1. FDA/Economics Staff, ''Revised Procedures for the Announcement of Approvals and Denials of Premarket Approval Applications and Humanitarian Device Exemption Applications, Preliminary Regulatory Impact Analysis, Preliminary Regulatory Flexibility Analysis, Unfunded Mandates Reform Act Analysis,'' 2019 (available at: *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*).

**List of Subjects in 21 CFR Part 814**

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 814 be amended as follows:

## PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 1. The authority citation for part 814 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 353, 360, 360c–360j, 360bbb–8b, 371, 372, 373, 374, 375, 379, 379e, 381.

**§ 814.40 [Amended]**

■ 2. In § 814.40, remove ''515(d)(3)'' and add in its place ''515(d)(4)''

**§ 814.44 [Amended]**

■ 3. Amend § 814.44 as follows:
■ a. In the fourth sentence in paragraph (d)(1), remove ''515(d)(3)'' and add in its place ''515(d)(4)'' and remove the sixth sentence;
■ b. In paragraph (d)(2), remove ''Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852'' and add in its place ''Freedom of Information Staff's address listed on the Agency's website at *https://www.fda.gov*.''; and
■ c. In paragraphs (e)(2)(ii) and (f)(2), remove ''515(d)(3)'' and add in its place ''515(d)(4)''.

**§ 814.45 [Amended]**

■ 4. Amend § 814.45 as follows:
■ a. In paragraph (d)(1), remove the third sentence and
■ b. In paragraph (e)(3), remove ''515(d)(3)'' and add in its place ''515(d)(4)''.
■ 5. In § 814.116 revise the fourth sentence in paragraph (b) to read as follows:

**§ 814.116 Procedures for review of an HDE.**

(b) * * * The notice of approval of an HDE will be placed on the FDA's home page on the internet (*https://www.fda.gov*) in accordance with the rules and policies applicable to PMAs submitted under § 814.20. * * *

**§ 814.118 [Amended]**

■ 6. In § 814.118(c)(3), remove ''515(d)(3)'' and add in its place ''515(d)(4)''.

Dated: December 9, 2019.

**Brett P. Giroir,**

*Acting Commissioner of Food and Drugs.*

[FR Doc. 2019–27045 Filed 12–16–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–107431–19]**

**RIN 1545–BP40**

## Treatment of Payments to Charitable Entities in Return for Consideration

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notification of public hearing.

**SUMMARY:** This document provides proposed amendments to the regulations under sections 162, 164, and 170 of the Internal Revenue Code (Code). First, the proposed amendments update the regulations under section 162 to reflect current law regarding the application of section 162 to a taxpayer that makes a payment or transfer to an entity described in section 170(c) for a business purpose. Second, the proposed amendments provide safe harbors under section 162 to provide certainty with respect to the treatment of payments made by business entities to an entity described in section 170(c). Third, the proposed amendments provide a safe harbor under section 164 for payments made to an entity described in section 170(c) by individuals who itemize deductions and receive or expect to receive a state or local tax credit in return. Fourth, the proposed amendments update the regulations under section 170 to reflect past guidance and case law regarding the application of the *quid pro quo* principle under section 170 to benefits received or expected to be received by a donor from a third party.

**DATES:** Written or electronic comments must be received by January 31, 2020 Requests to speak and outlines of topics to be discussed at the public hearing scheduled for February 20, 2020, must be received by January 31, 2020.

**ADDRESSES:** Submit electronic submissions via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–107431–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–107431–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–107431–19), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Mon L. Lam and Merrill D. Feldstein at (202) 317–4059; concerning submission of comments and requests to speak at the public hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers) or *fdms.database@irscounsel.treas.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

### I. Contributions in Exchange for State and Local Tax Credits

Section 170(a)(1) generally allows an itemized deduction for any ''charitable contribution'' paid within the taxable year. Section 170(c) defines ''charitable contribution'' as a ''contribution or gift to or for the use of'' an entity described in that section. Under section 170(c)(1), such entities include a State, a possession of the United States, or any political subdivision of the foregoing, or the District of Columbia. Section 170(c)(2) includes certain corporations, trusts, or community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. Section 1.170A–1(c)(5) of the Income Tax Regulations provides that transfers of property to an organization described in section 170(c) that bear a direct relationship to the taxpayer's trade or business and that are made with a reasonable expectation of financial return commensurate with the amount of the transfer may constitute allowable

deductions as trade or business expenses rather than as charitable contributions. Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Section 162(b) provides that no deduction shall be allowed under subsection (a) for any contribution or gift that would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment set forth in that section.

Section 1.162–15(a) applies to contributions to entities described in section 170(c). Section 1.162–15(a)(1) currently provides that no deduction is allowable under section 162(a) for a contribution or gift by an individual or a corporation if any part thereof is deductible under section 170. For example, if a taxpayer makes a contribution of $5,000 and only $4,000 of this amount is deductible under section 170(a) (whether because of the percentage limitation under either section 170(b)(1) or (2), the requirement as to time of payment, or both), no deduction is allowable under section 162(a) for the remaining $1,000. However, § 1.162–15(a)(2) clarifies that the limitations provided in section 162(b) and § 1.162–15(a)(1) apply only to payments that are in fact contributions or gifts to organizations described in section 170. For example, payments by a transit company to a local hospital (which is a charitable organization within the meaning of section 170) in consideration of a binding obligation on the part of the hospital to provide hospital services and facilities for the company's employees are not contributions or gifts within the meaning of section 170 and may be deductible under section 162(a) if the requirements of section 162(a) are otherwise satisfied.

Section 164(a) allows a deduction for the payment of certain taxes, including: (1) State and local, and foreign, real property taxes; (2) state and local personal property taxes; and (3) state and local, and foreign, income, war profits, and excess profits taxes. In addition, section 164 allows a deduction for taxes not described in the preceding sentence that are paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212. Moreover, under section 164(b)(5), taxpayers may elect to deduct state and local general sales taxes in lieu of state and local income taxes.

Section 164(b)(6), as added by section 11042(a) of the Tax Cuts and Jobs Act Public Law 115–97, (the ''TCJA'') provides that in the case of an individual, deductions for foreign real property taxes are not allowable under section 164(a)(1), and the deduction for the aggregate amount of the following state and local taxes paid during the calendar year is limited to $10,000 ($5,000 in the case of a married individual filing a separate return): (1) Real property taxes; (2) personal property taxes; (3) income, war profits, and excess profits taxes; and (4) general sales taxes. This limitation applies to taxable years beginning after December 31, 2017, and before January 1, 2026, and does not apply to foreign taxes described in section 164(a)(3) or to any taxes described in section 164(a)(1) and (2) that are paid or accrued in carrying on a trade or business or an activity described in section 212.

In response to the limitation in section 164(b)(6), some taxpayers have considered tax planning strategies to avoid or mitigate its effects. Some of these strategies rely on state and local tax credit programs under which states provide tax credits in return for contributions by taxpayers to entities described in section 170(c), and some state and local governments have created new programs intended to facilitate use of these strategies.

