

as having been newly issued by the issuer to the holder with an issue price equal to the sum of the amount of money and the fair market value of property paid by the new holder in exchange for the interest.

(c) *Agency Obligations*—(1) *In general.* Except as otherwise provided in this paragraph (c), the original issue discount rules of sections 1271 *et seq.* apply to Agency Obligations.

(2) *Issue price of Agency Obligations provided as Net Worth Assistance.* The issue price of an Agency Obligation that is provided as Net Worth Assistance and that bears interest at either a single fixed rate or a qualified floating rate (and provides for no contingent payments) is the lesser of the sum of the present values of all payments due under the obligation, discounted at a rate equal to the applicable Federal rate (within the meaning of section 1274(d) (1) and (3)) in effect for the date of issuance, or the stated principal amount of the obligation. The issue price of an Agency Obligation that bears a qualified floating rate of interest (within the meaning of §1.1275-5(b)) is determined by treating the obligation as bearing a fixed rate of interest equal to the rate in effect on the date of issuance under the obligation.

(3) *Adjustments to principal amount.* Except as provided in §1.597-5(d)(2)(iv), this paragraph (c)(3) applies if Agency modifies or exchanges an Agency Obligation provided as Net Worth Assistance (or a successor obligation). The issue price of the modified or new Agency Obligation is determined under paragraphs (c) (1) and (2) of this section. If the issue price is greater than the adjusted issue price of the existing Agency Obligation, the difference is treated as FFA. If the issue price is less than the adjusted issue price of the existing Agency Obligation, the difference is treated as an adjustment to FFA under §1.597-2(d)(4).

(d) *Successors.* To the extent necessary to effectuate the purposes of the regulations under section 597, an entity's treatment under the regulations applies to its successor. A successor includes a transferee in a transaction to which section 381(a) applies or a Bridge Bank to which another Bridge Bank transfers deposit liabilities.

(e) [Reserved]

(f) *Losses and deductions with respect to covered assets.* Prior to the disposition of an asset covered by a Loss Guarantee, the asset cannot be charged off, marked to a market value, depreciated, amortized, or otherwise treated in a manner that supposes an actual or possible diminution of value below the greater of the asset's highest guaranteed value or the highest price at which the asset can be put.

(g) *Anti-abuse rule.* The regulations under section 597 must be applied in a manner consistent with the purposes of section 597. Accordingly, if, in structuring or engaging in any transaction, a principal purpose is to achieve a tax result that is inconsistent with the purposes of section 597 and the regulations thereunder, the Commissioner can make appropriate adjustments to income, deductions and other items that would be consistent with those purposes.

[T.D. 8641, 60 FR 66097, Dec. 21, 1995, as amended by T.D. 9048, 68 FR 12290, Mar. 14, 2003]

§1.597-4 Bridge Banks and Agency Control.

(a) *Scope.* This section provides rules that apply to a Bridge Bank or other Institution under Agency Control and to transactions in which an Institution transfers deposit liabilities (whether or not the Institution also transfers assets) to a Bridge Bank.

(b) *Status as taxpayer.* A Bridge Bank or other Institution under Agency Control is a corporation within the meaning of section 7701(a)(3) for all purposes of the Internal Revenue Code and is subject to all Internal Revenue Code provisions that generally apply to corporations, including those relating to methods of accounting and to requirements for filing returns, even if Agency owns stock of the Institution.

(c) *No section 382 ownership change.* The imposition of Agency Control, the cancellation of Institution stock by Agency, a transaction in which an Institution transfers deposit liabilities to a Bridge Bank, and an election under paragraph (g) of this section are disregarded in determining whether an ownership change has occurred within the meaning of section 382(g).

(d) *Transfers to Bridge Banks*—(1) *In general.* Except as otherwise provided in paragraph (g) of this section, the rules of this paragraph (d) apply to transfers to Bridge Banks. In general, a Bridge Bank and its associated Residual Entity are together treated as the successor entity to the transferring Institution. If an Institution transfers deposit liabilities to a Bridge Bank (whether or not it also transfers assets), the Institution recognizes no gain or loss on the transfer and the Bridge Bank succeeds to the transferring Institution's basis in any transferred assets. The associated Residual Entity retains its basis in any assets it continues to hold. Immediately after the transfer, the Bridge Bank succeeds to and takes into account the transferring Institution's items described in section 381(c) (subject to the conditions and limitations specified in section 381(c)), taxpayer identification number ("TIN"), deferred FFA account, and account receivable for future FFA as described in paragraph (g)(4)(ii) of this section. The Bridge Bank also succeeds to and continues the transferring Institution's taxable year.

