

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 86.—Social Security and Tier 1 Railroad Retirement Benefits

Notice 98-23 provides guidance regarding recent changes to the taxation of social security benefits under the U.S.-Canada income tax treaty. See Notice 98-23, page 9.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-

term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-

term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, on this page.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for May 1998.

Rev. Rul. 98-23

This revenue ruling provides various prescribed rates for federal income tax purposes for May 1998 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 98-23 TABLE 1
Applicable Federal Rates (AFR) for May 1998

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	5.50%	5.43%	5.39%	5.37%
110% AFR	6.06%	5.97%	5.93%	5.90%
120% AFR	6.63%	6.52%	6.47%	6.43%
130% AFR	7.18%	7.06%	7.00%	6.96%
<i>Mid-Term</i>				
AFR	5.69%	5.61%	5.57%	5.55%
110% AFR	6.27%	6.17%	6.12%	6.09%
120% AFR	6.84%	6.73%	6.67%	6.64%
130% AFR	7.42%	7.29%	7.22%	7.18%
150% AFR	8.60%	8.42%	8.33%	8.28%
175% AFR	10.06%	9.82%	9.70%	9.62%
<i>Long-Term</i>				
AFR	5.94%	5.85%	5.81%	5.78%
110% AFR	6.54%	6.44%	6.39%	6.36%
120% AFR	7.14%	7.02%	6.96%	6.92%
130% AFR	7.75%	7.61%	7.54%	7.49%

REV. RUL. 98-23 TABLE 2

Adjusted AFR for May 1998

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	3.73%	3.70%	3.68%	3.67%
Mid-term adjusted AFR	4.30%	4.25%	4.23%	4.21%
Long-term adjusted AFR	5.05%	4.99%	4.96%	4.94%

REV. RUL. 98-23 TABLE 3

Rates Under Section 382 for May 1998

Adjusted federal long-term rate for the current month	5.05%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.05%

REV. RUL. 98-23 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for May 1998

Appropriate percentage for the 70% present value low-income housing credit	8.36%
Appropriate percentage for the 30% present value low-income housing credit	3.58%

REV. RUL. 98-23 TABLE 5

Rate Under Section 7520 for May 1998

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	6.8%
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Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 1998. See Rev. Rul. 98-23, page 5.

Section 2511.—Transfers in General

26 CFR 25.2511-1: *Transfers in general.*
(Also Section 2512; 25.2512-1.)

Transfer of nonstatutory stock option. This ruling provides guidance on the time that a completed gift occurs when a nonstatutory stock option is transferred without consideration by the optionee to a family member.

Rev. Rul. 98-21

ISSUE

When is the transfer of a nonstatutory stock option (*i.e.*, a compensatory stock option that is not subject to the provisions of § 421 of the Internal Revenue Code) by the optionee to a family member, for no consideration, a completed gift under § 2511?

FACTS

A is employed by Company. Company has one class of stock. Company has a stock option plan under which employees can be awarded nonstatutory stock op-

tions to purchase shares of Company's stock. These stock options are not traded on an established market. The shares acquired on the exercise of an option are freely transferable, subject only to generally applicable securities laws, and subject to no other restrictions or limitations.

Company grants to A, in consideration for services to be performed by A, a nonstatutory stock option to purchase shares of Company common stock. Company's stock option plan provides that the stock option is exercisable by A only after A performs additional services.

All options granted under Company's stock option plan expire 10 years from the grant date. The exercise price per share of A's option is the fair market value of one share of Company's common stock on the grant date. Company's stock option plan permits the transfer of nonstatutory stock options to a member of an optionee's immediate family or to a trust for the benefit of those individuals. The effect of such a transfer is that the transferee (after the required service is completed and before the option's expiration date) will determine whether and when to exercise the stock option and will also be obligated to pay the exercise price.

Before A performs the additional services necessary to allow A's option to be exercised, A transfers A's option to B, one of A's children, for no consideration.

LAW AND ANALYSIS

Section 2501 imposes a tax on the transfer of property by gift by any indi-

vidual. The gift tax is not imposed upon the receipt of the property by the donee, is not necessarily determined by the measure of enrichment resulting to the donee from the transfer, and is not conditioned upon the ability to identify the donee at the time of the transfer. The tax is a primary and personal liability of the donor, is an excise upon the donor's act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable. Section 25.2511-2(a) of the Gift Tax Regulations.

The gift tax applies to a transfer of property by way of gift, whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Section 25.2511-1(a). For this purpose, the term property is used in its broadest and most comprehensive sense and reaches "every species of right or interest protected by law and having an exchangeable value." H.R. Rep. No. 708, 72d Cong., 1st Sess. 27 (1932); S. Rep. No. 665, 72d Cong., 1st Sess. 39, (1932); both reprinted in 1939-1 (Part 2) C.B. 476, 524. Some rights, however, are not property. See *e.g.*, *Estate of Howell v. Commissioner*, 15 T.C. 224 (1950) (non-vested pension rights were not property rights includible in gross estate under § 811(c) of the 1939 Code); *Estate of Barr v. Commissioner*, 40 T.C. 227 (1963) *acq.*, 1964-1 C.B. 4 (death benefits