

## DEPARTMENT OF THE TREASURY

## Office of the Secretary

## Boycott Provisions (Section 999) of the Internal Revenue Code; Additional Boycott Guidelines

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of additional guidelines.

**SUMMARY:** The Treasury Department today issued additional guidelines relating to those provisions of the Tax Reform Act of 1976, found in section 999 of the Internal Revenue Code, which deny certain tax benefits for participation in or cooperation with international boycotts. These guidelines consist of clarifications of earlier guidelines and new guidelines which will elaborate on the Department of the Treasury's enforcement of section 999, primarily in the areas of compliance with local laws and the use of vessel eligible clauses. These guidelines were published in proposed form on November 23, 1983 at 48 FR 53003.

**FOR FURTHER INFORMATION CONTACT:** David D. Joy, Office of the General Counsel, Department of the Treasury, 15th & Pennsylvania Avenue, NW, Washington, DC 20220, (202-566-5569— not a toll-free call).

**SUPPLEMENTARY INFORMATION:** This document contains additional guidelines relating to the Department of the Treasury's enforcement of section 999 of the Internal Revenue Code. Section 999 incorporates provisions of the Tax Reform Act of 1976 (90 Stat. 1649-54), specifically sections 1061-1064 (known as the "Ribicoff Amendment"), which deny certain tax benefits for participation in or cooperation with international boycotts. Published guidelines which are still in effect today are found at 44 FR 66272 (November 19, 1979) and 43 FR 3454 (January 25, 1978).

## Executive Order 12291

The Department of the Treasury has determined that these guidelines are not a major rule as defined in Executive Order 12291, and that a Regulatory Impact Analysis is therefore not required.

## Analysis of Comments

These guidelines were published in proposed form for comment on November 23, 1983, at 48 FR 53003. The Department of the Treasury received three letters offering comments on these guidelines. Two of the letters focused on Guideline H-38, arguing that the Department of Treasury should permit the use of the clause "except to the

extent prohibited by U.S. law" to take a compliance clause out of the coverage of section 999. The third letter stated that the presumption that "vessel eligible" and "shall comply with local law" clauses are boycott-related should be reversed to give such clauses a presumption that they are not boycott-related.

After considering these comments, the Department of Treasury has decided not to implement these recommendations. The Department, however, has changed the word "Similarly" in Guideline J-3 to "On the other hand", substituted the word "clarification" for "correction" after Guidelines A-9, J-3, M-5, and M-7, and changed the number of "proposed" Guideline M-15 to Guideline M-14.

## Drafting Information

The principal author of these guidelines is Leonard Santos, formerly of the Office of the General Counsel, Department of the Treasury. David Joy from the Office of the General Counsel also participated in developing the guidelines.

The Guidelines are amended as follows:

*A-9 (clarification).* Q: Section 999(b)(4) permits a person to agree to comply with certain laws without being treated as having agreed to participate in or cooperate with an international boycott. In the course of its operations in or related to a boycotting country, a person agrees to comply with a prohibition on importation and exportation that is described in section 999(b)(4)(B) and section 999(b)(4)(C). Is that person required to report the operations on Form 5713?

A: Yes. Although agreements described in section 999(b)(4) (B) and (C) do not constitute participation in or cooperation with an international boycott, the operations in or related to a boycotting country must be reported on Form 5713. However, requests to enter into agreements described in section 999(b)(4) (B) and (C) are not reportable on Form 5713.

*J-3 (clarification).* Q: Company C competes for an industrial plant construction contract for which Company P of Country W is inviting international tenders. The contract is to be financed by Country X which maintains a blacklist of companies. Country X requires contracts for projects which it finances to state that the contractor is required to refrain from making any purchase for the project from any blacklisted company. Country W does not boycott those companies.

Company C wins the tender and signs the contract with Company P with the blacklist provision. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii)?

A: Generally, yes (see Guideline H-1A). Although the boycott is not implemented by Country W, but by Country X, and the project is being carried out in Country W, Company C has agreed not to do business with blacklisted U.S. companies as a condition of doing business indirectly with Country X. On the other hand, if the contract financed by Country X in Country W precluded the use of Country Y goods in connection with the project in Country W, the exception reflected in section 999(b)(4)(B) would apply to Company C's agreement and that agreement would not constitute participation in or cooperation with an international boycott.

*M-5 (clarification).* Q: Company C enters into a contract to export goods to or from Country X. The contract requires Company C not to ship the goods on a Country Y flag vessel or on a vessel owned, controlled, operated or chartered by Country Y or by companies or nationals of Country Y, or on a ship which during the voyage calls at Country Y enroute to or from Country X. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)?

A: No. The requirement in the contract is not a restrictive boycott practice. Rather, the contract provision is presumed to arise from the need to protect goods from damage or loss. However, this answer would not cover a restriction on the choice or route of a vessel when it carries no goods destined for or originating in Country X. The presumption described in this answer arises in every case where such clauses are used in connection with countries which are hostile to each other.

*M-7 (clarification).* Q: Company C signs a contract to export goods to Country X. The contract provides that the goods may not be shipped on a vessel that has been blacklisted by Country X because it has called at Country Y in the past. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(B)?

A: Yes.

The following guidelines are added:

**C-2. Q:** Company C is engaged in the sale of machinery to Country W. Company C has no knowledge or reason to know that Country W requires participation in or cooperation with an international boycott as a condition of doing business within Country W or with its government, companies or nationals, except that Company C is asked to sign a contract with Country W of the type described in Guideline M-5. Does Company C have knowledge that Country W is a boycotting country such that its operations with Country W are reportable?

**A:** No. Where the only Country W requirements of which Company C knows or has reason to know involve requests which, if agreed to, are not defined to constitute participation in or cooperation with an international boycott, Company C has no reason to treat Country W as a boycotting country.