(2) *Transfers to a Bridge Bank from multiple Institutions.* If two or more Institutions transfer deposit liabilities to the same Bridge Bank, the rules in paragraph (d)(1) of this section are modified to the extent provided in this paragraph (d)(2). The Bridge Bank succeeds to the TIN and continues the taxable year of the Institution that transfers the largest amount of deposits. The taxable years of the other transferring Institutions close at the time of the transfer. If all the transferor Institutions are members of the same consolidated group, the Bridge Bank's carryback of losses to the Institution that transfers the largest amount of deposits is not limited by section 381(b)(3). The limitations of section 381(b)(3) do apply to the Bridge Bank's carrybacks of losses to all other transferor Institutions. If the transferor Institutions are not all members of the same consolidated group, the limitations of section 381(b)(3) apply with respect to all transferor Institutions. See paragraph (g)(6)(ii) of this section for additional rules that apply if two or more Institutions that are not mem-

bers of the same consolidated group transfer deposit liabilities to the same Bridge Bank.

(e) *Treatment of Bridge Bank and Residual Entity as a single entity.* A Bridge Bank and its associated Residual Entity or Entities are treated as a single entity for income tax purposes and must file a single combined income tax return. The Bridge Bank is responsible for filing all income tax returns and statements for this single entity and is the agent of each associated Residual Entity to the same extent as if the Bridge Bank were the common parent of a consolidated group including the Residual Entity. The term *Institution* includes a Residual Entity that files a combined return with its associated Bridge Bank.

(f) *Rules applicable to members of consolidated groups*—(1) *Status as members.* Unless an election is made under paragraph (g) of this section, Agency Control of an Institution does not terminate the Institution's membership in a consolidated group. Stock of a subsidiary that is canceled by Agency is treated as held by the members of the consolidated group that held the stock prior to its cancellation. If an Institution is a member of a consolidated group immediately before it transfers deposit liabilities to a Bridge Bank, the Bridge Bank succeeds to the Institution's status as the common parent or, unless an election is made under paragraph (g) of this section, as a subsidiary of the group. If a Bridge Bank succeeds to an Institution's status as a subsidiary, its stock is treated as held by the shareholders of the transferring Institution, and the stock basis or excess loss account of the Institution carries over to the Bridge Bank. A Bridge Bank is treated as owning stock owned by its associated Residual Entities, including for purposes of determining membership in an affiliated group.

(2) *No 30-day election to be excluded from consolidated group.* Neither an Institution nor any of its Consolidated Subsidiaries may be excluded from a consolidated group for a taxable year under § 1.1502-76(b)(5)(ii), as contained in 26 CFR part 1 edition revised April 1, 1994, if the Institution is under Agency Control at any time during the year.

(3) *Coordination with consolidated return regulations.* The provisions of the regulations under section 597 take precedence over conflicting provisions in the regulations under section 1502.

(g) *Elective disaffiliation*—(1) *In general.* A consolidated group of which an Institution is a subsidiary may elect irrevocably not to include the Institution in its affiliated group if the Institution is placed in Agency receivership (whether or not assets or deposit liabilities of the Institution are transferred to a Bridge Bank). See paragraph (g)(6) of this section for circumstances under which a consolidated group is deemed to make this election.

(2) *Consequences of election.* If the election under this paragraph (g) is made with respect to an Institution, the following consequences occur immediately before the subsidiary Institution to which the election applies is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately before the consolidated group is deemed to make the election) and in the following order—

(i) All adjustments of the Institution and its Consolidated Subsidiaries under section 481 are accelerated;

(ii) Deferred intercompany gains and losses with respect to the Institution and its Consolidated Subsidiaries are taken into account and the Institution and its Consolidated Subsidiaries take into account any other items required under the regulations under section 1502 for members that become nonmembers within the meaning of § 1.1502-32(d)(4);

(iii) The taxable year of the Institution and its Consolidated Subsidiaries closes and the Institution includes the amount described in paragraph (g)(3) of this section in income as ordinary income as its last item for that taxable year;

(iv) The members of the consolidated group owning the common stock of the Institution include in income any excess loss account with respect to the Institution's stock under § 1.1502-19 and any other items required under the regulations under section 1502 for members that own stock of corporations that become nonmembers within the meaning of § 1.1502-32(d)(4); and

(v) If the Institution's liabilities exceed the aggregate fair market value of its assets on the date the Institution is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, on the date the consolidated group is deemed to make the election), the members of the consolidated group treat their stock in the Institution as worthless. (See §§ 1.337(d)-2, 1.1502-35(f), and 1.1502-36 for rules applicable when a member of a consolidated group is entitled to a worthless stock deduction with respect to stock of another member of the group.) In all other cases, the consolidated group will be treated as owning stock of a nonmember corporation until such stock is disposed of or becomes worthless under rules otherwise applicable.

