is no longer needed. Additionally, the name of the Indianapolis Terry Airport has changed.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Mount Comfort, IN, revokes Class E airspace at Indianapolis-Brookside, IN, and modifies the legal description at Indianapolis-Terry, IN. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Indianapolis Brookside Airpark, IN [Revoked]

AGL IN E5 Mount Comfort, IN [Revised]

Mount Comfort Airport, IN
(Lat. 39°50′37″ N., long. 85°53′49″ W.)
Indianapolis Metropolitan Airport, IN
(Lat. 39°56′07″ N., long. 86°02′42″ W.)
Indianapolis Executive Airport, IN
(Lat. 40°01′50″ N., long. 86°15′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mount Comfort Airport, and within a 6.3-mile radius of Indianapolis Metropolitan Airport, excluding that airspace within the Indianapolis Executive Airport, IN, Class E airspace area.

AGL IN E5 Indianapolis Executive Airport, IN [Revised]

Indianapolis Executive Airport, IN
(Lat. 40°01′50″ N., long. 86°15′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Indianapolis Executive Airport.

* * * * *

Issued in Des Plaines, Illinois on April 7, 2004.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 04–9074 Filed 4–20–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9121]

RIN 1545–BD11

Partner's Distributive Share: Foreign Tax Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: The temporary regulations provide rules for the proper allocation of partnership expenditures for foreign taxes. The temporary regulations affect partnerships and their partners. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. The final regulations consist of technical revisions to reflect the issuance of the temporary regulations.

DATES: *Effective Date:* These regulations are effective April 21, 2004.

Applicability Date: For dates of applicability, see § 1.704–1(b)(1)(ii).

FOR FURTHER INFORMATION CONTACT: Beverly Katz at 202–622–3050 (not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

Subchapter K is intended to permit taxpayers to conduct joint business activities through a flexible economic arrangement without incurring an entity-level tax. To achieve this goal of a flexible economic arrangement, partners are generally permitted to decide among themselves how a partnership's items will be allocated. Section 704(a) of the Internal Revenue Code (Code) provides that a partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided, be determined by the partnership agreement.

Section 704(b) places a significant limitation on the general flexibility of section 704(a). Specifically, section 704(b) provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances) if the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect. Thus, the statute provides that partnership allocations either must have substantial economic effect or must be in accordance with the partners' interests in the partnership.

Section 1.704–1(b)(2)(i) provides that the determination of whether an allocation of income, gain, loss, or deduction to a partner has substantial economic effect involves a two-part analysis that is made as of the end of the partnership taxable year to which the allocation relates. First, the allocation must have economic effect within the meaning of § 1.704–1(b)(2)(ii). Second,

the economic effect of the allocation must be substantial within the meaning of § 1.704–1(b)(2)(iii).

For an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the partners. This means that, in the event that there is an economic benefit or burden that corresponds to the allocation, the partner to whom the allocation is made must receive such economic benefit or bear such economic burden. § 1.704–1(b)(2)(ii). Generally, an allocation of income, gain, loss, or deduction (or item thereof) to a partner will have economic effect if, and only if, throughout the full term of the partnership, the partnership agreement provides: (1) For the determination and maintenance of the partners' capital accounts in accordance with § 1.704–1(b)(2)(iv); (2) for liquidating distributions to the partners to be made in accordance with the positive capital account balances of the partners; and (3) for each partner to be unconditionally obligated to restore the deficit balance in the partner's capital account following the liquidation of the partner's partnership interest. In lieu of satisfying the third criterion, the partnership may satisfy the qualified income offset rules set forth in § 1.704–1(b)(2)(ii)(*d*).

Section 1.704–1(b)(2)(iii)(*a*) provides as a general rule that the economic effect of an allocation (or allocations) is substantial if there is a reasonable possibility that the allocation (or allocations) will affect substantially the dollar amounts to be received by the partners from the partnership, independent of tax consequences. The section further provides that, even if the allocation affects substantially the dollar amounts, the economic effect of the allocation (or allocations) is not substantial if, at the time the allocation (or allocations) becomes part of the partnership agreement, (1) the after-tax economic consequences of at least one partner may, in present value terms, be enhanced compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement, and (2) there is a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be substantially diminished compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement.

