prohibiting systems from ranking and editing displays of airline services on the basis of carrier identity, they limit the ability of each system to bias its displays in favor of its owner airlines and against other airlines. The rules also prohibit charging participating airlines discriminatory fees. The rules, on the other hand, impose no significant costs on smaller airlines.

The CRS rules affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. The rules prohibit CRS contracts that have a term longer than five years, give travel agencies the right to use third-party hardware and software, and prohibit certain types of contract clauses, such as minimum use and parity clauses, that restrict an agency's ability to use multiple systems. By prohibiting display bias based on carrier identity, the rules also enable travel agencies to obtain more useful displays of airline services.

Our proposed rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq*.) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law. No. 96–511, 44 U.S.C. Chapter 35.

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule will not limit the policymaking discretion of the States. Nothing in this proposal would directly preempt any State law or regulation. We are proposing this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. We believe that the policy set forth in this proposed rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute. Comments on these conclusions are welcomed and should be submitted to the docket.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 255, Carrier-owned Computer Reservations Systems, as follows:

PART 255—[AMENDED]

1. The authority citation for Part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

§ 255.12 Termination.

The rules in this part terminate on March 31, 2001.

Issued in Washington, D.C. on February 25, 2000, under authority delegated by 49 CFR § 1.56a(h)2.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–4922 Filed 2–29–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209601–92]

RIN 1545–AR19

Taxation of Tax-Exempt Organizations' Income From Corporate Sponsorship

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of previous proposed rules, notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the tax treatment of sponsorship payments received by exempt organizations. The Taxpayer Relief Act of 1997 amended the Internal Revenue Code to provide that unrelated trade or business does not include the activity of soliciting and receiving qualified sponsorship payments. This action affects exempt organizations that receive sponsorship payments. This document provides notice of a public hearing on these proposed regulations. This document also withdraws proposed rules published on January 22, 1993.

DATES: Written or electronic comments must be received by May 30, 2000. Outlines of topics to be discussed at the public hearing scheduled for June 21, 2000, at 10 a.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209601–92), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209601–92), room 5226, 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.gov/tax__regs/regslist.html. The public hearing will be held in room G–043, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephanie Lucas Caden, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Exempt organizations generally must pay tax on unrelated business taxable income, as defined in section 512. Section 512(a)(1) defines *unrelated business taxable income* (UBTI) as the gross income derived by an organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions that are directly connected with the carrying on of the trade or business, both computed with the modifications provided in section 512(b).

Section 513(a) defines *unrelated trade or business* as any trade or business the conduct of which is not substantially related (aside from the need of an organization for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501. Section 513(c), captioned ''Advertising, Etc., Activities,'' provides that the term *trade*

or business includes any activity carried on for the production of income from the sale of goods or the performance of services, and that an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. See § 1.513–1(b).

The IRS first published a Notice of Proposed Rulemaking (1993 proposed regulations) on January 22, 1993 (58 FR 5687), proposing that the regulations under section 513 be amended to provide guidance on the proper tax treatment of sponsorship payments received by an exempt organization. The 1993 proposed regulations focused on the nature of the services provided by the exempt organization rather than the benefit received by the sponsor. The 1993 proposed regulations distinguished advertising, which is an unrelated trade or business activity, from acknowledgments, which are the mere recognition of a sponsor's payment, and therefore do not result in UBTI. Advertising was defined as any message or other programming material, broadcast or otherwise transmitted, published, displayed or distributed in exchange for any remuneration, that promotes or markets any company, service, facility or product. Acknowledgments were defined as mere recognition of sponsorship payments or identification of the sponsor rather than promotion of its products, services or facilities. Under the 1993 proposed regulations, the term acknowledgment included: sponsor logos and slogans that do not contain comparative or qualitative descriptions; locations and telephone numbers; value-neutral descriptions including displays or visual depictions; and sponsor brand or trade names and product or service listings.

In a so-called ''tainting rule,'' the 1993 proposed regulations provided that if any activities, messages or programming material constituted advertising with respect to a sponsorship payment, then all related activities, messages or programming material that might otherwise be acknowledgments would be considered advertising.

The 1993 proposed regulations clarified that the rules regarding corporate sponsorship apply uniformly to all sponsorship activities, both broadcast and nonbroadcast activities, unless otherwise expressly stated, without regard to the local nature of the organization or activities or to the amount of the sponsorship payment. The 1993 proposed regulations expressly did not apply to qualified convention and trade show activities or to the sale of advertising in exempt organization periodicals.

The 1993 proposed regulations also proposed to amend the regulations under section 512(a) by adding examples of the allocation rule governing exploitation of exempt activities in cases involving sponsorship income.

A public hearing on the 1993 proposed regulations was held on July 8, 1993.

Public comments received by the IRS generally welcomed the guidance as an important step in clarifying this area of the law, but suggested modifications. Several comments concerned the effective date of the amendments, but there was no consensus as to an appropriate effective date. In addition, numerous comments requested elimination of the tainting rule. One comment expressed concern that the approach taken in the 1993 proposed regulations to the exploitation rules of § 1.512(a)–1(d) was likely to create confusion and could lead to application of the exploitation exception in a manner far broader than was intended.

