Act, 42 U.S.C. 1306), Executive Order, or regulation (such as 20 CFR part 401)?

(2) Would providing the testimony put confidential, sensitive, or privileged information at risk?

(b) *Burden on SSA.* (1) Would granting the application unduly expend for private purposes the resources of the United States (including the time of SSA employees needed for official duties)?

(2) Would the testimony be available in a less burdensome form or from another source?

(3) Would the testimony be limited to the purpose of the request?

(4) Did you previously request the same testimony in the same or a related proceeding?

(c) *Interests served by allowing testimony.* (1) Would providing the testimony serve SSA's interest?

(2) Would providing the testimony maintain SSA's policy of impartiality among private litigants?

(3) Is another government agency involved in the proceeding?

(4) Do you need the testimony to prevent fraud or similar misconduct?

(5) Would providing the testimony be necessary to prevent a miscarriage of justice or to preserve the rights of an accused individual to due process in a criminal proceeding?

§ 403.135 What happens to your application for testimony?

(a) If 20 CFR part 401 or 402 does not permit disclosure of information about which you seek testimony from an SSA employee, we will notify you under § 403.145.

(b) If 20 CFR part 401 or 402 permits disclosure of the information about which you seek testimony,

(1) The Commissioner makes the final decision on your application;

(2) All final decisions are in the sole discretion of the Commissioner; and

(3) We will notify you of the final decision on your application.

§ 403.140 If the Commissioner authorizes testimony, what will be the scope and form of that testimony?

The employee's testimony must be limited to matters that were specifically approved. We will provide testimony in the form that is least burdensome to SSA unless you provide sufficient information in your application for SSA to justify a different form. For example, we will provide an affidavit or declaration rather than a deposition and a deposition rather than trial testimony.

§ 403.145 What will SSA do if you have not satisfied the conditions in this part or in 20 CFR part 401 or 402?

(a) We will provide the following information, as appropriate, to you or the court or other tribunal conducting the legal proceeding if your request states that a response is due on a particular date and the conditions prescribed in this part, or the conditions for disclosure in 20 CFR part 401 or 402, are not satisfied or we anticipate that they will not be satisfied by that date:

(1) A statement that compliance with the request is not authorized under 20 CFR part 401 or 402, or is prohibited without the Commissioner's approval;

(2) The requirements for obtaining the approval of the Commissioner for testimony or for obtaining information, records, or testimony under 20 CFR part 401 or 402; and

(3) If the request complies with § 403.120, the estimated time necessary for a decision. We will make every reasonable effort to provide this information in writing on or before the date specified in your request.

(b) Generally, if a response to a request for information, records, or testimony is due before the conditions of this Part or the conditions for disclosure in 20 CFR part 401 or 402 are met, no SSA employee will appear.

(c) SSA will seek the advice and assistance of the Department of Justice when appropriate.

§ 403.150 Is there a fee for our services?

(a) *General.* Unless the Commissioner grants a waiver, you must pay fees for our services in providing information, records, or testimony. You must pay the fees as prescribed by the Commissioner. In addition, the Commissioner may require that you pay the fees in advance as a condition of providing the information, records, or testimony. Make fees payable to the Social Security Administration by check or money order.

(b) *Records or information.* Unless the Commissioner grants a waiver, you must pay the fees for production of records or information prescribed in 20 CFR § § 401.95 and 402.155 through 402.185, as appropriate.

(c) *Testimony.* Unless the Commissioner grants a waiver, you must pay fees calculated to reimburse the United States Government for the full cost of providing the testimony. Those costs include, but are not limited to—

(1) The salary or wages of the witness and related costs for the time necessary to prepare for and provide the testimony and any travel time, and

(2) Other travel costs.

(d) *Waiver or reduction of fees.* The Commissioner may waive or reduce fees for providing information, records, or testimony under this Part. The rules in 20 CFR § 402.185 apply in determining whether to waive fees for the production of records. In deciding whether to waive or reduce fees for testimony or for production of information that does not constitute a record, the Commissioner may consider other factors, including but not limited to—

(1) The ability of the party responsible for the application to pay the full amount of the chargeable fees;

(2) The public interest, as described in 20 CFR § 402.185, affected by complying with the application;

(3) The need for the testimony or information in order to prevent a miscarriage of justice;

(4) The extent to which providing the testimony or information serves SSA's interest; and

(5) The burden on SSA's resources required to provide the information or testimony.

§ 403.155 Does SSA certify records?

We can certify the authenticity of copies of records we disclose pursuant to 20 CFR parts 401 and 402, and this part. We will provide this service only in response to your written request. If we certify, we will do so at the time of the disclosure and will not certify copies of records that have left our custody. A request for certified copies of records previously released is considered a new request for records. Fees for this certification are set forth in 20 CFR 402.165(e).