The regulations under section 704(b) provide that the allocation of certain items cannot have substantial economic effect, and accordingly provide guidance on allocating those items in a manner that will be deemed to be in accordance with the partners' interests in the partnership. Items that cannot be allocated with substantial economic effect include tax credits, nonrecourse deductions, and recapture amounts. These items are addressed in §§ 1.704–1(b)(4) and 1.704–2.

Explanation of Provisions

1. Clarifying the Allocation of Expenditures for Foreign Taxes

Section 901(b)(5) provides that an individual who is a partner will, subject to certain limitations, qualify for the foreign tax credit for his proportionate share of taxes of the partnership paid or accrued during the taxable year to a foreign country or to any possession of the United States. Section 702(a)(6) provides that each partner shall take into account separately his distributive share of the partnership's taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States. Section 703(a)(2)(B) provides that the partnership is not entitled to the deduction for taxes provided in section 164(a) with respect to taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States. Section 703(b)(3) provides that elections affecting the computation of taxable income derived from a partnership shall be made by the partnership, except that any election under section 901 (relating to taxes of foreign countries and possessions of the United States), will be made by each partner separately.

These temporary regulations clarify the application of the regulations under section 704 to creditable foreign tax expenditures for which the partnership bears legal liability as described in § 1.901–2(f). Unlike most other trade or business expenses, foreign taxes described in section 901 or 903 are fully creditable against a partner's U.S. tax liability, subject to certain limitations, including primarily the foreign tax credit limitation under section 904. For this reason, the temporary regulations provide that partnership allocations of creditable foreign tax expenditures cannot have substantial economic effect and, therefore, must be allocated in accordance with the partners' interests in the partnership. A creditable foreign tax is a foreign tax paid or accrued for U.S. tax purposes by a partnership and that is eligible for a credit under section 901(a). A foreign tax is a creditable foreign tax for these purposes without regard to whether a partner receiving an allocation of such foreign tax elects to claim a credit for such amount.

The temporary regulations establish a safe harbor under which partnership allocations of foreign tax expenditures will be deemed to be in accordance with the partners' interests in the partnership. Under this safe harbor, if the partnership agreement satisfies the requirements of § 1.704–1(b)(2)(ii)(*b*) or (*d*) (i.e., capital account maintenance, liquidation according to capital accounts, and either deficit restoration obligations or qualified income offsets), then an allocation of a foreign tax expenditure that is proportionate to a partner's distributive share of the partnership income to which such taxes relate (including income allocated pursuant to section 704(c)) will be deemed to be in accordance with the partners' interests in the partnership. This rule is consistent with the underlying purposes of the foreign tax credit, which is to avoid double taxation of foreign source income, and the foreign tax credit limitation, which is to prevent foreign tax credits from offsetting tax liability on a taxpayer's U.S. source income. Also, this rule achieves greater parity between entities that are taxed under foreign law at the partner level and entities that are taxed under foreign law at the entity level. If a partnership were taxed under foreign law at the partner level, then the amount of foreign taxes imposed on a partner generally would be proportionate to the partner's share of the income subject to the foreign tax. The partner would take into account this amount of foreign tax in computing U.S. tax liability. Likewise, for partnerships that are taxed under foreign law at the entity level, the safe harbor provides that a partner is allowed to take into account in computing U.S. tax liability the share of the partnership's foreign tax expenditures that is proportionate to the partner's share of the income to which such taxes relate.