The Taxpayer Relief Act of 1997, Public Law 105–34, section 965 (111 Stat. 788, 893–94), amended the Internal Revenue Code by adding section 513(i). Section 513(i) governs the treatment of certain sponsorship payments by providing that qualified sponsorship payments are not subject to the unrelated business income tax (UBIT). Section 513(i) defines *qualified sponsorship payments* as payments made by a person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgment of the name or logo (or product lines) of the person's trade or business in connection with the exempt organization's activities. Section 513(i) further provides that use or acknowledgment does not include advertising (including messages containing qualitative or comparative language, price information or other indications of savings or value, or an endorsement or other inducement to purchase, sell, or use a sponsor's products or services). The legislative history to section 513(i) indicates that the use of promotional logos or slogans that are an established part of the sponsor's identity does not, by itself, constitute advertising. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 476 (1997). Section 513(i)(2)(B)(i) provides that qualified sponsorship payments do not include payments where the amount is contingent upon the level of attendance at an event, broadcast ratings, or other factors indicating the degree of public exposure to an activity. However, the fact that a payment is contingent upon a sponsored activity actually being conducted or broadcast does not, by itself, cause the payment to fail to be a qualified sponsorship payment. The legislative history to section 513(i) further indicates that mere display or distribution, whether for free or remuneration, of a sponsor's products by the sponsor or the organization to the general public at a sponsored event is not considered advertising. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 474 (1997).

Section 513(i) differs from the 1993 proposed regulations in that section 513(i) has no tainting rule. Instead, section 513(i) specifically provides that, to the extent a portion of a payment would (if made as a separate payment) be a qualified sponsorship payment, that portion of such payment and the other portion of such payment are treated as separate payments. For example, if a sponsorship arrangement entitles the sponsor to both product advertising and use or acknowledgment of the sponsor's name or logo by the organization, the section 513(i) safe harbor applies only to the amount, if any, of the payment that exceeds the fair market value of the product advertising provided to the sponsor. Similarly, providing facilities, services or other privileges to a sponsor or the sponsor's designees (e.g., complimentary tickets, pro-am playing spots in golf tournaments, or receptions for major donors) in connection with a sponsorship arrangement is evaluated as a separate transaction in determining whether the organization has UBTI. A license granted to a sponsor as part of a sponsorship arrangement that allows a sponsor to use an intangible asset of the organization (e.g., the organization's trademark, patent, logo, or designation) is likewise treated as a separate transaction. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 475 (1997). Whether a separate transaction that falls outside of the section 513(i) safe harbor is subject to the UBIT depends on the application of existing rules under sections 512, 513, and 514.

Section 513(i) applies to payments solicited or received after December 31, 1997. Section 513(i) does not apply to qualified convention and trade show activities (described in section 513(d)(3)(B)) or to the sale of an acknowledgment or advertising in exempt organization periodicals. For this purpose, the term *periodicals* means regularly scheduled and printed

material published by or on behalf of an exempt organization that is not related to and primarily distributed in connection with a specific event conducted by the exempt organization.

Although section 513(i) codifies the 1993 proposed regulations in many respects, there are significant differences, including the elimination of the tainting rule. To reflect these differences, and in response to comments submitted on the 1993 proposed regulations, a number of changes are made in these proposed regulations, and some additional areas are addressed, such as exclusivity arrangements. In light of these changes, the IRS and the Treasury Department decided to issue regulations in proposed form, rather than final form, to provide an opportunity for further comment.

Discussion of Proposed Regulations

These proposed regulations amend the regulations under section 513 to provide guidance in the area of corporate sponsorship. Following section 513(i), these proposed regulations provide that qualified sponsorship payments are not UBTI. These proposed regulations define the term *qualified sponsorship payments* to mean payments made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit in exchange for making the payment.

These proposed regulations define the *phrase* substantial return benefit to mean any benefit other than (1) a use or acknowledgment of the payor's name or logo in connection with the exempt organization's activities, or (2) certain goods or services that have an insubstantial value under existing IRS guidelines. Generally, benefits such as complimentary tickets, pro-am playing spots, and receptions for donors have an insubstantial value only if they have a fair market value of not more than 2% of the payment, or $74 (for tax years beginning in calendar year 2000), whichever is less. See § 1.170A–13(f)(8)(i)(A); Rev. Proc. 90–12 (1990–1 C.B. 471), as adjusted for inflation (see Rev. Proc. 99–42, 1999–46 I.R.B. 568 (November 15, 1999)). If a payor receives a substantial return benefit (such as complimentary tickets having a fair market value in excess of $74) in exchange for a payment, the section 513(i) safe harbor does not apply to the payment (or portion thereof) attributable to the substantial return benefit. In that case, whether the payment (or portion thereof) is subject to UBIT must be determined under existing principles and rules. Thus, the payment may not be subject to UBIT because the exempt organization's activity is not an unrelated trade or business within the meaning of section 513(a) (for example, because substantially all of the work in carrying on the trade or business is performed by volunteers) or is not ''regularly carried on'' within the meaning of section 512(a)(1), or because one of the section 512(b) modifications applies.