**H-37. Q:** Company C signs a contract which provides that in connection with its performance Company C acknowledges that the import and customs laws and regulations of Country X shall apply to the furnishing and shipment of any products or components thereof to Country X, and that Company C acknowledges that such import and customs laws and regulations prohibit, among other things, the importation into Country X of products or components: (1) originating in Country Y; (2) manufactured, produced or furnished by companies organized under the laws of Country Y; and (3) manufactured, produced or furnished by nationals or residents of Country Y. Does Company C's contract constitute an agreement under section 999(b)(3)?

**A:** No. (see Guideline H-3). Company C has merely acknowledged that such import and customs laws shall apply to the furnishing of goods under the contract. However, an agreement by Company C to comply with Country X's restriction on the importation of goods furnished either by companies organized under Country Y's laws or by nationals of Country Y would constitute an agreement under section 999(b)(3).

**H-38. Q:** Company C signs a contract in which it agrees to comply with the laws, rules and regulations of Country X, except to the extent such compliance is penalized under laws of the United States. Does Company C's contract constitute an agreement under section 999(b)(3)?

**A:** No. An agreement to comply with the laws, rules and regulations of Country X does not constitute an

agreement under section 999(b)(3) when such a commitment is qualified by excepting out compliance penalized by U.S. law, including section 999. Any phrase which effectively excludes the agreements described in section 999 from the requirements of a contract with Country X would support the same result. For example, a compliance clause qualified by "except to the extent inconsistent with U.S. law" would also suffice to take the contract out of the coverage of section 999. However, a compliance clause qualified by the phrase "except to the extent prohibited by U.S. law" would not defeat the presumption that the contractual provision requires agreements penalized under section 999, since section 999 does not prohibit anything, but merely penalizes certain agreements.

**H-39. Q:** Company C signs a contract to construct an industrial plant in Country X. The contract states that the laws, regulations, requirements or administrative practices of Country X shall govern Company C's performance of the contract in Country X. The laws, regulations, requirements or administrative practices of Country X prohibit the importation into Country X of goods manufactured by any company engaged in trade in Country Y or with the government, companies or nationals of Country Y. Does Company C's action constitute an agreement under section 999(b)(3)?

**A:** No. (see Guideline H-3). The answer would be the same if the contract has instead stated that Company C would be "subject to" the laws, regulations, requirements or administrative practices of Country X.

**H-40. Q:** Company A signs a contract to export goods to Country X. The contract provides that payment will be made by means of a letter of credit confirmed by Bank C. The letter of credit requires Company A to provide to Bank C a certificate stating that the ship on which the goods are to be shipped is eligible to enter the ports of Country X in conformity with its laws and regulations, and that the insurer of the goods has a duly qualified and appointed agent or representative in Country X. Country X's laws and regulations prohibit, *inter alia*, black-listed vessels from calling at its ports and blacklisted insurance companies from qualifying or appointing an agent in Country X. Bank C confirms the letter of credit requiring the shipping and insurance certificates. Does Bank C's action constitute an agreement under section 999(b)(3)?

**A:** Yes. Unless Country X has offered the kind of explanation described in Guidelines M-12 and M-13, Bank C's

confirmation of the letter of credit constitutes an agreement to refrain from doing business with a U.S. person under section 999(b)(3)(A)(ii). The answer would be the same under section 999(b)(3)(A)(i), if the beneficiary of the letter of credit were organized under the laws of Country Y, and under section 999(b)(3)(A)(iii), if Bank C had reason to know that it would not be able to obtain the required certificate because of the nationality, race, or religion of the beneficiary's ownership, management, or directors. See Guideline H-29A.

**L-6. Q:** Company C signs a construction contract that provides that Company C is not to employ individuals or nationals of any country not diplomatically recognized by Country X. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iv)?

**A:** To the extent that Country Y is only one of several countries not recognized by Country X, the exclusion of nationals from unrecognized countries under the contract is not, on its face, boycott related. In those circumstances, agreement to the clause in question would not constitute an agreement to participate in or cooperate with an international boycott under section 999(b)(3). However, where Country Y is the only country not recognized by Country X, agreement to such a clause will constitute an agreement to participate in or cooperate with an international boycott under section 999(b)(3).

**M-14. Q:** Company C signs a contract to export goods to Country X. The contract provides that payment will be made by means of a letter of credit confirmed by Bank C. The letter of credit requires Company C to provide to Bank C a certificate stating that the goods are being shipped on a U.S. or Country X flag carrier *or*, alternatively, that the ship on which the goods are being shipped is eligible to enter the ports of Country X. Company C provides a certificate stating that the goods have been shipped on a U.S. or Country X flag carrier. Does Company C's acceptance of the letter of credit constitute an agreement under section 999(b)(3)?

**A:** No. Where the letter of credit requires alternative certifications, one of which is acceptable within the terms of section 999(b)(3), and Company C performs in accordance with that acceptable alternative (i.e., shipping on a U.S. or Country X flag carrier), it is presumed that Company C's agreement

included only the acceptable alternative. If Company C were to utilize a ship "eligible to enter the ports of Country X," Guideline M-10 would apply.

Dated: April 9, 1984.

John E. Chapoton,

*Assistant Secretary (Tax Policy).*

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#### Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 21]

#### Midwestern Casualty & Surety Co.; Surety Companies Acceptable on Federal Bonds; Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to Midwestern Casualty & Surety Company, under Sections 9304 to 9308 of Title 31 of the United States

Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 48 FR 30536, July 1, 1983.

With respect to any bonds currently in force with Midwestern Casualty & Surety Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Operations Staff (Surety), Banking and Cash Management, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-5745.

Dated: April 18, 1984.

W. E. Douglas,

*Commissioner.*

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