

Section 1.1092(c)-2 also issued under 26 U.S.C.1092(c)(4)(H).

Section 1.1092(c)-3 also issued under 26 U.S.C. 1092(c)(4)(H). * * *

Par. 2. Section 1.1092(c)-1 is amended as follows:

- 1. Paragraphs (b) and (d)(1)(ii) introductory text are revised.
- 2. Paragraphs (c) and (d)(3) are added.
- 3. Paragraph (e) is revised.

The revisions and addition read as follows:

§ 1.1092(c)-1 Equity options with flexible terms.

* * * * *

(b) *No effect on lowest qualified bench mark for standardized options.* The availability of strike prices for equity options with flexible terms does not affect the determination of the lowest qualified bench mark, as defined in section 1092(c)(4)(D), for an equity option with standardized terms.

(c) *Qualified covered call option status*—(1) *Requirements.* An equity option with flexible terms is a qualified covered call option only if—

- (i) The option meets the requirements of section 1092(c)(4)(B) (taking into account paragraph (c)(2) of this section);
- (ii) The only payments permitted with respect to the option are a single fixed premium paid not later than 5 business days after the day on which the option is granted, and a single fixed strike price stated as a dollar amount that is payable entirely at (or within 5 business days of) exercise;
- (iii) The option is granted not more than 1 year before the day on which the option expires; and
- (iv) An equity option with standardized terms is outstanding for the underlying equity.

(2) *Lowest qualified bench mark*—(i) *In general.* For purposes of determining whether an equity option with flexible terms is deep in the money within the meaning of section 1092(c)(4)(C), the lowest qualified bench mark under section 1092(c)(4)(D) is the same for an equity option with flexible terms as the lowest qualified bench mark for an equity option with standardized terms on the same stock having the same applicable stock price.

(ii) *Example.* The following example illustrates the rules set out in paragraph (c)(2)(i) of this section:

Example. Taxpayer owns stock in Corporation X. Taxpayer writes an equity call option with flexible terms on Corporation X stock through a national securities exchange. The applicable stock price for Corporation X stock is \$73.75. Using the bench marks for an equity option with standardized terms with an applicable stock price of \$73.75, the highest available bench mark less than the

applicable stock price is \$70, and the second highest bench mark is \$65. Therefore, an equity call option with flexible terms on Corporation X with a term of 90 days or less will not be deep in the money if the strike price is not less than \$70. If the term is greater than 90 days, an equity call option with flexible terms on Corporation X will not be deep in the money if the strike price is not less than \$65.

(d) * * *

(1) * * *

(ii) That is traded on any national securities exchange which is registered with the Securities and Exchange Commission (other than those described in the SEC Releases set forth in paragraph (d)(1)(i) of this section) and is—

* * * * *

(3) *Equity option with standardized terms* means an equity option that is traded on a national securities exchange registered with the Securities and Exchange Commission and that is not an equity option with flexible terms.

(e) *Effective date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to equity options with flexible terms entered into on or after January 25, 2000.

(2) *Special effective date for paragraph (c).* Paragraph (c) of this section applies to equity options with flexible terms entered into on or after 30 days after the date that the Treasury decision adopting these regulations is published in the **Federal Register**.

Par. 3. Section 1.1092(c)-2 is added to read as follows:

§ 1.1092(c)-2 Equity options with standardized terms.

(a) *One-year limitation.* An equity option with standardized terms (as defined in § 1.1092(c)-1(d)(3)) is a qualified covered call only if—

- (1) The option meets the requirements of section 1092(c)(4)(B); and
- (2) The option is granted not more than 1 year before the day on which the option expires.

(b) *Effective date.* This section applies to equity options with standardized terms entered into on or after 90 days after the date that the Treasury decision adopting these regulations is published in the **Federal Register**.

Par. 4. Section 1.1092(c)-3 is added.

§ 1.1092(c)-3 Qualifying over-the-counter options.

(a) *In general.* Under section 1092(c)(4)(B)(i), an equity option is not a qualified covered call option unless it is traded on a national securities exchange which is registered with the Securities and Exchange Commission or other market which the Secretary

determines has rules adequate to carry out the purposes of section 1092(c)(4). In accordance with section 1092(c)(4)(H), this requirement is modified as provided in paragraph (b) of this section.

(b) *Qualified covered call option status.* A qualifying over-the-counter option is a qualified covered call option if it meets the requirements of § 1.1092(c)-1(c) after substituting “qualifying over-the-counter option” for “equity option with flexible terms”. For the purposes of this paragraph (b), a qualifying over the counter option is deemed to satisfy the requirements of section 1092(c)(4)(B)(i).

(c) *Qualifying over-the-counter option.* For the purposes of this section, *qualifying over-the-counter option* means an equity option that—

- (1) Is not traded on a national securities exchange registered with the Securities and Exchange Commission; and
- (2) Is entered into with a person registered with the Securities and Exchange Commission as—

(i) A broker-dealer under section 15 of the Securities Act of 1934 and the regulations thereunder; or

(ii) An alternative trading system under 17 CFR 242.300 *et seq.*

(d) *Effective date.* This section applies to qualifying over-the-counter options entered into on or after 30 days after the date that the Treasury decision adopting these regulations is published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-114998-99]

RIN 1545-AY71

Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** on January 22, 1998. In the

Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance to state and local governments that issue bonds for output facilities. The text of those temporary regulations also serves as the text of these proposed regulations. This document provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by July 18, 2001. Outlines of topics to be discussed at the public hearing scheduled for July 24, 2001, at 10 a.m. must be received by July 3, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-114998-99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG-114998-99), courier's desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/reglist.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Rose M. Weber, (202) 622-3980; concerning submissions and the hearing, Treena Garrett, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Proposed regulations (REG-110965-97) §§ 1.141-7, 1.141-8 and 1.141-15(f) through (i), published on January 22, 1998 (63 FR 3296), addressed the application of the private activity bond tests of section 141(b) (1) and (2) to output contracts for output facilities and the application of the \$15 million limitation under section 141(b)(4) to output facility financings. These proposed sections are withdrawn.

Sections 1.141-7T, 1.141-8T and 1.141-15T published in the Rules and Regulations portion of this issue of the **Federal Register** are issued to provide guidance on certain aspects of the private activity bond restrictions under section 141 of the Internal Revenue Code.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the

temporary regulations explains the temporary regulations.

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 has also 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 Internal Revenue 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 24, 2001, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by July 18, 2001 and submit an outline of the topics to be discussed and the time to be devoted to each topic by July 3, 2001.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Bruce M. Serchuk, and Rose M. Weber, Office of Chief Counsel (Tax-exempt and Government Entities), Internal Revenue Service, and Stephen J. Watson, Office of Tax Legislative Counsel, Department of the Treasury. However, other personnel from the IRS and Treasury Department participated in their development.

Partial Withdrawal of Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, §§ 1.141-7, 1.141-8 and 1.141-15(f) through (i) in the notice of proposed rulemaking that was published on January 22, 1998 (63 FR 3256) are withdrawn.

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. Sections 1.141-7 and 1.141-8 are added to read as follows:

§ 1.141-7 Special rules for output facilities.

[The text of this proposed section is the same as the text of § 1.141-7T published elsewhere in this issue of the **Federal Register**.]

§ 1.141-8 \$15 million limitation for output facilities.

[The text of this proposed section is the same as the text of § 1.141-8T published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.141-15 is amended by adding paragraphs (f) through (i) to read as follows:

§ 1.141-15 Effective dates.

* * * * *

(f) through (i) [The text of proposed paragraphs (f) through (i) is the same as the text of § 1.141-15T(f) through (i) published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.
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