These proposed regulations clarify that sponsored activities within the scope of the section 513(i) safe harbor may include a single event (such as a bowl game, a walkathon or a television program); a series of related events (such as a concert series or a sports tournament); an activity of extended or indefinite duration (such as an art exhibit); or continuing support of an exempt organization's operation. A payment (or portion thereof) may be a qualified sponsorship payment regardless of whether the sponsored activity conducted by the organization is substantially related to its tax exempt purpose. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 474 n.44 (1997).

Consistent with section 513(i)(3), the tainting rule of the 1993 proposed regulations has been removed. However, these proposed regulations clarify that for an exempt organization to avail itself of the section 513(i) safe harbor, it must establish that some portion of the payment exceeds the fair market value of any substantial return benefit received by a payor in return for making the payment. In a sponsorship arrangement, the fair market value of the substantial return benefit may equal the entire amount of the sponsorship payment. The burden of establishing the fair market value of any substantial return benefit falls on the exempt organization because the exempt organization has superior access to relevant information regarding its sponsorship arrangements. These proposed regulations state that the exempt organization's determination of the fair market value of a substantial return benefit provided to the payor will not be set aside for purposes of applying the section 513(i) safe harbor so long as the organization makes a reasonable and good faith valuation of the substantial return benefit received by the payor.

These proposed regulations provide that the right to be the only sponsor of an activity, or the only sponsor representing a particular trade, business or industry is generally not a substantial return benefit. Any portion of the payment attributable to the exclusive sponsorship arrangement, therefore, may be a qualified sponsorship payment. However, if in return for a payment, the exempt organization agrees that products or services that compete with the payor's products or services will not be sold or provided in connection with one or more activities of the exempt organization, the payor has received a substantial return benefit and the portion of the payment attributable to the exclusive provider arrangement is not a qualified sponsorship payment. Consistent with the allocation rule described above, when a payor receives both exclusive sponsorship and exclusive provider rights in exchange for making a payment, the fair market value of the exclusive provider arrangement and any other substantial return benefit is determined first (i.e., without regard to the existence of the exclusive sponsorship arrangement).

The IRS and the Treasury Department have concluded that the examples included in the 1993 proposed regulations interpreted § 1.512(a)–1(d) too broadly by allowing exempt organizations to apply excess expenses directly connected with the conduct of an exempt activity (such as the conduct of a bowl game) to offset income from a separate, unrelated business activity (such as the sale of clothing featuring the name and logo of the bowl game) which does not have a proximate and primary relationship to the exempt activity. An example in these proposed regulations clarifies that § 1.512(a)–1(d) applies only in circumstances where the unrelated business activity and the exempt activity are closely connected, such that a taxable entity pursuing the same business activity would normally also conduct the exempt activity. The example involves the sale of advertising in a museum's exhibition catalog. In this example, the sale of advertising exploits an activity—the publication of editorial material—normally conducted by taxable entities that sell advertising. Therefore, the example concludes that any net loss related to the museum's publication of its exhibition catalog (after taking into account any income derived from or attributable to publication of the catalog) may be applied to offset any net unrelated business income from the museum's sale of advertising in the catalog. In contrast, expenses related to the costs of the exhibition itself are not directly connected with the unrelated advertising activity and cannot be applied to offset income from the advertising activity.

As discussed above, existing principles and rules will determine the UBIT consequences of any portion of a payment that falls outside the section

513(i) safe harbor. Existing principles and rules will also determine the non-UBIT consequences of sponsorship arrangements, including benefits to the payor. For example, see Rev. Rul. 77–367 (1977–2 C.B. 193), and Rev. Rul. 66–358 (1966–2 C.B. 218), regarding inurement and private benefit.

These proposed regulations do not specifically address the Internet activities of exempt organizations. However, the IRS and the Treasury Department are reviewing the application of existing tax laws governing exempt organizations, including the UBIT rules, to Internet activities. Comments are specifically requested on the application of the rules governing periodicals and trade shows in section 513(i)(2)(B)(ii) to an exempt organization's Internet sites, and on whether providing a link to a sponsor's Internet site is advertising within the meaning of section 513(i)(2)(A) and § 1.513–4(c)(2)(iv).

These proposed regulations clarify that qualified sponsorship payments in the form of money or property (but not services) are treated as contributions received by the exempt organization for purposes of determining public support to the organization under section 170(b)(1)(A)(vi) or section 509(a)(2). The exclusion of contributed services for purposes of determining public support is consistent with the general rule regarding donated services. See §§ 1.509(a)–3(f), 1.170A–9(e)(7)(i), 1.170A–1(g). Thus, qualified sponsorship payments in the form of money or property are treated as contributions for purposes of Part I (Revenue, Expenses, and Changes in Net Assets or Fund Balances) of Form 990, ''Return of Organization Exempt from Income Tax.'' The fact that a payment is a qualified sponsorship payment that is treated as a ''contribution'' to the payee organization does not determine whether the payment is deductible by the payor under section 162 or section 170.

