



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5f, and 46

[REG-125374-16]

RIN 1545-BN60

Guidance on the Definition of Registered Form

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on the definitions of registration-required obligation and registered form, including guidance on the issuance of pass-through certificates and participation interests in registered form. This document also withdraws a portion of previously proposed regulations regarding the definition of a registration-required obligation. The proposed regulations generally are necessary to address changes in market practices as well as issues raised by the statutory repeal of the foreign-targeted bearer obligation exception to the registered form requirement. The proposed regulations will affect issuers and holders of obligations in registered form as well as issuers and holders of registration-required obligations that are not issued in registered form.

DATES: Comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-125374-16), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-125374-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-125374-16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Spence Hanemann at (202) 317-6980; concerning submissions of comments and requesting a hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review under control number 1545-0945 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The collection of information in this proposed regulation is in §1.163-5(b), which permits issuers of registration-required obligations to satisfy the requirement for those obligations to be in registered form by maintaining a book entry system. Sections 163(f) and 149(a) require that certain obligations be in registered form and expressly permit issuers to satisfy that requirement through a book entry system. Accordingly, the proposed regulations permit issuers to satisfy the registration requirement through a book entry system and detail certain arrangements that qualify as book entry systems. The collection of information in proposed §1.163-5(b) is an increase in the total annual

burden under control number 1545-0945. The respondents are businesses and other for-profit organizations, non-profit organizations, and state, local and tribal governments.

Estimated total annual recordkeeping burden: 95,105 hours.

Estimated average annual burden hours per respondent: 0.5 hours.

Estimated number of respondents: 190,210.

Estimated annual frequency of responses: 190,210.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington DC 20224. Comments on the collection of information should be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by section 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR parts 1, 5f, and 46 under sections 103, 149, 163, 165, 860D, 871, 881, 1287, 4701, 6045, and 6049 of the Internal Revenue Code (Code).

1. In General

The classification of an obligation as in bearer or registered form has significant tax implications because a number of Code provisions impose sanctions on issuers and holders of registration-required obligations that are not issued in registered form. An obligation not issued in registered form is a bearer form obligation. Most of the Code provisions that pertain to registration-required obligations were enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97-248, 96 Stat.

324, §310. Among these provisions, section 163(f) denies an issuer an interest deduction for interest on a registration-required obligation that is not in registered form. Section 4701 imposes an excise tax on the issuer of a registration-required obligation that is not in registered form. The excise tax is equal to 1 percent of the principal amount of the obligation multiplied by the number of calendar years (or portions thereof) between the issue date of the obligation and the date of maturity. Section 149(a) provides that interest on a registration-required bond is not exempt from tax under section 103(a) unless the bond is in registered form. In addition, section 871(h) and section 881(c) exempt from federal income tax portfolio interest from sources within the U.S. received by a nonresident alien or foreign corporation (portfolio interest exception) only if the obligation with respect to which the interest was paid is in registered form. Similar restrictions are found in sections 165(j) (generally denying the holder a deduction for a loss sustained on a registration-required obligation not in registered form), 312(m) (generally providing that the issuer's earnings and profits cannot be decreased by interest paid on a registration-required obligation not in registered form), and 1287 (generally treating the holder's gain on sale of a registration-required obligation not in registered form as ordinary income).

Historically, the Code provisions referenced in the preceding paragraph generally did not apply to obligations that complied with the foreign-targeting rules of prior section 163(f)(2)(B) and §1.163-5(c) (foreign-targeted bearer obligations). Under the foreign-targeting rules, an issuer could issue foreign-targeted bearer obligations without penalty provided the obligations were issued under arrangements reasonably designed to ensure that the obligations were sold only to non-U.S. persons. The portfolio interest

exception also applied to interest paid on foreign-targeted bearer obligations issued under such reasonably designed arrangements.

The Hiring Incentives to Restore Employment Act (the HIRE Act), Public Law 111-147, 124 Stat. 71, section 502, repealed section 163(f)(2)(B) and generally eliminated the special treatment of foreign-targeted bearer obligations. Foreign-targeted bearer obligations issued after March 18, 2012, are subject to the sanctions on bearer form obligations under sections 149(a), 163(f), 165(j), 312(m), and 1287. The HIRE Act also revoked the portfolio interest exception for foreign-targeted bearer obligations, thus requiring that obligations issued after March 18, 2012, be in registered form to qualify for that exception. The HIRE Act did not, however, repeal the foreign-targeted bearer obligation exception to the excise tax under section 4701. See section 4701(b)(1)(B)(i).

2. *Registration-Required Obligations*

A. *In general*

Under section 163(f)(2)(A), as amended by the HIRE Act, the term *registration-required obligation* means any obligation other than an obligation that: (1) is issued by a natural person; (2) is not of a type offered to the public; or (3) has a maturity at issue of not more than 1 year. For purposes of sections 165(j), 312(m), and 1287, registration-required obligation has the same meaning as when used in section 163(f). See also section 149(a) (providing a similar definition except for the exclusion for instruments issued by a natural person). For purposes of section 4701, that term also has the same meaning as when used in section 163(f), except that tax-exempt bonds and foreign-targeted bearer obligations are excluded.

Section 5f.163-1(b)(2) provides that the determination as to whether an obligation is of a type offered to the public is based on whether similar obligations are in fact publicly offered or traded. On January 21, 1993, the Department of the Treasury (Treasury) and the IRS published in the **Federal Register** (58 FR 5316) a notice of proposed rulemaking (INTL-0115-90) containing proposed regulations that elaborated upon the meaning of “of a type offered to the public” for purposes of section 163(f)(2)(A) (the 1993 proposed regulations). See Prop. Treas. Reg. §5f.163-1(b)(2). The preamble to the 1993 proposed regulations cited the report of the Senate Finance Committee on TEFRA for the conclusion that an obligation that represents a “readily negotiable substitute for cash” should be a registration-required obligation. 58 FR 5316 (citing S. Rep. No. 97-494, at 242 (1982)). Treasury and the IRS reasoned in the preamble to the 1993 proposed regulations that, because the standards for determining if an obligation is “readily tradable in an established securities market” under section 453(f)(4)(B) and §15a.453-1(e)(4) address an analogous concern with negotiability, similar standards should apply for determining whether an obligation is “of a type offered to the public” under section 163(f)(2)(A).

