

section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to debt instruments issued after Dec. 31, 1986, in taxable years ending after such date, see section 675(b) of Pub. L. 99-514, set out as an Effective Date note under section 860A of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, but not applicable to any obligation issued on or before Dec. 31, 1984, which is not a capital asset in the hands of the taxpayer, and subsec. (a)(6) of this section not applicable to any purchase on or before July 18, 1984, see section 44 of Pub. L. 98-369, as amended, set out as a note under section 1271 of this title.

CHANGE IN METHOD OF ACCOUNTING

Section 1004(b)(2) of Pub. L. 105-34 provided that: “In the case of any taxpayer required by this section [amending this section and enacting provisions set out as a note above] to change its method of accounting for its first taxable year beginning after the date of the enactment of this Act [Aug. 5, 1997]—

“(A) such change shall be treated as initiated by the taxpayer,

“(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

“(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4-taxable year period beginning with such first taxable year.”

§ 1273. Determination of amount of original issue discount

(a) General rule

For purposes of this subpart—

(1) In general

The term “original issue discount” means the excess (if any) of—

(A) the stated redemption price at maturity, over

(B) the issue price.

(2) Stated redemption price at maturity

The term “stated redemption price at maturity” means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate, and payable unconditionally at fixed periodic intervals of 1 year or less during the entire term of the debt instrument).

(3) ¼ of 1 percent de minimis rule

If the original issue discount determined under paragraph (1) is less than—

(A) ¼ of 1 percent of the stated redemption price at maturity, multiplied by

(B) the number of complete years to maturity,

then the original issue discount shall be treated as zero.

(b) Issue price

For purposes of this subpart—

(1) Publicly offered debt instruments not issued for property

In the case of any issue of debt instruments—

(A) publicly offered, and

(B) not issued for property,

the issue price is the initial offering price to the public (excluding bond houses and brokers) at which price a substantial amount of such debt instruments was sold.

(2) Other debt instruments not issued for property

In the case of any issue of debt instruments not issued for property and not publicly offered, the issue price of each such instrument is the price paid by the first buyer of such debt instrument.

(3) Debt instruments issued for property where there is public trading

In the case of a debt instrument which is issued for property and which—

(A) is part of an issue a portion of which is traded on an established securities market, or

(B)(i) is issued for stock or securities which are traded on an established securities market, or

(ii) to the extent provided in regulations, is issued for property (other than stock or securities) of a kind regularly traded on an established market,

the issue price of such debt instrument shall be the fair market value of such property.

(4) Other cases

Except in any case—

(A) to which paragraph (1), (2), or (3) of this subsection applies, or

(B) to which section 1274 applies,

the issue price of a debt instrument which is issued for property shall be the stated redemption price at maturity.

(5) Property

In applying this subsection, the term “property” includes services and the right to use property, but such term does not include money.

(c) Special rules for applying subsection (b)

For purposes of subsection (b)—

(1) Initial offering price; price paid by the first buyer

The terms “initial offering price” and “price paid by the first buyer” include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof.

(2) Treatment of investment units

In the case of any debt instrument and an option, security, or other property issued together as an investment unit—

(A) the issue price for such unit shall be determined in accordance with the rules of this subsection and subsection (b) as if it were a debt instrument,

(B) the issue price determined for such unit shall be allocated to each element of such unit on the basis of the relationship of the fair market value of such element to the fair market value of all elements in such unit, and

(C) the issue price of any debt instrument included in such unit shall be the portion of the issue price of the unit allocated to the debt instrument under subparagraph (B).

(Added Pub. L. 98-369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 536; amended Pub. L. 99-514, title XVIII, §1803(a)(10), Oct. 22, 1986, 100 Stat. 2794.)

AMENDMENTS

1986—Subsec. (b)(3)(B). Pub. L. 99-514 amended subpar. (B) generally, designating existing provisions as cl. (i) and adding cl. (ii).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 1274. Determination of issue price in the case of certain debt instruments issued for property

(a) In general

In the case of any debt instrument to which this section applies, for purposes of this subpart, the issue price shall be—

- (1) where there is adequate stated interest, the stated principal amount, or
- (2) in any other case, the imputed principal amount.

(b) Imputed principal amount

For purposes of this section—

(1) In general

Except as provided in paragraph (3), the imputed principal amount of any debt instrument shall be equal to the sum of the present values of all payments due under such debt instrument.

(2) Determination of present value

For purposes of paragraph (1), the present value of a payment shall be determined in the manner provided by regulations prescribed by the Secretary—

- (A) as of the date of the sale or exchange, and
- (B) by using a discount rate equal to the applicable Federal rate, compounded semi-annually.

(3) Fair market value rule in potentially abusive situations

(A) In general

In the case of any potentially abusive situation, the imputed principal amount of any

debt instrument received in exchange for property shall be the fair market value of such property adjusted to take into account other consideration involved in the transaction.

(B) Potentially abusive situation defined

For purposes of subparagraph (A), the term “potentially abusive situation” means—

- (i) a tax shelter (as defined in section 6662(d)(2)(C)(iii)),¹ and
- (ii) any other situation which, by reason of—
 - (I) recent sales transactions,
 - (II) nonrecourse financing,
 - (III) financing with a term in excess of the economic life of the property, or
 - (IV) other circumstances,

is of a type which the Secretary specifies by regulations as having potential for tax avoidance.

(c) Debt instruments to which section applies

(1) In general

Except as otherwise provided in this subsection, this section shall apply to any debt instrument given in consideration for the sale or exchange of property if—

(A) the stated redemption price at maturity for such debt instrument exceeds—

- (i) where there is adequate stated interest, the stated principal amount, or
- (ii) in any other case, the imputed principal amount of such debt instrument determined under subsection (b), and

(B) some or all of the payments due under such debt instrument are due more than 6 months after the date of such sale or exchange.

(2) Adequate stated interest

For purposes of this section, there is adequate stated interest with respect to any debt instrument if the stated principal amount for such debt instrument is less than or equal to the imputed principal amount of such debt instrument determined under subsection (b).

(3) Exceptions

This section shall not apply to—

(A) Sales for \$1,000,000 or less of farms by individuals or small businesses

(i) In general

Any debt instrument arising from the sale or exchange of a farm (within the meaning of section 6420(c)(2))—

- (I) by an individual, estate, or testamentary trust,
- (II) by a corporation which as of the date of the sale or exchange is a small business corporation (as defined in section 1244(c)(3)), or
- (III) by a partnership which as of the date of the sale or exchange meets requirements similar to those of section 1244(c)(3).

(ii) \$1,000,000 limitation

Clause (i) shall apply only if it can be determined at the time of the sale or ex-

¹ See References in Text note below.