

## Regulatory Findings

### *Administrative Procedure Act*

The Department's implementation of this regulation as a final rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). Publication of this regulation as a final rule will expedite implementation of Public Laws 106-369 and 104-208, both already in effect. The change of the name of the program and the removal of the list of countries from the current regulation serve only to conform the existing regulation to the relevant statutes without any administrative interpretation or additional burden being placed on the public. Likewise, the application requirement for persons refused admission simply informs the public of a new statutory requirement, placing it in the context of the relevant Department regulation. In view of these circumstances, the Department does not believe that a solicitation for comments would serve any useful purpose.

### *Regulatory Flexibility Act*

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### *Executive Order 12866*

The Department of State does not consider this rule to be a "significant regulatory action" under Executive

Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

### *Executive Order 13132*

This regulation will 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### *Paperwork Reduction Act*

This rule does not impose any new reporting or record-keeping requirements. The information collection requirement (Form DS-156) contained by reference in this rule was previously approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act as OMB control number 1405-0018.

### **List of Subjects in 22 CFR Part 41**

Aliens, Nonimmigrants, Passports and visas.

For the reasons set forth in the preamble, the Department is amending the regulations at 22 CFR 41.2 to read as follows:

### **PART 41—[AMENDED]**

1. The authority citation for Part 41 continues to read as follows:

**Authority:** 8 U.S.C. 1104; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801.

2. Revise § 41.2(l) to read as follows:

#### **§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.**

\* \* \* \* \*

(l) *Visa waiver program.* (1) A visa is not required of any person who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure and who is eligible to apply for admission to the United States as a Visa Waiver Program applicant. (For the list of countries whose nationals are eligible to apply for

admission to the United States as Visa Waiver Program applicants, see 8 CFR 217.2(a)).

(2) An alien denied admission under the Visa Waiver Program by virtue of a ground of inadmissibility described in INA section 212(a) that is discovered at the time of the alien's application for admission at a port of entry or through use of an automated electronic database may apply for a visa as the only means of challenging such a determination. A consular officer must accept and adjudicate any such application if the alien otherwise fulfills all of the application requirements contained in Part 40, § 41.2(l)(1).

Dated: March 22, 2002.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8993]

RIN 1545-AY60

#### **Debt Instruments With Original Issue Discount; Annuity Contracts**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the federal income tax treatment of annuity contracts issued by certain insurance companies. The regulations provide guidance on whether certain annuity contracts are excluded from the definition of a debt instrument under the original issue discount provisions of the Internal Revenue Code.

**DATES:** *Effective Date:* These regulations are effective June 6, 2002.

*Applicability Dates:* For dates of applicability, see § 1.1275-1(k)(3).

**FOR FURTHER INFORMATION CONTACT:** Patrick E. White, (202) 622-3920 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Sections 163(e) and 1271 through 1275 of the Internal Revenue Code (Code) provide rules for the treatment of debt instruments with original issue discount (OID). Section 1275(a)(1)(A) defines the term debt instrument to include a bond, debenture, note, or

certificate or other evidence of indebtedness. Sections 1275(a)(1)(B)(i) and (ii), however, exclude certain annuity contracts from the definition of a debt instrument. This document contains rules concerning the exception for annuities described in section 1275(a)(1)(B)(ii). A notice of proposed rulemaking (REG-125237-00, 2001-12 I.R.B. 919) was published in the **Federal Register** (66 FR 2852) on January 12, 2001. One individual commented anonymously on the proposed regulations. The individual primarily expressed concern that the proposed guidance should not limit the investment options of U.S. investors. No public hearing was requested or held. The proposed regulations are adopted as proposed.

**Explanation of Provisions**

In general, the OID provisions apply to issuers and holders of debt instruments. The term debt instrument generally means any instrument or contractual arrangement that constitutes indebtedness under general principles of income tax law. See section 1275(a)(1)(A) and § 1.1275-1(d) of the Income Tax Regulations.