B. Pass-through certificates

Section 1.163-5T provides rules to address whether pass-through certificates are registration-required obligations. In their most common form, pass-through certificates are issued by an investment entity (typically a trust) that holds a pool of obligations, such as mortgage loans. Each pass-through certificate represents an interest in the investment entity.

To accommodate these securitization transactions, §1.163-5T(d)(1) generally provides that a pass-through certificate evidencing an interest in a pool of mortgage loans that is treated as a trust of which the grantor is the owner is considered to be a registration-required obligation if, standing alone, the pass-through certificate meets the definition of a registration-required obligation. Section 1.163-5T(d)(1) also applies to “similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust,” although commenters have noted the ambiguity of the reference. Similarly, §1.871-14(d)(1) provides that interest received on a pass-through certificate qualifies for the portfolio interest exception if, standing alone, the pass-through certificate is in registered form.

Commenters have asked that Treasury and the IRS describe the types of arrangements that qualify as pass-through certificates. Specifically, commenters have requested that Treasury and the IRS amend the definition of a pass-through certificate to clarify that the issuer of a pass-through certificate may be either a grantor trust or another type of entity, such as a partnership or a disregarded entity, so long as the obligations in the pool are held through an arrangement that meets the requirements to be in registered form. Commenters have also requested that Treasury and the IRS amend §1.871-14(d)(1) so that the definition of pass-through certificate for purposes of the portfolio interest exception is identical to the definition of pass-through certificate under §1.163-5T(d)(1).

3. Definition of Registered Form

A. In general

For purposes of determining whether an obligation is in registered form under section 163(f)¹, the principles of section 149(a)(3) apply. See section 163(f)(3). Section 149(a)(3)(A) provides that a bond is treated as being in registered form if the right to the principal of, and stated interest on, the bond may be transferred only through a book entry consistent with regulations prescribed by the Secretary. Section 149(a)(3)(B) authorizes the Secretary to prescribe regulations to carry out the requirement that a bond be issued in registered form when there is one or more nominee. For purposes of section 149(a), the conditions for an obligation to be considered in registered form are described in §5f.103-1(c).² The regulations under both section 163(f) and section 871(h), specifically §§5f.163-1(a) and 1.871-14(c), refer to §5f.103-1(c) for a definition of registered form. Obligations that do not meet the conditions described in §5f.103-1(c) are treated as issued in bearer form.

Generally, under §5f.103-1(c), an obligation is in registered form if: (1) the obligation is registered as to both principal and any stated interest with the issuer (or its agent) and any transfer of the obligation may be effected only by surrender of the old obligation and reissuance to the new holder; (2) the right to principal and stated interest with respect to the obligation may be transferred only through a book entry system maintained by the issuer or its agent; or (3) the obligation is registered as to both principal and stated interest with the issuer or its agent and may be transferred both by surrender and reissuance and through a book entry system. An obligation is considered

¹ For purposes of sections 165(j), 312(m), 871(h)(7), 881(c)(7), 1287, and 4701, the term *registered form* has the same meaning as when used in section 163(f).

² Section 5f.103-1 was originally published under section 103(j) of the Internal Revenue Code of 1954, which was enacted as part of TEFRA and provided that obligations must be in registered form to be tax-exempt. Section 103(j) was recodified as section 149(a) by section 1301 of the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085.

transferable through a book entry system if ownership of an interest in the obligation is required to be reflected in a book entry, whether or not physical securities are issued. An obligation that would otherwise be considered to be in registered form is not considered to be in registered form if the obligation may be converted at any time in the future into an obligation that is not in registered form. See §5f.103-1(e).

B. Dematerialized book entry systems

Since the publication of §5f.103-1, market practices have changed with respect to how interests in obligations are recorded and transferred. For example, many obligations trade in fully dematerialized form. An obligation that is fully dematerialized is not represented by a physical (paper) certificate, and a clearing organization that is the registered holder of the obligation operates an electronic book entry system that identifies the clearing organization's member or members holding the obligation (or interests in the obligation). The clearing organization facilitates and records transfers of the obligation (or interests in the obligation) among the clearing organization's members. The members (typically, banks or broker-dealers), in turn, record their clients' ownership of the obligation (or interests in the obligation) in their book entry systems. Alternatively, an obligation may be represented by a physical global certificate that is nominally in bearer form but that is immobilized in a clearing organization, which handles the obligation thereafter exactly as it does an obligation that was fully dematerialized when issued. Commenters have requested additional guidance on how the registered form rules in §5f.103-1 apply to these arrangements.

Treasury and the IRS provided guidance on how to apply the registered form rules to certain of these arrangements in Notice 2006-99, 2006-2 CB 907. Notice 2006-

99 addresses an arrangement in which no physical certificates are issued and under which ownership interests in bonds are required to be represented only by book entries in a dematerialized book entry system maintained by a clearing organization. Notice 2006-99 provides that an obligation issued under such an arrangement is treated as in registered form notwithstanding the ability of holders to obtain physical certificates in bearer form upon the termination of the business of the clearing organization without a successor.

The HIRE Act also addressed dematerialized book entry systems. For obligations issued after March 18, 2012, section 163(f)(3), as amended by the HIRE Act, provides that, for purposes of section 163(f), a dematerialized book entry system or other book entry system specified by the Secretary will be treated as a book entry system described in section 149(a)(3). The Joint Committee on Taxation's technical explanation of the HIRE Act further explained that an obligation "that is formally in bearer form is treated, for the purposes of section 163(f), as held in a book entry system as long as the debt obligation may be transferred only through a dematerialized book entry system or other book entry system specified by the Secretary." J. Comm. on Tax'n, *Technical Explanation of the Revenue Provisions Contained in Senate Amendment 3310, the "Hiring Incentives to Restore Employment Act," Under Consideration by the Senate* (JCX-4-10), Feb. 23, 2010, at 53.

C. *Notice 2012-20*

Commenters expressed concern that the explicit reference to a "dematerialized book entry system" in section 163(f)(3), as amended by the HIRE Act, would create uncertainty about obligations issued in a manner not specifically described in Notice

2006-99. In particular, commenters requested guidance to address the treatment of obligations represented by a physical global certificate that is nominally in bearer form, but that is immobilized in a clearing system. In addition, commenters requested guidance regarding whether an obligation will be considered to be in registered form if holders may obtain physical certificates in bearer form under circumstances not described in Notice 2006-99.