On June 11, 2018, the Treasury Department and the IRS announced their intention to propose regulations addressing the proper application of sections 164 and 170 to taxpayers who make contributions under state and local tax credit programs to entities described in section 170(c). See Notice 2018–54, 2018–24 I.R.B. 750. On August 27, 2018, proposed regulations (REG–112176–18) under sections 170 and 642(c) were published in the **Federal Register** (83 FR 43563) (''2018 proposed regulations''). The 2018 proposed regulations proposed amending § 1.170A–1(h)(3) to provide, in general, that if a taxpayer makes a payment or transfers property to or for the use of an entity described in section 170(c), and the taxpayer receives or expects to receive a state or local tax credit in return for such payment or transfer, the tax credit constitutes a return benefit to the taxpayer and reduces the taxpayer's charitable contribution deduction. The 2018 proposed regulations were premised, in part, on the *quid pro quo* principle articulated by the Supreme Court in *United States* v. *American Bar Endowment,* 477 U.S. 105, 116 (1986), and its progeny that ''a payment of money generally cannot constitute a charitable deduction if the contributor expects a substantial benefit in return.'' The 2018 proposed regulations also proposed amending regulations under section 642(c), to provide a similar rule for payments made by a trust or decedent's estate.

The Treasury Department and the IRS received over 7,700 comments responding to the 2018 proposed regulations and 25 requests to speak at the public hearing, which was held on November 5, 2018. After taking into account the comments received and the concerns expressed at the public hearing, the Treasury Department and the IRS published final regulations in the **Federal Register** on June 13, 2019 (T.D. 9864, 84 FR 27513) (''the final regulations''). The final regulations retained the rules set out in the 2018 proposed regulations, with certain clarifying and technical changes. Most significantly, the final regulations retained the general rule that, if a taxpayer makes a payment or transfers property to or for the use of an entity described in section 170(c), and the taxpayer receives or expects to receive a state or local tax credit in return for such transfer, the tax credit constitutes a return benefit to the taxpayer, or *quid pro quo,* reducing the taxpayer's charitable contribution deduction. See § 1.170A–1(h)(3) of the final regulations.

In response to Notice 2018–54 and the 2018 proposed regulations, commenters raised several ancillary issues. These issues involved: (1) Treatment of business entity payments to entities described in section 170(c); (2) treatment of payments by individuals with total state and local tax liabilities that were less than or equal to the section 164(b)(6) limitations; and (3) application of the *quid pro quo* principle under section 170 to benefits received or expected to be received by the donor from a party other than the donee.

Although the Treasury Department and the IRS have provided sub-regulatory safe harbors related to the first two issues (in Rev. Proc. 2019–12, 2019–04 I.R.B. 401, and Notice 2019–12, 2019–27 I.R.B. 57), the Treasury Department and the IRS believe that it is appropriate to include these safe harbors in proposed regulations and to request comments. Further, in the preamble to the final regulations, the Treasury Department and the IRS extensively addressed the third issue—whether a benefit received or expected to be received from a party other than the donee may constitute a *quid pro quo* that reduces the taxpayer's charitable contribution deduction under section 170. The preamble to the final regulations stated that the Treasury Department and the IRS would propose additional regulations setting forth a general rule for benefits received or

expected to be received from third parties. Accordingly, the proposed regulations, provided herein, would amend the regulations under sections 162, 164, and 170 to provide guidance on these three issues.

**II. Payments by Business Entities in Exchange for State or Local Tax Credits**

After the issuance of Notice 2018–54, and continuing after the publication of the 2018 proposed regulations, the Treasury Department and the IRS received inquiries from taxpayers regarding the application of the proposed regulations to businesses that make payments to entities described in section 170(c) pursuant to state and local tax credit programs. The taxpayers sought guidance as to whether a business entity may deduct these payments under section 162 as ordinary and necessary business expenses incurred in carrying on a trade or business. In response, on September 5, 2018, the IRS released a frequently asked question (''FAQ'') stating that a business taxpayer making a payment to an entity described in section 170(c) is generally permitted to deduct such payment as an ordinary and necessary business expense under section 162 if the payment is made with a business purpose. However, after the release of the FAQ, taxpayers continued to express concern about whether the business purpose requirement is met for contributions that result in a tax credit. Specifically, taxpayers asked whether payments by business entities in exchange for state and local tax credits would bear a direct relationship to the taxpayer's trade or business such that these payments would qualify as ordinary and necessary business expenses of carrying on a trade or business under section 162(a).

On December 28, 2018, the IRS issued Rev. Proc. 2019–12, providing a safe harbor under section 162 for payments made by a business entity that is a C corporation or specified passthrough entity to or for the use of an organization described in section 170(c) if the C corporation or specified passthrough entity receives or expects to receive state or local tax credits in return. The revenue procedure states that, to the extent that a C corporation receives or expects to receive a state or local tax credit in return for a payment to an organization described in section 170(c), it is reasonable to conclude that there is a direct benefit and a reasonable expectation of commensurate financial return to the C corporation's business in the form of a reduction in the state or local taxes the C corporation would otherwise be required to pay. Thus, the revenue procedure provides a safe harbor that allows a C corporation engaged in a trade or business to treat the portion of the payment that is equal to the amount of the credit received or expected to be received as meeting the requirements of an ordinary and necessary business expense under section 162.

The IRS determined that a similar analysis is appropriate in the case of a business entity other than a C corporation if (1) the business entity is regarded as separate from its owner for all Federal tax purposes under § 301.7701–3 of the Procedure and Administration Regulations (''passthrough entity''); (2) the passthrough entity operates a trade or business within the meaning of section 162; (3) the passthrough entity is subject to a state or local tax incurred in carrying on its trade or business that is imposed directly on the entity; and (4) in return for a payment to an entity described in section 170(c), the passthrough entity receives or expects to receive a state or local tax credit that the entity applies or expects to apply to offset a state or local tax other than a state or local income tax. Thus, to the extent that a specified passthrough entity makes a payment to an entity described in section 170(c) and receives or expects to receive a state or local tax credit, Rev. Proc. 2019–12 permits the passthrough entity to treat the payment as meeting the requirements of an ordinary and necessary business expense under section 162. The safe harbors for C corporations and specified passthrough entities apply only to payments of cash and cash equivalents.

In the interest of providing certainty for taxpayers, the Treasury Department and the IRS believe that it is appropriate to propose regulations to incorporate the safe harbors set out in Rev. Proc. 2019–12 and to request comments on these safe harbors. Thus, these proposed regulations propose amending § 1.162–15(a) to incorporate the Rev. Proc. 2019–12 safe harbors. These proposed regulations also propose amending § 1.170A–1(c)(5) and (h)(3)(viii) to provide cross references to § 1.162–15(a). The Treasury Department and the IRS specifically request comments on whether the safe harbors should be expanded to apply to an individual who is carrying on a trade or business or an activity described in section 212.

