Paperwork Reduction Act

This rule does not impose any new information collections subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35. The Department anticipates between 100 and 4,100 additional nonimmigrant visa applicants per year as a result of this rulemaking. The current burden for this information collection (OMB Control No. 1405–0182) is 13,875,345 hours, with 11,100,276 respondents. The burden per response is 75 minutes. The top estimate for the number of additional respondents would add approximately 5,000 hours to a burden that is almost 14 million hours. Therefore, the addition of these respondents does not significantly increase the burden associated with this information collection.

List of Subjects in 22 CFR Part 41

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and visas.

For the reasons stated in the preamble, the Department of State is amending 22 CFR part 41 to read as follows:

PART 41—[AMENDED]

■ 1. The authority citation for part 41 is revised to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

■ 2. Amend § 41.2 as follows:

■ a. Remove paragraph (e).

■ b. Redesignate paragraphs (f) through (m) as paragraphs (e) through (l).

■ c. Revise redesignated paragraph (e)(2)(iv).

The revisions read as follows:

§ 41.2 Exemption or waiver by Secretary of State and Secretary of Homeland Security of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(e) * * *

(2) * * *

(iv) Presents a current certificate issued by the Royal Virgin Islands Police Force indicating that he or she has no criminal record.

* * * * *

Dated: January 22, 2016.

David T. Donahue,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2016–02191 Filed 2–3–16; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9748]

RIN 1545–BM57

Allocation of Creditable Foreign Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance relating to the allocation by a partnership of creditable foreign tax expenditures. These temporary regulations are necessary to improve the operation of an existing safe harbor rule that is used for determining whether allocations of creditable foreign tax expenditures are deemed to be in accordance with the partners' interests in the partnership. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG–100861–15) published in the Proposed Rules section in this issue of the **Federal Register**. These regulations affect partnerships that pay or accrue foreign income taxes, and their partners.

DATES: *Effective Date:* These regulations are effective on February 4, 2016.

Applicability Dates: For dates of applicability, see §§ 1.704–1T(b)(1)(ii)(*b*)(*1*) and (b)(1)(ii)(*b*)(*3*)(*B*).

FOR FURTHER INFORMATION CONTACT: Suzanne M. Walsh, (202) 317–4908 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Allocations of creditable foreign tax expenditures (''CFTEs'') do not have substantial economic effect, and accordingly a CFTE must be allocated in accordance with the partners' interests in the partnership. *See* § 1.704–1(b)(4)(viii). Section 1.704–1(b)(4)(viii) provides a safe harbor under which CFTE allocations are deemed to be in accordance with the partners' interests in the partnership. In general, the purpose of the safe harbor is to match allocations of CFTEs with the income to which the CFTEs relate.

In order to apply the safe harbor, a partnership must (1) determine the partnership's ''CFTE categories,'' (2) determine the partnership's net income in each CFTE category, and (3) allocate the partnership's CFTEs to each category. Section 1.704–1(b)(4)(viii)(*c*)(*2*) requires a partnership to assign its income to activities and provides for the grouping of a partnership's activities into one or more CFTE categories based generally on whether net income from the activities is allocated to partners in the same sharing ratios. Section 1.704–1(b)(4)(viii)(*c*)(*3*) provides rules for determining the partnership's net income (for U.S. federal income tax purposes) in a CFTE category, including rules for allocating and apportioning expenses, losses, and other deductions to gross income. Section 1.704–1(b)(4)(viii)(*d*) assigns CFTEs to the CFTE category that includes the related income under the principles of § 1.904–6, with certain modifications. In order to satisfy the safe harbor, partnership allocations of CFTEs in a CFTE category must be in proportion to the allocations of the partnership's net income in the CFTE category.

I. Effect of Section 743(b) Adjustments

Section 1.704–1(b)(4)(viii)(*c*)(*3*)(*i*) of the current final regulations provides that a partnership determines its net income in a CFTE category by taking into account all partnership items attributable to the relevant activity or group of activities, including items of gross income, gain, loss, deduction, and expense, and items allocated pursuant to section 704(c). The current final regulations do not state whether an adjustment under section 743(b) is taken into account in computing the partnership's net income in a CFTE category.

In the case of a transfer of a partnership interest that results in an adjustment under section 743(b) (because the partnership has a section 754 election in effect, or because there is a substantial built-in loss (as defined in section 743(d)) in the partnership), the partnership must adjust the basis of partnership property with respect to the transferee partner only (a section 743(b) adjustment). No adjustment is made to the common basis of partnership property, and the section 743(b) adjustment has no effect on the partnership's computation of any item under section 703. § 1.743–1(j)(1).

The Treasury Department and the IRS believe that a transferee partner's section 743(b) adjustment with respect to its interest in a partnership should not be taken into account in computing such partnership's net income in a CFTE category because the basis adjustment is unique to the transferee partner and because the basis adjustment ordinarily would not be taken into account by a foreign jurisdiction in computing its foreign

taxable base. As such, taking a transferee partner's section 743(b) adjustment into account for purposes of computing the partnership's net income in a CFTE category could change the partners' relative shares of net income in a CFTE category and their allocable shares of CFTEs under the safe harbor solely as a result of the transfer of the partnership interest and not as a result of a change to the allocation of any partnership items under the partnership agreement. Accordingly, § 1.704–1T(b)(4)(viii)(*c*)(*3*)(*i*) of these temporary regulations provides that, for purposes of computing a partnership's net income in a CFTE category, the partnership determines its items without regard to any section 743(b) adjustments that its partners may have to the basis of property of the partnership.

A partnership that is a transferee partner may have a section 743(b) adjustment in its capacity as a direct or indirect partner in a lower-tier partnership. Under § 1.704–1T(b)(4)(viii)(*c*)(*3*)(*i*), such section 743(b) adjustment of the partnership *is* taken into account in determining the partnership's net income in a CFTE category. Nevertheless, in the case of a section 743(b) adjustment of a partnership that is a transferee partner, it may be appropriate to alter the way in which the section 743(b) adjustment is taken into account in determining the partnership's net income in a CFTE category when the section 743(b) adjustment gives rise to basis differences subject to section 901(m). The Treasury Department and the IRS intend to address section 901(m) in a separate guidance project.

No inference is intended from § 1.704–1T(b)(4)(viii)(*c*)(*3*)(*i*) as to how a section 743(b) adjustment is taken into account for other federal income tax purposes. The Treasury Department and the IRS request comments regarding whether final regulations should provide further guidance on how to compute a partnership's net income in a CFTE category, including how other types of items or adjustments to distributive shares that are specific to a partner should be taken into account in computing a partnership's net income in a CFTE category (for example, where property is contributed with a built-in loss and the built-in loss is taken into account only in determining the amount of items allocated to the contributing partner under section 704(c)(1)(C)). The Treasury Department and the IRS also request comments on whether, and the extent to which, the application of the safe harbor should differ with respect to CFTEs that are determined by taking into account partner-specific adjustments that are similar to those that apply for U.S. tax purposes in computing the foreign taxable base of a partnership.