In response to these comments, Treasury and the IRS published Notice 2012-20, 2012-13 IRB 574, on March 26, 2012. Notice 2012-20 provides additional guidance on the definition of registered form and further states that Treasury and the IRS intend to publish regulations consistent with the guidance described in the notice. Under Notice 2012-20, an obligation is considered to be in registered form if it is issued either through a dematerialized book entry system in which beneficial interests are transferable only through a book entry system maintained by a clearing organization (or by an agent of the clearing organization) or through a clearing system in which the obligation is effectively immobilized. Notice 2012-20 provides that an obligation is considered to be effectively immobilized if: (1) the obligation is represented by one or more global securities in physical form that are issued to and held by a clearing organization (or by a custodian or depository acting as an agent of the clearing organization) for the benefit of purchasers of interests in the obligation under arrangements that prohibit the transfer of the global securities except to a successor clearing organization subject to the same terms; and (2) beneficial interests in the underlying obligation are transferable only through a book entry system maintained by the clearing organization (or an agent of the clearing organization). Notice 2012-20 further states that an interest in an obligation is

considered to be transferable only through a book entry system if the interest would be considered transferable through a book entry system under §5f.103-1(c)(2), except that holders may obtain physical certificates in bearer form in certain limited circumstances stated in the notice. Finally, Notice 2012-20 states that, for purposes of determining when an obligation is a registration-required obligation under section 4701, rules identical to the foreign-targeting rules under section 163(f)(2)(B), prior to its amendment by the HIRE Act, and §1.163-5(c) will apply to obligations issued after March 18, 2012.

Explanation of Provisions

1. In General

Consistent with Notice 2012-20, these proposed regulations amend the definition of registered form to take into account current market practices and changes made by the HIRE Act, including the repeal of the foreign-targeting rules in section 163(f)(2)(B). In addition, these proposed regulations amend the definition of a registration-required obligation in two ways. First, the proposed regulations specify the types of obligations that are treated as “of a type offered to the public” and withdraw the 1993 proposed regulations. Second, the proposed regulations take into account comments requesting clarification on the types of arrangements that qualify as pass-through certificates.

Though the definitions of the terms *registered form* and *registration-required obligation* are generally consistent across the various provisions in which they are used, the rules are set forth in a number of existing regulations, including several promulgated under section 163(f). To the extent possible, these proposed regulations simplify the definitions of registered form and registration-required obligation by centralizing the rules in §1.163-5. Thus, the applicable rules have been relocated from §§5f.103-1

(definition of registered form), 1.163-5T (pass-through certificates and regular interests in REMICs), and 5f.163-1 (definition of registration-required obligation) to paragraphs (a) and (b) of proposed §1.163-5. Appropriate cross-references to §1.163-5 are proposed to be added to regulations that rely on one or both definitions, including §§1.149(a)-1, 1.165-12, 1.860D-1(b)(5)(i)(A), 1.871-14, 1.1287-1, and 46.4701-1.

2. Registration-Required Obligations

A. Obligation of a type offered to the public

Consistent with the 1993 proposed regulations, Treasury and the IRS continue to believe that it is appropriate to determine whether an obligation is of a type offered to the public by reference to whether the obligation is “traded on an established market.” Although a number of Code and regulation sections refer to and define that phrase (for example, sections 453, 1092, 1273, and 7704, as well as the regulations promulgated under those Code sections), Treasury and the IRS have concluded that the definition provided in §1.1273-2(f) is most appropriate for purposes of defining a registration-required obligation. Thus, the proposed regulations generally treat an obligation as of a type offered to the public if the obligation is traded on an established market as determined under §1.1273-2(f). For this purpose, however, the proposed regulations do not take into account the exception for small debt issues in §1.1273-2(f)(6).

B. Pass-through certificates and participation interests

Commenters indicated that an entity that issues pass-through certificates may hold a pool of debt instruments that is either fixed or that changes over time. For example, the issuing entity may have the right to acquire additional assets after formation, or the right to dispose of assets at any time. In those situations, the entity

generally will not be classified as a grantor trust for federal tax purposes, but that does not preclude it from issuing pass-through certificates. To address these situations, the proposed regulations amend the definition of a pass-through certificate to provide that a pass-through certificate may be issued by a grantor trust or a similar fund, and specify that a similar fund includes entities that are partnerships or disregarded for federal tax purposes and funds that have the power to vary the assets they hold or the sequence of payments to holders. A similar fund, however, does not include a business entity classified as a corporation.

In addition, Treasury and the IRS have concluded that an arrangement that satisfies the definition of a registration-required obligation and the registered form rules should be treated the same as a pass-through certificate even if the arrangement is with respect to only one underlying obligation or if the arrangement is treated as co-ownership of one or more obligations (rather than, for purposes of TEFRA or otherwise, ownership of an entity that holds the underlying obligations). The proposed regulations eliminate the requirement that the fund hold a pool of loans and replace it with a requirement that the fund primarily hold debt instruments. Thus, a fund can hold one or more debt instruments, so long as the fund primarily holds debt instruments.

In addition, the proposed regulations treat an interest that evidences co-ownership of one or more obligations (including a participation interest) as a registration-required obligation if, standing alone, the interest satisfies the definition of a registration-required obligation. The proposed regulations also propose to amend §1.871-14(d)(1) to include a cross-reference to the rules for pass-through certificates

and participation interests in proposed §1.163-5(a)(3)(i) and (ii) such that similar rules apply for purposes of the portfolio interest exception.

3. Definition of Registered Form

The proposed regulations amend the definition of registered form in a number of ways. First, the proposed regulations provide that an obligation is considered to be in registered form if it is transferable through a book entry system, including a dematerialized book entry system, maintained by the issuer of the obligation, an agent of the issuer, or a clearing organization. A clearing organization includes an entity that holds obligations for its members or maintains a system that reflects the ownership interests of members and transfers of obligations among members' accounts without the necessity of physical delivery of the obligation.

