

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-144762-09]

RIN 1545-BI99

Application of Section 108(i) to Partnerships and S Corporations

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 is issuing temporary regulations relating to the application of section 108(i) of the Internal Revenue Code (Code) to partnerships and S corporations. The temporary regulations provide rules regarding the deferral of discharge of indebtedness income and original issue discount deductions by a partnership or an S corporation with respect to reacquisitions of applicable debt instruments after December 31, 2008, and before January 1, 2011. The regulations affect partnerships and S corporations with respect to reacquisitions of applicable debt instruments and their partners and shareholders. The text of the temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests 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-144762-09), 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-144762-09), 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-144762-09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Megan A. Stoner and Joseph R. Worst, Office of Associate Chief Counsel (Passthroughs and Special Industries) (202) 622-3070; concerning submissions of comments or a request for a public hearing, Richard Hurst, (202) 622-7180 (not toll-free numbers) and his e-mail address is [Richard.A.Hurst@irsounsel.treas.gov](mailto:Richard.A.Hurst@irsounsel.treas.gov).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information contained in these proposed regulations has been reviewed and approved by 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. The collection of information in these regulations are in §1.108(i)-2(b)(3)(iv). Under §1.108(i)-2(b)(3)(iv), a partner in a partnership that makes an election under section 108(i) is required to provide certain information to the partnership so that the partnership can correctly determine the partner's deferred section 752 amount with respect to an applicable debt instrument.

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**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 108(i). The temporary regulations set forth rules for applying section 108(i) to partnerships and S corporations. The text of the 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 the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information imposed on partners of partnerships is minimal in that it requires partners to share information with partnerships that partners already maintain. Moreover, it should take a partner no more than one hour to satisfy the information-

sharing requirement in these regulations. 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 regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and 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. The IRS and the 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 will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal authors of these regulations are Megan A. Stoner and Joseph R. Worst, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the 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 an entry in numerical order to read as follows:

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

Section 1.108(i)-2 also issued under 26 U.S.C. 108(i)(7). \* \* \*

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

§1.108(i)-2 Application of section 108(i) to partnerships and S corporations.

[The text of proposed §1.108(i)-2 is the same as the text of §1.108(i)-2T(a) through (f) published elsewhere in this issue of the **Federal Register**].

Steven T. Miller  
Deputy Commissioner for Services and Enforcement.