

By direction of the Commission.

**Donald S. Clark**

*Secretary.*

[FR Doc. 2013–21601 Filed 9–4–13; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 1

#### General Enforcement Regulations

##### *CFR Correction*

■ In Title 21 of the Code of Federal Regulations, Parts 1 to 199, revised as of April 1, 2013, on page 7, in § 1.20, the introductory text is corrected to read as follows:

##### **§ 1.20 Presence of mandatory label information.**

Except as otherwise provided by section 900(13) of the Family Smoking Prevention and Tobacco Control Act (21 U.S.C. 387(13)) defining “package,” the term *package* means any container or wrapping in which any food, drug, device, or cosmetic is enclosed for use in the delivery or display of such commodities to retail purchasers, but does not include:

\* \* \* \* \*

BILLING CODE 1505–01–D

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## DEPARTMENT OF TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9635]

RIN 1545–BK89

#### **Debt That Is a Position in Personal Property That Is Part of a Straddle**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations relating to the application of the straddle rules to a debt instrument. The temporary regulations clarify that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. The temporary regulations primarily affect taxpayers that issue debt instruments that provide for one or more payments that reference

the value of personal property or a position in personal property. The text of these temporary regulations also serves as the text of the proposed regulations (REG–111753–12) set forth in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on September 5, 2013.

*Applicability Dates:* For date of applicability, see § 1.1092(d)–1T(e).

**FOR FURTHER INFORMATION CONTACT:** Mary Brewer, (202) 622–4695 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

#### **Background and Explanation of Provisions**

##### *1. Summary of Prior Notice of Proposed Rule Making*

This document contains amendments to 26 CFR part 1. On January 18, 2001, a notice of proposed rulemaking (REG–105801–00; RIN 1545–AX92) (the 2001 NPRM) was published in the **Federal Register** (66 FR 4746). The 2001 NPRM addresses the definition of personal property for purposes of section 263(g) of the Internal Revenue Code (Code), the types of expenses subject to capitalization, and the operation of the capitalization rules. Another portion of the 2001 NPRM (proposed regulation § 1.1092(d)–1(d)) would clarify the circumstances under which an issuer's position under a debt instrument is treated as a position in personal property that is part of a straddle.

No public hearing was requested or held. Written and electronic comments responding to the 2001 NPRM were received, and the only commenter that substantively addressed proposed § 1.1092(d)–1(d) urged its adoption. This Treasury Decision adopts proposed § 1.1092(d)–1(d) (REG–105801–00) in the form proposed. As so adopted, this provision is designated as § 1.1092(d)–1T(d). This Treasury Decision also adopts the 2001 NPRM's proposed amendment to the effective/applicability dates (proposed § 1.1092(d)–1(e)). As so adopted, this effective/applicability date is designated as § 1.1092(d)–1T(e)(2). The amendments are discussed in section 2 of this preamble. The remainder of the 2001 NPRM remains proposed.

##### *2. Overview of the Temporary Regulations*

The temporary regulations provide guidance under section 1092 regarding when an issuer's obligation under a debt instrument may be a position in actively traded personal property and, therefore, may be part of a straddle.

#### **Definition of Personal Property for Purposes of Section 1092**

Section 1092(d)(1) defines “personal property” to mean “personal property of a type that is actively traded.” A debt or obligation generally is not property of the debtor or obligor. Nevertheless, if a debt instrument provides for payments that are (or are reasonably expected to be) linked to the value of personal property as so defined, then the obligor on the instrument has a position in the personal property referenced by the debt instrument.

Section 1092(d)(7) provides that if a debt instrument is denominated in a nonfunctional currency, the obligor's position under the debt obligation is a position in the nonfunctional currency. Some maintain that section 1092(d)(7) evidences an intent by Congress to limit the circumstances in which an obligor's interest in a debt instrument may be a position in a straddle, and that such treatment is proper only with respect to debt obligations denominated in nonfunctional currency. The IRS and the Treasury Department do not believe that section 1092(d)(7) describes the only circumstance in which an obligor's interest in a debt instrument may be treated as part of a straddle. The statute and the legislative history do not contain any indication that Congress intended to limit section 1092 in this manner; rather, the legislative history characterizes section 1092(d)(7) as a clarification of prior law:

The Senate amendment clarifies that an obligor's interest in a foreign currency denominated obligation is a “position” for purposes of the loss deferral rule. The rationale for this treatment is that a foreign currency borrowing is economically similar to a short position in the foreign currency.