Second, the proposed regulations provide that an obligation represented by a physical certificate in bearer form will be considered to be in registered form if the physical certificate is effectively immobilized. To be effectively immobilized, the physical certificate evidencing an obligation must be issued to and held by a clearing organization for the benefit of purchasers of interests in the obligation under arrangements that prohibit the transfer of the physical certificate except to a successor clearing organization and permit transfers of ownership interests in the underlying obligation only through a book entry system maintained by the clearing organization (or a successor clearing organization). As suggested in comments, the proposed regulations change the requirement in Notice 2012-20 that a successor clearing organization hold the physical certificate subject to the same terms as the predecessor;

Treasury and the IRS concluded that it is sufficient if the successor clearing organization has rules that effectively immobilize the physical certificate.

Third, the proposed regulations permit holders of obligations (or interests in obligations) to have a right to obtain physical certificates evidencing the obligation (or interests in the obligation) in bearer form without causing the obligation to be treated as not in registered form in two circumstances: (1) a termination of the clearing organization's business without a successor; or (2) the issuance of physical securities at the issuer's request upon a change in tax law that would be adverse to the issuer but for the issuance of physical securities in bearer form. This exception from bearer form treatment is consistent with the guidance provided in Notice 2012-20, except that the proposed regulations do not permit a holder to have a right to obtain a physical bearer certificate if there is an issuer event of default (default exception). Treasury and the IRS understand that in certain situations holders may be required to obtain physical certificates to pursue claims against the issuer, but in such instances it would be appropriate to expect those physical certificates to be issued in registered form. Taxpayers may rely on the default exception in Notice 2012-20 for obligations issued prior to publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

After the occurrence of one of the two events described in the first sentence of the preceding paragraph, an obligation will no longer be in registered form if a holder, or a group of holders acting collectively, has a right to obtain a physical certificate in bearer form, regardless of whether any option to obtain a physical certificate in bearer form has actually been exercised.

4. *Section 881*

Commenters requested that examples 10 and 19 set forth in §1.881-3(e) be removed or revised to take into account the repeal of the foreign-targeted bearer obligation exception. Consistent with these comments, the proposed regulations propose to remove those examples.

5. *Section 4701*

Commenters requested clarification on whether the foreign-targeting rules under §1.163-5(c) would apply to obligations issued after March 18, 2012, for purposes of section 4701. Consistent with Notice 2012-20, proposed §46.4701-1 provides that, for purposes of determining whether an obligation is a foreign-targeted bearer obligation, the rules of §1.163-5(c) apply.

6. *Applicability Dates*

Notice 2012-20 stated that regulations incorporating the guidance described in that notice will be effective for obligations issued after March 18, 2012. Accordingly, the proposed regulations will generally apply to obligations issued after March 18, 2012. However, taxpayers may apply the rules in section 3 of Notice 2012-20, including the default exception, for obligations issued prior to publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. The rules related to pass-through certificates, participation interests, and regular interests in REMICs and the rules related to obligations not of a type offered to the public are not described in Notice 2012-20 and, therefore, will apply only to obligations issued after the publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**, except as otherwise provided in the next sentence. The existing regulations under

§5f.103-1 will continue to apply to tax-exempt bonds issued prior to the date 90 days after publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Sections 163(f) and 149(a) require that certain obligations be in registered form which is satisfied if the obligations are transferable only through a book entry system. The existing regulations under these sections therefore permit issuers to satisfy the registration requirement through a book entry system and describe the arrangements that are necessary for a system to qualify as a book entry system. Certain systems that are now common, however, may not qualify as book entry systems under the existing regulations. Because the proposed regulations merely clarify that these systems are book entry systems, the proposed regulations would not impose a significant economic impact. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the 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 entities.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as

prescribed in this preamble under the “ADDRESSES” heading. Treasury and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Spence Hanemann and Diana Imholtz, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from Treasury and the IRS participated in their development.

Availability of IRS Documents

The IRS notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at www.irs.gov.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5f

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 46

Excise taxes, Insurance, Reporting and recordkeeping requirements.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, §5f.163-1(b)(2) of the notice of proposed rulemaking (INTL-0115-90, subsequently converted to REG-208245-90) that was published in the **Federal Register** (58 FR 5316) on January 21, 1993, is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 5f, and 46 are proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.149(a)-1 also issued under 26 U.S.C. 149(a)(3).

* * * * *

Section 1.163-5 also issued under 26 U.S.C. 163(f)(3).

* * * * *

Par. 2. Section 1.149(a)-1 is added to read as follows:

§1.149(a)-1 Obligations required to be in registered form.

(a) *General rule.* Interest on a registration-required bond shall not be exempt from tax notwithstanding section 103(a) or any other provision of law, exclusive of any treaty obligation of the United States, unless the bond is issued in registered form (as defined in §1.163-5(b)). For this purpose, registration-required bond has the same meaning as registration-required obligation in §1.163-5(a)(2).

(b) *Applicability date.* This section applies to bonds issued on or after the date 90 days after the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For bonds issued before the date 90 days after the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, see §5f.103-1 of this chapter.

Par. 3. Section 1.163-5 is amended by revising the section heading and adding paragraphs (a), (b), and (c)(3)(iii) to read as follows:

§1.163-5 Denial of interest deduction on certain obligations unless issued in registered form.

(a) *Denial of deduction--(1) In general.* No deduction shall be allowed a taxpayer under section 163 for interest paid or accrued on a registration-required obligation (as defined in section 163(f) and paragraph (a)(2) of this section) unless such obligation is issued in registered form (as defined in paragraph (b) of this section). An obligation that is not in registered form under paragraph (b) of this section is an obligation in bearer form.

(2) *Registration-required obligation--(i) In general.* The term *registration-required obligation* means any obligation (including a pass-through certificate or participation interest described in paragraph (a)(3) of this section and a regular interest in a REMIC described in paragraph (a)(4) of this section) other than--

- (A) An obligation issued by a natural person;
- (B) An obligation not of a type offered to the public (as described in paragraph (a)(2)(ii) of this section); or
- (C) An obligation that has a maturity at the date of issue of not more than 1 year.

