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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-171386-03

RIN 1545-BD16

Time and Manner of Making §163(d)(4)(B) Election to Treat Qualified Dividend Income as Investment Income

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 an election that may be made by noncorporate taxpayers to treat qualified dividend income as investment income for purposes of calculating the deduction for investment interest. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 3, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-171386-03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044.

Alternatively, 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-171386-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. Taxpayers also may

submit comments electronically to the IRS internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-171386-03 or RIN 1545-BD16).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments or requesting a hearing, LaNita Van Dyke, (202) 622-7180; concerning the proposed regulations, Amy Pfalzgraf, (202) 622-4950 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

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 163(d)(4)(B) of the Internal Revenue Code. The temporary regulations provide rules regarding the time and manner for making an election under section 163(d)(4)(B) to treat qualified dividend income as investment income for purposes of calculating the deduction for investment interest. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

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 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 Internal Revenue 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 comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. 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 will be scheduled if requested in writing by any person that timely submits written 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 author of these regulations is Amy Pfalzgraf of the Office of Associate Chief Counsel (Income Tax & Accounting). 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 Amendments 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 continues to read, in part, as follows:

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

Par. 2. Section 1.163(d)-1 is revised.

§1.163(d)-1 Time and manner for making elections under the Omnibus Budget Reconciliation Act of 1993 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

[The text of proposed paragraphs (a), (b), (c), and (d) is the same as the text of paragraphs (a), (b), (c), and (d) of §1.163(d)-1T published elsewhere in this issue of the **Federal Register.**]

Nancy J. Jardini,
Acting Deputy Commissioner for Services and Enforcement.