The proposed regulations propose additional revisions to § 1.162–15(a) to more clearly reflect the current state of the law regarding a taxpayer's payment or transfer to an entity described in section 170(c). If the taxpayer's payment or transfer bears a direct relationship to its trade or business, and the payment is made with a reasonable expectation of commensurate financial return, the payment or transfer to the section 170(c) entity may constitute an allowable deduction as a trade or business expense under section 162, rather than a charitable contribution under section 170. See § 1.170A–1(c)(5); *Marquis* v. *Commissioner,* 49 T.C. 695 (1968). A proposed example illustrates that this rule applies regardless of whether the taxpayer expects to receive a state or local tax credit in return.

The proposed revisions are also consistent with the decision in *American Bar Endowment,* which states that a payment to an entity described in section 170(c) may have a dual character—part charitable contribution and part business expense. 477 U.S. at 117. Under *American Bar Endowment* and § 1.170A–1(h), if a taxpayer makes a payment to an entity described under section 170(c) in an amount that exceeds the fair market value of the benefit that the taxpayer receives or expects to receive in return, and this excess amount is paid with charitable intent, the taxpayer is allowed a charitable contribution deduction under section 170 for this excess amount.

In addition, the proposed regulations propose to add a cross-reference to § 1.170A–1(h) (payments to section 170(c) entities in exchange for consideration), which provides more detailed rules for determining whether a payment, or a portion of a payment, to an entity described in section 170(c) may be deducted under section 162(a) or section 170.

**III. Payments by Individuals in Exchange for State and Local Tax Credits**

After publication of the 2018 proposed regulations, commenters expressed concerns that the proposed regulations would create unfair consequences for certain individuals who receive state or local tax credits in return for their payments. Specifically, commenters noted that individuals who itemize deductions for Federal income tax purposes and have total state and local tax liabilities for the taxable year of $10,000 or less ($5,000 or less in the case of a married individual filing a separate return) would be precluded from taking charitable contribution deductions to the extent that they receive state or local tax credits even though the individuals would have been able to deduct equivalent payments of state and local taxes. Thus, if these individuals chose to make a payment to a section 170(c) entity through a state or local tax credit program instead of

paying tax to the state or local government, they would lose the deduction to which they would otherwise have been entitled under section 164 even after the application of the section 164(b)(6) limitation.

These state and local tax credit programs effectively offer taxpayers a choice of paying taxes to the state or local government or making a payment to a section 170(c) entity and receiving a tax credit that offsets a tax liability the taxpayer would otherwise owe to the state or local government. This situation can be analogized to situations in which an individual entitled to receive a payment from a second party directs or permits the second party to satisfy its payment obligation by making a payment to a third party. In such situations, the payment may be treated, for Federal income tax purposes, as a payment by the payor to the individual entitled to receive payment. *Cf.* Rev. Rul. 86–14, 1986–1 C.B. 304, modifying Rev. Rul. 74–75, 1974–1 C.B. 19 (payment made by an employer to a third party to discharge an obligation of an employee treated for Federal income tax purposes as made by the employer to the employee).

For these reasons, on June 11, 2019, the IRS released Notice 2019–12, announcing that the Treasury Department and the IRS intend to publish proposed regulations with a safe harbor under section 164 for individuals who make payments to section 170(c) entities in return for state or local tax credits. Under this safe harbor, an individual who itemizes deductions and who makes a payment to an entity described in section 170(c) in exchange for a state or local tax credit may treat as a payment of state or local tax for purposes of section 164 the portion of such payment for which a charitable contribution deduction is or will be disallowed under § 1.170A–1(h)(3). This treatment is allowed in the taxable year in which the payment is made, but only to the extent that the individual applies the resulting credit pursuant to applicable state or local law to offset the individual's state or local tax liability for such taxable year or the preceding taxable year. Notice 2019–12 requested comments for purposes of incorporating the safe harbor in proposed regulations.

The Treasury Department and the IRS received several comments in response to Notice 2019–12. Generally, commenters responded favorably to the safe harbor in the notice, finding that its rationale was sound and that the rule would effectively eliminate concerns that the final regulations under § 1.170A–1(h)(3) unfairly burden individuals who itemize deductions and have state and local tax liabilities that are less than the section 164(b)(6) limitation. One commenter noted that Executive Order 12866, which directs the agency issuing a regulation to identify the problem it intends to address and design the regulation in the most cost-effective manner to achieve that objective with the least amount of burden on society, further supports the safe harbor. See Executive Order 12866, section 1(b). This commenter also suggested that the IRS should track the effects of the safe harbor by requiring taxpayers to disclose state tax and local tax credits on their Form 1040, Schedule A. Alternatively, the commenter suggested that the IRS obtain this information directly from the states. Another commenter generally supported the safe harbor, but suggested that the Treasury Department and the IRS should avoid creating more safe harbor exceptions to § 1.170A–1(h)(3) of the final regulations. This commenter also expressed concerns about the application of the safe harbor when the state and local tax limitation under section 164(b)(6) expires or is modified.

Other commenters were concerned that Notice 2019–12 did not fully address the tax consequences to taxpayers who received or expected to receive state or local tax credits. Specifically, these commenters asked that the Treasury Department and the IRS provide guidance to address the treatment of state or local tax credits for Federal income tax purposes upon their sale or expiration. As noted in the preamble to the final regulations, the Treasury Department and the IRS recognize the significance and complexity of these questions. The Treasury Department and the IRS continue to study these issues and invite additional comment to inform potential future guidance on these issues.

The Treasury Department and the IRS continue to believe that the notice provides a fair, reasonable, and legally sound basis for the safe harbor for individual taxpayers, and that the safe harbor should be added to the regulations under section 164. Accordingly, these proposed regulations propose adding § 1.164–3(j) to provide a safe harbor for individuals who make a payment to or for the use of an entity described in section 170(c) in return for a state or local tax credit. These proposed regulations also propose adding § 1.170A–1(h)(3)(ix) to provide a cross reference to the safe harbor proposed under § 1.164–3(j) and to request comments.

Under these proposed regulations, an individual who itemizes deductions and who makes a payment to a section 170(c) entity in exchange for a state or local tax credit may treat as a payment of state or local tax for purposes of section 164 the portion of such payment for which a charitable contribution deduction under section 170 is or will be disallowed under § 1.170A–1(h)(3). This treatment is allowed in the taxable year in which the payment is made, but only to the extent that the resulting credit is applied pursuant to applicable state or local law to offset the individual's state or local tax liability for such taxable year or the preceding taxable year. Any unused credit permitted to be carried forward may be treated as a payment of state or local tax under section 164 in the taxable year or years for which the carryover credit is applied in accordance with state or local law. The safe harbor for individuals applies only to payments of cash and cash equivalents.