Proposed Effective Date

These regulations are proposed to apply on the date they are published as final in the **Federal Register**, although organizations may rely on these proposed regulations for payments received between January 1, 1998, and the date the regulations are published as final in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 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, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. In particular, the IRS and the Treasury Department request comments on whether further clarification is needed regarding the application of § 1.512(a)–1(d) in the context of corporate sponsorship payments or other unrelated business activities. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 21, 2000, at 10 a.m. in room G–043, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by May 31, 2000.

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

An agenda showing the scheduling of the speakers will be prepared after the 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 Stephanie Lucas Caden, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments

Accordingly, under the authority of 26 U.S.C. 7805, the proposed amendments to 26 CFR part 1, relating to § 1.512(a)–1 and § 1.513–4, published in the **Federal Register** for January 22, 1993 (58 FR 5687), are withdrawn.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. In § 1.170A–9, a sentence is added to the end of paragraph (e)(6)(i) to read as follows:

§ 1.170A–9 Definition of section 170(b)(1)(A) organization.

* * * * *

(e) * * *

(6) *Definition of support; meaning of general public*—(i) *In general.* * * * For purposes of this paragraph (e), the term *contributions* includes qualified sponsorship payments (as defined in § 1.513–4) in the form of money or property (but not services).

* * * * *

Par. 3. In § 1.509(a)–3, a sentence is added to the end of paragraph (f)(1) to read as follows:

§ 1.509(a)–3 Broadly, publicly supported organizations.

* * * * *

(f) *Gifts and contributions distinguished from gross receipts*—(1) *In general.* * * * For purposes of section 509(a)(2), the term *contributions* includes qualified sponsorship payments (as defined in § 1.513–4) in the form of money or property (but not services).

* * * * *

Par. 4. In § 1.512(a)–1, paragraph (e) is amended by:

1. Revising the heading and introductory text for paragraph (e);

2. Redesignating the current *Example.* as *Example 1*;

3. Adding *Example 2.*

The revisions and additions read as follows:

§ 1.512(a)–1 Definition.

* * * * *

(e) *Examples.* This section is illustrated by the following examples:

Example 1. * * *

Example 2. (i) P, a manufacturer of photographic equipment, underwrites a photography exhibition organized by M, an art museum described in section 501(c)(3). In return for a payment of $100,000, M agrees that the exhibition catalog sold by M in connection with the exhibit will advertise P's product. The exhibition catalog will also include educational material, such as copies of photographs included in the exhibition, interviews with photographers, and an essay by the curator of M's department of photography. For purposes of this example, assume that none of the $100,000 is a qualified sponsorship payment within the meaning of section 513(i) and § 1.513–4, that M's advertising activity is regularly carried on, and that the entire amount of the payment is unrelated business taxable income to M. Expenses directly connected with generating the unrelated business taxable income (i.e., direct advertising costs) total $25,000. Expenses directly connected with the preparation and publication of the exhibition catalog (other than direct advertising costs) total $110,000. M receives $60,000 of gross revenue from sales of the exhibition catalog. Expenses directly connected with the conduct of the exhibition total $500,000.

(ii) The computation of unrelated business taxable income is as follows:

(A) Unrelated trade or business (sale of advertising):

Income	$100,000	
Directly-connected expenses	(25,000)	
Subtotal	75,000	75,000

(B) Exempt function (publication of exhibition catalog):

Income (from catalog sales)	60,000	
Directly-connected expenses	(110,000)	
Net exempt function income (loss)	(50,000)	(50,000)
Unrelated business taxable income		25,000

(iii) Expenses related to publication of the exhibition catalog exceed revenues by $50,000. Because the unrelated business activity (the sale of advertising) exploits an exempt activity (the publication of the exhibition catalog), and because the publication of editorial material is an activity normally conducted by taxable entities that sell advertising, the net loss from the exempt publication activity is allowed as a deduction from unrelated business income under paragraph (d)(2) of this section. In contrast, the presentation of an exhibition is not an activity normally conducted by taxable entities engaged in advertising and publication activity for purposes of paragraph (d)(2) of this section. Consequently, the $500,000 cost of presenting the exhibition is not directly connected with the conduct of the unrelated advertising activity and does not have a proximate and primary relationship to that activity. Accordingly, M has unrelated business taxable income of $25,000.

Par. 5. Section 1.513–4 is added to read as follows:

§ 1.513–4 Certain sponsorship not unrelated trade or business.

(a) *In general.* Under section 513(i), the receipt of qualified sponsorship payments by an exempt organization which is subject to the tax imposed by section 511 does not constitute receipt of income from an unrelated trade or business.

(b) *Exception.* The provisions of this section do not apply with respect to payments made in connection with qualified convention and trade show activities. For rules governing qualified convention and trade show activity, see § 1.513–3. The provisions of this section also do not apply to income derived from the sale of advertising or acknowledgments in exempt organization periodicals. For this purpose, the term *periodical* means regularly scheduled and printed material published by or on behalf of the exempt organization that is not related to and primarily distributed in connection with a specific event conducted by the exempt organization. For rules governing the sale of advertising in exempt organization periodicals, see § 1.512(a)–1(f).