[FR Doc. 01–838 Filed 1–11–01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8934]

RIN 1545–AX60

Reopenings of Treasury Securities and Other Debt Instruments; Original Issue Discount

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the federal income tax treatment of debt instruments issued in certain reopenings. The final regulations provide guidance to holders and issuers of these debt instruments .

DATES: *Effective Date:* These regulations are effective March 13, 2001.

Applicability Dates: For dates of applicability, see §§ 1.163–7(f), 1.1275–1(f), 1.1275–2(d), and 1.1275–2(k)(5).

FOR FURTHER INFORMATION CONTACT: William E. Blanchard, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1999, temporary regulations were published in the **Federal Register** (64 FR 60342) that revised the rules for when a reopening of Treasury securities is a qualified reopening. The temporary regulations eliminated the acute, protracted shortage requirement that was in § 1.1275–2(d). See § 1.1275–2T(d) of the temporary Income Tax Regulations. As a result, additional Treasury securities issued in a reopening are part of the same issue as the original Treasury securities if (1) The additional Treasury securities have the same terms as the original Treasury securities, and (2) the additional Treasury securities are issued not more than one year after the original Treasury securities were first issued to the public.

On November 5, 1999, proposed regulations (REG–115932–99) also were published in the **Federal Register** (64 FR 60395) that, for the first time, provided rules for reopenings of debt instruments other than Treasury securities. See § 1.1275–2(k) of the proposed Income Tax Regulations.

Although a public hearing on the proposed regulations was held on March 22, 2000, no one testified at the hearing. Eight comment letters, however, were received on the proposed regulations. The proposed regulations, with certain changes to respond to the comments, are adopted as final regulations.

Explanation of Provisions

Reopenings

A. General Description

In certain circumstances, an issuer would like to reopen an existing issue of debt instruments (that is, sell additional amounts of debt instruments with terms that are identical to the terms of the original debt instruments and with the same CUSIP number and tax characteristics as the original debt instruments). In most cases, the purpose of the reopening is to create a large, liquid issue of debt instruments. However, during periods of rising market interest rates, the original issue discount (OID) provisions of the Code can effectively prohibit reopenings, especially if the additional debt instruments are not considered part of the same issue as the original debt instruments.

If the debt instruments sold in the reopening are considered part of the original issue, they have OID only to the extent the debt instruments in the original issue have OID. Thus, if the original debt instruments were issued without OID, the subsequently sold debt instruments also do not have OID. In this case, any discount on the subsequently sold debt instruments generally is market discount, not OID. Conversely, if the subsequently sold debt instruments are a separate issue for tax purposes, any discount that arises as part of their issuance is OID if it equals or exceeds the OID de minimis amount for the debt instruments.

The holder and issuer have different consequences depending upon whether the discount is characterized as OID or market discount. For a holder, the primary difference is whether the holder has to include the discount in income on a current basis as it accrues. If it is OID, the holder must include the accruals in income currently; if it is market discount, the holder generally does not have to include discount in income until the debt instrument is disposed of or redeemed. In general, an issuer's interest deduction does not depend on whether the discount is OID or market discount. However, the issuer's reporting obligations depend on whether the discount is OID or market discount. If the subsequently sold debt instruments are part of a separate issue and if the discount is OID, the issuer (or a broker or middleman) generally is required under section 6049 to make OID information reports for these debt instruments. To comply with this reporting obligation, the issuer must be able to distinguish the subsequently sold debt instruments (which require OID information reports) from the originally sold debt instruments. As a practical matter, the only way the subsequently sold debt instruments can be distinguished is if they are assigned new CUSIP numbers. The different tax treatment and the assignment of new CUSIP numbers prevents the debt instruments from being fungible and, thereby, defeats the purpose of the reopening.

B. Proposed Regulations

In an attempt to strike a balance between the tax policy concern about the conversion of OID into market discount and the need to have the tax rules reflect current capital market practices, the proposed regulations specified when debt instruments issued in a reopening are considered part of the same issue as the original debt instruments (a qualified reopening). (As noted above, § 1.1275–2T(d) provides rules to determine when a reopening of Treasury securities is a qualified reopening.)