The proposed regulations are not intended to permit a taxpayer to avoid the limitations of section 164(b)(6). Therefore, the proposed regulations provide that any payment treated as a state or local tax under section 164, pursuant to the safe harbor provided in § 1.164–3(j) of the proposed regulations, is subject to the limitations on deductions in section 164(b)(6). Furthermore, the proposed regulations are not intended to permit deductions of the same payments under more than one provision. Thus, the proposed regulations provide that an individual who relies on the safe harbor in § 1.164–3(j) to deduct qualifying payments under section 164 may not also deduct the same payments under any other section of the Code.

## IV. Consideration Provided by Party Other Than the Donee

Section 1.170A–1(h)(1) provides that no part of a payment that a taxpayer makes to or for the use of an organization described in section 170(c) that is in consideration for (as defined in § 1.170A–13(f)(6)) goods or services (as defined in § 1.170A–13(f)(5)) is a contribution or gift within the meaning of section 170(c) unless the taxpayer (i) intends to make a payment in an amount that exceeds the fair market value of the goods or services; and (ii) makes a payment in an amount that exceeds the fair market value of the goods or services.

Section 1.170A–1(h)(2) states that the charitable contribution deduction under section 170(a) may not exceed the amount of cash paid and the fair market value of property transferred to an organization described in section 170(c) over the fair market value of goods or

services the organization provides in return. Section 1.170A–13(f)(5) defines goods or services as cash, property, services, benefits, and privileges. Section 1.170A–13(f)(6) provides that a donee provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes a payment to the donee, the taxpayer receives or expects to receive goods or services in exchange for that payment.

Section 1.170A–1(h)(3)(iii) defines ''in consideration for'' for purposes of determining whether a state or local tax credit should reduce a charitable contribution under section 170. This section provides that the term ''in consideration for'' shall have the meaning set forth in § 1.170A–13(f)(6), except that the state or local tax credit need not be provided by the donee organization.

Some commenters on the 2018 proposed regulations interpreted the definition of ''in consideration for'' under § 1.170A–13(f)(6) to suggest that consideration provided by a third party is disregarded in calculating the charitable contribution deduction, and that § 1.170A–1(h)(3)(iii) of the proposed regulations provided an exception from this rule solely for state or local tax credits provided by third parties. Other commenters disagreed with this interpretation and suggested that the final regulations should set forth a general rule clarifying that consideration includes all benefits that a taxpayer receives or expects to receive, regardless of whether they are provided by the donee.

In the preamble to the final regulations, the Treasury Department and the IRS acknowledged that the final regulations did not address all situations in which a taxpayer makes a payment or transfers property and receives or expect to receive benefits from a party that is not the donee. Accordingly, the preamble to the final regulations indicated that the Treasury Department and the IRS intended to propose amendments to the regulations under section 170 to make clear that the *quid pro quo* principle applies regardless of whether the party providing the *quid pro quo* is the donee.

As noted in the preamble to the final regulations, in *American Bar Endowment,* 477 U.S. at 116–17, and *Hernandez* v. *Commissioner,* 490 U.S. 680, 691–92 (1989), the Supreme Court made clear that a payment is not a charitable contribution if the donor expects to receive a substantial benefit in return. *American Bar Endowment* and *Hernandez* did not directly address the question of benefits provided by third parties; the return benefits at issue in those cases were provided by the donees. However, the Court derived the *quid pro quo* principle in those cases from a lower court decision and a revenue ruling that directly addressed the question. See *American Bar Endowment,* 477 U.S. at 117 (citing *Singer* v. *United States,* 449 F.2d 413 (Ct. Cl. 1971), and Rev. Rul. 67–246, 1967–2 C.B. 104); *Hernandez,* 490 U.S. at 691 (citing *Singer*). In *Singer,* the appellate division of the Court of Claims (the predecessor to the Court of Appeals for the Federal Circuit) held that a sewing machine company was not eligible for a charitable contribution deduction for selling sewing machines to schools at a discount because the company ''expected a return in the nature of future increased sales'' to students. *Singer,* 449 F.2d at 423–24. In so holding, the court expressly rejected the company's argument that this expected benefit should be ignored because it would come from the students rather than from the schools. *Id.* at 422–23. The court stated, ''Obviously, we cannot agree with plaintiff's distinction.'' *Id.*

In Rev. Rul. 67–246, Example 11, a local store agreed to award a transistor radio, worth $15, to each person who contributed $50 or more to a specific charity. The ruling concluded that if a taxpayer received a $15 radio as a result of a $100 payment to the charity, only $85 qualified as a charitable contribution deduction. It did not matter that the donor received the $15 radio from the store, a third party, rather than from the charity. This conclusion is reflected in the IRS's audit practices. See IRS Conservation Easement Audit Techniques Guide (Rev. Jan. 24, 2018, p. 16) (stating that a ''quid pro quo contribution is a transfer of money or property . . . partly in exchange for goods or services in return from the charity or a third party,'' and ''a quid pro quo may also be in the form of an indirect benefit from a third party'').

Moreover, courts have ruled that a taxpayer's expectation of significant financial returns demonstrates a lack of charitable intent. For example, in *Ottawa Silica Co.* v. *United States,* 699 F.2d 1124 (Fed. Cir. 1983), the Federal Circuit denied a taxpayer's charitable contribution deduction for the value of land the taxpayer donated for construction of a school. The court's analysis focused on the taxpayer's expectation of benefits, and not on the source of such benefits. The court found that the taxpayer had reason to believe that construction of a school would result in the construction of new roads that would in turn increase the value of the taxpayer's retained land. The court recognized that although the taxpayer did not receive an agreement from any party that the roads would be built, the expectation of this benefit was a sufficient reason to deny the charitable contribution deduction. More recently, in *Wendell Falls Development, LLC* v. *Commissioner,* T.C. Memo. 2018–45, a taxpayer contributed a conservation easement that essentially restricted land for use as a park. The taxpayer expected this restriction to increase the value of the taxpayer's adjacent property. The Tax Court disallowed the taxpayer's claimed charitable contribution deduction for the easement, finding that the taxpayer contributed the easement with the expectation of receiving a substantial benefit (increased value of taxpayer's adjacent property) from the contribution, even though the expected benefit would not come from the donee. In accordance with these authorities, the source of the return benefit is immaterial in determining whether the donee at the time of the contribution expects to receive substantial benefits in return.

The *quid pro quo* principle is thus equally applicable regardless of whether the donor expects to receive the benefit from the donee or from a third party. In either case, the donor's payment is not a charitable contribution or gift to the extent that the donor expects a substantial benefit in return. Accordingly, the Treasury Department and the IRS propose amendments to § 1.170A–1(h) that address a donor's payments in exchange for consideration in order for the regulation to reflect existing law. Specifically, these proposed amendments revise paragraph (h)(4) to provide definitions of ''in consideration for'' and ''goods and services'' for purposes of applying the rules in § 1.170A–1(h). Under the proposed regulations, a taxpayer will be treated as receiving goods and services in consideration for a taxpayer's payment or transfer to an entity described in section 170(c) if, at the time the taxpayer makes the payment or transfer, the taxpayer receives or expects to receive goods or services in return.