If the taxpayer does not satisfy this safe harbor, then the taxpayer's allocations will be tested under the partners' interests in the partnership standard set forth in § 1.704–1(b)(3). Under that standard, the determination of a partner's interest in a partnership is made by taking into account all facts and circumstances relating to the economic arrangement of the partners. Among the facts to be considered are: (a) The partners' relative contributions to the partnership; (b) the interests of the partners in economic profits and losses (if different than their interests in taxable income or loss); (c) the interests of the partners in cash flow and other non-liquidating distributions; and (d)

the rights of the partners to distributions of capital upon liquidation. Ultimately, the partners' interests in the partnership signify the manner in which the partners have agreed to share the economic benefit or burden (if any) corresponding to the income, gain, loss, deduction, or credit (or item thereof) that is allocated. The sharing arrangement with respect to a particular item may or may not correspond to the overall economic arrangement of the partners. Thus, a partnership's allocation of a foreign tax expenditure that does not satisfy the safe harbor contained in these temporary regulations, may, in unusual circumstances (such as where there is substantial certainty that U.S partners will deduct, rather than credit, foreign taxes) be in accordance with partners' interests in the partnership under § 1.704–1(b)(3).

2. Application of § 1.704–1(b)(2)(iii) Substantiality Requirement Where Partnership Allocation Has Tax Effect on Owners of Partners

As discussed above, in determining if the economic effect of a partnership allocation is substantial, the partnership must consider the after-tax economic consequences to the partners. The IRS and Treasury have become aware that some partnerships are taking the position that, in determining if the economic effect of a partnership allocation is substantial, they need not consider any tax consequences to an owner of the partner that result from the allocation. The IRS and Treasury believe that such a position is inconsistent with the policies underlying the substantial economic effect rules, because it would allow a partnership to make tax-advantaged allocations if the tax advantages of the allocations were to accrue to an owner of a partner, rather than to the partner itself. The IRS and Treasury are planning to issue guidance on the application of the section 704(b) regulations to these situations.

3. Effective Date

The provisions of these regulations generally apply for partnership taxable years beginning on or after the date that the temporary regulations are published in the **Federal Register**. A transition rule is also provided for existing partnerships. Under the transition rule, if a partnership agreement was entered into before April 21, 2004, then the partnership may apply the provisions of § 1.704–1(b), as if the amendments made by this temporary regulation had not occurred, until any subsequent material modification to the partnership agreement, which includes any change in ownership, occurs. This transition rule does not apply if, as of April 20, 2004, persons that are related to each other (within the meaning of section 267(b) and 707(b)) collectively have the power to amend the partnership agreement without the consent of any unrelated party. No inference regarding the treatment of allocations of foreign taxes under § 1.704–1(b) (prior to the amendments made by this temporary regulation) is intended.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the notice of proposed rulemaking on this subject published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this notice of rulemaking will be 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 this regulation is Beverly M. Katz, Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ 2. Section 1.704–1 is amended as follows:

■ 1. Paragraph (b)(0) is amended by adding entries for §§ 1.704–1(b)(1)(ii)(*a*), 1.704–1(b)(1)(ii)(*b*), 1.704–1(b)(4)(viii), 1.704–1(b)(4)(ix), 1.704–1(b)(4)(x), and 1.704–1(b)(4)(xi).

■ 2. The text of paragraph (b)(1)(ii) is redesignated as paragraph (b)(1)(ii)(*a*).

■ 3. A heading is added to newly designated paragraph (b)(1)(ii)(*a*).

■ 4. Paragraphs (b)(1)(ii)(*b*), (b)(4)(viii), (b)(4)(ix), (b)(4)(x), and (b)(4)(xi) are added.

■ 5. Paragraph (b)(5) is amended by adding *Example 20* through *Example 28.*

■ 6. The additions read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

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

* * * * *

Generally	1.704–1(b)(1)(ii)(*a*)
Foreign tax expenditures.	1.704–1(b)(1)(ii)(*b*)
[Reserved]	1.704–1(b)(4)(viii)
[Reserved]	1.704–1(b)(4)(ix)
[Reserved]	1.704–1(b)(4)(x)
Allocation of creditable foreign taxes.	1.704–1(b)(4)(xi)

* * * * *

(1) * * *

(ii) * * * (*a*) *Generally.*

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

* * * * *

(4) * * *

(viii) [Reserved].