(ii) *Obligation not of a type offered to the public.* For purposes of section 163(f)(2)(A)(ii) and paragraph (a)(2)(i)(B) of this section, an obligation is not of a type offered to the public unless the obligation is traded on an established market as determined under §1.1273-2(f) without regard to §1.1273-2(f)(6).

(3) *Pass-through certificates and participation interests--(i) Pass-through certificate--(A) In general.* A pass-through certificate is considered to be a registration-required obligation if the pass-through certificate is described in paragraph (a)(2)(i) of this section without regard to whether any obligation held by the entity to which the pass-through certificate relates is described in paragraph (a)(2)(i) of this section.

(B) *Definition of pass-through certificate.* For purposes of paragraph (a) of this section, a *pass-through certificate* is an instrument evidencing an interest in a grantor trust under Subpart E of Part I of Subchapter J of the Code, or a similar fund, that principally holds debt instruments. For purposes of this paragraph (a)(3)(i)(B), a similar fund includes an entity that, under §§301.7701-1 through 301.7701-3 of this chapter, is disregarded as an entity separate from its owner or classified as a partnership for federal tax purposes, without regard to whether the fund has the power to vary the assets in the fund or the sequence of payments made to holders. In addition, for purposes of this paragraph (a)(3)(i)(B), a similar fund does not include a business entity that is classified as a corporation under §301.7701-2 of this chapter.

(ii) *Participation interest.* A participation interest that evidences ownership of some or all of one or more obligations and that is treated as conveying ownership of a specified portion of the obligation or obligations (and not ownership of an entity treated as created under §301.7701-1(a)(2) of this chapter) is considered to be a registration-

required obligation if the participation interest is described in paragraph (a)(2)(i) of this section without regard to whether any obligation to which the participation interest relates is described in paragraph (a)(2)(i) of this section.

(iii) *Treatment of obligation held by a trust or fund.* An obligation held by a trust or a fund in which ownership interests are represented by pass-through certificates is considered to be in registered form or to be a registration-required obligation if the obligation held by the trust or fund is in registered form (as defined in paragraph (b) of this section) or is a registration-required obligation described in paragraph (a)(2)(i) of this section, without regard to whether the pass-through certificates are so considered.

(iv) *Examples.* The application of paragraph (a)(3) of this section may be illustrated by the following examples:

Example 1. Fund, a partnership under the laws of the state in which it is organized, acquires a pool of student loans. The student loans are issued by natural persons and, therefore, are not registration-required obligations as described in paragraph (a)(2)(i) of this section. Fund contributes the student loans to Trust, a business trust under the laws of the state in which Trust is organized. Trust has the power to vary the investments in Trust, and is not treated as a trust of which the grantor is the owner under Subpart E of Part I of Subchapter J of the Code. Trust issues certificates evidencing an interest in Trust. The certificates issued by Trust are offered to the public. The certificates issued by Trust are pass-through certificates (as described in paragraph (a)(3)(i)(B) of this section) and are described in paragraph (a)(2)(i) of this section, and thus, are registration-required obligations described in paragraph (a)(2)(i) of this section, even though the student loans held by Trust are not registration-required obligations.

Example 2. Partnership U purchases a building from Partnership V. Partnership U makes a cash down payment and issues a note secured by a mortgage in the building to Partnership V for the remaining purchase price of the building. The note is not a registration-required obligation described in paragraph (a)(2)(i) of this section because it is not an obligation of a type offered to the public. Partnership V offers participations in the underlying note to the public. Under the terms of the participation, each participant will own an interest in the note that will entitle the participant to a specified portion of the interest and principal generated by the note. The participation is a participation interest described in paragraph (a)(3)(ii) of this section and is described in paragraph (a)(2)(i) of this section, and, thus, is a registration-required obligation

described in paragraph (a)(2)(i) of this section, even though the underlying note is not a registration-required obligation.

(4) *REMICs--(i) Regular interest in a REMIC.* A regular interest in a REMIC, as defined in sections 860D and 860G and the regulations thereunder, is considered to be a registration-required obligation if the regular interest is described in paragraph (a)(2)(i) of this section, without regard to whether one or more of the obligations held by the REMIC to which the regular interest relates is described in paragraph (a)(2)(i) of this section.

(ii) *Treatment of obligation held by a REMIC.* An obligation described in paragraph (a)(2)(i) of this section and held by a REMIC is treated as a registration-required obligation regardless of whether the regular interests in the REMIC are so treated.

(5) *Applicability date--(i) In general.* Except as otherwise provided in paragraphs (a)(5)(ii) and (iii) of this section, paragraph (a) of this section applies to obligations issued after March 18, 2012. For obligations issued on or before March 18, 2012, see §5f.163-1 of this chapter.

(ii) *Obligations not of a type offered to the public.* Paragraph (a)(2)(ii) of this section applies to obligations issued after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

(iii) *Pass-through certificates, participation interests, and regular interests in REMICs.* Paragraph (a) of this section applies to pass-through certificates, participation interests, and regular interests in REMICs issued after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. For pass-through certificates or regular interests in REMICs issued on or before the date of

publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**, see §1.163-5T.

(b) *Registered form--(1) General rule.* Except as provided in paragraph (b)(4) of this section, an obligation is in registered form if a transfer of the right to receive both principal and any stated interest on the obligation may be effected only--

(i) By surrender of the old obligation and either the reissuance of the old obligation to the new holder or the issuance of a new obligation to the new holder;

(ii) Through a book entry system (as described in paragraph (b)(2) of this section) maintained by the issuer of the obligation (or its agent) or by a clearing organization (as defined in paragraph (b)(3) of this section); or

(iii) Through both of the methods described in paragraphs (b)(1)(i) and (ii) of this section.

(2) *Book entry system--(i) In general.* An obligation will be considered transferable through a book entry system, including a dematerialized book entry system, if ownership of the obligation or an interest in the obligation is required to be recorded in an electronic or physical register maintained by the issuer of the obligation (or its agent) or by a clearing organization (as defined in paragraph (b)(3) of this section).

