

§ 356.32

§ 356.32 What tax rules apply?

(a) *General.* Securities issued under this part are subject to all applicable taxes imposed under the Internal Revenue Code of 1986, or its successor. Under section 3124 of title 31, United States Code, the securities are exempt from taxation by a State or political subdivision of a State, except for State estate or inheritance taxes and other exceptions as provided in that section.

(b) *Treasury inflation-protected securities.* Special federal income tax rules for inflation-protected securities, including stripped inflation-protected principal and interest components, are set forth in Internal Revenue Service regulations.

§ 356.33 Does the Treasury have any discretion in the auction process?

(a) We have the discretion to:

(1) Accept, reject, or refuse to recognize any bids submitted in an auction;

(2) Award more or less than the amount of securities specified in the auction announcement;

(3) Waive any provision of this part for any bidder or submitter; and

(4) Change the terms and conditions of an auction.

(b) Our decisions under this part are final. We will provide a public notice if we change any auction provision, term, or condition.

(c) We reserve the right to modify the terms and conditions of new securities and to depart from the customary pattern of securities offerings at any time.

§ 356.34 What could happen if someone does not fully comply with the auction rules or fails to pay for securities?

(a) *General.* If a person or entity fails to comply with any of the auction rules in this part, we will consider the circumstances and take what we deem to be appropriate action. This could include barring the person or entity from participating in future auctions under this part. We also may refer the matter to an appropriate regulatory agency.

(b) *Liquidated damages.* If you fail to pay for awarded securities in a timely manner, we may require you to pay liquidated damages of up to one percent of the par amount of securities we awarded to you. Our use of this liq-

31 CFR Ch. II (7–1–12 Edition)

uidated damages remedy does not preclude us from using any other appropriate remedy.

§ 356.35 Who approved the information collections?

The Office of Management and Budget approved the collections of information contained in §§ 356.11, 356.12, 356.13, 356.14, and 356.15 and in appendix A of this part under control number 1535–0112.

APPENDIX A TO PART 356—BIDDER CATEGORIES

I. CATEGORIES OF ELIGIBLE BIDDERS

We describe below various categories of bidders eligible to bid in Treasury auctions. You may use them to determine whether we consider you and other persons or entities to be one bidder or more than one bidder for auction bidding and compliance purposes. For example, we use these definitions to apply the competitive and noncompetitive award limitations and for other requirements. Notwithstanding these definitions, we consider any persons or entities that intentionally act together with respect to bidding in a Treasury auction to collectively be one bidder. Even if an auction participant does not fall under any of the categories listed below, it is our intent that no auction participant receives a larger auction award by acquiring securities through others than it could have received had it been considered one of these types of bidders.

(a) *Corporation*—We consider a corporation to be one bidder. A corporation includes all of its affiliates, which may be persons, partnerships, or other entities. We consider a business trust, such as a Massachusetts or Delaware business trust, to be a corporation. We use the term “corporate structure” to refer to the collection of affiliates that we consider collectively to be one bidder. An affiliate is any:

- Entity that is more than 50-percent owned, directly or indirectly, by the corporation;

- Entity that is more than 50-percent owned, directly or indirectly, by any other affiliate of the corporation;

- Person or entity that owns, directly or indirectly, more than 50 percent of the corporation;

- Person or entity that owns, directly or indirectly, more than 50 percent of any other affiliate of the corporation; or

- Entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the corporation, or of any affiliate of the corporation.

An entity that is more than 50-percent owned as described in this definition is not an affiliate, however, if:

- The purpose of such ownership is to seek a return on investment and not to engage in the business of the entity;
- The owner does not routinely exercise operational or management control over the entity;
- The owner does not exercise any control over investment decisions of the entity regarding U.S. Treasury securities;
- The corporation has written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent it from acting together with the entity regarding participation in Treasury auctions or investment strategies regarding Treasury securities being auctioned; and
- The corporation submits notice and certification to us, as provided in this appendix A.

A corporation that plans to make use of this exception to the definition of “affiliate” must inform us of this fact in writing and provide the following certification:

[Name of corporation] hereby certifies that, with regard to any entity of which it owns more than 50 percent as defined in appendix A to 31 CFR part 356, but for which the purpose of such ownership is to seek a return on investment and not to engage in the business of the entity:

- We do not routinely exercise operational or management control over the entity;
- We do not exercise any control over investment decisions of the entity regarding U.S. Treasury securities;
- We have written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the corporation from acting together with the entity regarding participation in Treasury auctions or investment strategies regarding Treasury securities being auctioned; and
- We will continue to meet the terms of this certification until we notify the Treasury of a change.