(ix) [Reserved].

(x) [Reserved].

(xi) *Allocation of creditable foreign taxes.* [Reserved]. For further guidance, *see* § 1.704–1T(b)(4)(xi).

(5) * * *

Examples (20) through (24). [Reserved].

Examples (25) through (28). [Reserved]. For further guidance, *see* § 1.704–1T(b)(5), Examples (25) through (28).

* * * * *

■ 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)(1)(ii)(*b*) *Rules relating to foreign tax expenditures*—(*1*) *In general.* The provisions of paragraphs (b)(4)(xi) (regarding the allocation of foreign tax expenditures) apply for partnership taxable years beginning on or after April 21, 2004.

(*2*) *Transition rule.* If a partnership agreement was entered into before April 21, 2004, then the partnership may apply the provisions of this paragraph (b) as if the amendments made by this temporary regulation had not occurred,

until any subsequent material modification to the partnership agreement, which includes any change in ownership, occurs. This transition rule does not apply if, as of April 20, 2004, persons that are related to each other (within the meaning of section 267(b) and 707(b)) collectively have the power to amend the partnership agreement without the consent of any unrelated party.

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

(b)(4)(viii) through (b)(4)(x) [Reserved].

(b)(4)(xi) *Allocations of creditable foreign taxes*—(*a*) *In general.* Allocations of creditable foreign taxes cannot have substantial economic effect and, accordingly, such expenditures must be allocated in accordance with the partners' interests in the partnership. An allocation of a creditable foreign tax will be deemed to be in accordance with the partners' interests in the partnership if—

(*1*) The requirements of either paragraph (b)(2)(ii)(*b*) or (b)(2)(ii)(*d*) of this section are satisfied (*i.e.*, capital accounts are maintained in accordance with paragraph (b)(2)(iv) of this section, liquidating distributions are required to be made in accordance with positive capital account balances, and each partner either has an unconditional deficit restoration obligation or agrees to a qualified income offset); and

(*2*) The partnership agreement provides for the allocation of the creditable foreign tax in proportion to the partners' distributive shares of income (including income allocated pursuant to section 704(c)) to which the creditable foreign tax relates.

(*b*) *Creditable foreign taxes.* A creditable foreign tax is a foreign tax paid or accrued for U.S. tax purposes by a partnership and that is eligible for a credit under section 901(a). A foreign tax is a creditable foreign tax for these purposes without regard to whether a partner receiving an allocation of such foreign tax elects to claim a credit for such amount.

(*c*) *Income related to foreign taxes.* A foreign tax is related to income if the income is included in the base upon which the taxes are imposed, which determination must be made in accordance with the principles of § 1.904–6. See *Examples* (25) through (28) of paragraph (b)(5) of this section.

(b)(5) * * *

Examples 1 through 19 [Reserved]. For further guidance, see § 1.704–1(b)(5), *Examples* 1 through 19.

Examples 20 through 24 [Reserved].

Example 25. (i) A and B form AB, an eligible entity (as defined in § 301.7701–3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB's partnership agreement (within the meaning of paragraph (b)(2)(ii)(*j*) of this section) provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, that liquidation proceeds will be distributed in accordance with the partners' positive capital account balances, and that any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership. AB operates business M and earns income from passive investments in country X. Assume that country X imposes a 40 percent tax on business M income, which tax is a creditable foreign tax, but exempts from tax income from passive investments. In year 1, AB earns $100 of income from business M and $30 from passive investments and pays or accrues $40 of country X taxes. For purposes of section 904(d), the income from business M is general limitation income and the income from the passive investments is passive income. Pursuant to the partnership agreement, all partnership items, including creditable foreign taxes, from business M are allocated 60 percent to A and 40 percent to B, and all partnership items, including creditable foreign taxes, from passive investments are allocated 80 percent to A and 20 percent to B. Accordingly, A is allocated 60 percent of the business M income ($60) and 60 percent of the country X taxes ($24), and B is allocated 40 percent of the business M income ($40) and 40 percent of the country X taxes ($16).

