

Classification*Executive Order 12866*

It has been determined that this interim final rule is not significant for purposes of Executive Order 12866 of September 30, 1993 ("Regulatory Planning and Review") (58 FR 51735 (October 4, 1993)).

Paperwork Reduction Act

This interim final rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Administrative Procedure Act

The Assistant Secretary for Import Administration finds good cause to waive the requirement to provide prior notice and opportunity for public comment, pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is impracticable and contrary to the public interest.

The regulation has been interpreted to restrict the Department's exercise of its discretion and, in such cases, requires the Department to identify the incorrect entity as the seller of subject merchandise, which adversely affects the Department's antidumping determinations. The Department's antidumping regulation, 19 CFR 351.401(h), is intended to ensure that the antidumping analysis is focused on the party setting the price of subject merchandise when the manufacture of such merchandise is subcontracted to another company. The regulation has been construed to have the unintended effect of bestowing the status of "foreign manufacturer" or "foreign producer" on parties in the United States that would have otherwise assumed the status of "purchasers". As described in the preamble, if a party that customarily assumes the status of a "purchaser" is bestowed the status of "foreign manufacturer" or "foreign producer", the proper application of the law is thwarted. This effect is contrary to the Department's intention in promulgating the regulation, and inconsistent with the Department's statutory mandate to provide relief to domestic industries suffering material injury from unfairly traded imports. Courts have determined that notice and comment is impracticable when "the agency could both follow section 553 and execute its statutory duties." *Lavesque v. Block*,

723 F.2d 175, 184 (5th Cir. 1980). It went further to clarify that the Administrative Procedure Act good cause waiver authorizes departures from the requirements "only when compliance would interfere with the agency's ability to carry out its mission." *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485. Here, the Department has a statutory duty under the Tariff Act of 1930, as amended, to determine instances of dumping by examining the price at which the merchandise is first sold in the United States. The regulation at issue confounds the Department's ability to make such a determination. Because the regulation is applicable to on-going antidumping investigations and administrative reviews, and because the application of the regulation can act to deny relief to domestic industries suffering material injury from unfairly traded imports, immediate revocation is necessary to ensure the proper and efficient operation of the antidumping law and to provide the relief intended by Congress.

The Assistant Secretary for Import Administration also finds good cause to waive the 30-day delay in effectiveness, pursuant to the authority set forth at 5 U.S.C. 553(e) for the reasons given above. As described in the preamble, if a party that customarily assumes the status of a "purchaser" is bestowed the status of "foreign manufacturer" or "foreign producer", the proper application of the law is thwarted. This effect is contrary to the Department's intention in promulgating the regulation, and inconsistent with the Department's statutory mandate to provide relief to domestic industries suffering material injury from unfairly traded imports. The regulation at issue confounds the Department's ability to make such a determination. Because the regulation is applicable to on-going antidumping investigations and administrative reviews, and because the application of the regulation can act to deny relief to domestic industries suffering material injury from unfairly traded imports, immediate revocation is necessary to ensure the proper and efficient operation of the antidumping law and to provide the relief intended by Congress.

Regulatory Flexibility Act

Because a notice and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, a regulatory flexibility analysis has not been prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Investigations, Reporting and recordkeeping requirements.

For the reasons stated above, amend 19 CFR part 351 as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

§ 351.401 [Amended]

2. Amend § 351.401 by removing and reserving paragraph (h).

Dated: March 21, 2008.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E8-6499 Filed 3-27-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9381]

RIN 1545-BF79

TIPRA Amendments to Section 199; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9381) that were published in the **Federal Register** on Friday, February 15, 2008 (73 FR 8798) concerning the amendments made by the Tax Increase Prevention and Reconciliation Act of 2005 to section 199 of the Internal Revenue Code. These final regulations also contain a rule concerning the use of losses incurred by members of an expanded affiliated group and affect taxpayers engaged in certain domestic production activities.

DATES: The correction is effective March 28, 2008.