Under § 1.1275–2(k) of the proposed regulations, a reopening of debt instruments is a qualified reopening if: (1) The original debt instruments are publicly traded; (2) the issue date of the additional debt instruments (treated as if they were a separate issue) is not more than six months after the issue date of the original debt instruments; (3) seven days before the date on which the price of the additional debt instruments is established, the yield of the original debt instruments (based on their fair market value) is not more than 107.5 percent of the yield of the original debt instruments on their issue date; and (4) the yield of the additional debt instruments (based on the sales price of the additional debt instruments) is no more than 115 percent of the yield of the original debt instruments on their issue date. For purposes of the yield tests, if the original debt instruments were issued with no more than a de minimis amount of OID, the coupon rate of the original debt instruments is used rather than the yield. A qualified reopening also includes a reopening of original debt instruments if the first two conditions described above are met and the additional debt instruments (treated as a separate issue) are issued with no more than a de minimis amount of OID. A qualified reopening, however, does not include a reopening of tax-exempt obligations or contingent payment debt instruments.

The 107.5 percent test was designed to give some relief to the reopening of relatively short-term issues (that is, issues with a remaining term of ten years or less), which tend to be the most impacted by the OID de minimis rules. In addition, the 107.5 percent test, which is tested seven days before the anticipated pricing date, would give the issuer an indication as to whether the reopening would be a qualified reopening. The 115 percent test was designed to prevent, in a situation in which interest rates were to move sharply upward in the period between the announcement date and the issue date, a conversion of a significant amount of OID into market discount.

C. Final Regulations

(1) Fixed Reopening Period

Commentators suggested that the final regulations extend the one-year rule for reopenings of Treasury securities to other issuers. In support of this change, commentators stated that different rules will impede the ability of U.S. issuers to compete with foreign issuers for investors' funds and will affect the

ability of non-Treasury issuers to make their dollar-denominated issues attractive alternatives to U.S. Treasury securities as benchmarks for prevailing market interest rates. They also stated that an extended period (from six to twelve months) is often required in order to aggregate sufficient debt issuances to create a large liquid issue and that many holders of reopened debt instruments are tax-indifferent parties.

If the one-year rule is not adopted in the final regulations, some commentators suggested that the final regulations provide a fixed period of less than one year in which there would be no restrictions on reopenings (for example, a period of six months for non-Treasury securities with an original maturity of less than ten years and nine months for non-Treasury securities with an original maturity of at least ten years). In addition, other commentators suggested that the final regulations extend the one-year rule to reopenings of issuers whose securities are treated as government securities for U.S. securities law purposes.

After careful consideration of these comments, the IRS and the Treasury Department have decided not to adopt these suggestions. Congress adopted different statutory regimes for OID and market discount. The IRS and the Treasury Department believe that adopting the commentators' suggestions would not strike the appropriate balance between the statutory scheme and providing some flexibility for issuers. Additionally, the reopening of Treasury securities does not produce a potential mismatch between the issuer's interest deductions and the holder's income inclusions.

(2) Yield Test

Commentators suggested that the two-part yield test be replaced with a single yield test. According to the commentators, by the time a reopening is priced, dealers, traders, and investors have arranged their affairs in reliance on the issue coming to market, and the issuer has earmarked the proceeds for use in its business. In addition, many of the participants have arranged hedges and other transactions around the reopening. In those cases in which the second-yield test would not be met (which would be caused by unexpected market volatility), a cancelled reopening could generate lost economic costs for these capital market participants. In addition, the second test would create marketing and credibility concerns for issuers.

Most of the commentators suggested that any yield test should be applied either on the pricing date or the announcement date. According to one commentator, the yield test should be applied by an issuer on a single date that is the announcement date for the reopening transaction, provided the pricing date for the transaction occurs thereafter within a period consistent with customary commercial practice. Although customary commercial practice may vary somewhat by issuer and market, the period between the announcement date and the pricing date is usually five business days or less. The yield test should allow issuers to presume that a transaction is consistent with customary commercial practice if the period between the announcement date and the pricing date is five business days or less.

For public transactions, the commentators suggested that the announcement date can be defined as the date that the reopening transaction is publicly announced through one or more media, including a press release, a news item posted on a public messaging service such as Reuters, Telerate, or Bloomberg, or a posting on the issuer's public web site. (Because the transaction is a reopening, the payment terms of the securities to be issued will be known in advance based on the prior issue.) A test based on a public announcement date would be fairly easy to administer for both issuers and the government. Moreover, if an announced reopening transaction is not priced within a customary commercial time frame, it is likely that the transaction will be re-evaluated and subsequently re-announced on a later date that could serve as the appropriate announcement date for the yield test.

According to another commentator, each reopening should be tested on the earlier of the pricing date or the announcement date of a reopening. The term *announcement date* could be defined as the later of seven days before pricing or the date on which an issuer's intent to reopen a security is reported on the standard electronic news services used by security broker-dealers. This rule would accommodate issuers who announce and price reopenings on the same day as well as Treasury and non-Treasury issuers who announce reopenings up to 7 days before pricing.