The proposed regulations do not amend the language of § 1.170A–13(f)(6) which discusses ''in consideration for'' for purposes of determining whether the taxpayer provides proper substantiation of its charitable contribution. Section 1.170A–13(f) details the requirements of a contemporaneous written acknowledgment, including a statement of whether the donee organization provides any goods or services in consideration for any cash or other property transferred to the donee organization and a description and a

good faith estimate of the value of those goods or services. See § 1.170A–13(f)(2)(ii) and (iii). These substantiation provisions refer only to written acknowledgments from donee organizations and do not address the application of *quid pro quo* principles to benefits received from parties other than donees. The Treasury Department and the IRS request comments on whether guidance concerning substantiation and reporting of *quid pro quo* benefits provided or expected to be provided by third parties, including state governments, would be beneficial to taxpayers in demonstrating that they have given more than they received or expected to receive and to the IRS in administering the proposed regulation. In addition, the Treasury Department and the IRS request comments regarding the manner by which donors, donees, or third parties may report or provide substantiation for the value or type of consideration received or expected to be received from third parties.

For additional clarity, the proposed regulation amends the language in § 1.170A–1(h)(2)(i)(B) to clarify that the fair market value of goods and services includes the value of goods and services provided by parties other than the donee. Also, the proposed regulation adds a definition of ''goods and services'' that is the same as the definition in § 1.170A–13(f)(5). Finally, the proposed regulation revises the cross-references defining ''in consideration for'' and ''goods and services'' in paragraphs (h)(1) and (h)(3)(iii) to be consistent with the proposed definitions provided in paragraph (h)(4).

**Proposed Applicability Dates**

The proposed amendments contained in §§ 1.162–15(a)(1) and (2) and 1.170A–1(c)(5), regarding the application of section 162 to taxpayers that make payments or transfers to entities described in section 170(c), are proposed to apply to payments or transfers on or after December 17, 2019. However, a taxpayer may rely on these proposed regulations for payments and transfers made on or after January 1, 2018 and before the date regulations finalizing these proposed regulations are published in the **Federal Register**.

The proposed amendment contained in § 1.162–15(a)(3), regarding safe harbors for C corporations and specified passthrough entities making payments to or for the use of section 170(c) entities in exchange for state or local tax credits, is proposed to apply to payments on or after December 17, 2019. However, prior to this date, a taxpayer may continue to apply Rev. Proc. 2019–12, which applies to payments made on or after January 1, 2018.

The proposed amendments contained in §§ 1.164–3(j) and 1.170A–1(h)(3)(ix), regarding the safe harbor for payments by certain individuals to or for the use of section 170(c) entities, are proposed to apply to payments made on or after June 11, 2019, the date that the IRS issued Notice 2019–12, announcing it intended to publish proposed regulations with a safe harbor under section 164 for individuals who make payments to section 170(c) entities in return for state or local tax credits. However, individuals may rely on these proposed regulations for payments made after August 27, 2018, the applicability date of the final regulations, and before the date regulations finalizing these proposed regulations are published in the **Federal Register**.

Finally, the proposed amendments contained in §§ 1.170A–1(h)(1), (h)(2)(i)(B), (h)(3)(iii), and (h)(4)(i), and 1.170A–13(f)(7) clarifying ''in consideration for'' for purposes of applying § 1.170A–1(h) are proposed to apply to payments or transfers on or after December 17, 2019.

**Special Analyses**

*Regulatory Planning and Review—Economic Analysis*

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is expected to be an E.O. 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

These proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated these regulations as significant under section 1(b) of the MOA. Accordingly, the OMB has reviewed these regulations.

A. Background

Section 164 of the Code allows a deduction for certain state and local taxes paid, including state or local income and property taxes. Section 164(b)(6), added by the TCJA, generally limits an individual's deduction of these taxes to $10,000 ($5,000 in the case of a married individual filing a separate return). The limitation does not apply to foreign income taxes or to property taxes that are paid or incurred in carrying on a trade or business or an activity described in section 212. Section 162 allows a deduction for ordinary and necessary expenses paid or incurred in carrying on a trade or business. Section 170 allows a deduction for charitable contributions, specifically for payments or transfers to an entity described in section 170(c); however, the deduction must be reduced by any *quid pro quo* benefit that the taxpayer receives or expects to receive in return.

After the enactment of the TCJA, questions arose regarding the interaction of these deductions. To clarify the application of these provisions, the Treasury Department and the IRS issued guidance including: (1) Final regulations (T.D. 9864, 84 FR 27513) providing that a tax credit received or expected to be received in return for a payment or transfer to an entity described in section 170(c) (hereafter referred to as a charitable entity) is a return benefit to the taxpayer, resulting in the reduction of the charitable contribution deduction; (2) Notice 2019–12 announcing the intent to issue proposed regulations providing a safe harbor for individuals under which a charitable contribution that is disallowed because of a return benefit of a state or local tax credit may be treated as a payment of state or local tax; and (3) Rev. Proc. 2019–12 providing a safe harbor allowing as a deductible business expense certain payments by businesses to charitable organizations.

B. Need for the Proposed Regulations

The Treasury Department and the IRS believe that it is appropriate to propose as regulations and seek additional public comment on the safe harbors provided in Notice 2019–12 and Rev. Proc. 2019–12. In addition, comments received in response to Notice 2018–54 and the 2018 proposed regulations (guidance preceding the final regulations T.D. 9864) indicate that taxpayers will benefit from additional guidance regarding contributions to a charitable entity resulting in a return benefit from a third party.

C. Overview of the Proposed Regulations

First, these proposed regulations reflect the guidance in Notice 2019–12. Under the safe harbor an individual who itemizes deductions and who makes a payment to a charitable entity in exchange for a state or local tax credit may be able to claim a state and local tax deduction for the portion of the payment for which a charitable contribution deduction is or will be disallowed as a return benefit. The safe harbor for individuals applies only to payments of cash and cash equivalents. In addition, these payments are subject to the overall limitation on state and local deductions added by the TCJA. Further, any payment may be deducted under only one provision of the Code. Thus, an individual who has total state and local tax liability of $10,000 or less, and who makes a payment to a charitable entity and receives a state tax credit in return resulting in the disallowance of a charitable contribution deduction, may claim an itemized deduction for the disallowed amount, subject to other requirements of the Code.