(ii) Under paragraph (b)(4)(xi) of this section, the $40 of taxes is related to the $100 of general limitation income and no portion of the taxes is related to the passive income. Because AB's partnership agreement allocates the general limitation income 60/40 and the country X taxes 60/40, the allocations of the country X taxes are in proportion to the allocation of the income to which the foreign tax relates. Because AB satisfies the requirement of paragraph (b)(4)(xi) of this section, the allocations of the country X taxes are deemed to be in accordance with the partners' interests in the partnership.

Example 26. (i) A and B form AB, an eligible entity (as defined in § 301.7701–3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB's partnership agreement (within the meaning paragraph (b)(2)(ii)(j) of this section) provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, that liquidation proceeds will be distributed in accordance with the partners' positive capital account balances, and that any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership. AB operates business M in country X and business N in country Y. Assume that country X imposes a 40 percent tax on business M income, country Y imposes a 20 percent tax on business N income, and the country X and country Y taxes are creditable foreign taxes. In year 1, AB has $100 of income from business M and $50 of income from business N. Country X imposes $40 of tax on the income from business M and country Y imposes $10 of tax on the income of business N. Pursuant to the partnership agreement, all partnership items, including creditable foreign taxes, from business M are allocated 75 percent to A and 25 percent to B, and all partnership items, including creditable foreign taxes, from business N are split evenly between A and B (50/50). Accordingly, A is allocated 75 percent of the income from business M ($75), 75 percent of the country X taxes ($30), 50 percent of the income from business N ($25), and 50 percent of the country Y taxes ($5). B is allocated 25 percent of the income from business M ($25), 25 percent of the country X taxes ($10), 50 percent of the income from business N ($25), and 50 percent of the country Y taxes ($5).

(ii) Because the income from business M and business N is general limitation income and the partnership agreement provides for different allocations with respect to such income, it is necessary to determine which foreign taxes are related to the business M income and which foreign taxes are related to the business N income. Under paragraph (b)(4)(xi) of this section, the $40 of country X taxes is related to business M and the $10 of country Y taxes is related to business N. Because AB's partnership agreement allocates the $40 of country X taxes in the same proportion as the general limitation income from business M, and the $10 of country Y taxes in the same proportion as the general limitation income from business N, the allocations of the country X taxes and the country Y taxes are in proportion to the allocation of the income to which the foreign taxes relate. Because AB satisfies the requirements of paragraph (b)(4)(xi), the allocations of the country X and country Y taxes are deemed to be in accordance with the partners' interests in the partnership.

Example 27. (i) The facts are the same as in *Example 26,* except that AB does not actually receive the $50 accrued with respect to business N until year 2. Also assume that A, B and AB each report taxable income on an accrual basis for U.S. tax purposes and AB reports taxable income on a cash basis for country X and country Y purposes. In year 1, AB pays country X taxes of $40. In year 2, AB pays country Y taxes of $10. Pursuant to the partnership agreement, in year 1, A is allocated 75 percent of business M income ($75) and country X taxes ($30) and 50 percent of business N income ($25). B is allocated 25 percent of business M income ($25) and country X taxes ($10) and 50 percent of business N income ($25). In year 2, A and B will each be allocated 50 percent of the country Y taxes ($5).