If a contract is a debt instrument with OID, section 1272 generally requires the holder of the contract to include OID in income currently on a constant yield basis, regardless of the holder's overall method of accounting. By contrast, the holder of an annuity contract to which section 72 applies generally is allowed to defer recognizing economically earned income until distributions are made on the contract.

Section 1275(a)(1)(B) excepts two types of annuity contracts from the definition of a debt instrument. First, section 1275(a)(1)(B)(i) excepts an annuity contract to which section 72 applies if the contract "depends (in whole or in substantial part) on the life expectancy of 1 or more individuals." Second, section 1275(a)(1)(B)(ii) excepts an annuity contract to which section 72 applies under certain circumstances if the contract "is issued by an insurance company subject to tax under subchapter L (or by an entity described in section 501(c) and exempt from tax under section 501(a) which would be subject to tax under subchapter L were it not so exempt). . . ."

The regulations provide that an annuity contract issued by a foreign insurance company is treated under section 1275(a)(1)(B)(ii) as issued by an insurance company subject to tax under subchapter L if the insurance company is subject to tax under subchapter L with respect to income earned on the annuity contract. The IRS and Treasury

conclude that this is the most appropriate application of the language of section 1275(a)(1)(B)(ii) and is consistent with the use of that phrase elsewhere in the Code and regulations. See, e.g., sections 953(e)(3)(C) and 1297(b)(2)(B); § 1.848-2(h).

**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, and because these 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, the notice of proposed rulemaking preceding these regulations was 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 Patrick E. White, Office of the Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

**Adoption of 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 1.1271-0 is amended by adding entries for paragraphs (k) through (k)(3) to § 1.1275-1 to read as follows:

**§ 1.1271-0 Original issue discount; effective dates; table of contents.**

\* \* \* \* \*

**§ 1.1275-1 Definitions.**

\* \* \* \* \*

(k) Exception under section 1275(a)(1)(B)(ii) for annuities issued by an insurance company subject to tax under subchapter L of the Internal Revenue Code.

- (1) Rule.
- (2) Examples.
- (3) Effective date.

\* \* \* \* \*

**Par. 3.** Section 1.1275-1 is amended by adding paragraph (k) to read as follows:

**§ 1.1275-1 Definitions.**

\* \* \* \* \*

(k) *Exception under section 1275(a)(1)(B)(ii) for annuities issued by an insurance company subject to tax under subchapter L of the Internal Revenue Code—(1) Rule.* For purposes of section 1275(a)(1)(B)(ii), an annuity contract issued by a foreign insurance company is considered as issued by an insurance company subject to tax under subchapter L if the insurance company is subject to tax under subchapter L with respect to income earned on the annuity contract.

(2) *Examples.* The following examples illustrate the rule of paragraph (k)(1) of this section. Each example assumes that the annuity contract is a contract to which section 72 applies and was issued in a transaction where there is no consideration other than cash or another qualifying annuity contract, pursuant to the exercise of an election under an insurance contract by a beneficiary thereof on the death of the insured party, or in a transaction involving a qualified pension or employee benefit plan. The examples are as follows:

*Example 1.* Company X is an insurance company that is organized, licensed and doing business in Country Y. Company X does not have a U.S. trade or business and is not, under section 842, subject to U.S. income tax under subchapter L with respect to income earned on annuity contracts. A, a U.S. taxpayer, purchases an annuity contract from Company X in Country Y. The annuity contract is not excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

*Example 2.* The facts are the same as in Example 1, except that Company X has a U.S. trade or business. A purchased the annuity from Company X's U.S. trade or business. Under section 842(a), Company X is subject to tax under subchapter L with respect to income earned on the annuity contract. Under these facts, the annuity contract is excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

*Example 3.* The facts are the same as in Example 2, except that there is a tax treaty between Country Y and the United States. Company X is a resident of Country Y for purposes of the U.S.-Country Y tax treaty. Company X's activities in the U.S. do not constitute a permanent establishment under the U.S.-Country Y tax treaty. Because Company X does not have a U.S. permanent establishment, Company X is not subject to tax under subchapter L with respect to income earned on the annuity contract. Thus, the annuity contract is not excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