(b) *Partnership*—We consider a partnership to be one bidder if it is a partnership for which the Internal Revenue Service has assigned a tax-identification number. A partnership includes all of its affiliates, which may be persons, corporations, general partners acting on behalf of the partnership, or other entities. We use the term “partnership structure” to refer to the collection of affiliates that we consider collectively to be one bidder. We may consider a partnership structure that contains one or more corporations as a “partnership” or a “corporation,” but not both.

An affiliate is any:

- Entity that is more than 50-percent owned, directly or indirectly, by the partnership;

- Entity that is more than 50-percent owned, directly or indirectly, by any other affiliate of the partnership;

- Person or entity that owns, directly or indirectly, more than 50 percent of the partnership;

- Person or entity that owns, directly or indirectly, more than 50 percent of any other affiliate of the partnership; or

- Entity, a majority of whose general partners or a majority of whose board of directors are general partners or directors of the partnership or of any affiliate of the partnership.

An entity that is more than 50-percent owned as described in this definition is not an affiliate, however, if:

- The purpose of such ownership is to seek a return on investment and not to engage in the business of the entity;

- The owner does not routinely exercise operational or management control over the entity;

- The owner does not exercise any control over investment decisions of the entity regarding U.S. Treasury securities;

- The partnership has written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent it from acting together with the entity regarding participation in Treasury auctions or investment strategies regarding Treasury securities being auctioned; and

- The partnership submits notice and certification to us, as provided in this appendix A.

A partnership that plans to make use of this exception to the definition of “affiliate” must inform us of this fact in writing and provide the following certification:

[Name of partnership] hereby certifies that, with regard to any entity of which it owns more than 50 percent as defined in appendix A to 31 CFR part 356, but for which the purpose of such ownership is to seek a return on investment and not to engage in the business of the entity:

- We do not routinely exercise operational or management control over the entity;

- We do not exercise any control over investment decisions of the entity regarding U.S. Treasury securities;

- We have written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the partnership from acting together with the entity regarding participation in Treasury auctions or investment strategies regarding Treasury securities being auctioned; and

- We will continue to meet the terms of this certification until we notify the Treasury of a change.

(c) *Government-related entity*—We consider each of the following entities to be one bidder:

- (1) A state government or the government of the District of Columbia

(2) A unit of local government, including any county, city, municipality, or township, or other unit of general government as defined by the Bureau of the Census for statistical purposes.

(3) A commonwealth, territory, or possession of the United States.

(4) A governmental entity, body, or corporation established under Federal, State, or local law.

(5) A foreign central bank, the government of a foreign state, or an international organization in which the United States holds membership. This type of entity applies only when such entity is not using an account at the Federal Reserve Bank of New York (See paragraph (f).).

We generally consider an investment, reserve, or other fund of one of the above government-related entities as part of that entity and not a separate bidder. We will consider a government-related entity's fund to be a separate bidder if it meets the definition of the "trust or other fiduciary estate" category, or if applicable law requires that the investments of such fund be made separately.

(d) *Trust or other fiduciary estate*—We consider a legal entity created under a valid trust instrument, court order, or other legal authority that designates a trustee or fiduciary to act for the benefit of a named beneficiary to be one bidder. The following conditions must also be met for us to consider a trust entity to be one bidder:

- The legal entity must be able to be identified by:

1. The name or title of the trustee or fiduciary;

2. Specific reference to the trust instrument, court order, or legal authority under which the trustee or fiduciary is acting; and

3. The unique IRS-assigned employer identification number (not social security number) for the entity.

- The trustee or fiduciary must make the decisions on participating in auctions on behalf of the trust or fiduciary estate.

(e) *Individual*—We consider a person to be one bidder, regardless of whether he or she is acting as an individual, a sole proprietor, or for any entity not otherwise defined as a bidder. If a person meets the definition of an affiliate within a corporate or partnership structure, we will consider him or her to be a bidder in this "individual" category if the corporation or partnership is not bidding in the same auction. We do not consider a person acting in an official capacity as an employee or other representative of a bidder defined in any other category to be an "individual" bidder. We consider a person, his or her spouse, and any children under the age of 21 having a common household to be one "individual" bidder.

(f) *Foreign and International Monetary Authority ("FIMA")*—We consider one or more

parties making up a foreign or international monetary organization that is not private in nature to be a bidder called a FIMA entity if at least one of the parties is a foreign or international entity that is (i) financial in nature, or (ii) not financial in nature but is authorized to open an account at the Federal Reserve Bank of New York. We consider each of the following entities to be a single FIMA entity:

- (1) A foreign central bank or regional central bank.

- (2) A foreign governmental monetary or finance entity.

- (3) A non-governmental international financial organization that is not private in nature (for example, the International Monetary Fund, the World Bank, the Inter-American Development Bank, and the Asian Development Bank).

