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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Part 12

[CBP Dec. 12–13]

RIN 1515–AD90

#### Extension of Import Restrictions on Archaeological Objects and Ecclesiastical and Ritual Ethnological Materials From Cyprus; Correction

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule; correction; correcting amendment.

**SUMMARY:** On July 13, 2012, U.S. Customs and Border Protection (CBP) published in the *Federal Register* a final rule reflecting an extension of import restrictions on certain archaeological and ethnological materials from Cyprus and announcing that the Designated List of materials covered by the restrictions has been revised. The Designated List and the regulatory text in that document contain language which is inadvertently not consistent with the rest of the document as to the historical period that the import restrictions cover for ecclesiastical and ritual ethnological materials from Cyprus. This document corrects the inconsistent language to clarify that ecclesiastical and ritual ethnological materials from Cyprus representing the Byzantine and Post-Byzantine periods, dating from approximately the 4th century A.D. to 1850 A.D., are subject to the import restrictions.

**DATES:** *Effective Date:* The corrections set forth in this document are effective on August 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Bill Conrad, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, (202) 325–0268.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 13, 2012, CBP published in the *Federal Register* (77 FR 41266), as CBP Decision Number 12–13, a final rule reflecting an extension of import restrictions on certain archaeological and ethnological materials from Cyprus and announcing that the Designated List of materials covered by the restrictions (also published with CBP Dec. 12–13) has been revised to reflect that the ethnological articles previously covered under the list through the Byzantine period (through approximately the 15th century A.D.) are also covered if dating through the Post-Byzantine period (to 1850 A.D.). The Designated List contains a list of certain archaeological materials and a list of certain ethnological materials. The revisions were limited to the list of ethnological materials.

The rule also announced an amendment to the list of ethnological materials to clarify that certain mosaics of stone and wall paintings (referred to as “wall hangings” in CBP Dec. 12–13) include those depicting images of Saints along with those depicting images of Christ, Archangels, and the Apostles. The restrictions were extended for a five-year period (through July 16, 2017) pursuant to determinations of the State Department under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

In CBP Dec. 12–13, the title of the Designated List was erroneously abbreviated where the Department of State Web site is listed. This document corrects the omission and clarifies that the covered ecclesiastical and ritual ethnological materials are those dating to the Byzantine and Post-Byzantine periods. In the list of ethnological materials, CBP inadvertently retained references to the Byzantine period. As the list was revised to cover listed ethnological materials if dating to the

Post-Byzantine period as well, references to the Byzantine period in the list are inconsistent and misleading. This document corrects the oversight and removes all references to the Byzantine period in the list. In addition, this document corrects the language in Amending Instruction number 2 of CBP Dec. 12–13 which imprecisely set forth in the amended regulation the end point of the time period applicable to the ethnological materials covered by the restrictions. This correction remedies an inconsistency with the time period which was correctly reflected in the heading of the list of ethnological materials found on page 41269 of the published document (in the first column).

#### Correction of Publication

Accordingly, the publication on July 13, 2012 of the final regulation (CBP Dec. 12–13), which was the subject of FR Doc. 2012–16989, is corrected as follows:

##### *Preamble:*

1. In the first column on page 41267, in the last paragraph that extends into the second column, first sentence, remove the words “and Ecclesiastical and Ritual Ethnological Materials” and add in their place the words “and Byzantine and Post-Byzantine Period Ecclesiastical and Ritual Ethnological Materials”;

2. In the first column on page 41269:

a. Under the heading “B. Lead,” remove the words “date to the Byzantine period and”, and

b. Under the heading “II. Wood,” in the first sentence, remove the words “during the Byzantine period”;

3. In the second column on page 41269:

a. Under the heading “V. Textiles—Ritual Garments,” in the first sentence, remove the words “from the Byzantine period”,

b. Under the heading “A. Wall Mosaics,” in the first sentence, remove the words “Dating to the Byzantine period, wall mosaics” and add in their place the words “Wall mosaics”, and

c. Under the heading “VII. Frescoes/Wall Paintings,” in the first sentence, remove the words “the Byzantine period”.

##### *Correcting amendment:*

#### § 12.104g(a) [Amended]

■ 4. In § 12.104g(a), the table of the list of agreements imposing import

restrictions on described articles of cultural property of State Parties is amended in the entry for Cyprus by, in the column headed "Cultural Property," removing the entry and adding in its place the following entry:

"Archaeological material of pre-Classical and Classical periods ranging approximately from the 8th millennium B.C. to 330 A.D. and ecclesiastical and ritual ethnological material representing the Byzantine and Post-Byzantine periods ranging from approximately the 4th century A.D. to 1850 A.D."

