

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9386]

RIN 1545-BE80

Abandonment of Stock or Other Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the availability and character of a loss deduction under section 165 of the Internal Revenue Code (Code) for losses sustained from abandoned stock or other securities. The final regulations clarify the tax treatment of losses from abandoned securities, and affect any taxpayer claiming a deduction for a loss from abandoned securities after the date these regulations are published in the **Federal Register**.

DATES: Effective Date: These final regulations are effective on March 12, 2008.

Applicability Date: For dates of applicability, see §1.165-5(i)(2).

FOR FURTHER INFORMATION CONTACT: Sean M. Dwyer at (202) 622-5020 or Peter C. Meisel at (202) 622-7750 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On July 30, 2007, the IRS published a notice of proposed rulemaking (REG-101001-05) in the **Federal**

Register (72 FR 41468). The notice of proposed rulemaking clarified the treatment of abandoned stock or other securities under section 165 of the Code, specifically providing that a loss from an abandoned security is governed by section 165(g), and that the loss is only allowed if all rights in the security are permanently surrendered and relinquished for no consideration. The IRS received no comments in response to the notice of proposed rulemaking. No public hearing was requested or held.

The proposed regulations are adopted as final regulations by this Treasury decision.

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. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded this final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these final regulations are Sean M. Dwyer, Office of the Associate Chief Counsel (Income Tax & Accounting), and Peter C. Meisel, Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their 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

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

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

Par. 2. Section 1.165-5 is amended by:

1. Redesignating paragraph (i) as paragraph (j).
2. Adding a new paragraph (i).

The addition reads as follows:

§1.165-5 Worthless securities.

* * * * *

(i) Abandonment of securities--(1) In general. For purposes of section 165 and this section, a security that becomes wholly worthless includes a security described in paragraph (a) of this section that is abandoned and otherwise satisfies the requirements for a deductible loss under section 165. If the abandoned security is a capital asset and is not described in section 165(g)(3) and paragraph (d) of this section (concerning worthless securities of certain affiliated corporations), the resulting loss is treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset. See section 165(g)(1) and paragraph (c) of this section. To abandon a security, a taxpayer must permanently surrender and relinquish all rights in the security and

receive no consideration in exchange for the security. For purposes of this section, all the facts and circumstances determine whether the transaction is properly characterized as an abandonment or other type of transaction, such as an actual sale or exchange, contribution to capital, dividend, or gift.

(2) Effective/applicability date. This paragraph (i) applies to any abandonment of stock or other securities after March 12, 2008.

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Deputy Commissioner for Services and Enforcement.

Linda E. Stiff

Approved: March 3, 2008

Assistant Secretary of the Treasury (Tax Policy).

Eric Solomon