(3) *Toll charge.* The amount described in this paragraph (g)(3) is the excess of the Institution's liabilities over the adjusted bases of its assets immediately before the Institution is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately before the consolidated group is deemed to make the election). In computing this amount, the adjusted bases of an Institution's assets are reduced by the amount of the Institution's reserves for bad debts under section 585 or 593, other than supplemental reserves under section 593. For purposes of this paragraph (g)(3), an Institution is treated as a single entity that includes the assets and liabilities of its Consolidated Subsidiaries, with appropriate adjustments to prevent duplication. The amount described in this paragraph (g)(3) for alternative minimum tax purposes is determined using alternative minimum tax basis, deductions, and all other items required to be taken into account. In computing the increase in the group's taxable income or alternative minimum taxable income, sections 56(d)(1), 382 and 383 and §§ 1.1502-15, 1.1502-21 and 1.1502-22 (or §§ 1.1502-15A, 1.1502-21A and 1.1502-22A, as appropriate) do not limit the use of the attributes of the Institution and its Consolidated Subsidiaries to the extent, if any, that the inclusion of the amount described in this paragraph (g)(3) in income would result in the

group having taxable income or alternative minimum taxable income (determined without regard to this sentence) for the taxable year. The preceding sentence does not apply to any limitation under section 382 or 383 or § 1.1502-15, 1.1502-21, or 1.1502-22 (or § 1.1502-15A, 1.1502-21A, or 1.1502-22A, as appropriate) that arose in connection with or prior to a corporation becoming a Consolidated Subsidiary of the Institution.

(4) *Treatment of Institutions after disaffiliation*—(i) *In general*. If the election under this paragraph (g) is made with respect to an Institution, immediately after the Institution is placed in Agency receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately after the consolidated group is deemed to make the election), the Institution and each of its Consolidated Subsidiaries are treated for income tax purposes as new corporations that are not members of the electing group's affiliated group. Each new corporation retains the TIN of the corresponding disaffiliated corporation and is treated as having received the assets and liabilities of the corresponding disaffiliated corporation in a transaction to which section 351 applies (and in which no gain was recognized under section 357(c) or otherwise). Thus, the new corporation has no net operating or capital loss carryforwards. An election under this paragraph (g) does not terminate the single entity treatment of a Bridge Bank and its Residual Entities provided in paragraph (e) of this section.

(ii) *FFA*. A new Institution is treated as having a non-interest bearing, non-transferable account receivable for future FFA with a basis equal to the amount described in paragraph (g)(3) of this section. If a disaffiliated Institution has a deferred FFA account at the time of its disaffiliation, the corresponding new Institution succeeds to and takes into account that deferred FFA account.

(iii) *Filing of consolidated returns*. If a disaffiliated Institution has Consolidated Subsidiaries at the time of its disaffiliation, the corresponding new Institution is required to file a consolidated income tax return with the sub-

siidiaries in accordance with the regulations under section 1502.

(iv) *Status as Institution*. If an Institution is disaffiliated under this paragraph (g), the resulting new corporation is treated as an Institution for purposes of the regulations under section 597 regardless of whether it is a bank or domestic building and loan association within the meaning of section 597.

(v) *Loss carrybacks*. To the extent a carryback of losses would result in a refund being paid to a fiduciary under section 6402(i), an Institution or Consolidated Subsidiary with respect to which an election under this paragraph (g) (other than under paragraph (g)(6)(ii) of this section) applies is allowed to carry back losses as if the Institution or Consolidated Subsidiary had continued to be a member of the consolidated group that made the election.