According to a third commentator, an issuer should be permitted to satisfy any yield test by demonstrating that the test was satisfied on any one of the seven days prior to the date on which the price of the additional debt instruments was established.

Based on historical evidence, the commentators stated that the 107.5 pecent test in the proposed regulations would not have been met in a number of cases in which a reopening would be economically desirable. Therefore, the commentators suggested that any yield test should be based on 115 percent of the yield rather than 107.5 percent of the yield. While a 115 percent test also would not be met in a number of cases, the commentators stated that the 115 percent figure used in the proposed regulations represents an acceptable middle ground. (However, some commentators stated that a 115 percent test would be too low to qualify many reopenings of sovereign debt issued by emerging market governments.)

In response to the comments, the final regulations adopt a single yield test to determine if the reopening is a qualified reopening. Under the final regulations, the yield test is satisfied if, on the date on which the price of the additional debt instruments is established (or, if earlier, the announcement date), the yield of the original debt instruments (based on their fair market value) is not more than 110 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a de minimis amount of OID, the coupon rate). For purposes of the yield test, the announcement date is the later of seven days before the date on which the price of the additional debt instruments is established or the date on which the issuer's intent to reopen a security is publicly announced through one or more media, including an announcement reported on the standard electronic news services used by security broker-dealers (for example, Reuters, Telerate, or Bloomberg). The test rate of 110 percent in the final regulations reflects a compromise between the 107.5 percent test rate in the proposed regulations and the 115 percent test rate suggested by the commentators.

(3) Six-Month Period

Some of the commentators suggested that the six-month period be extended to one year. According to the commentators, many issuers have specific funding needs that arise sporadically over the course of a year or, in the case of foreign sovereign issuers, are often fiscally constrained from reopening issues within a six-month period. Therefore, an extended period (from six to twelve months) is required in order to aggregate sufficient debt issuances to create a large, liquid issue. Because the extension of the six-month period would increase the likelihood of the conversion of OID into market discount, the final regulations do not adopt this suggestion.

(4) De Minimis Test

Some of the commentators suggested that the final regulations clarify the treatment of reopened debt instruments that are issued with no more than a de minimis amount of OID after the expiration of the six-month period (a *de facto* qualified reopening). According to the commentators, the proposed regulations apparently are stricter than current law in limiting a *de facto* qualified reopening to one in which the reopened securities are issued within six months after the issue date of the original debt instruments. As a result, there is uncertainty in the debt markets where none existed for these securities.

The final regulations provide that a reopening (including a reopening of Treasury securities) is a qualified reopening if the original debt instruments are publicly traded and the additional debt instruments are issued with no more than a *de minimis* amount of OID (determined without the application of § 1.1275–2(k)). As a result, the *de minimis* test is no longer limited to the six-month period after the issue date of the original debt instruments.

(5) Reopenings After the Six-Month Period

Some of the commentators suggested that the final regulations allow a reopening occurring after the expiration of the fixed reopening period to be a qualified reopening if the reopening satisfies a yield test that would limit the amount of OID converted into market discount. In the experience of the commentators, as longer-term debt securities progress in age, they become less liquid as compared with shorter-term debt securities of equal remaining life. (For example, a thirty-year debt issue with five years of remaining life generally can be expected to be less liquid than an otherwise identical new five-year issue.) The ability to reopen a security throughout its life would help issuers increase the liquidity of their longer-term issues as needed to address such competitive concerns. This ability would be highly valuable to private sector and government-sponsored enterprise issuers; therefore, it would be appropriate to allow it so long as a yield test ultimately limits the amount of OID that can be converted into market discount. For example, the final regulations could permit an issuer (including the Treasury Department) to reopen a security after the fixed reopening period if a 10 percent yield-change test is met.

The final regulations do not adopt this suggestion. The IRS and the Treasury Department believe that the changes to the *de minimis* test described above provide the appropriate relief for debt instruments reopened after the six-month period.

D. Treasury Securities

The final regulations concerning reopenings of Treasury securities are generally the same as the temporary regulations. See § 1.1275–2(d)(2). In addition, under the final regulations, if a reopening of Treasury securities is not a qualified reopening under § 1.1275–2(d)(2) (for example, because the reopening date is more than one year after the issue date of the original Treasury securities), the reopening is a qualified reopening under § 1.1275–2(k) if the additional Treasury securities are issued with no more than a *de minimis* amount of OID (determined without the application of § 1.1275–2(k)).