(c) *Qualified sponsorship payment*—(1) *Definition.* The term *qualified sponsorship payment* means any payment of money, transfer of property, or performance of services by any person engaged in a trade or business with respect to which there is no arrangement or expectation that the person will receive any substantial return benefit. In determining whether a payment is a qualified sponsorship payment, it is irrelevant whether the sponsored activity is related or unrelated to the recipient organization's exempt purpose. It is also irrelevant whether the sponsored activity is temporary or permanent.

(2) *Substantial return benefit*—(i) *In general.* For purposes of this section, a *substantial return benefit* means any benefit other than goods, services or other benefits of insubstantial value that are disregarded under paragraph (c)(2)(ii) of this section, or a use or acknowledgment described in paragraph (c)(2)(iii) of this section.

A substantial return benefit includes advertising as defined in paragraph (c)(2)(iv) of this section, providing facilities, services or other privileges to the payor or persons designated by the payor (except as provided in paragraph (c)(2)(ii) of this section), and granting the payor or persons designated by the payor an exclusive or nonexclusive right to use an intangible asset (e.g., trademark, patent, logo, or designation) of the exempt organization.

(ii) *Certain goods or services disregarded.* (A) For purposes of paragraph (c)(2)(i) of this section, goods, services or other benefits are disregarded if—

(*1*) The goods, services or other benefits provided to the payor or persons designated by the payor have an aggregate fair market value of not more than 2% of the amount of the payment, or $74 (adjusted for tax years beginning after calendar year 2000 by an amount determined under section 1(f)(3), by substituting ''calendar year 1999'' for ''calendar year 1992'' in section 1(f)(3)(B)), whichever is less (or such other amount(s) as may be specified in a revenue procedure or other form of

guidance issued by the Commissioner); or

(*2*) The only benefits provided to the payor or persons designated by the payor are token items (e.g., bookmarks, calendars, key chains, mugs, posters, tee shirts) bearing the exempt organization's name or logo that have an aggregate cost within the limit established for low cost articles under section 513(h)(2) (or such other limit as may be specified in a revenue procedure or other form of guidance issued by the Commissioner); however, token items (as described above) provided to employees of the payor, or to partners of a partnership that is the payor, are disregarded if the combined total cost of the token items provided to each employee or partner does not exceed the limit stated in this paragraph (c)(2)(ii)(A)(*2*).

(B) If the fair market value of the benefits (or the cost, in the case of token items) exceeds the amount or limit specified in paragraph (c)(2)(ii)(A) of this section, then (except as provided in paragraph (c)(2)(iii) of this section) the entire fair market value (as opposed to cost) of such benefits, not merely the excess amount, is a substantial return benefit.

(iii) *Use or acknowledgment.* For purposes of this section, a substantial return benefit does not include the use or acknowledgment of the name or logo (or product lines) of the payor's trade or business in connection with the activities of the exempt organization. Use or acknowledgment does not include advertising as described in paragraph (c)(2)(iv) of this section, but may include the following: logos and slogans that do not contain qualitative or comparative descriptions of the payor's products, services, facilities or company; a list of the payor's locations, telephone numbers, or Internet address; value-neutral descriptions, including displays or visual depictions, of the payor's product-line or services; and the payor's brand or trade names and product or service listings. Logos or slogans that are an established part of a payor's identity are not considered to contain qualitative or comparative descriptions. Mere display or distribution, whether for free or remuneration, of a payor's product by the payor or the exempt organization to the general public at the sponsored activity is not considered an inducement to purchase, sell or use the payor's product for purposes of this section and, thus, will not affect the determination of whether a payment is a qualified sponsorship payment.

(iv) *Advertising.* For purposes of this section, the term *advertising* means any message or other programming material which is broadcast or otherwise transmitted, published, displayed or distributed, and which promotes or markets any trade or business, or any service, facility or product. Advertising includes messages containing qualitative or comparative language, price information or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use any company, service, facility or product. A single message that contains both advertising and an acknowledgment is advertising. This section does not apply to activities conducted by a payor on its own. For example, if a payor purchases broadcast time from a television station to advertise its product during commercial breaks in a sponsored program, the exempt organization's activities are not thereby converted to advertising.

(v) *Exclusivity arrangements*—(A) *Exclusive sponsor.* An arrangement that acknowledges the payor as the exclusive sponsor of an exempt organization's activity, or the exclusive sponsor representing a particular trade, business or industry, generally does not, by itself, result in a substantial return benefit. For example, if in exchange for a payment, an organization announces that its event is sponsored exclusively by the payor (and does not provide any advertising or other substantial return benefit to the payor), the payor has not received a substantial return benefit.

(B) *Exclusive provider.* An arrangement that limits the sale, distribution, availability, or use of competing products, services, or facilities in connection with an exempt organization's activity generally results in a substantial return benefit. For example, if in exchange for a payment, the exempt organization agrees to allow only the payor's products to be sold in connection with an activity, the payor has received a substantial return benefit.