(ii) *Book entry system maintained by clearing organization that effectively immobilizes a bearer form obligation.* An obligation represented by one or more physical certificates in bearer form will be considered to be in registered form if the physical certificates are effectively immobilized. A physical certificate is effectively immobilized only if--

(A) The physical certificate is issued to and held by a clearing organization (as defined in paragraph (b)(3) of this section) for the benefit of purchasers of interests in the obligation under arrangements that prohibit the transfer of the physical certificate except to a successor clearing organization subject to terms that effectively immobilize the physical certificate, as provided in paragraph (b)(2)(ii) of this section, in the hands of the successor clearing organization; and

(B) Ownership of the obligation or an interest in the obligation is transferable only through a book entry system (as described in paragraph (b)(2)(i) of this section) maintained by the clearing organization (as defined in paragraph (b)(3) of this section).

(3) *Definition of clearing organization.* For purposes of paragraph (b) of this section, *clearing organization* means an entity that is in the business of holding obligations for or reflecting the ownership interests of member organizations and transferring obligations among such member organizations by credit or debit to the account of a member organization without the necessity of physical delivery of the obligation.

(4) *Temporal limitations on registered form--(i) In general.* Except as provided in paragraphs (b)(4)(ii) and (iii) of this section, an obligation is not considered to be in registered form as of a particular time if the obligation may be transferred at that time or at a time or times on or before the maturity of the obligation by any means not described in paragraph (b)(1) of this section.

(ii) *Events that permit issuance of physical certificates in bearer form--(A) In general.* An obligation transferrable through a dematerialized book entry system is not in bearer form pursuant to paragraph (b)(4)(i) of this section solely because a holder of

the obligation (or an interest therein) has a right to obtain a physical certificate in bearer form upon the occurrence of one or both of the following events--

(1) A termination of business without a successor by the clearing organization that maintains the book entry system; or

(2) The issuance of physical securities at the issuer's request upon a change in tax law that would be adverse to the issuer but for the issuance of physical securities in bearer form.

(B) *Treatment upon issuance of physical certificate in bearer form.* Upon the occurrence of one or both of the events described in paragraph (b)(4)(ii)(A) of this section, any obligation with respect to which a holder, or a group of holders acting collectively, may obtain a physical certificate in bearer form will no longer be in registered form, regardless of whether a physical certificate in bearer form has actually been issued.

(iii) *Obligations in registered form until maturity.* An obligation that as of a particular time is not considered to be in registered form because the obligation may be transferred at a time or times before the maturity of the obligation by a means not described in paragraph (b)(1) of this section and that during the period beginning at a later time and ending at maturity may be transferred only by a means described in paragraph (b)(1) of this section is considered to be in registered form during the period beginning at that later time.

(5) *Examples.* The application of paragraph (b) of this section may be illustrated by the following examples:

Example 1. X issues an obligation that is a registration-required obligation as described in paragraph (a)(2)(i) of this section. At issuance, X issues the obligation in

the purchaser's name evidencing the purchaser's ownership of the principal and interest under the obligation. The purchaser may transfer the obligation only by surrendering the obligation to X and by X issuing a new instrument to the new holder. X's obligation is issued in registered form under paragraph (b)(1) of this section.

Example 2. Corporation A issues US\$500 million of debt (the Note) evidenced by a physical certificate that is registered in the name of ABC, a clearing organization (as defined in paragraph (b)(3) of this section). Under the terms of the Note, Corporation A must maintain an electronic register identifying the owners of interests in the Note, and a transfer of the right to receive either principal or any stated interest on such ownership interests may be effected only through a change to the electronic register. Pursuant to an agreement with Corporation A, ABC takes custody of the physical certificate evidencing the Note and receives all principal and interest on the Note from Corporation A. Independently of its agreement with Corporation A, ABC maintains electronic records of its members' ownership interests in the Note and distributes principal and interest to members' accounts in accordance with those interests. ABC's members, in turn, maintain electronic records of their customers' ownership interests in the Note and similarly distribute principal and interest to their customers' accounts. Corporation A's electronic register identifies ABC as the sole owner of the Note. Corporation A does not record transfers of ownership interests in the Note to or among ABC's members, and ABC does not record transfers of ownership interests in the Note to or among its members' customers. Corporation A's electronic register is a book entry system as described in paragraph (b)(2)(i) of this section, and the Note is in registered form under paragraph (b)(1) of this section.

Example 3. The facts are the same as in *Example 2* of paragraph (b)(5) of this section, except that, instead of maintaining an electronic register, Corporation A issues a global bearer certificate (Certificate) to ABC pursuant to an agreement that prohibits the transfer of Certificate except to a successor clearing organization subject to terms that effectively immobilize Certificate, as provided in paragraph (b)(2)(ii) of this section, in the hands of the successor clearing organization. Further, holders of interests in Certificate may only obtain physical bearer certificates upon cessation of ABC's operations without a successor or, at Corporation A's request, upon a change in tax law that would be adverse to Corporation A but for the issuance of physical bearer certificates. Because ownership of interests in Certificate may be transferred only through a dematerialized book entry system maintained by ABC, and because the circumstances under which definitive bearer certificates may be issued to holders of interests in Certificate are limited to the circumstances described in paragraph (b)(4)(ii)(A) of this section, Certificate is an immobilized bearer form obligation described in paragraph (b)(2)(ii) of this section and is accordingly in registered form under paragraph (b)(2)(ii) of this section.

Example 4. The facts are the same as in *Example 3* of paragraph (b)(5) of this section, except that purchasers of interests in Certificate have the right to obtain definitive bearer certificates upon request at any time until maturity of Certificate. Because the circumstances under which definitive bearer obligations may be issued to holders of interests in Certificate are not limited to the circumstances described in

paragraph (b)(4)(ii)(A) of this section, Certificate is not considered to be issued in registered form under paragraph (b)(4)(i) of this section.

Example 5. Bank makes a loan to borrower secured by real property (Loan). Participations in Loan are traded on an established market. The participations are participation interests described in paragraph (a)(3)(ii) of this section and are accordingly registration-required obligations described in paragraph (a)(2)(i) of this section. Bank remains the registered owner of Loan and maintains an electronic book entry system that identifies participants. Participation interests may be transferred only by surrender of the old participation interest and reissuance of the participation interest in the name of the new participant, or by transfer of the participation interest from the name of the old participant to the name of the new participant in the book entry system of Bank. Bank's book entry system is described in paragraph (b)(2)(i) of this section, and, accordingly, under paragraph (b)(1)(iii) of this section, the participation interests are in registered form.