II. Special Rules for Deductible Allocations and Nondeductible Guaranteed Payments

For purposes of the safe harbor, § 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*) provides, among other rules, a special rule that reduces the partnership's net income in a CFTE category to the extent foreign law allows a deduction for an allocation (or payment of an allocated amount) to a partner, for example, because foreign law characterizes a preferential allocation of gross income as deductible interest expense. The basis for this rule is that a CFTE category should not include income of the partnership that has not been included in a foreign taxable base due to the fact that an allocation (or payment of an allocated amount) to a partner of that income results in a foreign law deduction. Because the income out of which the allocation is made was not included in the taxable base of the foreign jurisdiction that allowed the deduction, no CFTEs are imposed on that income; therefore, the allocation of that income should not be taken into account in testing whether allocations of CFTEs of that jurisdiction match related income allocations for purposes of the safe harbor.

Deductible guaranteed payments under section 707(c) reduce the partnership's net income in a CFTE category. Therefore, in the case of a guaranteed payment that results in a deduction under both U.S. and foreign law, no special rule reducing the partnership's net income in a CFTE category is necessary. However, to the extent that foreign law does *not* allow a deduction for a guaranteed payment that is deductible under U.S. law, § 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*) provides another special rule that requires an upward adjustment to the partnership's net income in a CFTE category (this rule, together with the special rule described in the preceding paragraph, are referred to in this preamble as the ''special rules''). Adding the amount of a guaranteed payment that is not deductible under foreign law to the partnership's net income in a CFTE category results in CFTEs attributable to tax imposed on the income out of which the guaranteed payment is made following the payment for purposes of the safe harbor. An additional rule in § 1.704–1(b)(4)(viii)(*c*)(*4*) treats the guaranteed payment as a distributive share of the partnership's net income in a CFTE category to the extent of the upward adjustment. Together, these rules for guaranteed payments provide a more appropriate matching under the safe harbor of CFTEs and the income to which they relate.

However, the current final regulations do not expressly address situations in which an allocation or distribution of an allocated amount or guaranteed payment gives rise to a deduction for purposes of one foreign tax, but is made out of income subject to another tax imposed by the same or a different foreign jurisdiction. For example, a partnership may make a preferential allocation of gross income that is deductible in the foreign jurisdiction in which the partnership is a resident (foreign jurisdiction X) but that is made out of income earned by a disregarded entity or branch owned by the partnership that is subject to net basis tax in the jurisdiction in which the disregarded entity or branch is located (foreign jurisdiction Y). In this case, the Treasury Department and the IRS are aware that some taxpayers have suggested that § 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*) may be interpreted to provide that the income related to the preferential allocation should not be included in a CFTE category because it is not included in the foreign jurisdiction X base, even though there are foreign jurisdiction Y CFTEs that clearly relate to the income out of which the preferential allocation is made. This interpretation is inconsistent with the purpose of the special rules to apply the safe harbor in a manner that matches income with the related CFTEs.

The special rules were not intended to permit taxpayers to adjust or fail to adjust income in a CFTE category in a manner that distorts a partner's share of the income to which the CFTEs assigned to that category relate. Therefore, these temporary regulations revise the special rules to address situations in which allocations (or distributions of allocated amounts) and guaranteed payments that give rise to foreign law deductions are made out of income with related CFTEs. Specifically, § 1.704–1T(b)(4)(viii)(*c*)(*4*)(*ii*) provides that a partnership's net income in a CFTE category from which a guaranteed payment that is not deductible in a foreign jurisdiction is made shall be increased by the amount of the guaranteed payment that is deductible for U.S. federal income tax purposes, and such amount shall be treated as an allocation to the recipient of the guaranteed payment for purposes of determining the partners' shares of income in the CFTE category, but only for purposes of testing allocations of CFTEs attributable to a foreign tax that

does not allow a deduction for the guaranteed payment. However, for purposes of testing allocations of CFTEs attributable to a foreign tax that *does* allow a deduction for the guaranteed payment, a partnership's net income in a CFTE category is increased only to the extent that the amount of the guaranteed payment that is deductible for U.S. federal income tax purposes exceeds the amount allowed as a deduction for purposes of that foreign tax, and such excess is treated as an allocation to the recipient of the guaranteed payment for purposes of determining the partners' shares of income in the CFTE category.

Similarly, § 1.704–1T(b)(4)(viii)(*c*)(*4*)(*iii*) provides that, to the extent that a foreign tax allows a deduction from its taxable base for an allocation (or distribution of an allocated amount) to a partner, then solely for purposes of testing allocations of CFTEs attributable to that foreign tax, the partnership's net income in the CFTE category from which the allocation is made is reduced by the amount of the foreign law deduction, and that amount is not treated as an allocation for purposes of determining the partners' shares of income in the CFTE category. For purposes of testing allocations of CFTEs attributable to a foreign tax that does *not* allow a deduction for an allocation (or distribution of an allocated amount) to a partner, the partnership's net income in a CFTE category is *not* reduced.

Finally, the current final regulations provide that the adjustment to income attributable to an activity for a preferential allocation depends on whether the allocation of the item of income (or payment thereof) ''results'' in a deduction under foreign law. This rule was intended to apply even if the foreign law deduction occurred in a different taxable year (for example, because the foreign jurisdiction allowed a deduction only upon a subsequent payment of accrued interest). These temporary regulations at § 1.704–1T(b)(4)(viii)(*c*)(*4*)(*ii*) and (*iii*) clarify that a guaranteed payment or preferential allocation is considered deductible under foreign law for purposes of the special rules if the foreign jurisdiction allows a deduction from its taxable base either in the current year or in a different taxable year.

III. Inter-Branch Payments

For taxable years beginning before January 1, 2012, the special rules under § 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*) included a cross-reference confirming that certain inter-branch payments that were described in § 1.704–1(b)(4)(viii)(*d*)(*3*) (the ''inter-branch payment rule'') were not subject to the special rules. On February 14, 2012, temporary regulations (TD 9577) were published in the **Federal Register** (77 FR 8127) addressing situations in which foreign income taxes have been separated from the related income. As part of those regulations, the inter-branch payment rule was removed because it allowed taxpayers to separate foreign income taxes and related income. In conjunction with the removal of the inter-branch payment rule, the cross-reference to the eliminated rule was removed from § 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*).

