or accrual of Federal financial assistance may be deferred as follows: If Agency provides Federal financial assistance to a Target that is not a member of an affiliated group of corporations making a consolidated return (or that is the common parent of such a group) the Target may elect to defer the payment of the net tax liability attributable to the assistance for a period not extending beyond the earlier of thirty-six months from the date such assistance is provided or the date on which the Target stock or assets and liabilities are acquired. For this purpose, the net tax liability attributable to Federal financial assistance equals the difference between the actual amount of the corporation's tax liability and a recomputed amount of tax liability that does not take into account the income attributable to the assistance.

The election described in the preceding paragraph will be made by filing with the Federal income tax return for the year at issue the following declaration: "THIS CERTIFIES THAT AN ELECTION IS BEING MADE UNDER NOTICE 89-102 TO DEFER THE PAYMENT OF THE NET TAX LIABILITY ATTRIBUTABLE TO FEDERAL FINANCIAL ASSISTANCE." The Target making the election must include with the certification a statement under oath or affirmation providing a description of the assistance received, the date of receipt, and any amounts deferred pursuant to the election. The election will be made with the income tax return for each taxable year in which the payment of tax liability attributable to the Federal financial assistance is deferred. The election will be noted on the Form 1120 on the line for total tax (line 31 on the Form 1120 for 1989) by filling in the space to the left of the total tax with "Election under Notice 89-102." The Target making the election will file each declaration in duplicate and will file such additional statements as the district director for the internal revenue district in which the taxpayer's returns were filed may require. Whether or not additional statements will be required, and the frequency thereof, will depend on the circumstances and the time that is available for assessment and collection. Failure of a Target to file any required statement will cause Target to be treated as no longer entitled to defer its net tax liability. The Target will immedi-

ately notify the district director of the termination of the period of deferral. As the period of deferral terminates, it will be the duty of the Target, without notice from the district director, to make payment of any taxes then due. The running of the period of limitations on the assessment and collection of any net tax liability attributable to the Federal financial assistance will be suspended during, and for 90 days beyond, the period which ends on the date Target notifies the district director of the termination of the deferral period. Nothing in the foregoing will relieve a Target from its obligation to file returns for each of its taxable years.

IX. RULES FOR APPLICATION OF OID RULES TO AGENCY OBLIGATIONS ACQUIRED IN CONNECTION WITH AGENCY-ASSISTED TRANSACTIONS

The original issue discount (OID) rules of the Code will apply to determine the value of Net Worth Notes and the amount of interest payable with respect to such Notes. For purposes of determining the issue price and amount of OID on a Net Worth Note, if any, the Note will be treated as a debt instrument described in section 1273(b)(2). The fact that the principal amount of a Net Worth Note may be determined by reference to the value of property received by Agency from Target does not affect the treatment of a Net Worth Note as "not issued for property." In addition, without regard to whether the Note was actually issued to Target or Acquiring, (i) Acquiring will be treated as the first holder of such instrument and (ii) the issue price will equal the present value of all payments under the debt instrument, discounted at the applicable Federal rate (AFR) on the date Acquiring acquired the debt instrument. For purposes of determining the AFR, the principles of section 1.1274-6 of the Proposed Income Tax Regulations will apply. In the case of a debt instrument calling for a variable rate of interest based on an index, the principles of section 1.1274-3(d)(1) of the Proposed Income Tax Regulations will apply for purposes of computing the amount of payments under the debt instrument.

X. COMMENTS REQUESTED

The Internal Revenue Service invites comments concerning the provisions of this Notice and the need for further guidance with respect to the tax consequences of transactions that involve Federal financial assistance. In particular, the Internal Revenue Service invites comments on the treatment of transactions that involve the transfer of assets and liabilities of more than one unrelated financial institution into a Bridge Bank.

Written comments should be sent to the Office of Assistant Chief Counsel (Financial Institutions & Products), Branch 1, P. O. BOX 7604, Ben Franklin Station, Washington, D.C. 20044.

XI. PROCEDURAL INFORMATION

This notice serves as an "administrative pronouncement" as that term is described in section 1.6661-3(b)(2) of the regulations and may be relied upon to the same extent as a revenue ruling or a revenue procedure.

The collection of information contained in this Notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1141. The estimated average burden associated with the collection of information in this Notice is 30 minutes per respondent.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Washington, D.C. 20224, Attention: IRS Reports Clearance Officer T:FP; or the Office of Management and Budget, Paperwork Reduction Project (1545-1141), Washington, D.C. 20503.

Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance

Notice 89-102A

The following was inadvertently omitted from the beginning of the fifth paragraph of section VII, entitled "TREATMENT OF CREATION OF INTERIM FINANCIAL INSTITUTIONS," of Notice 89-102:

> The rules described in the preceding four paragraphs are effective for transfers occurring on or after September 8, 1989. No inference should be drawn regarding the proper treatment of such transfers before that date.

This language will be inserted in the appropriate place in Notice 89-102 when that notice is printed in the Internal Revenue Bulletin and in the Cumulative Bulletin.

This Notice serves as an "administrative pronouncement" as that term is described in section 1.6661-3(b)(2) of the regulations and may be relied upon to the same extent as a revenue ruling or a revenue procedure. *See* Rev. Rul. 87-138, 1987-2 C.B. 287.

Notice of Retroactive Increase of Alternative Minimum Taxable Income by Personal Exemption Amount

Notice 89-103

Section 1007(b)(2) of the Technical and Miscellaneous Revenue Act of 1988 ("TAMRA") requires taxpayers to add personal exemptions back to taxable income when figuring their alternative minimum taxable income ("AMTI"). This provision, which retroactively applies to 1987 income tax returns, will increase the alternative minimum tax ("AMT") liability of some taxpayers, and will require other taxpayers who originally reported no AMT liability to pay AMT for 1987.

Because of this change in the law, persons having AMT liability for 1987, as well as persons who would have AMT liability for 1987 if personal exemptions are added back in computing AMTI, will need to recompute their AMT liability for 1987,