E. Issuer's Treatment

The proposed regulations require the issuer to take into account, as an adjustment to its interest expense, any difference between the amounts paid by the holders to acquire the additional debt instruments issued in a qualified reopening and the adjusted issue price of the original debt instruments. This difference would either increase or decrease the adjusted issue prices of all of the debt instruments in the issue (both original and additional) with respect to the issuer (but not the holder). The issuer would then, as of the reopening date, recompute the yield of the debt instruments in the issue based on this aggregate adjusted issue price and the remaining payment schedule of the debt instruments. The issuer would use this recomputed yield for purposes of applying the constant yield method to determine its accruals of interest expense over the remaining term of the debt instruments in the issue.

One commentator suggested that the adjusted issue price of the combined debt instruments simply should be the sum of the issuer's adjusted issue price in the original debt instruments on the reopening date and the issue price of the additional debt instruments determined as if they were a separate issue. The final regulations do not adopt this suggestion; the rule in the proposed regulations is more accurate than the rule suggested by the commentator. The same commentator also suggested that the final regulations state that, for purposes of determining the adjusted issue price of the combined debt instruments, pre-issuance accrued interest on the additional debt instruments for which the issuer is compensated at issuance is not treated as part of the issue price of the additional debt instruments. In effect, this suggestion would make the rule in § 1.1273–2(m) mandatory for debt instruments issued in a qualified reopening. Under § 1.1273–2(m), a taxpayer can choose to determine the issue price of a debt instrument by excluding pre-issuance accrued interest. There does not seem to be a compelling reason to make this rule mandatory for debt instruments issued in a qualified reopening when it is not mandatory for other debt instruments. As a result, the final regulations do not adopt this suggestion.

F. Effective Date

The rules in the final regulations for qualified reopenings (other than for Treasury reopenings subject to § 1.1275–2(d)) apply to debt instruments that are part of a reopening where the reopening date is on or after March 13, 2001.

Definition of Issue

The proposed regulations define the term issue as two or more debt instruments that (1) have the same credit and payment terms, (2) are issued either pursuant to a common plan or as part of a single transaction or a series of related transactions, and (3) are issued within a period of 13 days beginning with the date on which the first debt instrument that would be part of the issue is issued to a person other than a bond house, broker, or similar person acting in the capacity of an underwriter, placement agent, or wholesaler. The final regulations generally are the same as the proposed regulations but for the additional requirement that the debt instruments be issued on or after March 13, 2001. The final regulations also provide certain transition rules if the debt instruments are issued prior to March 13, 2001.

Issue Price of Treasury Securities

Under § 1.1275–2T(d)(1), the issue price of an issue of Treasury securities auctioned before November 2, 1998, is the average price of the securities sold, and the issue price of an issue of Treasury securities auctioned on or after November 2, 1998, is the price of the securities sold at auction. The change to the definition of issue price for Treasury securities in the temporary regulations reflected the Treasury Department's switch on November 2, 1998, from an average price auction to a single price auction for selling Treasury securities. However, in order to accommodate all types of auction techniques and because the rule for an average price auction, when applied to a single price auction, produces the same result as the rule for

a single price auction, the final regulations provide that the issue price of an issue of Treasury securities is the average price of the securities sold.

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 and, 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 Code, the notice of proposed rulemaking preceding these regulations 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 author of the regulations is William E. Blanchard, Office of the Associate Chief Counsel (Financial Institutions and Products). 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 is amended by removing the entry for § 1.1275–2T to read in part as follows:

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

Par. 2. Section 1.163–7 is amended by:

1. Revising paragraph (e).
2. Adding a new paragraph (f).

The revision and addition read as follows:

§ 1.163–7 Deduction for OID on certain debt instruments.

* * * * *

(e) *Qualified reopening*—(1) *In general.* In a qualified reopening of an issue of debt instruments, if a holder pays more or less than the adjusted issue price of the original debt instruments to acquire an additional debt instrument, the issuer treats this difference as an adjustment to the issuer's interest expense for the original and additional debt instruments. As provided by paragraphs (e)(2) through (5) of this section, the adjustment is taken into account over the term of the instrument using constant yield principles.

(2) *Positive adjustment.* If the difference is positive (that is, the holder pays more than the adjusted issue price of the original debt instrument), then, with respect to the issuer but not the holder, the difference increases the aggregate adjusted issue prices of all of the debt instruments in the issue, both original and additional.

(3) *Negative adjustment.* If the difference is negative (that is, the holder pays less than the adjusted issue price of the original debt instrument), then, with respect to the issuer but not the holder, the difference reduces the aggregate adjusted issue prices of all of the debt instruments in the issue, both original and additional.