H.R. Rep. No. 99–841, pt. 2, at 670 (1986) (Conf. Rep.); 1986–3 (Vol. 4) CB 670. Moreover, it is clear that an economic exposure associated with an obligation that is not a debt instrument (such as a written option or the obligation created by a short sale) may be a straddle position. Similarly, a debt instrument may be a position in personal property, and accordingly subject to the straddle rules, if the obligation is linked to personal property. Therefore, § 1.1092(d)–1T(d) of the temporary regulations expressly provides that an obligation under a debt instrument may be a position in personal property that is part of a straddle.

#### **Dates of Applicability of the Regulations**

The temporary regulations adopt the effective/applicability date set forth in the 2001 NPRM by providing that

§ 1.1092(d)–1T(d) applies to straddles established on or after January 17, 2001 (the date on which the 2001 NPRM was filed with the **Federal Register**). No inference is intended with respect to straddles established prior to January 17, 2001. In appropriate cases, the IRS may take the position under section 1092(d)(2) that, even in the absence of a regulation, an obligation under a debt instrument was part of a straddle prior to the effective date of § 1.1092(d)–1T(d) if the debt instrument functioned economically as an interest in actively traded personal property.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. 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.

### Drafting Information

The principal author of these regulations is Mary Brewer, Office of Associate Chief Counsel (Financial Institutions and Products). 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.

### 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 adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.1092(d)–1T also issued under 26 U.S.C. 1092(b)(1). \* \* \*

■ **Par. 2.** Section 1.1092(d)–1 is amended by redesignating paragraph (d) as newly-designated paragraph (e) and

revising newly-designated paragraph (e), and adding new paragraph (d) to read as follows:

#### § 1.1092(d)–1 Definitions and special rules.

\* \* \* \* \*

(d) [Reserved]. For further guidance, see § 1.1092(d)–1T(d).

(e) *Effective/applicability dates.* (1) Paragraph (b)(1)(vii) of this section applies to positions entered into on or after October 14, 1993. Paragraph (c) of this section applies to positions entered into on or after July 8, 1991.

(2) [Reserved]. For further guidance, see § 1.1092(d)–1T(e)(2).

■ **Par. 3.** Section 1.1092(d)–1T is added to read as follows:

#### § 1.1092(d)–1T Definitions and special rules (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.1092(d)–1(a) through (c).

(d) *Debt instrument linked to the value of personal property.* If a taxpayer is the obligor under a debt instrument one or more payments on which are linked to the value of personal property or a position with respect to personal property, then the taxpayer's obligation under the debt instrument is a position with respect to personal property and may be part of a straddle.

(e) *Effective/applicability dates.*—(1) [Reserved]. For further guidance, see § 1.1092(d)–1(e)(1).

(2) Notwithstanding paragraph (e)(1) of this section, paragraph (d) of this section applies to straddles established on or after January 17, 2001.

(f) *Expiration date.* The applicability of this section expires on September 2, 2016.

Approved: August 26, 2013.

**Beth Tucker,**

*Deputy Commissioner for Operations Support.*

**Mark J. Mazur,**

*Assistant Secretary (Tax Policy).*

[FR Doc. 2013–21540 Filed 9–4–13; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[USCG–2013–0721]

RIN 1625–AA08

#### Special Local Regulation, Cumberland River, Mile 190.0 to 192.0; Nashville, TN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for the waters of the Cumberland River beginning at mile marker 190.0 and ending at mile marker 192.0, extending bank to bank. This zone is necessary to protect participants in the Cumberland River Dragon Boat Festival. Entry into this area is prohibited unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or designated representative.

**DATES:** This rule is effective and enforceable through actual notice from 8:00 a.m. to 6:00 p.m. September 7, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0721]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Petty Officer James Alter, Marine Safety Detachment Nashville, at (615) 736–5421 or email at [james.r.alter@uscg.mil](mailto:james.r.alter@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

#### SUPPLEMENTARY INFORMATION:

#### Table of Acronyms

BNM Broadcast Notices to Mariners  
COTP Captain of the Port  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a