Second, the proposed regulations incorporate into the regulations under section 162 longstanding principles from case law and existing section 170 regulations regarding a taxpayer's payment or transfer to a charitable entity. Specifically, the proposed regulations confirm that, when a taxpayer's transfer or payment bears a direct relationship to its trade or business, and that transfer or payment is made with a reasonable expectation of commensurate financial return, the transfer or payment to the charitable entity may constitute an allowable deduction under section 162, rather than under section 170. In addition, the proposed regulations incorporate the safe harbors provided by Rev. Proc. 2019–12 for certain payments by C corporations and specified passthrough entities, for cases in which the financial return is a tax credit. Thus, under the proposed regulations, a C corporation may treat the portion of the payment to a charitable entity that is equal to the amount of tax credit received or expected to be received in return as a deductible business expense under section 162. Consistent with Rev. Proc. 2019–12, the proposed regulations also provide that a specified passthrough entity may treat a payment resulting in a tax credit as a business expense if the business is regarded as separate from its owner for Federal tax purposes, if it operates a trade or business within the meaning of section 162, if it is subject to state or local tax incurred in carrying on its trade or business that is imposed directly on the passthrough entity, and if it receives or expects to receive a state or local tax credit in return for the payment.

Third, the proposed regulations clarify that a payment to a charitable entity that results in a return benefit is a *quid pro quo* for purposes of section 170, regardless of whether the donor expects to receive the benefit from the donee or from a third party. As a result, the contribution is reduced by the amount of the return benefit for purposes of determining the amount allowable as a charitable contribution deduction.

D. Economic Analysis

1. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of these proposed regulations compared to a no-action baseline that reflects anticipated Federal income tax-related behavior in the absence of these proposed regulations.

2. Summary of Economic Effects

The proposed regulations reflect existing, published, Treasury Department and IRS policies. As a result, they provide some additional clarity to taxpayers by clearly articulating these existing policies as regulations. The Treasury Department does not expect any noticeable change in taxpayer behavior resulting from these regulations, but requests comments on their potential economic effects. The increased clarity, in particular the provision of safe harbors, is expected to reduce compliance burdens.

As described in the Special Analyses for the final regulations (T.D. 9864), allowing a payment that is disallowed as a charitable contribution deduction because of the receipt or expected receipt of a tax credit to be deducted as a payment of state or local tax means that payments by taxpayers with state and local tax liabilities of $10,000 or less are subject to the same tax treatment under these proposed regulations as under the TCJA (in absence of any guidance) and as under the law prior to the TCJA. (See Example 2, Table 1, T.D. 9864.) It also means that such taxpayers are not treated less favorably than taxpayers with state and local tax liabilities in excess of $10,000 or taxpayers subject to the Alternative Minimum Tax. (See Examples 1 and 3 of Table 1, T.D. 9864.)

The Treasury Department and the IRS request comments on the economic effects of the proposed regulations.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Although data are not readily available for the IRS and the Treasury Department to assess the number of small entities that are likely to be directly affected by the regulations, the economic impact is unlikely to be significant.

As discussed elsewhere in this preamble, the proposed rule largely updates the regulations to reflect existing law and policy. The proposed amendments would update the section 162 and section 170 regulations to reflect current law. In addition, the proposed amendments add to the regulations safe harbors under section 162 and section 164, regarding deductions when payments are made to entities described in section 170(c) and the donor receives or expects to receive a state or local tax credit in return; these safe harbors were provided previously in Internal Revenue Bulletin guidance. These regulations are expected to provide some additional certainty to taxpayers but are not expected to result in any noticeable change in taxpayer behavior. The increased certainty, and in particular the provision of safe harbors, is expected to reduce compliance burdens. Accordingly, the Treasury Department and the IRS certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding this certification, the Treasury Department and the IRS invite comments about the potential impact of this proposed rule on small entities.

Pursuant to section 7805(f), the proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

**Comments and Requests and Public Hearing**

Before the regulations proposed herein are adopted as final regulations, consideration will be given to any electronic and written comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. All comments submitted will be made available at *http://www.regulations.gov* or upon request. A public hearing has been scheduled for February, 20, 2020, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security

procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by January 31, 2020. Submit a signed paper or electronic copy of the outline as prescribed in this preamble under the **ADDRESSES** heading. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Statement of Availability of IRS Documents**

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov*.

**Drafting Information**

The principal author of these proposed regulations is the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be 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 1.162–15 is amended by revising paragraph (a) to read as follows:

**§ 1.162–15 Contributions, dues, etc.**

(a) *Payments and transfers to entities described in section 170(c)*—(1) *In general.* A payment or transfer to or for the use of an entity described in section 170(c) that bears a direct relationship to the taxpayer's trade or business and that is made with a reasonable expectation of financial return commensurate with the amount of the payment or transfer may constitute an allowable deduction as a trade or business expense rather than a charitable contribution deduction under section 170. For payments or transfers in excess of the amount deductible under section 162(a), see § 1.170A–1(h).

(2) *Examples.* The following examples illustrate the rules of paragraph (a)(1) of this section:

(i) *Example 1. A,* an individual, is a sole proprietor who manufactures musical instruments and sells them through a website. *A* makes a $1,000 payment to a local church (which is a charitable organization described in section 170(c)) for a half-page advertisement in the church's program for a concert. In the program, the church thanks its concert sponsors, including *A*. *A*'s advertisement includes the URL for the website through which *A* sells its instruments. *A* reasonably expects that the advertisement will attract new customers to *A*'s website and will help *A* to sell more musical instruments. *A* may treat the $1,000 payment as an expense of carrying on a trade or business under section 162.

(ii) *Example 2. P,* a partnership, operates a chain of supermarkets, some of which are located in State N. *P* operates a promotional program in which it sets aside the proceeds from one percent of its sales each year, which it pays to one or more charities described in section 170(c). The funds are earmarked for use in projects that improve conditions in State N. *P* makes the final determination on which charities receive payments. *P* advertises the program. *P* reasonably believes the program will generate a significant degree of name recognition and goodwill in the communities where it operates and thereby increase its revenue. As part of the program, *P* makes a $1,000 payment to a charity described in section 170(c). *P* may treat the $1,000 payment as an expense of carrying on a trade or business under section 162. This result is unchanged if, under State N's tax credit program, *P* expects to receive a $1,000 income tax credit on account of *P*'s payment, and under State N law, the credit can be passed through to *P*'s partners.

(3) *Safe harbors for C corporations and specified passthrough entities making payments in exchange for state or local tax credits*—(i) *Safe harbor for C corporations.* If a C corporation makes a payment to or for the use of an entity described in section 170(c) and receives or expects to receive in return a state or local tax credit that reduces a state or local tax imposed on the C corporation, the C corporation may treat such payment as meeting the requirements of an ordinary and necessary business expense for purposes of section 162(a) to the extent of the amount of the credit received or expected to be received.

(ii) *Safe harbor for specified passthrough entities*—(A) *Definition of specified passthrough entity.* For purposes of this paragraph (a)(3)(ii), an entity is a specified passthrough entity if each of the following requirements is satisfied—

(*1*) The entity is a business entity other than a C corporation and is regarded for all Federal income tax purposes as separate from its owners under § 301.7701–3 of this chapter;

(*2*) The entity operates a trade or business within the meaning of section 162;

(*3*) The entity is subject to a state or local tax incurred in carrying on its trade or business that is imposed directly on the entity; and

(*4*) In return for a payment to an entity described in section 170(c), the entity described in paragraph (a)(3)(ii)(A)(*1*) of this section receives or expects to receive a state or local tax credit that this entity applies or expects to apply to offset a state or local tax described in paragraph (a)(3)(ii)(A)(*3*) of this section.