The Treasury Department and the IRS have become aware that some taxpayers claim that the inclusion and subsequent removal of the cross-reference created uncertainty regarding the application of the special rules under § 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*) to disregarded payments among branches of a partnership. As explained above, the purpose of the special rules is to match preferential allocations and guaranteed payments to partners with CFTEs that relate to the income out of which the allocation or guaranteed payment is made, and also to ensure proper testing of CFTE allocations when no CFTEs relate to such income. The special rules accomplish this matching by treating preferential allocations and guaranteed payments as distributive shares of income, but only for purposes of allocating CFTEs attributable to taxes imposed by a foreign jurisdiction that does not allow deductions for such allocations and payments. Because an inter-branch payment is not made to a partner, it can never be treated as a distributive share, and is outside the scope of the special rules. By its terms, current § 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*) applies only to partnership allocations that are deductible under foreign law, guaranteed payments that are not deductible under foreign law, and (not discussed herein) income that is excluded from a foreign tax base as a result of the status of a partner. The inclusion and subsequent removal of the cross-reference did not change the purpose of current § 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*) or expand its scope to provide for reductions in income in a CFTE category if a partnership makes a disregarded payment that is deductible under foreign law. These regulations under § 1.704–1T(b)(4)(viii)(*c*)(*4*)(*iii*) clarify that the special rule for preferential allocations applies only to allocations (or distributions of allocated amounts) to a partner that are deductible under foreign law, and not to other items that give rise to deductions under foreign law. For example, the special rule does not apply to reduce income in a CFTE category by reason of a disregarded inter-branch payment, even if the income out of which the inter-branch payment is made is not subject to tax in any foreign jurisdiction.

In addition, the Treasury Department and the IRS are aware of transactions involving serial disregarded payments in which taxpayers take the position that withholding taxes assessed on the first payment in a series of back-to-back disregarded payments do not need to be apportioned among the CFTE categories that include the income out of which the payment is made. These regulations include new examples clarifying that under § 1.704–1(b)(4)(viii)(*d*)(*1*) withholding taxes must be apportioned among the CFTE categories that include the related income. *See* § 1.704–1T(b)(5) *Example 36* and *Example 37.*

IV. Other Non-Substantive Clarifications

These regulations make certain organizational and other non-substantive changes that clarify how items of income under U.S. federal income tax law are assigned to an activity and how a partnership's net income in a CFTE category is determined.

For the avoidance of doubt, § 1.704–1(b)(4)(viii)(*c*)(*2*)(*iii*) is revised to more clearly describe when income from a divisible part of a single activity must be treated as income from a separate activity. Section 1.704–1(b)(4)(viii)(*c*)(*2*)(*iii*) provides that whether a partnership has one or more activities, and the scope of each activity, is determined in a reasonable manner taking into account all the facts and circumstances, with the principal consideration being whether the proposed determination has the effect of separating CFTEs from the related foreign income. The rule also provides that income from a divisible part of a single activity is treated as income from a separate activity if necessary to prevent separating CFTEs from the related foreign income. *Example 24(iii)* of § 1.704–1(b)(5) illustrates that if a partnership agreement makes a special allocation of income earned by a disregarded entity (DE1) in order to reflect a disregarded inter-branch payment paid by DE1 to a second disregarded entity, then the payment is treated as a divisible part of an activity and treated as a separate activity. These regulations confirm this result by adding language in § 1.704–1T(b)(4)(viii)(*c*)(*2*)(*iii*) clarifying that income from a divisible part of a single

activity is treated as income from a separate activity whenever the income is subject to different allocations.

These regulations also confirm in § 1.704–1T(b)(4)(viii)(*c*)(*2*)(*iii*) that a guaranteed payment or preferential allocation of income that is determined by reference to all the income from a single activity generally will *not* result in dividing a single activity into separate activities. This clarification is consistent with the rule in § 1.704–1(b)(4)(viii)(*c*)(*2*)(*ii*), which generally provides that a guaranteed payment, gross income allocation, or other preferential allocation that is determined by reference to income from all of the partnership's activities does not result in different allocations of income from separate activities. For an illustration of the application of § 1.704–1(b)(4)(viii)(*c*)(*2*)(*iii*) prior to this clarification, see § 1.704–1(b)(5) *Example 22* and *Example 25,* the latter of which has also been updated as part of these temporary regulations.

In order to more clearly explain how the rules for determining a partnership's net income in a CFTE category operate and to assist taxpayers in applying these rules, these temporary regulations reorganize § 1.704–1(b)(4)(viii)(*c*)(*3*) and provide an introductory paragraph at § 1.704–1T(b)(4)(viii)(*c*)(*3*)(*i*) that describes the steps for computing a partnership's net income in a CFTE category.

The current final regulations provide that only items of gross income recognized by a branch for U.S. income tax purposes are taken into account to determine net income attributable to any activity of a branch. *Example 24* in § 1.704–1(b)(5) further illustrates that a disregarded inter-branch payment does not move income from one activity to another. These temporary regulations confirm at § 1.704–1T(b)(4)(viii)(*c*)(*3*)(*iv*) that disregarded payments are never taken into account in determining the amount of net income attributable to an activity (although, as noted above, a special allocation of income used to make a disregarded payment may result in that income being treated as a divisible part of the activity giving rise to the income), and that therefore an item of gross income is assigned to the activity that generates the item of income that is recognized for U.S. federal income tax purposes.

In addition, the current final regulations use the term ''distributive share of income,'' which has a general meaning under subchapter K but is used for a different purpose under § 1.704–1(b)(4)(viii)(*c*)(*4*). To avoid confusion, these temporary regulations at § 1.704–1T(b)(4)(viii)(*c*)(*4*)(*i*) revise the term ''distributive share of income'' to ''CFTE category share of income.'' No difference in meaning or purpose is intended by the change in terminology. The Treasury Department and the IRS will update *Examples 20, 21, 22, 23, 24, 26,* and *27* in § 1.704–1(b)(5) (which are not revised under these temporary regulations) to reflect the new terminology when these temporary regulations are finalized. In the interim, any reference to ''distributive share of income'' under the current final regulations should be treated as a reference to a ''CFTE category share of income'' as defined in § 1.704–1T(b)(4)(viii)(*c*)(*4*)(*i*).

V. Effective Date

These temporary regulations apply for partnership taxable years that both begin on or after January 1, 2016, and end after February 4, 2016. The temporary regulations also modify an existing transition rule with respect to certain inter-branch payments for partnerships whose agreements were entered into prior to February 14, 2012. The current transition rule provides that if there has been no material modification to their partnership agreements on or after February 14, 2012, then, for tax years beginning on or after January 1, 2012, these partnerships may apply the provisions of §§ 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*) and 1.704–1(b)(4)(viii)(*d*)(*3*) (revised as of April 1, 2011). That transition rule is modified to provide that for tax years that both begin on or after January 1, 2016, and end after February 4, 2016, these partnerships may continue to apply the provisions of § 1.704–1(b)(4)(viii)(*d*)(*3*) (revised as of April 1, 2011) but must apply the provisions of § 1.704–1T(b)(4)(viii)(*c*)(*3*)(*ii*). *See* § 1.704–1T(b)(1)(ii)(*b*)(*3*)(*B*). For purposes of this transition rule, any change in ownership constitutes a material modification to the partnership agreement. This transition rule does not apply to any taxable year (and all subsequent taxable years) in which persons bearing a relationship to each other that is specified in section 267(b) or section 707(b) collectively have the power to amend the partnership agreement without the consent of any unrelated party.