(6) *Applicability date.* Paragraph (b) of this section applies to obligations issued after March 18, 2012. Taxpayers may apply the rules in section 3 of Notice 2012-20, 2012-13 IRB 574, for obligations issued prior to the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For obligations issued on or before March 18, 2012, see §5f.103-1 of this chapter.

(c) * * *

(3) * * *

(iii) *Applicability to obligations issued after March 18, 2012.* For purposes of section 163(f), paragraph (c) of this section does not apply to obligations issued after March 18, 2012. However, for purposes of determining whether an obligation is described in section 4701(b)(1)(B) or whether the exception in section 6049 from information reporting of interest or original discount with respect to obligations that have an original term of 183 days or less applies, paragraph (c) of this section continues to apply to obligations issued after March 18, 2012. See §§1.4701-1(b)(3) and 1.6049-5(b)(10).

Par. 4. Section 1.163-5T is amended by adding paragraph (f) to read as follows:

§1.163-5T Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form (temporary).

* * * * *

(f) *Applicability date.* This section applies to obligations to which §5f.163-1 of this chapter applies. See §5f.163-1(d) of this chapter.

Par. 5. Section 1.165-12 is amended by:

1. Revising paragraph (a).
2. Redesignating paragraphs (b)(1) and (2) as (b)(2) and (3), respectively.
3. Adding a new paragraph (b)(1).
4. Revising the paragraph heading and first sentence of newly redesignated paragraph (b)(2).
5. Redesignating paragraph (d) as paragraph (d)(1).
6. Revising the paragraph heading and the first sentence of newly redesignated paragraph (d)(1).
7. Adding a new paragraph heading for paragraph (d).
8. Adding paragraph (d)(2).

The revisions and additions read as follows:

§1.165-12 Denial of deduction for losses on registration-required obligations not in registered form.

(a) *In general.* Except as provided in paragraph (c) of this section, nothing in section 165(a) and the regulations thereunder, or in any other provision of law, shall be construed to provide a deduction for any loss sustained on any registration-required obligation held after December 31, 1982, unless the obligation is in registered form or the issuance of the obligation was subject to tax under section 4701. The term

registration-required obligation has the meaning given to that term in section 163(f)(2) and §1.163-5(a)(2)(i). For purposes of this section, the term *holder* means the person that would be denied a loss deduction under section 165(j)(1) or denied capital gain treatment under section 1287(a). For purposes of this section, the term *United States* means the United States and its possessions within the meaning of §1.163-5(c)(2)(iv).

(b) *Registered form--(1) Obligations issued after March 18, 2012.* With respect to obligations issued after March 18, 2012, the term *registered form* has the meaning given that term in §1.163-5(b).

(2) *Obligations issued after September 21, 1984 and on or before March 18, 2012.* With respect to any obligation originally issued after September 21, 1984, and on or before March 18, 2012, the term *registered form* has the meaning given that term in §5f.103-1 of this chapter. * * *

* * * * *

(d) *Applicability date--(1) In general.* Except as provided in paragraph (d)(2) of this section, these regulations apply generally to obligations issued after January 20, 1987. * * *

(2) *Obligations issued after March 18, 2012.* Paragraph (a) of this section applies to obligations issued after March 18, 2012. For the rules that apply to obligations issued on or before March 18, 2012, see §1.165-12 as contained in 26 CFR part 1, revised as of the date of the most recent annual revision.

§1.860D-1 [Amended]

Par. 6. Section 1.860D-1(b)(5)(i)(A) is amended by removing the language “§5f.103-1(c)” and adding in its place the language “§1.163-5(b).”

Par. 7. Section 1.871-14 is amended by:

1. Revising the heading for paragraph (c).
2. Revising paragraph (c)(1)(i).
3. Revising the heading for paragraph (d).
4. Revising paragraphs (d)(1) and (2).
5. Adding paragraphs (j)(4) and (5).

The revisions and additions read as follows:

§1.871-14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(c) Obligations in registered form--(1) In general--(i) Registered form. For purposes of this section, the rules of §1.163-5(b) apply to determine when an obligation is in registered form.

* * * * *

(d) Application of repeal of 30-percent withholding to pass-through certificates or participation interests--(1) In general--(i) Pass-through certificates. Interest received on a pass-through certificate (as defined in §1.163-5(a)(3)(i)(B)) qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (c)(1)(ii) of this section or the conditions described in paragraph (e) of this section, without regard to whether any obligation held by the grantor trust, or similar fund, to which the pass-through certificate relates is described in paragraph (c)(1)(ii) or (e) of this section. For purposes of this paragraph (d)(1)(i), a similar fund includes an entity that, under §§301.7701-1 through 301.7701-3 of this chapter, is

disregarded as an entity separate from its owner or classified as a partnership for federal tax purposes, without regard to the fund has the power to vary the assets in the fund or the sequence of payments made to holders. In addition, for purposes of this paragraph (d)(1)(i), a similar fund does not include a business entity that is classified as a corporation under §301.7701-2 of this chapter.

(ii) *Participation interests.* Interest received on a participation interest described in §1.163-5(a)(3)(ii) qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (c)(1)(ii) of this section or the conditions described in paragraph (e) of this section, without regard to whether the obligation to which the participation interest relates is described in paragraph (c)(1)(ii) or (e) of this section.

(2) *Interest in REMICs.* Interest received on a regular or residual interest in a REMIC, as defined in sections 860D and 860G and the regulations thereunder, qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (c)(1)(ii) of this section or the conditions described in paragraph (e) of this section. For purposes of paragraphs (c)(1)(ii) and (e) of this section, interest on a regular interest in a REMIC is not considered interest on any mortgage obligations held by the REMIC. The rule in the preceding sentence, however, applies only to payments made to the holder of the regular interest in the REMIC from the REMIC and does not apply to payments made to the REMIC. For purposes of paragraphs (c)(1)(ii) and (e) of this section, interest on a residual interest in a REMIC is considered to be interest on or with respect to the obligations held by the REMIC, and not on or with respect to the residual interest.

* * * * *

(j) * * *

(4) *Registered form.* Paragraph (c)(1)(i) of this section applies to obligations issued after March 18, 2012. For the rules that apply to obligations issued on or before March 18, 2012, see §1.871-14 as contained in 26 CFR part 1, revised as of the date of the most recent annual revision.