(B) *Safe harbor.* Except as provided in paragraph (a)(3)(ii)(C) of this section, if a specified passthrough entity makes a payment to or for the use of an entity described in section 170(c), and receives or expects to receive in return a state or local tax credit that reduces a state or local tax described in paragraph (a)(3)(ii)(A)(*3*) of this section, the specified passthrough entity may treat such payment as meeting the requirements of an ordinary and necessary business expense for purposes of section 162(a) to the extent of the amount of credit received or expected to be received.

(C) *Exception.* The safe harbor described in this paragraph (a)(3)(ii) does not apply if the credit received or expected to be received reduces a state or local income tax.

(iii) *Definition of payment.* For purposes of this paragraph (a)(3), payment is defined as a payment of cash or cash equivalent.

(iv) *Examples.* The following examples illustrate the rules of paragraph (a)(3) of this section.

(A) *Example 1: C corporation that receives or expects to receive dollar-for-dollar state or local tax credit. A,* a C corporation engaged in a trade or business, makes a payment of $1,000 to an entity described in section 170(c). In return for the payment, *A* expects to receive a dollar-for-dollar state tax credit to be applied to *A*'s state corporate income tax liability. Under paragraph (a)(3)(i) of this section, *A* may treat the $1,000 payment as

an expense of carrying on a trade or business under section 162.

(B) *Example 2: C corporation that receives or expects to receive percentage-based state or local tax credit. B,* a C corporation engaged in a trade or business, makes a payment of $1,000 to an entity described in section 170(c). In return for the payment, *B* expects to receive a local tax credit equal to 80 percent of the amount of this payment ($800) to be applied to *B*'s local real property tax liability. Under paragraph (a)(3)(i) of this section, *B* may treat $800 as an expense of carrying on a trade or business under section 162. The treatment of the remaining $200 will depend upon the facts and circumstances and is not affected by paragraph (a)(3)(i) of this section.

(C) *Example 3: Partnership that receives or expects to receive dollar-for-dollar state or local tax credit. P* is a limited liability company classified as a partnership for Federal income tax purposes under § 301.7701–3 of this chapter. *P* is engaged in a trade or business and makes a payment of $1,000 to an entity described in section 170(c). In return for the payment, *P* expects to receive a dollar-for-dollar state tax credit to be applied to *P*'s state excise tax liability incurred by *P* in carrying on its trade or business. Under applicable state law, the state's excise tax is imposed at the entity level (not the owner level). Under paragraph (a)(3)(ii) of this section, *P* may treat the $1,000 as an expense of carrying on a trade or business under section 162.

(D) *Example 4: S corporation that receives or expects to receive percentage-based state or local tax credit. S* is an S corporation engaged in a trade or business and is owned by individuals *C* and *D. S* makes a payment of $1,000 to an entity described in section 170(c). In return for the payment, *S* expects to receive a local tax credit equal to 80 percent of the amount of this payment ($800) to be applied to *S*'s local real property tax liability incurred by *S* in carrying on its trade or business. Under applicable state and local law, the real property tax is imposed at the entity level (not the owner level). Under paragraph (a)(3)(ii) of this section, *S* may treat $800 of the payment as an expense of carrying on a trade or business under section 162. The treatment of the remaining $200 will depend upon the facts and circumstances and is not affected by paragraph (a)(3)(ii) of this section.

(v) *Applicability of section 170 to payments in exchange for state or local tax benefits.* For rules regarding the availability of a charitable contribution deduction under section 170 where a taxpayer makes a payment or transfers property to or for the use of an entity described in section 170(c) and receives or expects to receive a state or local tax benefit in return for such payment, see § 1.170A–1(h)(3).

(4) *Applicability dates.* Paragraphs (a)(1) and (2) of this section, regarding the application of section 162 to taxpayers making payments or transfers to entities described in section 170(c), apply to payments or transfers on or after December 17, 2019. However, taxpayers may choose to apply paragraphs (a)(1) and (2) to payments and transfers on or after January 1, 2018. Paragraph (a)(3) of this section, regarding the safe harbors for C corporations and specified passthrough entities making payments to section 170(c) entities in exchange for state or local tax credits applies to payments made by these entities on or after December 17, 2019. However, taxpayers may choose to apply the safe harbors of paragraph (a)(3) to payments on or after January 1, 2018.

* * * * *

■ **Par. 3.** Section 1.164–3 is amended by adding paragraph (j) to read as follows:

**§ 1.164–3 Definitions and special rules.**

* * * * *

(j) *Safe harbor for payments by individuals in exchange for state or local tax credits*—(1) *In general.* An individual who itemizes deductions and who makes a payment to or for the use of an entity described in section 170(c) in consideration for a state or local tax credit may treat as a payment of state or local tax for purposes of section 164 the portion of such payment for which a charitable contribution deduction under section 170 is disallowed under § 1.170A–1(h)(3). This treatment as payment of state or local tax under section 164(a) is allowed in the taxable year in which the payment is made to the extent that the resulting credit is applied, consistent with applicable state or local law, to offset the individual's state or local tax liability for such taxable year or the preceding taxable year.

(2) *Credits carried forward.* To the extent that a state or local tax credit described in paragraph (j)(1) of this section is not applied to offset the individual's applicable state or local tax liability for the taxable year of the payment or the preceding taxable year, any excess state or local tax credit permitted to be carried forward may be treated as a payment of state or local tax under section 164(a) in the taxable year or years for which the carryover credit is applied in accordance with state or local law.

(3) *Limitation on individual deductions.* Nothing in this paragraph (j) may be construed as permitting a taxpayer who applies this safe harbor to avoid the limitations of section 164(b)(6) for any amount paid as a tax or treated under this paragraph (j) as a payment of tax.

(4) *No safe harbor for transfers of property.* The safe harbor provided in this paragraph (j) applies only to a payment of cash or cash equivalent.

(5) *Coordination with other deductions.* An individual who deducts a payment under section 164 may not also deduct the same payment under any other Code section.

(6) *Examples.* In the following examples, assume that the taxpayer is an individual who itemizes deductions for Federal income tax purposes.

(i) *Example 1.* In year 1, Taxpayer *A* makes a payment of $500 to an entity described in section 170(c). In return for the payment, *A* receives a dollar-for-dollar state income tax credit. Prior to application of the credit, *A*'s state income tax liability for year 1 was more than $500. *A* applies the $500 credit to *A*'s year 1 state income tax liability. Under paragraph (j)(1) of this section, *A* treats the $500 payment as a payment of state income tax in year 1. To determine *A*'s deduction amount, *A* must apply the provisions of section 164 applicable to payments of state and local taxes, including the limitation in section 164(b)(6). See paragraph (j)(3) of this section.