No inference is intended as to the application of the provisions amended by these temporary regulations under current law. The IRS may, where appropriate, challenge transactions, including those described in these temporary regulations and this preamble, under currently applicable Code or regulatory provisions or judicial doctrines.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also 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 the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Suzanne M. Walsh of the Office of Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

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 1.704–1 is amended as follows:

■ 1. In Paragraph (b)(0):

■ i. Add an entry for § 1.704–1(b)(1)(ii)(*b*)(*1*).

■ ii. Revise the entries for § 1.704–1(b)(4)(viii)(*c*)(*1*) through (*4*) and (b)(4)(viii)(*d*)(*1*).

■ 2. Revise paragraphs (b)(1)(ii)(*b*)(*1*), (b)(1)(ii)(*b*)(*3*)(*B*), (b)(4)(viii)(*a*)(*1*), (b)(4)(viii)(*c*)(*1*), (b)(4)(viii)(*c*)(*2*)(*ii*) and (*iii*), (b)(4)(viii)(*c*)(*3*) and (*4*), (b)(4)(viii)(*d*)(*1*), and *Example 25* of paragraph (b)(5).

■ 3. Add *Examples 36* and *37* to paragraph (b)(5).

The revisions and additions read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) *Determination of partner's distributive share*–(0) *Cross-references.*

Heading	Section
* * * * *	
[Reserved]	1.704–1(b)(1)(ii)(*b*)(*1*)
* * * * *	
[Reserved]	1.704–1(b)(4)(viii)(*c*)(*1*)
[Reserved]	1.704–1(b)(4)(viii)(*c*)(*2*)
[Reserved]	1.704–1(b)(4)(viii)(*c*)(*3*)
[Reserved]	1.704–1(b)(4)(viii)(*c*)(*4*)
* * * * *	
[Reserved]	1.704–1(b)(4)(viii)(*d*)(*1*)
* * * * *	

(1) * * *

(ii) * * *

(*b*) *Rules relating to foreign tax expenditures.* (*1*) [Reserved]. For further guidance, see § 1.704–1T(b)(1)(ii)(*b*)(*1*).

* * * * *

(*3*) * * *

(*B*) [Reserved]. For further guidance, see § 1.704–1T(b)(1)(ii)(*b*)(*3*)(*B*).

* * * * *

(4) * * *

(viii) * * *

(*a*) * * *

(*1*) [Reserved]. For further guidance, see § 1.704–1T(b)(4)(viii)(*a*)(*1*).

* * * * *

(*c*) *Income to which CFTEs relate.* (*1*) [Reserved]. For further guidance, see § 1.704–1T(b)(4)(viii)(*c*)(*1*).

(*2*) * * *

(*ii*) and (*iii*) [Reserved]. For further guidance, see § 1.704–1T(b)(4)(viii)(*c*)(*2*)(*ii*) and (*iii*).

(*3*) [Reserved]. For further guidance, see § 1.704–1T(b)(4)(viii)(*c*)(*3*).

(*4*) [Reserved]. For further guidance, see § 1.704–1T(b)(4)(viii)(*c*)(*4*).

* * * * *

(*d*) *Allocation and apportionment of CFTEs to CFTE categories.* (*1*) [Reserved]. For further guidance, see § 1.704–1T(b)(4)(viii)(*d*)(*1*).

* * * * *

(5) * * *

Example 25. [Reserved]. For further guidance, see § 1.704–1T(b)(5) *Example 25.*

* * * * *

Example 36. [Reserved]. For further guidance, see § 1.704–1T(b)(5) *Example 36.*

Example 37. [Reserved]. For further guidance, see § 1.704–1T(b)(5) *Example 37.*

* * * * *

■ Par. 3. Section 1.704–1T is added to read as follows:

§ 1.704–1T Partner's distributive share (temporary).

(a) through (b)(1)(ii)(*a*) [Reserved]. For further guidance, see § 1.704–1(a) through (b)(1)(ii)(*a*).

(*b*) *Rules relating to foreign tax expenditures*—(*1*) *In general.* Except as otherwise provided in this paragraph (b)(1)(ii)(*b*)(*1*), the provisions of paragraphs (b)(3)(iv) and (b)(4)(viii) of this section (regarding the allocation of creditable foreign taxes) apply for partnership taxable years beginning on or after October 19, 2006. The rules that apply to allocations of creditable foreign taxes made in partnership taxable years beginning before October 19, 2006 are contained in § 1.704–1T(b)(1)(ii)(*b*)(*1*) and (b)(4)(xi) as in effect prior to October 19, 2006 (see 26 CFR part 1 revised as of April 1, 2005). However, taxpayers may rely on the provisions of paragraphs (b)(3)(iv) and (b)(4)(viii) of this section for partnership taxable years beginning on or after April 21, 2004. The provisions of paragraphs (b)(4)(viii)(*a*)(*1*), (b)(4)(viii)(*c*)(*1*), (b)(4)(viii)(*c*)(*2*)(*ii*) and (*iii*), (b)(4)(viii)(*c*)(*3*) and (*4*), (b)(4)(viii)(*d*)(*1*), and *Examples 25, 36,* and *37* of paragraph (b)(5) of this section apply for partnership taxable years that both begin on or after January 1, 2016, and end after February 4, 2016. For the rules that apply to partnership taxable years beginning on or after October 19, 2006, and before January 1, 2016, and to taxable years that both begin on or after January 1, 2016, and end on or before February 4, 2016, see § 1.704–1(b)(1)(ii)(*b*), (b)(4)(viii)(*a*)(*1*), (b)(4)(viii)(*c*)(*1*), (b)(4)(viii)(*c*)(*2*)(*ii*) and (*iii*), (b)(4)(viii)(*c*)(*3*) and (*4*), (b)(4)(viii)(*d*)(*1*), and (b)(5), *Example 25* (as contained in 26 CFR part 1 revised as of April 1, 2015).

(b)(1)(ii)(*b*)(*2*) through (b)(1)(ii)(*b*)(*3*)(*A*) [Reserved]. For further guidance, see § 1.704–1(b)(1)(ii)(*b*)(*2*) through (b)(1)(ii)(*b*)(*3*)(*A*).

(*B*) *Transition rule.* Transition relief is provided herein to partnerships whose agreements were entered into prior to February 14, 2012. In such cases, if there has been no material modification to the partnership agreement on or after February 14, 2012, then, for taxable years beginning on or after January 1, 2012, and before January 1, 2016, and for taxable years that both begin on or after January 1, 2012, and end on or before February 4, 2016, these partnerships may apply the provisions of § 1.704–1(b)(4)(viii)(*c*)(*3*)(*ii*) (see 26 CFR part 1 revised as of April 1, 2011) and § 1.704–1(b)(4)(viii)(*d*)(*3*) (see 26 CFR part 1 revised as of April 1, 2011). For taxable years that both begin on or after January 1, 2016, and end after February 4, 2016, these partnerships may apply the provisions of § 1.704–1(b)(4)(viii)(*d*)(*3*) (see 26 CFR part 1 revised as of April 1, 2011). For purposes of this paragraph (b)(1)(ii)(*b*)(*3*), any change in ownership constitutes a material modification to the partnership agreement. This transition rule does not apply to any taxable year in which persons bearing a relationship to each other that is specified in section 267(b) or section 707(b) collectively have the power to amend the partnership agreement without the consent of any unrelated party (and all subsequent taxable years).

