

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-142800-09

RIN 1545-BI96

Guidance Regarding Deferred Discharge of Indebtedness Income of Corporations and
Deferred Original Issue Discount Deductions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations (TD 9497) under section 108(i) of the Internal Revenue Code (Code). These regulations primarily affect C corporations regarding the acceleration of deferred discharge of indebtedness (COD) income (deferred COD income) and deferred original issue discount (OID) deductions (deferred OID deductions) under section 108(i)(5)(D), and the calculation of earnings and profits as a result of an election under section 108(i). In addition, these regulations provide rules applicable to all taxpayers regarding deferred OID deductions under section 108(i) as a result of a reacquisition of an applicable debt instrument by an issuer or related party. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and request for a public hearing must be received by **INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT**

IN THE FEDERAL REGISTER].

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-142800-09), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-142800-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-142800-09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robert M. Rhyne (202) 622-7790 and Rubin B. Ranat (202) 622-7530; concerning submissions of comments and/or requests for a public hearing, Richard Hurst (202) 622-7180 (not toll-free numbers), or Richard.a.hurst@irsounsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-2147. Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE**

FEDERAL REGISTER]. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §1.108(i)-1(b)(3). This information is required by the IRS to allow members of a consolidated group to make an election to accelerate the inclusion of deferred COD income under section 108(i). The likely recordkeepers are corporations filing consolidated income tax returns (electing members). The IRS and Treasury Department believe that an electing member's election under §1.108(i)-1(b)(3) reduces the member's overall reporting burden under section 108(i).

Estimated total annual reporting burden: 0 hours.

Estimated average annual burden per respondent: 0 hours.

Estimated number of respondents: 5,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR parts 1 and 602) relating to section 108(i). The temporary regulations set forth rules for applying section 108(i) to C corporations. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations merely provide more specific guidance for the timing of the inclusion of deferred COD income that is otherwise includible under the Code. Therefore, a Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of

proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In addition to the specific requests for comments made elsewhere in this preamble or the preamble to the temporary regulations, the IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Robert M. Rhyne and Rubin B. Ranat of the Office of 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.

Proposed Amendment to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in

numerical order to read as follows:

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

Section 1.108(i)-0T also issued under 26 U.S.C. 108(i)(7). * * *

Section 1.108(i)-1T also issued under 26 U.S.C. 108(i)(7) and 1502. * * *

Section 1.108(i)-3T also issued under 26 U.S.C. 108(i)(7) and 1502. * * *

Par. 2. Section 1.108(i)-0 is added to read as follows:

§1.108(i)-0 Definitions.

[The text of proposed §1.108(i)-0 is the same as the text of §1.108(i)-0T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.108(i)-1 is added to read as follows:

§1.108(i)-1 Deferred discharge of indebtedness income and deferred original issue discount deductions of C corporations.

[The text of proposed §1.108(i)-1 is the same as the text of §1.108(i)-1T published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.108(i)-3 is added to read as follows:

§1.108(i)-3 Rules for the deduction of OID.

[The text of proposed § 1.108(i)-3 is the same as the text of § 1.108(i)-3T published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010-20059 Filed 08/11/2010 at 11:15 am; Publication Date: 08/13/2010]