(ii) *Example 2.* In year 1, Taxpayer *B* makes a payment of $7,000 to an entity described in section 170(c). In return for the payment, *B* receives a dollar-for-dollar state income tax credit, which under state law may be carried forward for three taxable years. Prior to application of the credit, *B*'s state income tax liability for year 1 was $5,000; *B* applies $5,000 of the $7,000 credit to *B*'s year 1 state income tax liability. Under paragraph (j)(1) of this section, *B* treats $5,000 of the $7,000 payment as a payment of state income tax in year 1. Prior to application of the remaining credit, *B*'s state income tax liability for year 2 exceeds $2,000. *B* applies the excess credit of $2,000 to *B*'s year 2 state income tax liability. For year 2, under paragraph (j)(2) of this section, *B* treats the $2,000 as a payment of state income tax under section 164. To determine *B*'s deduction amounts in years 1 and 2, *B* must apply the provisions of section 164 applicable to payments of state and local taxes, including the limitation under section 164(b)(6). See paragraph (j)(3) of this section.

(iii) *Example 3.* In year 1, Taxpayer *C* makes a payment of $7,000 to an entity described in section 170(c). In return for the payment, *C* receives a local real property tax credit equal to 25 percent of the amount of this payment ($1,750). Prior to application of the credit, *C*'s local real property tax liability in year 1 was more than $1,750. *C* applies the $1,750 credit to *C*'s year 1 local real property tax liability. Under paragraph (j)(1) of this section, for year 1, *C* treats $1,750 of her $7,000 payment as a payment of local real property tax for purposes of section 164. To determine *C*'s deduction amount, *C* must apply the provisions of section 164 applicable to payments of state and local taxes, including the limitation under section 164(b)(6). See paragraph (j)(3) of this section.

(7) *Applicability date.* This paragraph (j) applies to payments made to section 170(c) entities on or after June 11, 2019. However, a taxpayer may choose to apply this paragraph (j) to payments made to section 170(c) entities after August 27, 2018.

■ **Par. 4.** Section 1.170A–1 is amended as follows:

■ 1. Paragraph (c)(5) is revised.

■ 2. In paragraph (h)(1), remove the cross-references to ''§ 1.170A–13(f)(6)'' and ''§ 1.170A–13(f)(5)'' and add in their places ''paragraph (h)(4)(i) of this section'' and ''paragraph (h)(4)(ii) of this section'', respectively.

■ 3. Paragraphs (h)(2)(i)(B) and (h)(3)(iii) are revised.

■ 4. Paragraph (h)(3)(viii) is redesignated as paragraph (h)(3)(x).

■ 5. New paragraph (h)(3)(viii) and paragraph (h)(3)(ix) are added.

■ 6. Paragraphs (h)(4) through (6) are redesignated as paragraphs (h)(5) through (7).

■ 7. New paragraph (h)(4) is added.

The revisions and additions read as follows:

**§ 1.170A–1 Charitable, etc., contributions and gifts; allowance of deduction.**

* * * * *

(c) * * *

(5) For payments or transfers to an entity described in section 170(c) by a taxpayer carrying on a trade or business, see § 1.162–15(a).

* * * * *

(h) * * *

(2) * * *

(i) * * *

(B) The fair market value of the goods or services received or expected to be received in return.

* * * * *

(3) * * *

(iii) *In consideration for.* For purposes of paragraph (h) of this section, the term *in consideration for* has the meaning set forth in paragraph (h)(4)(i) of this section.

* * * * *

(viii) *Safe harbor for payments by C corporations and specified passthrough entities.* For payments by a C corporation or by a specified passthrough entity to an entity described in section 170(c), where the C corporation or specified passthrough entity receives or expects to receive a state or local tax credit that reduces the charitable contribution deduction for such payments under paragraph (h)(3) of this section, see § 1.162–15(a)(3) (providing safe harbors under section 162(a) to the extent of that reduction).

(ix) *Safe harbor for individuals.* Under certain circumstances, an individual who itemizes deductions and makes a payment to an entity described in section 170(c) in consideration for a state or local tax credit may treat the portion of such payment for which a charitable contribution deduction is disallowed under paragraph (h)(3) of this section as a payment of state or local taxes under section 164. See § 1.164–3(j), providing a safe harbor for certain payments by individuals in exchange for state or local tax.

* * * * *

(4) *Definitions.* For purposes of this paragraph (h), the following definitions apply:

(i) *In consideration for.* A taxpayer receives goods or services in consideration for a taxpayer's payment or transfer to an entity described in section 170(c) if, at the time the taxpayer makes the payment to such entity, the taxpayer receives or expects to receive goods or services from that entity or any other party in return.

(ii) *Goods or services.* Goods or services means cash, property, services, benefits, and privileges.

(iii) *Applicability date.* The definitions provided in this paragraph (h)(4) are applicable for amounts paid or property transferred on or after December 17, 2019.

* * * * *

**§ 1.170A–13 [Amended]**

■ **Par. 5.** Section 1.170A–13(f)(7) is amended by removing the cross-reference to ''§ 1.170A–1(h)(5)'' and adding in its place ''§ 1.170A–1(h)(6).''

**Sunita Lough,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2019–26969 Filed 12–13–19; 4:15 pm]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

### 29 CFR Part 401

**RIN 1245–AA08**

## Labor Organization Annual Financial Reports: Coverage of Intermediate Bodies

**AGENCY:** Office of Labor-Management Standards, Department of Labor.

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** The Department of Labor (Department) proposes to promulgate a rule governing intermediate bodies that are wholly composed of public sector organizations but are subordinate to national or international labor organizations that are covered by the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act). Under the proposed rule, such intermediate bodies would now be covered by the LMRDA, and would be required to file the Form LM–2 and Form LM–3 annual union financial reports.

**DATES:** Submit written comments on or before February 18, 2020.

**ADDRESSES:** You may submit comments, identified by RIN 1245–AA08, only by the following method: Electronic Comments: Submit comments through the Federal eRulemaking Portal *http://www.regulations.gov.* To locate the proposed rule, use key words such as ''Labor-Management Standards'' or ''Labor Organization Annual Financial Reports'' to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Andrew Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Authority

The Department of Labor's statutory authority is set forth in sections 201 and 208 of the LMRDA, 29 U.S.C. 431, 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as he may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438. Section 201, discussed in more detail below, sets out the substantive reporting obligations.

The Secretary has delegated his authority under the LMRDA to the Director of the Office of Labor-Management Standards and permitted redelegation of such authority. *See* Secretary's Order 03–2012 (Oct. 19, 2012), published at 77 FR 69376 (Nov. 16, 2012).

### II. Background

*A. Introduction*

In October of 2003, the Department of Labor (Department) issued an interpretation that required certain