(b)(1)(iii) through (b)(4)(viii)(*a*) [Reserved]. For further guidance, see § 1.704–1(b)(1)(iii) through (b)(4)(viii)(*a*).

(*1*) The CFTE is allocated (whether or not pursuant to an express provision in the partnership agreement) to each partner and reported on the partnership return in proportion to the partners' CFTE category shares of income to which the CFTE relates; and

(b)(4)(viii)(*a*)(*2*) through (b)(4)(viii)(*b*) [Reserved]. For further guidance, see § 1.704–1(b)(4)(viii)(*a*)(*2*) through (b)(4)(viii)(*b*).

(*c*) *Income to which CFTEs relate*—(*1*) *In general.* For purposes of paragraph (b)(4)(viii)(*a*) of this section, CFTEs are related to net income in the partnership's CFTE category or categories to which the CFTE is allocated and apportioned in accordance with the rules of paragraph (b)(4)(viii)(*d*) of this section. Paragraph (b)(4)(viii)(*c*)(*2*) of this section provides rules for determining a partnership's CFTE categories. Paragraph (b)(4)(viii)(*c*)(*3*) of this section provides rules for determining the net income in each CFTE category. Paragraph (b)(4)(viii)(*c*)(*4*) of this section provides rules for determining a partner's CFTE category share of income, including rules that require adjustments to net income in a CFTE category for purposes of determining the partners' CFTE category share of income with respect to certain CFTEs. Paragraph (b)(4)(viii)(*c*)(*5*) of this section provides a special rule for allocating CFTEs when a partnership has no net income in a CFTE category.

(*2*)(*i*) [Reserved]. For further guidance, see § 1.704–1(b)(4)(viii)(*c*)(*2*)(*i*).

(*ii*) *Different allocations.* Different allocations of net income (or loss) generally will result from provisions of the partnership agreement providing for different sharing ratios for net income (or loss) from separate activities. Different allocations of net income (or loss) from separate activities generally will also result if any partnership item is shared in a different ratio than any other partnership item. A guaranteed payment described in paragraph (b)(4)(viii)(*c*)(*4*)(*ii*) of this section, gross income allocation, or other preferential allocation will result in different allocations of net income (or loss) from

separate activities only if the amount of the payment or the allocation is determined by reference to income from less than all of the partnership's activities.

(*iii*) *Activity.* Whether a partnership has one or more activities, and the scope of each activity, is determined in a reasonable manner taking into account all the facts and circumstances. In evaluating whether aggregating or disaggregating income from particular business or investment operations constitutes a reasonable method of determining the scope of an activity, the principal consideration is whether the proposed determination has the effect of separating CFTEs from the related foreign income. Relevant considerations include whether the partnership conducts business in more than one geographic location or through more than one entity or branch, and whether certain types of income are exempt from foreign tax or subject to preferential foreign tax treatment. In addition, income from a divisible part of a single activity is treated as income from a separate activity if necessary to prevent separating CFTEs from the related foreign income, such as when income from divisible parts of a single activity is subject to different allocations. A guaranteed payment, gross income allocation, or other preferential allocation of income that is determined by reference to all the income from a single activity generally will not result in the division of an activity into divisible parts. See *Examples 22* and *25* of paragraph (b)(5) of this section. The partnership's activities must be determined consistently from year to year absent a material change in facts and circumstances.

(*3*) *Net income in a CFTE category*—(*i*) *In general.* A partnership computes net income in a CFTE category as follows: First, the partnership determines for U.S. federal income tax purposes all of its partnership items, including items of gross income, gain, loss, deduction, and expense, and items allocated pursuant to section 704(c). For this purpose, the items of the partnership are determined without regard to any adjustments under section 743(b) that its partners may have to the basis of property of the partnership. However, if the partnership is a transferee partner that has a basis adjustment under section 743(b) in its capacity as a direct or indirect partner in a lower-tier partnership, the partnership does take such basis adjustment into account. Second, the partnership must assign those partnership items to its activities pursuant to paragraph (b)(4)(viii)(*c*)(*3*)(*ii*) of this section. Third, partnership items attributable to each activity are aggregated within the relevant CFTE category as determined under paragraph (b)(4)(viii)(*c*)(*2*) of this section in order to compute the net income in a CFTE category.

(*ii*) *Assignment of partnership items to activities.* The items of gross income attributable to an activity must be determined in a consistent manner under any reasonable method taking into account all the facts and circumstances. Except as otherwise provided in paragraph (b)(4)(viii)(*c*)(*3*)(*iii*) of this section, expenses, losses, or other deductions must be allocated and apportioned to gross income attributable to an activity in accordance with the rules of §§ 1.861–8 and 1.861–8T. Under these rules, if an expense, loss, or other deduction is allocated to gross income from more than one activity, such expense, loss, or deduction must be apportioned among each such activity using a reasonable method that reflects to a reasonably close extent the factual relationship between the deduction and the gross income from such activities. See § 1.861–8T(c). For the effect of disregarded payments in determining the amount of net income attributable to an activity, see paragraph (b)(4)(viii)(*c*)(*3*)(*iv*) of this section.

(*iii*) *Interest expense and research and experimental expenditures.* The partnership's interest expense and research and experimental expenditures described in section 174 may be allocated and apportioned under any reasonable method, including but not limited to the methods prescribed in §§ 1.861–9 through 1.861–13T (interest expense) and § 1.861–17 (research and experimental expenditures).

(*iv*) *Disregarded payments.* An item of gross income is assigned to the activity that generates the item of income that is recognized for U.S. federal income tax purposes. Consequently, disregarded payments are not taken into account in determining the amount of net income attributable to an activity, although a special allocation of income used to make a disregarded payment may result in the subdivision of an activity into divisible parts. See paragraph (b)(4)(viii)(*c*)(*2*)(*iii*) of this section and *Examples 24, 36,* and *37* of paragraph (b)(5) of this section (relating to inter-branch payments).