Dated: July 26, 2012.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9597]

RIN 1545-BF34

#### Deductions for Entertainment Use of Business Aircraft

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the use of business aircraft for entertainment.

These final regulations affect taxpayers that deduct expenses for entertainment, amusement, or recreation provided to specified individuals. The final regulations reflect statutory amendments under the American Jobs Creation Act of 2004 (AJCA) and the Gulf Opportunity Zone Act of 2005 (GOZA).

**DATES:** *Effective Date:* These regulations are effective August 1, 2012.

*Applicability Date:* For dates of applicability, see §§ 1.61-21(g)(14)(iii), 1.274-9(e), and 1.274-10(h).

**FOR FURTHER INFORMATION CONTACT:**

Michael Nixon (section 274), (202) 622-4930; or Lynne A. Camillo (section 61), (202) 622-6040 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document contains final amendments to the Income Tax

Regulations, 26 CFR part 1, relating to the disallowance under section 274 of the Internal Revenue Code (Code) of deductions for the use of business aircraft for entertainment.

On June 15, 2007, a notice of proposed rulemaking (REG-147171-05) regarding the use of business aircraft for entertainment was published in the **Federal Register** (72 FR 33169). Written and electronic comments responding to the notice of proposed rulemaking were received. A public hearing on the proposed regulations was held on October 25, 2007. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and revisions are discussed in the preamble.

#### Explanation of Provisions and Summary of Comments

##### 1. Determination of Costs

###### a. Application of Disallowance to Fixed Costs

The proposed regulations provide that expenses subject to disallowance under section 274(a) include variable costs such as fuel and landing fees, and fixed costs such as depreciation, hangar fees, pilot salaries, and other items not directly related to an individual flight. Commentators suggested that the final regulations should limit expenses subject to disallowance to the direct or variable costs of a flight and exclude fixed costs. The final regulations do not adopt this comment because section 274(e)(2) does not explicitly differentiate between fixed and variable expenses and because such an interpretation is contrary to Congressional intent.

###### b. Charter Rate Safe Harbor

The proposed regulations requested comments on whether, as an alternative to determining actual expenses, the final regulations should allow taxpayers to determine the amount of expenses paid or incurred for entertainment flights by reference to charter rates. The proposed regulations asked for specific comments on the availability of substantiated actual, published, undiscounted charter rates charged to the general public by companies that meet certain requirements.

Commentators generally endorsed the inclusion of a charter rate safe harbor in the final regulations. They suggested that the IRS establish rates either by conducting a survey of average charter rates by region or by authorizing representatives of the industry to create a charter rate reporting system. One commentator suggested that if the IRS

does not establish charter rates, individual taxpayers should be allowed to determine charter rates.

Commentators also stated that a charter rate safe harbor should include rates for rentals of small piston aircraft, which taxpayers use extensively for business but normally are not chartered.

The difficulty of determining accurate and reliable charter rates continues to be an impediment to establishing a charter rate safe harbor. Accordingly, the final regulations do not include these rules. However, the final regulations authorize the IRS to adopt charter rate or other safe harbors in future published guidance, see § 601.601(d).

###### c. Depreciation

The proposed regulations permit a taxpayer to elect to compute depreciation expenses on a straight-line basis for all of the taxpayer's aircraft and all taxable years for purposes of calculating expenses subject to disallowance, even if the taxpayer uses another method to compute depreciation for other purposes. The proposed regulations provide a transition rule for applying the straight-line election to aircraft placed in service in taxable years preceding the election, which requires the taxpayer to apply the straight-line method as if it had been applied from the year the aircraft was placed in service.

A commentator requested that the final regulations allow a separate election for each aircraft. The final regulations do not allow an aircraft-by-aircraft election. Requiring taxpayers to make the election for all aircraft appropriately balances the policies of promoting business investment through the allowance of additional first-year depreciation and denying a tax benefit for entertainment use of business aircraft.

The commentator also suggested that changing depreciation methods under the transition rule may result in disallowing more than 100 percent of the cost of the aircraft. In response to the comment, the final regulations clarify that, in any taxable year, the depreciation disallowance does not exceed the amount of otherwise allowable depreciation. Thus, the sum of the allowable depreciation and the depreciation disallowed will not exceed 100 percent of basis, regardless of the taxable year a taxpayer makes the straight-line election.

The final regulations provide examples illustrating how taxpayers determine depreciation and basis under the election.