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.199-2(e)(2) and 1.199-8(i)(5), Paul Handleman or David McDonnell, (202) 622-3040; concerning

§§ 1.199–3(i)(7) and (8), and 1.199–5, William Kostak, (202) 622–3060; and concerning §§ 1.199–7(b)(4) and 1.199–8(i)(6), Ken Cohen, (202) 622–7790 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9381) that are the subject of the correction are under section 199 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9381) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following amendment:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.199–8 is amended by revising the last sentence of paragraph (i)(5) to read as follows:

§ 1.199–8 Other rules.

* * * * *

(i) * * *

(5) * * * A taxpayer may apply §§ 1.199–2(e)(2), 1.199–3(i)(7) and (8), and 1.199–5 to taxable years beginning after May 17, 2006, and before October 19, 2006, regardless of whether the taxpayer otherwise relied upon Notice 2005–14 (2005–1 CB 498) (see § 601.601(d)(2)(ii)(b) of this chapter), the provisions of REG–105847–05 (2005–2 CB 987), or §§ 1.199–1 through 1.199–8.

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LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).
[FR Doc. E8–6309 Filed 3–27–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 53

[TD 9390]

RIN 1545–BE37

Standards for Recognition of Tax-Exempt Status if Private Benefit Exists or if an Applicable Tax-Exempt Organization Has Engaged in Excess Benefit Transaction(s)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that clarify the substantive requirements for tax exemption under section 501(c)(3) of the Internal Revenue Code (Code). This document also contains provisions that clarify the relationship between the substantive requirements for tax exemption under section 501(c)(3) and the imposition of section 4958 excise taxes on excess benefit transactions. These regulations affect organizations described in section 501(c)(3) of the Code and organizations applying for exemption as organizations described in section 501(c)(3) of the Code.

DATES: *Effective Date:* These regulations are effective March 28, 2008.

FOR FURTHER INFORMATION CONTACT: Galina Kolomietz, (202) 622–7971 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2005, a notice of proposed rulemaking (REG–111257–05, 2005–42 CB 759) clarifying the substantive requirements for tax exemption under section 501(c)(3) of the Code, and the relationship between the substantive requirements for tax exemption under section 501(c)(3) and the imposition of section 4958 excise taxes was published in the **Federal Register** (70 FR 53599). The IRS received several written comments responding to this notice. After consideration of all comments received, the proposed regulations under sections 501(c)(3) and 4958 are revised and published in final form. The major areas of comments and revisions are discussed in the following preamble. (See § 601.601(d)(2)(ii)(b)).

Explanation and Summary of Comments

Private Benefit

The proposed regulations added several examples to illustrate the

requirement in § 1.501(c)(3)–1(d)(1)(ii) that an organization serve a public rather than a private interest. The purpose of the examples is to illustrate that prohibited private benefit may involve non-economic benefits as well as economic benefits and that prohibited private benefit may arise regardless of whether payments made to private interests are reasonable or excessive.

One comment suggested that, rather than add three isolated examples on private benefit to the regulations, the IRS consider a broader revision of the regulations under section 501(c)(3) to provide a more detailed discussion of the underlying principles of the private benefit doctrine. In particular, this comment suggested that the regulations address the relative quantity of private benefit that could preclude exemption. The IRS and the Treasury Department are not revising the existing regulations under section 501(c)(3) at this time. The new examples in the proposed regulations clarify the principles of the private benefit doctrine under current law. In § 1.501(c)(3)–1(d)(1)(iii), Example 1 illustrates that private benefit may involve non-economic benefits. Example 2 illustrates that private benefit is inconsistent with tax-exempt status under section 501(c)(3) if it is substantial and not merely incidental to the accomplishment of the organization's exempt purposes. Example 3 illustrates that private benefit may exist even though the transaction is at fair market value. Moreover, these examples are intended to illustrate the principle that private benefit remains an independent basis for revocation even if it does not involve economic benefit or raise fair market value issues. Accordingly, these examples are adopted in final form without revision.

Revocation Standards

The proposed regulations provided guidance on certain factors that the IRS will consider in determining whether an applicable tax-exempt organization described in section 501(c)(3) that engages in one or more excess benefit transactions continues to be described in section 501(c)(3). The comments received in response to the proposed regulations are discussed below. Overall, the commentators reacted favorably to the factors set forth in the proposed regulations. The factors described in the proposed regulations are finalized without major revisions. The application of the factors is refined by the addition of a new example to the final regulations.