(*4*) *CFTE category share of income*—(*i*) *In general.* CFTE category share of income means the portion of the net income in a CFTE category, determined in accordance with paragraph (b)(4)(viii)(*c*)(*3*) of this section as modified by paragraphs (b)(4)(viii)(c)(*4*)(*ii*) through (*iv*) of this section, that is allocated to a partner. To the extent provided in paragraph (b)(4)(viii)(*c*)(*4*)(*ii*) of this section, a guaranteed payment is treated as an allocation to the recipient of the guaranteed payment for this purpose. If more than one partner receives positive income allocations (income in excess of expenses) from a CFTE category, which in the aggregate exceed the total net income in the CFTE category, then such partner's CFTE category share of income equals the partner's positive income allocation from the CFTE category, divided by the aggregate positive income allocations from the CFTE category, multiplied by the net income in the CFTE category. Paragraphs (b)(4)(viii)(*c*)(*4*)(*ii*) through (*iv*) of this section require adjustments to the net income in a CFTE category for purposes of determining the partners' CFTE category share of income if one or more foreign jurisdictions impose a tax that provides for certain exclusions or deductions from the foreign taxable base. Such adjustments apply only with respect to CFTEs attributable to the taxes that allow such exclusions or deductions. Thus, net income in a CFTE category may vary for purposes of applying paragraph (b)(4)(viii)(*a*)(*1*) of this section to different CFTEs within that CFTE category.

(*ii*) *Guaranteed payments.* Except as otherwise provided in this paragraph (b)(4)(viii)(*c*)(*4*)(*ii*), solely for purposes of applying the safe harbor provisions of paragraph (b)(4)(viii)(*a*)(*1*) of this section, net income in the CFTE category from which a guaranteed payment (within the meaning of section 707(c)) is made is increased by the amount of the guaranteed payment that is deductible for U.S. federal income tax purposes, and such amount is treated as an allocation to the recipient of such guaranteed payment for purposes of determining the partners' CFTE category shares of income. If a foreign tax allows (whether in the current or in a different taxable year) a deduction from its taxable base for a guaranteed payment, then solely for purposes of applying the safe harbor provisions of paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of CFTEs that are attributable to that foreign tax, net income in the CFTE category is increased only to the extent that the amount of the guaranteed payment that is deductible for U.S. federal income tax purposes exceeds the amount allowed as a deduction for purposes of the foreign tax, and such excess is treated as an allocation to the recipient of the guaranteed payment for purposes of

determining the partners' CFTE category shares of income. See *Example 25* of paragraph (b)(5) of this section.

(*iii*) *Preferential allocations.* To the extent that a foreign tax allows (whether in the current or in a different taxable year) a deduction from its taxable base for an allocation (or distribution of an allocated amount) to a partner, then solely for purposes of applying the safe harbor provisions of paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of CFTEs that are attributable to that foreign tax, the net income in the CFTE category from which the allocation is made is reduced by the amount of the allocation, and that amount is not treated as an allocation for purposes of determining the partners' CFTE category shares of income. See *Example 25* of paragraph (b)(5) of this section.

(*iv*) *Foreign law exclusions due to status of partner.* If a foreign tax excludes an amount from its taxable base as a result of the status of a partner, then solely for purposes of applying the safe harbor provisions of paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of CFTEs that are attributable to that foreign tax, the net income in the relevant CFTE category is reduced by the excluded amounts that are allocable to such partners. See *Example 27* of paragraph (b)(5) of this section.

(b)(4)(viii)(*c*)(*5*) [Reserved]. For further guidance, see § 1.704–1(b)(4)(viii)(*c*)(*5*).

(*d*) *Allocation and apportionment of CFTEs to CFTE categories*—(*1*) *In general.* CFTEs are allocated and apportioned to CFTE categories in accordance with the principles of § 1.904–6. Under these principles, a CFTE is related to income in a CFTE category if the income is included in the base upon which the foreign tax is imposed. See *Examples 36* and *37 of* paragraph (b)(5) of this section, which illustrate the application of this paragraph in the case of serial disregarded payments subject to withholding tax. In accordance with § 1.904–6(a)(1)(ii) as modified by this paragraph (b)(4)(viii)(*d*), if the foreign tax base includes income in more than one CFTE category, the CFTEs are apportioned among the CFTE categories based on the relative amounts of taxable income computed under foreign law in each CFTE category. For purposes of this paragraph (b)(4)(viii)(*d*), references in § 1.904–6 to a separate category or separate categories mean ''CFTE category'' or ''CFTE categories'' and the rules in § 1.904–6(a)(1)(ii) are modified as follows:

(b)(4)(viii)(*d*)(*1*)(*i*) through (b)(5) *Example 24* [Reserved]. For further guidance, see § 1.704–1(b)(4)(viii)(*d*)(*1*)(*i*) through (b)(5) *Example 24.*

Example 25. (i) A contributes $750,000 and B contributes $250,000 to form AB, a country X eligible entity (as defined in § 301.7701–3(a) of this chapter) treated as a partnership for U.S. federal income tax purposes. AB operates business M in country X. Country X imposes a 20 percent tax on the net income from business M, which tax is a CFTE. In 2016, AB earns $300,000 of gross income, has deductible expenses of $100,000, and pays or accrues $40,000 of country X tax. Pursuant to the partnership agreement, the first $100,000 of gross income each year is specially allocated to A as a preferred return on excess capital contributed by A. All remaining partnership items, including CFTEs, are split evenly between A and B (50 percent each). The gross income allocation is not deductible in determining AB's taxable income under country X law. Assume that allocations of all items other than CFTEs are valid.

(ii) AB has a single CFTE category because all of AB's net income is allocated in the same ratio. See paragraph (b)(4)(viii)(*c*)(*2*) of this section. Under paragraph (b)(4)(viii)(*c*)(*3*) of this section, the net income in the single CFTE category is $200,000. The $40,000 of taxes is allocated to the single CFTE category and, thus, is related to the $200,000 of net income in the single CFTE category. In 2016, AB's partnership agreement results in an allocation of $150,000 or 75 percent of the net income to A ($100,000 attributable to the gross income allocation plus $50,000 of the remaining $100,000 of net income) and $50,000 or 25 percent of the net income to B. AB's partnership agreement allocates the country X taxes in accordance with the partners' shares of partnership items remaining after the $100,000 gross income allocation. Therefore, AB allocates the country X taxes 50 percent to A ($20,000) and 50 percent to B ($20,000). AB's allocations of country X taxes are not deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii) of this section because they are not in proportion to the allocations of the CFTE category shares of income to which the country X taxes relate. Accordingly, the country X taxes will be reallocated according to the partners' interests in the partnership. Assuming that the partners do not reasonably expect to claim a deduction for the CFTEs in determining their U.S. federal income tax liabilities, a reallocation of the CFTEs under paragraph (b)(3) of this section would be 75 percent to A ($30,000) and 25 percent to B ($10,000). If the reallocation of the CFTEs causes the partners' capital accounts not to reflect their contemplated economic arrangement, the partners may need to reallocate other partnership items to ensure that the tax consequences of the partnership's allocations are consistent with their contemplated economic arrangement over the term of the partnership.