(ii) Because the income from business M and business N is general limitation income and the partnership agreement provides for different allocations with respect to such income, it is necessary to determine which foreign taxes are related to business M income and which foreign taxes are related to business N income. Under paragraph (b)(4)(xi) of this section, $40 of country X taxes is related to the $100 of general

limitation income from business M. Under paragraph (b)(4)(xi), the country Y tax imposed in year 2 is allocable to the $50 of business N income AB recognizes in year 2 under country Y law and is treated as paid in year 2 on the $50 of business N income recognized for U.S. tax purposes in year 1. See § 1.904–6(a)(1)(iv) and (c), *Example 5.* Accordingly, the $10 of country Y taxes is related to the $50 of general limitation income from business N. Because AB's partnership agreement allocates the $40 of country X taxes in proportion to the general limitation income from business M, and the $10 of country X taxes from business N in proportion to the year 1 general limitation income from business N, the allocations of the country X and country Y taxes are in proportion to the allocation of the income to which the foreign taxes relate. Therefore, AB's partnership agreement satisfies the requirement of paragraph (b)(4)(xi)(*a*)(*2*) of this section. Because AB also satisfies the requirements of paragraph (b)(4)(xi)(*a*)(*1*) of this section, the allocations of the country X and Y taxes are deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(xi) of this section.

Example 28. (i) A and B form AB, an eligible entity (as defined in § 301.7701–3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB's partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, that liquidation proceeds will be distributed in accordance with the partners' positive capital account balances, and that any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership. AB operates business M in country X. Assume that country X imposes a 20 percent tax on the net income from business M, which tax is a creditable foreign tax. In year 1, AB earns $300 of gross income, has deductible expenses, exclusive of creditable foreign taxes, of $100, and pays or accrues $40 of country X tax. For purposes of section 904(d), all income from business M is general limitation income. Pursuant to the partnership agreement, the first $100 of gross income each year is allocated to A as a return on excess capital contributed by A. All remaining partnership items, including creditable foreign taxes, are split evenly (50/50) between A and B. Assume that the gross income allocation is not deductible for country X purposes.

(ii) Under paragraph (b)(4)(xi) of this section, the $40 of taxes is related to the $200 of general limitation net income. In year 1, AB's partnership agreement allocates $150 or 75 percent of the general limitation income to A ($100 attributable to the gross income allocation plus $50 of the remaining $100 of net income) and $50 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 gross income allocation. Therefore, AB allocates the country X taxes 50 percent to A ($20) and 50 percent to B ($20). Under paragraph (b)(4)(xi) of this section, the allocation of country X taxes cannot have substantial economic effect and must be allocated in accordance with the partners' interests in the partnership. 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)(xi) of this section, because they are not in proportion to the allocation of the income to which the country X taxes relates.

(c) through (e)(4)(ii)(*b*) [Reserved]. For further guidance, see § 1.704–1(c) through (e)(4)(ii)(*b*).

John M. Dalrymple,

Acting Deputy Commissioner for Services and Enforcement.

Approved: March 25, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–8704 Filed 4–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

[Docket No. NHTSA–02–12150; Notice 3]

RIN 2127–AJ24

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration; correction.

SUMMARY: This document responds to petitions for reconsideration regarding amendments to NHTSA's regulation on Confidential Business Information. These petitions addressed the provisions relating to information submitted to NHTSA pursuant to the early warning reporting regulation. It also corrects a typographic error in the final rule.

DATES: This rule is effective on May 21, 2004. If you wish to submit a petition for reconsideration of this rule, your petition must be received by June 7, 2004.

ADDRESSES: Any further petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to the docket. They may also be submitted to the docket electronically. Documents may be filed electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help & Information'' or "Help/Info'' to obtain instructions for filing the document electronically. You may also visit the Federal E-Rulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may call Docket Management at 202–366–9324. The Docket room hours are from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For questions contact Michael Kido or Lloyd Guerci. They can be reached in the Office of the Chief Counsel at the National Highway Traffic Safety Administration, 400 7th Street SW., Room 5219, Washington, DC 20590, or by telephone at (202) 366–5263.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

A. The Notice of Proposed Rulemaking

On April 30, 2002, NHTSA published a Notice of Proposed Rulemaking ("NPRM'') to amend 49 CFR Part 512, Confidential Business Information ("Part 512'' or "CBI''). 67 FR 21198 (April 30, 2002). The agency sought to simplify and update the regulation to reflect developments in the law. The NPRM also asked for comments on whether to