(4) *Determination of issuer's interest accruals.* As of the reopening date, the issuer must redetermine the yield of the debt instruments in the issue for purposes of applying the constant yield method described in § 1.1272–1(b) to determine the issuer's accruals of interest expense over the remaining term of the debt instruments in the issue. This redetermined yield is based on the aggregate adjusted issue prices of the debt instruments in the issue (as determined under this paragraph (e)) and the remaining payment schedule of the debt instruments in the issue. If the aggregate adjusted issue prices of the debt instruments in the issue (as determined under this paragraph (e)) are less than the aggregate stated redemption price at maturity of the instruments (determined as of the reopening date) by a *de minimis* amount (within the meaning of § 1.1273–1(d)), the issuer may use the rules in paragraph (b) of this section to determine the issuer's accruals of interest expense.

(5) *Effect of adjustments on issuer's adjusted issue price.* The adjustments made under this paragraph (e) are taken into account for purposes of determining the issuer's adjusted issue price under § 1.1275–1(b).

(6) *Definitions.* The terms *additional debt instrument, original debt instrument, qualified reopening,* and *reopening date* have the same meanings as in § 1.1275–2(k).

(f) *Effective dates.* This section (other than paragraph (e) of this section) applies to debt instruments issued on or after April 4, 1994. Taxpayers, however, may rely on this section (other than paragraph (e) of this section) for debt instruments issued after December 21, 1992, and before April 4, 1994. Paragraph (e) of this section applies to qualified reopenings where the reopening date is on or after March 13, 2001.

Par. 3. In § 1.1271–0, paragraph (b) is amended by:

1. Adding entries for paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of § 1.1275–1.
2. Removing the language ''[Reserved]'' from the entry for paragraph (d) and adding entries for paragraph (d) of § 1.1275–2.
3. Adding entries for paragraph (k) of § 1.1275–2.
4. Removing the entries for § 1.1275–2T.
5. Removing the language ''[Reserved]'' from the entry for paragraph (g) and adding an entry for paragraph (g) of § 1.1275–7.

The revisions and additions read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

(b) * * *

* * * * *

§ 1.1275–1 Definitions.

* * * * *

(f) *Issue.*

(1) *Debt instruments issued on or after March 13, 2001.*

(2) *Debt instruments issued before March 13, 2001.*

(3) *Transition rule.*

(4) *Cross-references for reopening and aggregation rules.*

* * * * *

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(d) *Special rules for Treasury securities.*

(1) *Issue price and issue date.*

(2) *Reopenings of Treasury securities.*

* * * * *

(k) *Reopenings.*

(1) *In general.*

(2) *Definitions.*

(3) *Qualified reopening.*

(4) *Issuer's treatment of a qualified reopening.*

(5) *Effective date.*

* * * * *

§ 1.1275–7 Inflation-indexed debt instruments.

* * * * *

(g) *Reopenings.*

* * * * *

Par. 4. In § 1.1275–1, paragraph (f) is revised to read as follows:

§ 1.1275–1 Definitions.

* * * * *

(f) *Issue*—(1) *Debt instruments issued on or after March 13, 2001.* Except as provided in paragraph (f)(3) of this section, two or more debt instruments are part of the same issue if the debt instruments—

(i) Have the same credit and payment terms;

(ii) Are issued either pursuant to a common plan or as part of a single transaction or a series of related transactions;

(iii) Are issued within a period of thirteen days beginning with the date on which the first debt instrument that would be part of the issue is issued to a person other than a bond house, broker, or similar person or organization acting in the capacity of an underwriter, placement agent, or wholesaler; and

(iv) Are issued on or after March 13, 2001.

(2) *Debt instruments issued before March 13, 2001.* Except as provided in paragraph (f)(3) of this section, two or more debt instruments are part of the same issue if the debt instruments—

(i) Have the same credit and payment terms;

(ii) Are sold reasonably close in time either pursuant to a common plan or as part of a single transaction or a series of related transactions; and

(iii) Are issued on or after April 4, 1994, and before March 13, 2001.

(3) *Transition rule.* If the issue date of any of the debt instruments that would be part of the same issue (determined as if each debt instrument were part of a separate issue) is on or after March 13, 2001, then the definition of the term *issue* in paragraph (f)(1) of this section applies rather than the definition in paragraph (f)(2) of this section to determine if the debt instruments are part of the same issue.

(4) *Cross-references for reopening and aggregation rules.* See § 1.1275–2(d) and (k) for rules that treat debt instruments issued in certain reopenings as part of an issue of original (outstanding) debt instruments. See § 1.1275–2(c) for rules that treat two or more debt instruments as a single debt instrument.