(d) *Allocation of payment*—(1) *In general.* If there is an arrangement or expectation that the payor will receive a substantial return benefit with respect to any payment, then only the portion, if any, of the payment that exceeds the fair market value of the substantial return benefit (determined on the date the sponsorship arrangement is entered into) is a qualified sponsorship payment. However, if the exempt organization does not establish that the payment exceeds the fair market value of any substantial return benefit, then no portion of the payment constitutes a qualified sponsorship payment. The unrelated business income tax (UBIT) treatment of any payment (or portion thereof) that is not a qualified sponsorship payment is determined by application of sections 512, 513 and 514. For example, payments related to an exempt organization's providing facilities, services, or other privileges to the payor or persons designated by the payor, advertising, exclusive provider arrangements described in paragraph (c)(2)(v)(B) of this section, a license to use intangible assets of the exempt organization, or other substantial return benefits, are evaluated separately in determining whether the exempt organization realizes unrelated business taxable income. The fair market value of any substantial return benefit provided as part of a sponsorship arrangement is the price at which the benefit would be provided between a willing recipient and a willing provider of the benefit, neither being under any compulsion to enter into the arrangement, and both having reasonable knowledge of relevant facts, and without regard to any other aspect of the sponsorship arrangement.

(2) *Anti-abuse provision.* To the extent necessary to prevent avoidance of the rule stated in paragraph (d)(1) of this section, where the exempt organization fails to make a reasonable and good faith valuation of any substantial return benefit, the Commissioner (or the Commissioner's delegate) may determine the portion of a payment allocable to such substantial return benefit and may treat two or more related payments as a single payment.

(e) *Special rules*—(1) *Written agreements.* The existence of a written sponsorship agreement does not, in itself, cause a payment to fail to be a qualified sponsorship payment. The terms of the agreement, not its existence or degree of detail, are relevant to the determination of whether a payment is a qualified sponsorship payment. Similarly, the terms of the agreement and not the title or responsibilities of the individuals negotiating the agreement determine whether a payment (or any portion thereof) made pursuant to the agreement is a qualified sponsorship payment.

(2) *Contingent payments.* The term qualified sponsorship payment does not include any payment the amount of which is contingent, by contract or otherwise, upon the level of attendance at one or more events, broadcast ratings, or other factors indicating the degree of public exposure to the sponsored activity. The fact that a payment is contingent upon sponsored events or activities actually being conducted does not, by itself, cause the payment to fail to be a qualified sponsorship payment.

(3) *Determining public support.* Qualified sponsorship payments in the form of money or property (but not

services) are treated as contributions received by the exempt organization for purposes of determining public support to the organization under section 170(b)(1)(A)(vi) or section 509(a)(2). See §§ 1.509(a)–3(f)(1) and 1.170A–9(e)(6)(i). The fact that a payment is a qualified sponsorship payment that is treated as a contribution to the payee organization does not determine whether the payment is deductible by the payor under section 162 or section 170.

(f) *Examples.* The provisions of this section are illustrated by the following examples. The tax treatment of any payment (or portion of a payment) that does not constitute a qualified sponsorship payment is governed by general UBIT principles. In these examples, the recipients of the payments at issue are section 501(c) organizations. The only benefits received by the payors are those specifically indicated in the example. The examples are as follows:

Example 1. M, a local charity, organizes a marathon and walkathon at which it serves to participants drinks and other refreshments provided free of charge by a national corporation. The corporation also gives M prizes to be awarded to winners of the event. M recognizes the assistance of the corporation by listing the corporation's name in promotional fliers, in newspaper advertisements of the event and on T-shirts worn by participants. M changes the name of its event to include the name of the corporation. M's activities constitute acknowledgment of the sponsorship. The drinks, refreshments and prizes provided by the corporation are a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 2. N, an art museum, organizes an exhibition and receives a large payment from a corporation to help fund the exhibition. N recognizes the corporation's support by using the corporate name and established logo in materials publicizing the exhibition, including banners, posters, brochures and public service announcements. N also hosts a dinner for the corporation's executives. The fair market value of the dinner exceeds the amount specified in paragraph (c)(2)(ii) of this section. N's use of the corporate name and logo in connection with the exhibition constitutes acknowledgment of the sponsorship. However, the dinner for corporate executives is a substantial return benefit. Only that portion of the payment, if any, that N can demonstrate exceeds the fair market value of the dinner is a qualified sponsorship payment.

Example 3. O coordinates sports tournaments for local charities. An auto manufacturer agrees to underwrite the expenses of the tournaments. O recognizes the auto manufacturer by including the manufacturer's name and established logo in the title of each tournament as well as on signs, scoreboards and other printed material. The auto manufacturer receives complimentary admission passes and pro-am playing spots for each tournament that have a fair market value in excess of the amount specified in paragraph (c)(2)(ii) of this section. Additionally, O displays the latest models of the manufacturer's premier luxury cars at each tournament. O's use of the manufacturer's name and logo and display of cars in the tournament area constitute acknowledgment of the sponsorship. However, the admission passes and pro-am playing spots are a substantial return benefit. Only that portion of the payment, if any, that O can demonstrate exceeds the fair market value of the admission passes and pro-am playing spots is a qualified sponsorship payment.