(5) *Affirmative election*—(i) *Original Institution*—(A) *Manner of making election*. Except as otherwise provided in paragraph (g)(6) of this section, a consolidated group makes the election provided by this paragraph (g) by sending a written statement by certified mail to the affected Institution on or before the later of 120 days after its placement in Agency receivership or May 31, 1996. The statement must contain the following legend at the top of the page: "THIS IS AN ELECTION UNDER § 1.597-4(g) TO EXCLUDE THE BELOW-REFERENCED INSTITUTION AND CONSOLIDATED SUBSIDIARIES FROM THE AFFILIATED GROUP," and must include the names and taxpayer identification numbers of the common parent and of the Institution and Consolidated Subsidiaries to which the election applies, and the date on which the Institution was placed in Agency receivership. The consolidated group must send a similar statement to all subsidiary Institutions placed in Agency receivership during the consistency period described in paragraph (g)(5)(ii) of this section. (Failure to satisfy the requirement in the preceding sentence, however, does not invalidate the election with respect to any subsidiary Institution placed in Agency receivership during the consistency period described in paragraph (g)(5)(ii) of

this section.) The consolidated group must include a copy of any election statement and accompanying certified mail receipt as part of its first income tax return filed after the due date under this paragraph (g)(5) for such statement. A statement must be attached to this return indicating that the individual who signed the election was authorized to do so on behalf of the consolidated group. Agency cannot make this election under the authority of section 6402(i) or otherwise.

(B) *Consistency limitation on affirmative elections.* A consolidated group may make an affirmative election under this paragraph (g)(5) with respect to a subsidiary Institution placed in Agency receivership only if the group made, or is deemed to have made, the election under this paragraph (g) with respect to every subsidiary Institution of the group placed in Agency receivership on or after May 10, 1989 and within five years preceding the date the subject Institution was placed in Agency receivership.

(ii) *Effect on Institutions placed in receivership simultaneously or subsequently.* An election under this paragraph (g), other than under paragraph (g)(6)(ii) of this section, applies to the Institution with respect to which the election is made or deemed made (the original Institution) and each subsidiary Institution of the group placed in Agency receivership or deconsolidated in contemplation of Agency Control or the receipt of FFA simultaneously with the original Institution or within five years thereafter.

(6) *Deemed Election—(i) Deconsolidations in contemplation.* If one or more members of a consolidated group deconsolidate (within the meaning of §1.1502-19(c)(1)(ii)(B)) a subsidiary Institution in contemplation of Agency Control or the receipt of FFA, the consolidated group is deemed to make the election described in this paragraph (g) with respect to the Institution on the date the deconsolidation occurs. A subsidiary Institution is conclusively presumed to have been deconsolidated in contemplation of Agency Control or the receipt of FFA if either event occurs within six months after the deconsolidation.

(ii) *Transfers to a Bridge Bank from multiple groups.* On the day an Institution's transfer of deposit liabilities to a Bridge Bank results in the Bridge Bank holding deposit liabilities from both a subsidiary Institution and an Institution not included in the subsidiary Institution's consolidated group, each consolidated group of which a transferring Institution or the Bridge Bank is a subsidiary is deemed to make the election described in this paragraph (g) with respect to its subsidiary Institution. If deposit liabilities of another Institution that is a subsidiary member of any consolidated group subsequently are transferred to the Bridge Bank, the consolidated group of which the Institution is a subsidiary is deemed to make the election described in this paragraph (g) with respect to that Institution at the time of the subsequent transfer.

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

Facts. Corporation X, the common parent of a consolidated group, owns all the stock (with a basis of \$4 million) of Institution M, an insolvent Institution with no Consolidated Subsidiaries. At the close of business on April 30, 1996, M has \$4 million of deposit liabilities, \$1 million of other liabilities, and assets with an adjusted basis of \$4 million and a fair market value of \$3 million.

Example 1. Effect of receivership on consolidation. On May 1, 1996, Agency places M in receivership and begins liquidating M. X does not make an election under §1.597-4(g). M remains a member of the X consolidated group after May 1, 1996. Section 1.597-4(f)(1).

Example 2. Effect of Bridge Bank on consolidation—(i) Additional facts. On May 1, 1996, Agency places M in receivership and causes M to transfer all of its assets and deposit liabilities to Bridge Bank MB.

(ii) *Consequences without an election to disaffiliate.* M recognizes no gain or loss from the transfer and MB succeeds to M's basis in the transferred assets, M's items described in section 381(c) (subject to the conditions and limitations specified in section 381(c)) and TIN. Section 1.597-4(d)(1). (If M had a deferred FFA account, MB would also succeed to that account. Section 1.597-4(d)(1).) MB continues M's taxable year and succeeds to M's status as a member of the X consolidated group after May 1, 1996. Section 1.597-4(d)(1) and (f). MB and M are treated as a single entity for income tax purposes. Section 1.597-4(e).