* * * * *

Par. 5. In § 1.1275–2, paragraph (d) is revised and paragraph (k) is added to read as follows:

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(d) *Special rules for Treasury securities*—(1) *Issue price and issue date.* The issue price of an issue of Treasury securities is the average price of the securities sold. The issue date of an issue of Treasury securities is the first settlement date on which a substantial amount of the securities in the issue is sold. For an issue of Treasury securities sold from November 1, 1998, to March 13, 2001, the issue price of the issue is the price of the securities sold at auction.

(2) *Reopenings of Treasury securities*—(i) *Treatment of additional Treasury securities.* Notwithstanding § 1.1275–1(f), additional Treasury securities issued in a qualified reopening are part of the same issue as the original Treasury securities. As a result, the additional Treasury securities have the same issue price, issue date, and (with respect to holders) the same adjusted issue price as the original Treasury securities. This paragraph (d)(2) applies to qualified reopenings that occur on or after March 25, 1992.

(ii) *Definitions*—(A) *Additional Treasury securities.* Additional Treasury securities are Treasury securities with terms that are in all respects identical to the terms of the original Treasury securities.

(B) *Original Treasury securities.* Original Treasury securities are securities comprising any issue of outstanding Treasury securities.

(C) *Qualified reopening—reopenings on or after March 13, 2001.* For a reopening of Treasury securities that occurs on or after March 13, 2001, a qualified reopening is a reopening that occurs not more than one year after the original Treasury securities were first issued to the public or, under paragraph (k)(3)(iii) of this section, a reopening in which the additional Treasury securities are issued with no more than a de minimis amount of OID.

(D) *Qualified reopening—reopenings before March 13, 2001.* For a reopening of Treasury securities that occurs before March 13, 2001, a qualified reopening is a reopening that occurs not more than one year after the original Treasury securities were first issued to the public. However, for a reopening of Treasury securities (other than Treasury Inflation-Indexed Securities) that occurred prior to November 5, 1999, a qualified reopening is a reopening of Treasury securities that satisfied the preceding sentence and that was intended to alleviate an acute, protracted shortage of the original Treasury securities.

* * * * *

(k) *Reopenings*—(1) *In general.* Notwithstanding § 1.1275–1(f), additional debt instruments issued in a qualified reopening are part of the same issue as the original debt instruments. As a result, the additional debt instruments have the same issue date, the same issue price, and (with respect to holders) the same adjusted issue price as the original debt instruments.

(2) *Definitions*—(i) *Original debt instruments.* Original debt instruments are debt instruments comprising any single issue of outstanding debt instruments. For purposes of determining whether a particular reopening is a qualified reopening, debt instruments issued in prior qualified reopenings are treated as original debt instruments and debt instruments issued in the particular reopening are not so treated.

(ii) *Additional debt instruments.* Additional debt instruments are debt instruments that, without the application of this paragraph (k)—

(A) Are part of a single issue of debt instruments;

(B) Are not part of the same issue as the original debt instruments; and

(C) Have terms that are in all respects identical to the terms of the original debt instruments as of the reopening date.

(iii) *Reopening date.* The reopening date is the issue date of the additional debt instruments (determined without the application of this paragraph (k)).

(iv) *Announcement date.* The announcement date is the later of seven days before the date on which the price of the additional debt instruments is established or the date on which the issuer's intent to reopen a security is publicly announced through one or more media, including an announcement reported on the standard electronic news services used by security broker-dealers (for example, Reuters, Telerate, or Bloomberg).

(3) *Qualified reopening*—(i) *Definition.* A qualified reopening is a reopening of original debt instruments that is described in paragraph (k)(3)(ii) or (iii) of this section. In addition, see paragraph (d)(2) of this section to determine if a reopening of Treasury securities is a qualified reopening.

(ii) *Reopening within six months.* A reopening is described in this paragraph (k)(3)(ii) if—

(A) The original debt instruments are publicly traded (within the meaning of § 1.1273–2(f));

(B) The reopening date of the additional debt instruments is not more than six months after the issue date of the original debt instruments; and

(C) On the date on which the price of the additional debt instruments is established (or, if earlier, the announcement date), the yield of the original debt instruments (based on their fair market value) is not more than 110 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a de minimis amount of OID, the coupon rate).

(iii) *Reopening with de minimis OID.* A reopening (including a reopening of Treasury securities) is described in this paragraph (k)(3)(iii) if—

(A) The original debt instruments are publicly traded (within the meaning of § 1.1273–2(f)); and

(B) The additional debt instruments are issued with no more than a de minimis amount of OID (determined without the application of this paragraph (k)).