- (4) A non-financial international organization that the United States participates in (for example, the United Nations).

- (5) A multi-party arrangement of a governmental ministry and/or a foreign central bank or monetary authority with a United States Government Department and/or the Federal Reserve Bank of New York.

- (6) A foreign or international monetary entity or an entity authorized by statute or by us to open accounts at the Federal Reserve Bank of New York.

(g) *Other Bidder*—We do not consider a bidder defined by any of the above categories to be a bidder in this category. For purposes of this definition, "other bidder" means an institution or organization with a unique IRS-assigned employer identification number. This definition includes such entities as an association, church, university, union, or club. This category does not include any person or entity acting in a fiduciary or investment management capacity, a sole proprietorship, an investment account, an investment fund, a form of registration, or investment ownership designation.

II. HOW TO OBTAIN SEPARATE BIDDER RECOGNITION

Under certain circumstances, we may recognize a major organizational component (e.g., the parent or a subsidiary) in a corporate or partnership structure as a bidder separate from the larger corporate or partnership structure. We also may recognize two or more major organizational components collectively as one bidder. All of the following criteria must be met for such component(s) to qualify for recognition as a separate bidder:

- (a) Such component(s) must be prohibited by law or regulation from exchanging, or must have established written internal procedures designed to prevent the exchange of, information related to bidding in Treasury auctions with any other component in the corporate or partnership structure;

(b) Such component(s) must not be created for the purpose of circumventing our bidding and award limitations;

(c) Decisions related to purchasing Treasury securities at auction and participation in specific auctions must be made by employees of such component(s). Employees of such component(s) that make decisions to purchase or dispose of Treasury securities must not perform the same function for other components within the corporate or partnership structure; and

(d) The records of such component(s) related to the bidding for, acquisition of, and disposition of Treasury securities must be maintained by such component(s). Those records must be identifiable—separate and apart from similar records for other components within the corporate or partnership structure. To obtain recognition as a separate bidder, each component or group of components must request such recognition from us, provide a description of the component or group and its position within the corporate or partnership structure, and provide the following certification:

[Name of the bidder] hereby certifies that to the best of its knowledge and belief it meets the criteria for a separate bidder as described in appendix A to 31 CFR part 356. The above-named bidder also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the component or group of components from:

(1) Exchanging any of the following information with any other part of the corporate [partnership] structure: (a) yields or rates at which it plans to bid; (b) amounts of securities for which it plans to bid; (c) positions that it holds or plans to acquire in a security being auctioned; and (d) investment strategies that it plans to follow regarding the security being auctioned, or

(2) In any way intentionally acting together with any other part of the corporate [partnership] structure with respect to formulating or entering bids in a Treasury auction.

The above-named bidder agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate bidder status changes or when this certification is no longer valid.

[69 FR 45202, July 28, 2004, as amended at 70 FR 29456, May 23, 2005]

APPENDIX B TO PART 356—FORMULAS AND TABLES

I. Computation of Interest on Treasury Bonds and Notes.

II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices.

III. Formulas for Conversion of Inflation-Protected Security Yields to Equivalent Prices.

IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Protected Interest Components.

V. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills.

The examples in this appendix are given for illustrative purposes only and are in no way a prediction of interest rates on any bills, notes, or bonds issued under this part. In some of the following examples, we use intermediate rounding for ease in following the calculations. In actual practice, we generally do not round prior to determining the final result.

If you use a multi-decimal calculator, we recommend setting your calculator to at least 13 decimals and then applying normal rounding procedures. This should be sufficient to obtain the same final results. However, in the case of any discrepancies, our determinations will be final.

I. COMPUTATION OF INTEREST ON TREASURY BONDS AND NOTES

A. Treasury Fixed-Principal Securities

1. *Regular Half-Year Payment Period.* We pay interest on marketable Treasury fixed-principal securities on a semiannual basis. The regular interest payment period is a full half-year of six calendar months. Examples of half-year periods are: (1) February 15 to August 15, (2) May 31 to November 30, and (3) February 29 to August 31 (in a leap year). Calculation of an interest payment for a fixed-principal note with a par amount of \$1,000 and an interest rate of 8% is made in this manner: $(\$1,000 \times .08)/2 = \40 . Specifically, a semiannual interest payment represents one half of one year's interest, and is computed on this basis regardless of the actual number of days in the half-year.

2. *Daily Interest Decimal.* We compute a daily interest decimal in cases where an interest payment period for a fixed-principal security is shorter or longer than six months or where accrued interest is payable by an investor. We base the daily interest decimal on the actual number of calendar days in the half-year or half-years involved. The number of days in any half-year period is shown in Table 1.