(iii) The facts are the same as in paragraph (i) of this *Example 25*, except that country X allows a deduction for the $100,000 allocation of gross income and, as a result, AB pays or accrues only $20,000 of foreign tax. Under paragraph (b)(4)(viii)(*c*)(*4*)(*iii*) of this section, the net income in the single CFTE category is $100,000, determined by reducing the net income in the CFTE category by the $100,000 of gross income that is allocated to A and for which country X allows a deduction in determining AB's taxable income. Pursuant to the partnership agreement, AB allocates the country X tax 50 percent to A ($10,000) and 50 percent to B ($10,000). This allocation is in proportion to the partners' CFTE category shares of the $100,000 net income. Accordingly, AB's allocations of country X taxes are deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii)(*a*) of this section.

(iv) The facts are the same as in paragraph (iii) of this *Example 25,* except that, in addition to $20,000 of country X tax, AB is subject to $30,000 of country Y withholding tax with respect to the $300,000 of gross income that it earns in 2016. Country Y does not allow any deductions for purposes of determining the withholding tax. As described in paragraph (ii) of this *Example 25,* there is a single CFTE category with respect to AB's net income. Both the $20,000 of country X tax and the $30,000 of country Y withholding tax relate to that income and are therefore allocated to the single CFTE category. Under paragraph (b)(4)(viii)(c)(*4*)(*iii*) of this section, however, net income in a CFTE category is reduced by the amount of an allocation for which a deduction is allowed in determining a foreign taxable base, but only for purposes of applying paragraph (b)(4)(viii)(*a*) of this section to allocations of CFTEs that are attributable to that foreign tax. Accordingly, because the $100,000 allocation of gross income is deductible for country X tax purposes but not for country Y tax purposes, the allocations of the CFTEs attributable to country X tax and country Y tax are analyzed separately. For purposes of applying paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of the CFTEs attributable to the $20,000 tax imposed by country X, the analysis described in paragraph (iii) of this *Example 25* applies. For purposes of applying paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of the CFTEs attributable to the $30,000 tax imposed by country Y, which did not allow a deduction for the $100,000 gross income allocation, the net income in the single CFTE category is $200,000. Pursuant to the partnership agreement, AB allocates the country Y tax 50 percent to A ($15,000) and 50 percent to B ($15,000). These allocations are not deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii) of this section because they are not in proportion to the partners' CFTE category shares of the $200,000 of net income in the category, which is allocated 75 percent to A and 25 percent to B under the partnership agreement. Accordingly, the country Y taxes will be reallocated according to the partners' interests in the partnership as described in paragraph (ii) of this *Example 25.*

(v) The amount of net income in the single CFTE category of AB for purposes of

applying paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of CFTEs would be the same as in the fact patterns described in paragraphs (ii), (iii) and (iv) if, rather than being a preferential gross income allocation, the $100,000 was a guaranteed payment to A within the meaning of section 707(c). See paragraph (b)(4)(viii)(*c*)(*4*)(*ii*) of this section.

(b)(5) *Examples 26* through *35* [Reserved]. For further guidance, see § 1.704–1(b)(5) *Examples 26* through *35*.

Example 36. (i) A, B, and C form ABC, an eligible entity (as defined in § 301.7701–3(a) of this chapter) treated as a partnership for U.S. federal income tax purposes. ABC owns three entities, DEX, DEY, and DEZ, which are organized in, and treated as corporations under the laws of, countries X, Y, and Z, respectively, and as disregarded entities for U.S. federal income tax purposes. DEX operates business X in country X, DEY operates business Y in country Y, and DEZ operates business Z in country Z. Businesses X, Y, and Z relate to the licensing and sublicensing of intellectual property owned by DEZ. During 2016, DEX earns $100,000 of royalty income from unrelated payors on which it pays no withholding taxes. Country X imposes a 30 percent tax on DEX's net income. DEX makes royalty payments of $90,000 during 2016 to DEY that are deductible by DEX for country X purposes and subject to a 10 percent withholding tax imposed by country X. DEY earns no other income in 2016. Country Y does not impose income or withholding taxes. DEY makes royalty payments of $80,000 during 2016 to DEZ. DEZ earns no other income in 2016. Country Z does not impose income or withholding taxes. The royalty payments from DEX to DEY and from DEY to DEZ are disregarded for U.S. federal income tax purposes.

As a result of these payments, DEX has taxable income of $10,000 for country X purposes on which $3,000 of taxes are imposed, and DEY has $90,000 of income for country X withholding tax purposes on which $9,000 of withholding taxes are imposed. Pursuant to the partnership agreement, all partnership items from business X, excluding CFTEs paid or accrued by business X, are allocated 80 percent to A and 10 percent each to B and C. All partnership items from business Y, excluding CFTEs paid or accrued by business Y, are allocated 80 percent to B and 10 percent each to A and C. All partnership items from business Z, excluding CFTEs paid or accrued by business Z, are allocated 80 percent to C and 10 percent each to A and B. Because only business X has items that are regarded for U.S. federal income tax purposes (the $100,000 of royalty income), only business X has partnership items. Accordingly A is allocated 80 percent of the income from business X ($80,000) and B and C are each allocated 10 percent of the income from business X ($10,000 each). There are no partnership items of income from business Y or Z to allocate.

(ii) Because the partnership agreement provides for different allocations of partnership net income attributable to businesses X, Y, and Z, the net income attributable to each of businesses X, Y, and Z is income in separate CFTE categories. See paragraph (b)(4)(viii)(*c*)(*2*) of this section. Under paragraph (b)(4)(viii)(*c*)(*3*)(*iv*) of this section, an item of gross income that is recognized for U.S. federal income tax purposes is assigned to the activity that generated the item, and disregarded inter-branch payments are not taken into account in determining net income attributable to an activity. Consequently, all $100,000 of ABC's income is attributable to the business X activity for U.S. federal income tax purposes, and no net income is in the business Y or Z CFTE category. Under paragraph (b)(4)(viii)(*d*)(*1*) of this section, the $3,000 of country X taxes imposed on DEX is allocated to the business X CFTE category. The additional $9,000 of country X withholding tax imposed with respect to the inter-branch payment to DEY is also allocated to the business X CFTE category because for U.S. federal income tax purposes the related $90,000 of income on which the country X withholding tax is imposed is in the business X CFTE category. Therefore, $12,000 of taxes ($3,000 of country X income taxes and $9,000 of the country X withholding taxes) is related to the $100,000 of net income in the business X CFTE. See paragraph (b)(4)(viii)(*c*)(*1*) of this section. The allocations of country X taxes will be in proportion to the CFTE category shares of income to which they relate and will be deemed to be in accordance with the partners' interests in the partnership if such taxes are allocated 80 percent to A and 10 percent each to B and C.

