

## Part III - Administrative, Procedural, and Miscellaneous

### Extension of Temporary Suspension of AHYDO Rules

#### Notice 2010-11

This notice extends the temporary suspension of the rules for certain applicable high yield discount obligations (“AHYDOs”) pursuant to § 163(e)(5)(F) of the Internal Revenue Code.

Under § 163(e)(5), in the case of an AHYDO as defined in § 163(i), a corporation is not allowed a deduction for the disqualified portion of the original issue discount (“OID”) on the obligation, and the corporation’s deduction for the remaining portion of the OID is deferred until the OID is paid in cash or in property (other than debt of the issuer or a related person within the meaning of § 453(f)(1)). Section 163(e)(5)(F)(i), which was added to the Internal Revenue Code by section 1232(a) of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), generally provides that § 163(e)(5) does not apply to any AHYDO issued during the period beginning on September 1, 2008, and ending on December 31, 2009, in exchange (including an exchange resulting from a modification of the debt instrument) for an obligation which is not an AHYDO and the issuer (or obligor) of which is the same

as the issuer (or obligor) of such AHYDO.

Section 163(e)(5)(F)(iii) permits the Secretary to suspend the applicability of § 163(e)(5) for AHYDOs issued after December 31, 2009, if the Secretary determines that such application is appropriate in light of distressed conditions in the debt capital markets.

Pursuant to the authority granted in § 163(e)(5)(F)(iii), the suspension of the applicability of § 163(e)(5) provided for in § 163(e)(5)(F)(i) is extended to December 31, 2010 for any AHYDO that is a qualified obligation. For purposes of the preceding sentence, an AHYDO is a qualified obligation only if: (1) the AHYDO is issued after December 31, 2009, and on or before December 31, 2010, in exchange (including an exchange resulting from a modification of the debt instrument) for an obligation that is not an AHYDO; (2) the issuer (or obligor) of the AHYDO is the same as the issuer (or obligor) of the obligation exchanged for the AHYDO; (3) the AHYDO does not pay interest that would be treated as contingent interest for purposes of § 871(h)(4) (without regard to § 871(h)(4)(D)); (4) the AHYDO is not issued to a related person (within the meaning of § 108(e)(4)); (5) the issue price of the AHYDO is determined under § 1273(b)(1), 1273(b)(2), 1273(b)(3), or 1274(b)(3), whichever is applicable, and the regulations thereunder; and (6) the AHYDO would not otherwise be an AHYDO if its issue price were increased by the amount of any discharge of indebtedness income realized by the issuer (or obligor) upon the exchange.

For example, assume that prior to 2010 Corporation X issued a debt instrument that was not an AHYDO. In 2010, Corporation X exchanges the debt instrument issued

prior to 2010, which has an adjusted issue price of \$100x as of the exchange date, for a new debt instrument that is an AHYDO with an issue price of \$80x (determined under § 1273(b)(3)) and a stated redemption price at maturity of \$100x. Corporation X realizes \$20x of discharge of indebtedness income on the exchange. To determine whether the new debt instrument is a qualified obligation, the issue price of the new debt instrument is increased from \$80x to \$100x (\$80x plus \$20x) and this deemed issue price is used to determine whether the new debt instrument is an AHYDO for purposes of this notice. If the new debt instrument would be an AHYDO if the issue price were \$100x, then the new debt instrument is not a qualified obligation and the new debt instrument does not qualify for the relief provided by § 163(e)(5)(F) and this notice. If the new debt instrument would not be an AHYDO if the issue price were \$100x, then the new debt instrument is a qualified obligation and the new debt instrument does qualify for the relief provided by § 163(e)(5)(F) and this notice, provided that the other requirements to be a qualified obligation are satisfied.

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