Example 4. P conducts an annual college football bowl game. P sells to commercial broadcasters the right to broadcast the bowl game on television and radio. A major corporation agrees to be the exclusive sponsor of the bowl game. The detailed contract between P and the corporation provides that the name of the bowl game will include the name of the corporation. The contract further provides that the corporation's name and established logo will appear on players' helmets and uniforms, on the scoreboard and stadium signs, on the playing field, on cups used to serve drinks at the game, and on all related printed material distributed in connection with the game. The agreement is contingent upon the game being broadcast on television and radio, but the amount of the payment is not contingent upon the number of people attending the game or the television ratings. The contract provides that television cameras will focus on the corporation's name and logo on the field at certain intervals during the game. P's use of the corporation's name and logo in connection with the bowl game constitutes acknowledgment of the sponsorship. The exclusive sponsorship arrangement is not a substantial return benefit. The entire payment is a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 5. Q organizes an amateur sports team. A major pizza chain gives uniforms to players on Q's team, and also pays some of the team's operational expenses. The uniforms bear the name and established logo of the pizza chain. During the final tournament series, Q distributes free of charge souvenir flags bearing Q's name to employees of the pizza chain who come out to support the team. The flags cost $2 each. The flags are not a substantial return benefit because they are token items that qualify as low cost articles under paragraph (c)(2)(ii) of this section. Q's use of the name and logo of the pizza chain in connection with the tournament constitutes acknowledgment of the sponsorship. The funding and supplied uniforms are a qualified sponsorship payment, which is not income from an unrelated trade or business.

Example 6. R is a liberal arts college. A soft drink manufacturer makes a substantial payment to the college's English department, and in exchange, R names a writing competition after the soft drink manufacturer. In addition, R agrees to limit all soft drink sales on campus to the manufacturer's brand of soft drink. R's use of the manufacturer's name in the writing competition constitutes acknowledgment of the sponsorship. However, limiting all soft drink sales on campus to the manufacturer's brand of soft drink, i.e., the exclusive provider arrangement, is a substantial return benefit. Only that portion of the payment, if any, that R can demonstrate exceeds the fair market value of the exclusive provider arrangement is a qualified sponsorship payment.

Example 7. S is a noncommercial broadcast station that airs a program funded by a local music store. In exchange for the funding, S broadcasts the following message: ''This program has been brought to you by the Music Shop, located at 123 Main Street. For your music needs, give them a call today at 555–1234. This station is proud to have the Music Shop as a sponsor.'' Because this single broadcast message contains both advertising and an acknowledgment, the entire message is advertising and constitutes a substantial return benefit. Unless S establishes that the amount of the payment exceeds the fair market value of the advertising, none of the payment is a qualified sponsorship payment.

Example 8. T, a symphony orchestra, performs a series of concerts. A program guide that contains notes on guest conductors and other information concerning the evening's program is distributed by T at each concert. The Music Shop makes a payment to T in support of the concert series. As a supporter of the event, the Music Shop is recognized in the program guide and on a poster in the lobby of the concert hall. The Music Shop receives complimentary tickets to the concert series. The fair market value of the complimentary tickets exceeds the amount specified in paragraph (c)(2)(ii) of this section. The lobby poster states that ''The T concert is sponsored by the Music Shop, located at 123 Main Street, telephone number 555–1234.'' The program guide contains the same information and also states, ''Visit today for the finest selection of music CDs and cassette tapes.'' T's use of the Music Shop's name and address in the lobby poster constitutes acknowledgment of the sponsorship. However, the promotion in the program guide and complimentary tickets are a substantial return benefit. Only that portion of the payment, if any, that T can demonstrate exceeds the fair market value of the promotion in the program guide and complimentary tickets is a qualified sponsorship payment.

Example 9. U, a national charity dedicated to promoting health, organizes a campaign to inform the public about potential cures to fight a serious disease. As part of the campaign, U sends representatives to community health fairs around the country to answer questions about the disease and inform the public about recent developments in the search for a cure. A pharmaceutical company makes a payment to U to fund U's booth at a health fair. U places a sign in the booth displaying the pharmaceutical company's name and slogan, ''Better Research, Better Health,'' which is an established part of the company's identity. In addition, U grants the pharmaceutical company a license to use U's logo in

marketing its products to health care providers around the country. U's display of the pharmaceutical company's name and slogan constitutes acknowledgment of the sponsorship. However, the license granted to the pharmaceutical company to use U's logo is a substantial return benefit. Only that portion of the payment, if any, that U can demonstrate exceeds the fair market value of the license granted to the pharmaceutical company is a qualified sponsorship payment.

Example 10. V, a trade association, publishes a monthly scientific magazine for its members containing information about current issues and developments in the field. A textbook publisher makes a large payment to V to have its name displayed on the inside cover of the magazine each month. Because the monthly magazine is a periodical within the meaning of paragraph (b) of this section, the section 513(i) safe harbor does not apply. See § 1.512(a)–1(f).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AA57

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (the Commission or EEOC) proposes to amend its regulation governing federal sector equal employment opportunity to reflect the 1992 amendment of section 501 of the Rehabilitation Act of 1973. Congress amended section 501 in October 1992 to state that the nondiscrimination standards of Title I of the Americans with Disabilities Act apply to section 501 of the Rehabilitation Act.