Example 37. (i) Assume that the facts are the same as in paragraph (i) of *Example 36* of this section, except that in order to reflect the $90,000 payment from DEX to DEY and the $80,000 payment from DEY to DEZ, the partnership agreement treats only $10,000 of the gross income as attributable to the business X activity, which the partnership agreement allocates 80 percent to A and 10 percent each to B and C. Of the remaining $90,000 of gross income, the partnership agreement treats $10,000 of the gross income as attributable to the business Y activity, which the partnership agreement allocates 80 percent to B and 10 percent each to A and C; and the partnership agreement treats $80,000 of the gross income as attributable to the business Z activity, which the partnership agreement allocates 80 percent to C and 10 percent each to A and B. In addition, the partnership agreement allocates the country X taxes among A, B, and C in accordance with which disregarded entity is considered to have paid the taxes for country X purposes. The partnership agreement allocates the $3,000 of country X income taxes 80 percent to A and 10 percent to each of B and C, and allocates the $9,000 of country X withholding taxes 80 percent to B and 10 percent to each of A and C. Thus, ABC allocates the country X taxes $3,300 to A (80 percent of $3,000 plus 10 percent of $9,000), $7,500 to B (10 percent of $3,000 plus 80 percent of $9,000), and $1,200 to C (10 percent of $3,000 plus 10 percent of $9,000).

(ii) In order to prevent separating the CFTEs from the related foreign income, the special allocations of the $10,000 and $80,000 treated under the partnership agreement as attributable to the business Y and the business Z activities, respectively, which do not follow the allocation ratios that otherwise apply under the partnership agreement to items of income in the business X activity, are treated as divisible parts of the business X activity and, therefore, as separate activities. See paragraph (b)(4)(viii)(*c*)(*2*)(*iii*) of this section. Because the divisible part of the business X activity attributable to the portion of the disregarded payment received by DEY and not paid on to DEZ ($10,000) and the net income from the business Y activity ($0) are both shared 80 percent to B and 10 percent each to A and C, that divisible part of the business X activity and the business Y activity are treated as a single CFTE category. Because the divisible part of the business X activity attributable to the disregarded payment paid to DEZ ($80,000) and the net income from the business Z activity ($0) are both shared 80 percent to C and 10 percent each to A and B, that divisible part of the business X activity and the business Z activity are also treated as a single CFTE category. See paragraph (b)(4)(viii)(*c*)(*2*)(*i*) of this section. Accordingly, $10,000 of net income attributable to business X is in the business X CFTE category, $10,000 of net income of business X attributable to the net disregarded payments of DEY is in the business Y CFTE category, and $80,000 of net income of business X attributable to the disregarded payment to DEZ is in the business Z CFTE category. Under paragraph (b)(4)(viii)(*d*)(*1*) of this section, the $3,000 of country X tax imposed on DEX's income is allocated to the business X CFTE category. Because the $90,000 on which the country X withholding tax is imposed is split between the business Y CFTE category and the business Z CFTE category, those withholding taxes are allocated on a pro rata basis, $1,000 [$9,000 × ($10,000/$90,000)] to the business Y CFTE category and $8,000 [$9,000 × ($80,000/$90,000)] to the business Z CFTE category. See paragraph (b)(4)(viii)(*d*)(*1*) of this section. To satisfy the safe harbor of paragraph (b)(4)(viii) of this section, the $3,000 of country X taxes allocated to the business X CFTE category must be allocated in proportion to the CFTE category shares of income to which they relate, and therefore would be deemed to be in accordance with the partners' interests in the partnership if such taxes were allocated 80 percent to A and 10 percent each to B and C. The allocation of the $1,000 of country X withholding taxes allocated to the business Y CFTE category would be in proportion to the CFTE category shares of income to which they relate, and therefore would be deemed to be in accordance with the partners' interests in the partnership if such taxes were allocated 80 percent to B and 10 percent each to A and C. The allocation of the $8,000 of country X withholding taxes allocated to the business Z CFTE category would be in proportion to the CFTE category shares of income to which they relate, and therefore would be deemed to be in accordance with the partners' interests in the partnership if such taxes were allocated 80 percent to C and

10 percent each to A and B. Thus, to satisfy the safe harbor, ABC must allocate the country X taxes $3,300 to A (80 percent of $3,000 plus 10 percent of $1,000 plus 10 percent of $8,000), $1,900 to B (10 percent of $3,000 plus 80 percent of $1,000 plus 10 percent of $8,000), and $6,800 to C (10 percent of $3,000 plus 10 percent of $1,000 plus 80 percent of $8,000). ABC's allocations of country X taxes are not deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii) of this section because they are not in proportion to the partners' CFTE category shares of income to which the country X taxes relate. Accordingly, the country X taxes will be reallocated according to the partners' interests in the partnership.

(c) through (e) [Reserved]. For further guidance, see § 1.704–1(c) through (e).

(f) *Expiration date.* The applicability of this section expires on February 4, 2019.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: January 14, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–01949 Filed 2–3–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0076]

Drawbridge Operation Regulation; Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Bridge across the Columbia River, mile 105.6, at Vancouver, WA. This deviation is necessary to accommodate maintenance to replace movable rail joints. This deviation allows the bridge to remain in the closed position during maintenance activities.

DATES: This deviation is effective from 7 a.m. on March 8, 2016, to 7 p.m. on March 17, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0076] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: BNSF requested that the BNSF Swing Bridge across the Columbia River, mile 105.6, remain closed to vessel traffic to remove and replace rail joints. During this installation period, the swing span of the bridge will be in the closed-to-navigation position; however, the span may be opened for maritime emergencies, but any emergency opening will necessitate a time extension to the approved dates. The BNSF Swing Bridge, mile 105.6, provides 39 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. The current operations for the swing bridge is in 33 CFR 117.5. This deviation allows the swing span of the BNSF Railway Bridge across the Columbia River, mile 105.6, to remain in the closed-to-navigation position, and need not open for maritime traffic from 7 a.m. to 7 p.m. on March 8, March 10, March 15, March 16 and March 17, 2016. These dates coincide with the Columbia River Bonneville lock and the Dalles lock. The bridge shall operate in accordance to 33 CFR 117.5 at all other times. Waterway usage on this part of the Columbia River includes vessels ranging from commercial tug and tow vessels to recreational pleasure craft including cabin cruisers and sailing vessels.

Vessels able to pass through the bridge in the closed positions may do so at anytime. For the duration of the repair work, vessels will not be allowed to pass through the bridge. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The bridge can be opened for emergency vessels in response to a call, however, if an opening for emergencies is needed, an extension of this deviation will be required to complete the work. No immediate alternate route for vessels to pass is available on this part of the river.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 29, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–02098 Filed 2–3–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0057]

Drawbridge Operation Regulation; James River, Isle of Wight and Newport News, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the James River Bridge (US17) across the James River, mile 5.0, at Isle of Wight and Newport News, VA. The deviation is necessary to perform bridge maintenance and repairs. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 5 a.m. on February 7, 2016 to 7 p.m. on February 14, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0057] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Virginia Department of Transportation, that owns and operates the James River Bridge (US17), has requested a temporary deviation from the current operating regulations to perform repairs to the aerial electrical cable connecting the north tower to the south tower. The bridge is a vertical lift draw bridge and has a vertical clearance in the closed position of 60 feet above mean high water.

The current operating schedule is open on signal as set out in 33 CFR 117.5. Under this temporary deviation, the bridge will remain in the closed-to-