(iii) *Consequences with an election to disaffiliate.* If, on July 1, 1996, X makes an election under § 1.597-4(g) with respect to M, the following consequences are treated as occurring immediately before M was placed in Agency receivership. M must include \$1 million (\$5 million of liabilities—\$4 million of adjusted basis) in income as of May 1, 1996. Section 1.597-4(g) (2) and (3). M is then treated as a new corporation that is not a member of the X consolidated group and that has assets (including a \$1 million account receivable for future FFA) with a basis of \$5 million and \$5 million of liabilities received from disaffiliated corporation M in a section 351 transaction. New corporation M retains the TIN of disaffiliated corporation M. Section 1.597-4(g)(4). Immediately after the disaffiliation, new corporation M is treated as transferring its assets and deposit liabilities to Bridge Bank MB. New corporation M recognizes no gain or loss from the transfer and MB succeeds to M's TIN and taxable year. Section 1.597-4(d)(1). Bridge Bank MB is treated as a single entity that includes M and has \$5 million of liabilities, an account receivable for future FFA with a basis of \$1 million, and other assets with a basis of \$4 million. Section 1.597-4(d)(1).

[T.D. 8641, 60 FR 66098, Dec. 21, 1995, as amended by T.D. 8677, 61 FR 33322, 33323, June 27, 1996; T.D. 8823, 64 FR 36099, July 2, 1999; T.D. 9048, 68 FR 12290, Mar. 14, 2003; T.D. 9187, 70 FR 10326, Mar. 3, 2005; T.D. 9254, 71 FR 13018, Mar. 14, 2006; T.D. 9424, 73 FR 53986, Sept. 17, 2008]

§ 1.597-5 Taxable Transfers.

(a) *Taxable Transfers—(1) Defined.* The term *Taxable Transfer* means—

(i) A transaction in which an entity transfers to a transferee other than a Bridge Bank—

(A) Any deposit liability (whether or not the Institution also transfers assets), if FFA is provided in connection with the transaction; or

(B) Any asset for which Agency or a Controlled Entity has any financial obligation (e.g., pursuant to a Loss Guarantee or Agency Obligation); or

(ii) A deemed transfer of assets described in paragraph (b) of this section.

(2) *Scope.* This section provides rules governing Taxable Transfers. Rules applicable to both actual and deemed asset acquisitions are provided in paragraphs (c) and (d) of this section. Special rules applicable only to deemed asset acquisitions are provided in paragraph (e) of this section.

(b) *Deemed asset acquisitions upon stock purchase—(1) In general.* In a

deemed transfer of assets under this paragraph (b), an Institution (including a Bridge Bank or a Residual Entity) or a Consolidated Subsidiary of the Institution (the Old Entity) is treated as selling all of its assets in a single transaction and is treated as a new corporation (the New Entity) that purchases all of the Old Entity's assets at the close of the day immediately preceding the occurrence of an event described in paragraph (b)(2) of this section. However, such an event results in a deemed transfer of assets under this paragraph (b) only if it occurs—

(i) In connection with a transaction in which FFA is provided;

(ii) While the Old Entity is a Bridge Bank;

(iii) While the Old Entity has a positive balance in a deferred FFA account (see § 1.597-2(c)(4)(v) regarding the optional accelerated recapture of deferred FFA); or

(iv) With respect to a Consolidated Subsidiary, while the Institution of which it is a Consolidated Subsidiary is under Agency Control.

(2) *Events.* A deemed transfer of assets under this paragraph (b) results if the Old Entity—

(i) Becomes a non-member within the meaning of § 1.1502-32(d)(4) of its consolidated group (other than pursuant to an election under § 1.597-4(g));

(ii) Becomes a member of an affiliated group of which it was not previously a member (other than pursuant to an election under § 1.597-4(g)); or

(iii) Issues stock such that the stock that was outstanding before the imposition of Agency Control or the occurrence of any transaction in connection with the provision of FFA represents 50 percent or less of the vote or value of its outstanding stock (disregarding stock described in section 1504(a)(4) and stock owned by Agency or a Controlled Entity).

(3) *Bridge Banks and Residual Entities.* If a Bridge Bank is treated as selling all of its assets to a New Entity under this paragraph (b), each associated Residual Entity is treated as simultaneously selling its assets to a New Entity in a Taxable Transfer described in this paragraph (b).

(c) *Treatment of transferor—(1) FFA in connection with a Taxable Transfer.* A