*Example 4.* The facts are the same as in Example 1, except that Company X is a

foreign insurance corporation controlled by a U.S. shareholder, Company X does not make an election 1 under section 953(d) to be treated as a domestic corporation. The controlling U.S. shareholder is required under sections 953 and 954 to include income earned on the annuity contract in its taxable income under subpart F. However, Company X is not subject to tax under subchapter L with respect to income earned on the annuity contract. Thus, the annuity contract is not excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

*Example 5.* The facts are the same as in *Example 4*, except that Company X properly elects under section 953(d) to be treated as a domestic corporation. By reason of its election, Company X is subject to tax under subchapter L with respect to income earned on the annuity contract. Thus, the annuity contract is excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

(3) *Effective date.* This paragraph (k) is applicable for interest accruals on or after June 6, 2002. This paragraph (k) does not apply to an annuity contract that was purchased before January 12, 2001. For purposes of this paragraph (k), if any additional investment in a contract purchased before January 12, 2001, is made on or after January 12, 2001, and the additional investment is not required to be made under a binding written contractual obligation that was entered into before that date, then the additional investment is treated as the purchase of a contract after January 12, 2001.

Dated: April 26, 2002.

**David A. Mader,**

*Acting, Deputy Commission of Internal Revenue.*

**Pamela F. Olson,**

*Acting, Assistant Secretary of the Treasury*  
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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-229-FOR]

#### Kentucky Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Kentucky permanent regulatory program (the Kentucky program) under the Surface Mining Control and

Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed revisions to the State regulations pertaining to subsidence control. The amendment is intended to render the Kentucky program consistent with the corresponding Federal regulations and to provide additional specificity.

**EFFECTIVE DATE:** May 7, 2002.

**FOR FURTHER INFORMATION CONTACT:**

William J. Kovacic, Field Office Director  
Telephone: (859) 260-8400. Address:  
Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Kentucky Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

#### I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982 **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

#### II. Submission of the Proposed Amendment

By letter dated January 25, 2001 (Administrative Record No. KY-1502), the Kentucky Department of Surface Mining Reclamation and Enforcement sent us an amendment to the Kentucky program. In its letter, Kentucky noted that on December 22, 1999, we suspended and modified portions of 30 CFR 784.20 and 30 CFR 817.121(c)(4)(i) through (iv) pursuant to an order of the United States Court of Appeals for the District of Columbia Circuit. Kentucky proposed to amend its rules in the same

manner that we modified our regulations. The amendment, at Title 405 of the Kentucky Administrative Regulations (KAR) Chapter 18:210, deleted the provision that required presubidence surveys of structures at Section 1(4) and the rebuttable presumption of causation of subsidence damage at Section 3(4).

Kentucky also submitted changes to Section 2(2) of 405 KAR 18:210, deleting references to the presubidence survey of structures and adding a provision allowing property owners to waive the 30-day mining moratorium following the emergency notice. With the exception of the deletion of the references to presubidence structural surveys, the changes to Section 2(2) do not correspond to any federal regulatory changes.

We announced receipt of the proposed amendment in the March 5, 2001, **Federal Register** (66 FR 13275). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. KY-1519). The public comment period ended on April 4, 2001.

By letter dated June 8, 2001 (Administrative Record No. KY-1513), Kentucky submitted the final version of the proposed amendment.

We reopened the public comment period in the August 15, 2001, **Federal Register** (66 FR 42815) and provided an opportunity for a public hearing or meeting on the adequacy of the revised amendment. (Administrative Record No. KY-1515). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 30, 2001. We received comments from one industry group, one Federal agency, and two private citizens.

#### Procedural History of Suspended Federal Rules

The Energy Policy Act was enacted October 24, 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) (hereinafter, The Energy Policy Act or EPAct). Section 2504 of that Act, 106 Stat. 2776, 3104, amends SMCRA, 30 U.S.C. 1201 *et seq.* Section 2504 of EPAct added a new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal-mining operations conducted after October 24, 1992, promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations. Repair of damage includes rehabilitation, restoration, or