

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9147]

RIN 1545-BD30

Time and Manner of Making Section 163(d)(4)(B) Election To Treat Qualified Dividend Income as Investment Income**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Temporary regulations.

SUMMARY: This document contains 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 regulations reflect changes to the law made by the Jobs and Growth Tax Relief Reconciliation Act of 2003. The regulations affect taxpayers making the election under section 163(d)(4)(B) to treat qualified dividend income as investment income. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective August 5, 2004.*Applicability Dates:* For dates of applicability, see § 1.163(d)-1T(d).**FOR FURTHER INFORMATION CONTACT:** Amy Pfalzgraf, (202) 622-4950 (not a toll-free number).**SUPPLEMENTARY INFORMATION:****Background and Explanation of Provisions**

Section 163(d)(1) provides that the investment interest deduction for a noncorporate taxpayer for any taxable year is limited to the net investment income of the taxpayer for the taxable year. Section 163(d)(4)(A) defines "net investment income" as the excess of investment income over investment expenses. Section 163(d)(4)(B)(iii) provides that an electing taxpayer may take all or a portion of certain net capital gain attributable to dispositions of property held for investment into account as investment income. Section 1(h)(2) provides that any net capital gain taken into account as investment income is not eligible to be taxed at the capital gains rates.

Section 302(b) of the Jobs and Growth Tax Relief Reconciliation Act of 2003,

(Pub. L. 108-27, 117 Stat. 762) (JGTRRA 2003), amended section 163(d)(4)(B) to provide that an electing taxpayer may take all or a portion of qualified dividend income (as defined in section 1(h)(11)(B)) into account as investment income. Section 302(a) of JGTRRA 2003 added new section 1(h)(11)(D) to provide that any qualified dividend income taken into account as investment income is not eligible to be taxed at the capital gains rates.

Section 1.163(d)-1 of the Income Tax Regulations provides rules regarding the time and manner for making the net capital gain election under section 163(d)(4)(B)(iii). These regulations amend § 1.163(d)-1 to provide that the rules regarding the time and manner for making the qualified dividend income election under section 163(d)(4)(B) are the same as the rules for making the net capital gain election under section 163(d)(4)(B)(iii).

Special Analyses

It has been determined that this Treasury decision 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. For application of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be 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 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.

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 continues to read, in part, as follows:

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

■ **Par. 2.** Section 1.163(d)-1 is revised to read as follows:

§ 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.

(a) [Reserved]. For further guidance, see § 1.163(d)-1T(a).

(b) [Reserved]. For further guidance, see § 1.163(d)-1T(b).

(c) [Reserved]. For further guidance, see § 1.163(d)-1T(c).

(d) [Reserved]. For further guidance, see § 1.163(d)-1T(d).

■ **Par. 3.** Section 1.163(d)-1T is added to read as follows:

§ 1.163(d)-1T 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 (temporary).

(a) *Description.* Section 163(d)(4)(B)(iii), as added by section 13206(d) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, 107 Stat. 467), allows an electing taxpayer to take all or a portion of certain net capital gain attributable to dispositions of property held for investment into account as investment income. Section 163(d)(4)(B), as amended by section 302(b) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Pub. L. 108-27, 117 Stat. 762), allows an electing taxpayer to take all or a portion of qualified dividend income, as defined in section 1(h)(11)(B), into account as investment income. As a consequence, the net capital gain and qualified dividend income taken into account as investment income under these elections are not eligible to be taxed at the capital gains rates. An election may be made for net capital gain recognized by noncorporate taxpayers during any taxable year beginning after December 31, 1992. An election may be made for qualified dividend income received by noncorporate taxpayers during any taxable year beginning after December 31, 2002, but before January 1, 2009.

(b) *Time and manner for making the elections.* The elections for net capital gain and qualified dividend income must be made on or before the due date (including extensions) of the income tax return for the taxable year in which the net capital gain is recognized or the qualified dividend income is received. The elections are to be made on Form 4952, "Investment Interest Expense Deduction," in accordance with the form and its instructions.

(c) *Revocability of elections.* The elections described in this section are

revocable with the consent of the Commissioner.

(d) *Effective date.* The rules set forth in this section regarding the net capital gain election are effective December 12, 1996. The rules set forth in this section regarding the qualified dividend income election apply to any taxable year beginning after December 31, 2002, but before January 1, 2009.

Nancy J. Jardini,

Acting Deputy Commissioner for Services and Enforcement.

Approved: July 29, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. WA-04-001; FRL-7792-5]

Approval and Promulgation of State Implementation Plans: State of Washington; Central Puget Sound Carbon Monoxide and Ozone Second 10-Year Maintenance Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving the Central Puget Sound carbon monoxide (CO) and Ozone Second 10-Year Maintenance Plans. Specifically EPA is approving Washington's demonstration that the Central Puget Sound area will maintain air quality standards for CO and ozone through the year 2016; a revised CO motor vehicle emissions budget for transportation conformity purposes using the MOBILE6.2 emissions model and latest growth and planning assumptions; updates and enhancements of state implementation plan (SIP) control measures and contingency measures; and identification of emissions associated with the Seattle Tacoma International Airport included in the area-wide emissions inventory through the maintenance period.

DATES: This final rule is effective on September 7, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. WA-04-001. Publicly available docket materials are available in hard copy at the EPA, Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, WA. This Docket

facility is open from 8:30-4, Monday through Friday, excluding legal holidays. The Docket telephone number is (206) 553-4273.

FOR FURTHER INFORMATION CONTACT:

Connie L. Robinson, Office of Air, Waste and Toxics (OAQ-107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA; telephone number: (206) 553-1086; fax number: (206) 553-0110; e-mail address: robinson.connie@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

- I. Background
- II. Public Comments on the Proposed Action
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background

On June 1, 2004, EPA published in the **Federal Register**, a proposal to approve the Central Puget Sound CO and Ozone second 10-year maintenance plans. A detailed description of our action was published in the **Federal Register** on June 1, 2004. The reader is referred to the proposed rulemaking (69 FR 30847, June 1, 2004) for details.

II. Public Comments on the Proposed Action

EPA provided a 30-day review and comment period and solicited comments on our proposal published in the June 1, 2004, **Federal Register**. No comments were received for the proposed rulemaking. EPA is now taking final action on the SIP revision consistent with the published proposal.

III. Final Action

In this action, the EPA is approving the Central Puget Sound CO and Ozone Second 10-Year Maintenance Plans. Specifically EPA is approving Washington's demonstration that the Central Puget Sound area will maintain air quality standards for CO and ozone through the year 2016; a revised CO motor vehicle emissions budget for transportation conformity purposes using the MOBILE6.2 emissions model and latest growth and planning assumptions; updates and enhancements of state implementation plan (SIP) control measures and contingency measures; and identification of emissions associated with the Seattle Tacoma International Airport included in the area-wide emissions inventory through the maintenance period. A Technical Support Document on file at the EPA Region 10 office contains a detailed analysis and rationale in support of the

Central Puget Sound CO and Ozone Second 10-Year Maintenance Plans.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the