

DEPARTMENT OF THE TREASURY

Published May 20, 2004

Internal Revenue Service

26 CFR Part 1

REG-148399-02

RIN 1545-BB62

Uniform Capitalization of Interest Expense in Safe Harbor Sale and Leaseback Transactions

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 final and temporary regulations relating to the capitalization of interest expense in sale and leaseback transactions under the Economic Recovery Tax Act of 1981 (ERTA) safe harbor leasing provisions. The regulations affect taxpayers that provide purchase money obligations in connection with these transactions. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by August 18, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:RU (REG-148399-02), room 5203, Internal Revenue Service, POB 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:RU (REG-148399-02), Courier's Desk, Internal Revenue

Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the IRS

Internet site at www.irs.gov/reg or the Federal eRulemaking Portal at

<http://www.regulations.gov> (indicate IRS and REG-148399-02 or RIN 1545-BB62).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grant Anderson, (202) 622-4970; concerning submission of comments and/or requests for a public hearing, LaNita VanDyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Final and 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 263A(f) of the Internal Revenue Code (Code). The temporary regulations generally provide that a purchase money obligation given by the lessor to the lessee (or a party related to the lessee) in a safe harbor sale and leaseback transaction under former section 168(f)(8) is not eligible debt² as defined in § 1.263A-9(a)(4). The text of those regulations also serves as the text of these proposed regulations. The preamble to the final and 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 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 specifically request comments on the clarity of the proposed rule and how it may 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 Grant Anderson 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 1.263A-9 is revised by adding a new paragraph (a)(4)(ix) to read as follows:

[The text of proposed ' 1.263A-9(a)(4)(ix) is the same as the text of ' 1.263A-9T(a)(4)(ix) published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.263A-15 is amended by adding a new paragraph (a)(3) to read as follows:

§ 1.263A-15 Effective dates, transitional rules, and anti-abuse rules.

(a) * * *

(3) [The text of proposed paragraph (a)(3) of ' 1.263A-15 is the same as the

text of ' 1.263A-15T published elsewhere in this issue of the **Federal Register.**]

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Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.