(iv) *Exceptions.* This paragraph (k)(3) does not apply to a reopening of tax-exempt obligations (as defined in section 1275(a)(3)) or contingent payment debt instruments (within the meaning of § 1.1275–4).

(4) *Issuer's treatment of a qualified reopening.* See § 1.163–7(e) for the issuer's treatment of the debt instruments that are part of a qualified reopening.

(5) *Effective date.* This paragraph (k) applies to debt instruments that are part of a reopening where the reopening date is on or after March 13, 2001.

§ 1.1275–2T [Removed]

Par. 6. Section 1.1275–2T is removed.

Par. 7. In § 1.1275–7, paragraph (g) is added to read as follows:

§ 1.1275–7 Inflation-indexed debt instruments.

* * * * *

(g) *Reopenings.* For rules concerning a reopening of Treasury Inflation-Indexed Securities, see paragraphs (d)(2) and (k)(3)(iii) of § 1.1275–2.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 29, 2000.

Jonathan Talisman,

Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8939]

RIN 1545–AX13

Definition of Last Known Address

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations defining *last known address* in relation to the mailing of notices of deficiency and other notices, statements, and documents sent to a taxpayer's last known address. The final regulations affect taxpayers who receive notices of deficiency and other notices, statements, and documents sent to taxpayers' last known addresses.

DATES: *Effective date:* These regulations are effective January 12, 2001.

Applicability date: For dates of applicability, see § 301.6212–2(d).

FOR FURTHER INFORMATION CONTACT: Charles A. Hall, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 6212(b) relating to the sufficiency of a notice of deficiency if it is mailed to the last known address of a taxpayer. This document also contains amendments to the Income Tax Regulations (26 CFR part 1) and the Regulations on Procedure and Administration (26 CFR part 301) to provide cross-references to the last known address rules under section 6212(b) in order to apply those rules to other notices, statements, and documents required to be sent to the last known address of a taxpayer.

A notice of proposed rulemaking (REG–104939–99) was published in the **Federal Register** (64 FR 63768) on November 22, 1999. No public hearing was requested or held. Three written comments were received. After consideration of the comments, the proposed regulations are adopted as modified by this Treasury decision. The comments are discussed below.

Explanation of Revisions

Under the proposed regulations, the IRS would have accessed the United States Postal Service (USPS) National Change of Address database (NCOA database) annually to update all taxpayer address records maintained in the IRS's automated masterfile for purposes of updating the IRS's mailing list. The IRS's mailing list contains the last known address for each taxpayer. In addition, prior to mailing correspondence to any particular taxpayer from an IRS Service Center, the IRS would have accessed the NCOA database to update the taxpayer's last known address. Employees mailing correspondence from one of the district offices would have accessed an updated address by virtue of the annual update of the entire masterfile. Except in the case of certain joint filers, the annual update was scheduled to occur in May 2000, November 2000, and every November thereafter. The update based on correspondence mailed from an IRS Service Center was scheduled to begin May 2000. All steps necessary to implement the proposed regulations were not completed by May 2000. Therefore, the IRS delayed use of the NCOA database to update a taxpayer's last known address. See Announcement 2000–49 (2000–19 I.R.B. 998 (May 8, 2000)).

The procedures for updating taxpayer address records maintained in the IRS's automated masterfile are modified by these regulations. Implementing the proposed procedures for updating a taxpayer's last known address upon the mailing of correspondence from a Service Center required complicated programming that resulted in the delay in finalizing the proposed regulations. In addition, one commentator on the proposed regulations noted that the difference in treatment for Service Center mailings and district office mailings might cause confusion for taxpayers. The IRS, in conjunction with the USPS, has developed an improved system for updating taxpayer addresses that is intended to be easier to implement and operate and minimize confusion.

To gain access to the NCOA database, the IRS has become a limited licensee of the NCOA database. The NCOA database is a computerized record of changes of address maintained by the USPS. This database retains address changes for a thirty-six month period. As a limited licensee, the IRS will receive from the USPS a copy of the entire thirty-six month NCOA database. The IRS's copy of the NCOA database will be retained at the Martinsburg Computing Center (MCC) in Martinsburg, West Virginia. Additionally, the IRS will receive weekly updates to the NCOA database. The updates will contain the most recent changes of address submitted to the USPS. The IRS will update its copy of the full NCOA database with the most recent changes of address in the weekly update.

Beginning in January 2001, the IRS will access the NCOA database to update taxpayer address records maintained in the IRS's automated masterfile for purposes of updating the IRS's mailing list. The IRS plans to undertake two different procedures in order to assure the most comprehensive update of taxpayer addresses.

First, the IRS will compare taxpayer addresses in IRS's records to the most recent changes of address contained in the weekly updates to the NCOA