(5) *Pass-through certificates, participation interests, and interests in REMICs.* Paragraph (d) of this section applies to pass-through certificates, participation interests, or interests in REMICs issued after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§1.881-3 [Amended]

Par. 8. Section 1.881-3(e) is amended by:

1. Removing *Examples 10* and *19*.
2. Redesignating *Examples 11* through *18* as *Examples 10* through *17* and *Examples 20* through *26* as *Examples 18* through *24*.

Par. 9. Section 1.1287-1 is amended by:

1. Revising paragraph (a).
2. Redesignating paragraphs (b)(1) and (2) as (b)(2) and (3), respectively.
3. Adding a new paragraph (b)(1).
4. Revising the paragraph heading and first sentence of newly redesignated paragraph (b)(2).
5. Redesignating paragraph (d) as paragraph (d)(1).
6. Revising the paragraph heading and the first sentence of newly redesignated paragraph (d)(1).

7. Adding a new paragraph heading for paragraph (d).
8. Adding paragraph (d)(2).

The revisions and additions read as follows:

§1.1287-1 Denial of capital gains treatment for gains on registration-required obligations not in registered form.

(a) *In general.* Except as provided in paragraph (c) of this section, any gain on the sale or other disposition of a registration-required obligation held after December 31, 1982, that is not in registered form shall be treated as ordinary income unless the issuance of the obligation was subject to tax under section 4701. The term *registration-required obligation* has the meaning given to that term in section 163(f)(2) and §1.163-5(a)(2)(i). The term *holder* means the person that would be denied a loss deduction under section 165(j)(1) or denied capital gain treatment under section 1287(a).

(b) *Registered form--(1) Obligations issued after March 18, 2012.* With respect to obligations issued after March 18, 2012, the term *registered form* has the meaning given that term in §1.163-5(b).

(2) *Obligations issued after September 21, 1984 and on or before March 18, 2012.* With respect to any obligation originally issued after September 21, 1984, and on or before March 18, 2012, the term *registered form* has the meaning given that term in §5f.103-1 of this chapter. * * *

* * * * *

(d) *Applicability date--(1) In general.* Except as provided in paragraph (d)(2) of this section, these regulations apply generally to obligations issued after January 20, 1987. * * *

(2) *Obligations issued after March 18, 2012.* Paragraph (a) of this section applies to obligations issued after March 18, 2012.

§1.6045-1 [Amended]

Par. 10. Section 1.6045-1(n)(2)(ii)(J) is amended by removing the language “§1.1471-1(b)(18)” and adding in its place the language “§1.1471-1(b)(21)”.

§1.6049-5 [Amended]

Par. 11. Section 1.6049-5 is amended by:

1. Removing “§5f.103-1(c),” and adding in its place “§1.163-5(b);” in paragraph (a)(1)(i).

2. Removing the language “§5f.163-1” and adding in its place the language “§1.163-5(a)(2)” in paragraph (a)(1)(ii).

PART 5f--TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 12. The authority citation for part 5f continues to read in part as follows:

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

Par. 13. Section 5f.103-1(d) is amended by revising the paragraph heading and adding two sentences at the end of the paragraph to read as follows:

§5f.103-1 Obligations issued after December 31, 1982, required to be in registered form.

* * * * *

(d) *Applicability date.* * * * For the purpose of determining whether bonds satisfy the requirements of section 149(a), this section applies to bonds issued prior to the date 90 days after the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, and §1.149(a)-1 of this chapter applies to bonds

issued on or after the date 90 days after the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For all other purposes, see §1.163-5(a)(2) and (b) of this chapter for obligations issued after March 18, 2012.

* * * * *

Par. 14. Section 5f.163-1(d) is amended by revising the paragraph heading and adding a sentence at the end of the paragraph to read as follows:

§5f.163-1 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.

* * * * *

(d) *Applicability date.* * * * For obligations issued after March 18, 2012, see §1.163-5 of this chapter.

* * * * *

PART 46--EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM

Par. 15. The authority citation for part 46 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 16. Section 46.4701-1 is amended by:

1. Revising paragraphs (b)(3), (4), and (5).
2. Redesignating paragraph (e) as paragraph (e)(1).
3. Revising the paragraph heading of newly redesignated paragraph (e)(1).
4. Adding a new paragraph heading for paragraph (e).
5. Adding paragraph (e)(2).

The revisions and additions read as follows:

§46.4701-1 Tax on issuer of registration-required obligation not in registered form.

* * * * *

(b) * * *

(3) *Registration-required obligation.* The term *registration-required obligation* has the same meaning as in section 163(f) and §1.163-5(a)(2)(i) of this chapter, except that the term does not include an obligation described in section 4701(b)(1)(B) or any obligation that is required to be registered under section 149(a), such as bonds that are tax-exempt under section 103. For purposes of determining whether an obligation is described in section 4701(b)(1)(B), the rules of §1.163-5(c) of this chapter apply.

(4) *Registered form.* The term *registered form* has the same meaning as in §1.163-5(b) of this chapter.

(5) *Issuer--(i) In general.* Except as provided in paragraph (b)(5)(ii) of this section, the term *issuer* is the person whose interest deduction would be disallowed solely by reason of section 163(f)(1).

(ii) *Sponsor treated as issuer.* A pass-through certificate (as defined in §1.163-5(a)(3)(i)(B) of this chapter), a participation interest described in §1.163-5(a)(3)(ii) of this chapter, or a regular interest in a REMIC, as defined in sections 860D and 860G and the regulations thereunder, is considered to be issued solely by the recipient of the proceeds from the issuance of the certificate or interest (the *sponsor*). The sponsor is therefore liable for any excise tax under section 4701 that may be imposed with reference to the principal amount of the pass-through certificate, participation interest, or regular interest.

* * * * *

(e) *Applicability date*--(1) *In general.* * * *

(2) *Exception.* Notwithstanding paragraph (e)(1) of this section, paragraphs (b)(3), (4), and (5) of this section apply to obligations issued after March 18, 2012. For the rules that apply to obligations issued on or before March 18, 2012, see §46.4701-1 as contained in 26 CFR part 46, revised as of the date of the most recent annual revision.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

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