DATES: Comments must be received by May 1, 2000.

ADDRESSES: Comments should be submitted to the Office of the Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507. Copies of comments submitted by the public will be available for review on weekdays, except federal holidays, at the Commission's library, Room 6502, 1801 L Street, N.W., Washington, D.C., between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, at (202) 663–4689 or TDD (202) 663–7026. This document is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this document in an alternative format should be made to the Publications Information Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: With the Rehabilitation Act Amendments of 1992, Public Law 102–569, 106 Stat. 4344 (1992 Amendments or Rehabilitation Act Amendments), Congress added a new subsection (g) to section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791 (section 501). Subsection (g) provides that the standards used to determine whether section 501 has been violated in a complaint alleging ''nonaffirmative action employment discrimination'' [1] are the standards of Title I of the Americans with Disabilities Act of 1990 (ADA), as well as sections 501 through 504, and 510 of the ADA, as such sections relate to employment.[2] This notice of proposed rulemaking (NPRM) sets forth proposed regulatory revisions to implement the Rehabilitation Act Amendments.

Summary of Proposal

The Commission promulgated its latest regulation under section 501 of the Rehabilitation Act in April, 1992, several months before Congress enacted the Rehabilitation Act Amendments in October, 1992. The Commission now proposes to update this section 501 regulation, found at 29 CFR 1614.203, by deleting all of the current provisions and adding a new paragraph (b)(1) that cross-references the ADA regulation at 29 CFR Part 1630. [3]

Effect of the ADA Standards

As a general matter, the ADA regulation is more extensive than the requirements in place under § 1614.203. [4] In other respects, however, the ADA regulation closely corresponds to provisions in § 1614.203. The following discussion compares each paragraph in § 1614.203 to the corresponding section(s) of the ADA regulation, and identifies major consequences of applying the ADA regulation to the federal sector.

Definitions: Change from Paragraph 1614.203(a) to 29 CFR 1630.2

Subparagraphs 1614.203(a)(1)—(a)(5)

The Commission proposes to delete 29 CFR 1614.203(a)(1)—(a)(5) because these sections are repetitive of ADA definitions at 29 C.F.R. 1630.2. For example, the definition of ''disability'' in the two regulations is virtually identical, referring in both instances to an impairment that substantially limits one or more major life activities, a record of such a substantially limiting impairment, or being regarded as having such a substantially limiting impairment.[5] The ADA regulation also defines several important terms that are not defined in § 1614.203, such as ''essential functions,'' ''qualification standards,'' and ''direct threat.''

Subparagraph 1614.203(a)(6): Safety Issues and ''Qualified Individual with [a Disability]''

The Commission proposes to delete 29 CFR 1614.203(a)(6) because it is inconsistent with the ADA's standard on safety issues. Under the ADA, an employer can disqualify an individual from employment if the employer shows that the individual poses a ''direct threat'' to health and safety, even after considering reasonable accommodation. The ADA regulation defines ''direct threat'' as a ''significant risk of substantial harm,'' and states that an employer must consider individualized medical or other objective evidence to decide if a particular individual poses a ''direct threat.'' 29 CFR 1630.2(r). By contrast, the old subparagraph 1614.203(a)(6) did not even use ''direct

[1] Accordingly, the 1992 Amendments do not alter affirmative action duties under section 501. For simplicity, the phrase ''employment discrimination'' will be used in this document in lieu of the statutory phrase ''nonaffirmative action employment discrimination.''

[2] See 42 U.S.C. 12101–12117, 12201–12213 (1994) (codified as amended).

[3] The fact that the ADA's definition of ''employer'' excludes the United States does not impact this proposal. See 42 U.S.C. 12111(5)(B)(i); 29 CFR 1630.2 (e)(2)(i). The NPRM does not state that the ADA regulation applies directly to the federal government as an employer. Rather, the NPRM simply implements the Rehabilitation Act Amendments by applying ADA employment discrimination standards through Section 501 to the federal sector.

[4] Under the 1992 Amendments, the federal sector is subject to all ADA employment discrimination standards through Section 501.

[5] Compare 29 CFR 1614.203(a)(1) with 29 CFR 1630.2(g). In a decision focused closely on the wording of the ADA definition of ''disability,'' the Supreme Court held in Sutton v. United Airlines, 119 S. Ct. 2139, 9 AD Cas. (BNA) 673 (1999), that the positive and negative effects of corrective or mitigating measures must be considered when judging whether an impairment substantially limits one or more of an individual's major life activities and, therefore, whether the individual is ''disabled'' under the first prong of the ADA's definition of ''disability.'' See also Murphy v. United Parcel Service, Inc., 119 S. Ct. 2133, 9 AD Cas. (BNA) 691 (1999); and Albertsons, Inc. v. Kirkingburg, 119 S. Ct. 2162, 9 AD Cas. (BNA) 694 (1999). The Court's decision in Sutton does not affect the text of the ADA regulation because the regulation does not address mitigating measures. The Sutton holding, however, alters the Commission's subregulatory ADA guidance to the extent such guidance sets forth a position on mitigating measures that is contrary to the Court's holding.