

## IMMIGRANTS—Continued

Symbol	Class	Section of law
R52 .....	Spouse of R51 .....	203(d) & 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
R53 .....	Child of R51 .....	203(d) & 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
I51 .....	Investor Pilot Program, in Targeted Area .....	203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
I52 .....	Spouse of I51 .....	203(d) & 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
I53 .....	Child of I51 .....	203(d) & 203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395), as amended.
<b>Other Numerically Limited Categories Diversity Immigrants</b>		
DV1 .....	Diversity Immigrant .....	203(c).
DV2 .....	Spouse of DV1 .....	203(d) & 203(c).
DV3 .....	Child of DV1 .....	203(d) & 203(c).

Dated: March 3, 2008.

**Stephen A. Edson,**

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

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BILLING CODE 4710–06–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9387]

RIN 1545–AY75

#### **Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Assets Cease To Be Public Utility Property**

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that provide guidance on the normalization requirements applicable to public utilities that benefit (or have benefited) from accelerated depreciation methods or from the investment tax credit permitted under pre-1991 law. These regulations permit a utility whose assets cease, whether by disposition, deregulation, or otherwise, to be public

utility property with respect to the utility (deregulated public utility property) to return to its ratepayers the normalization reserve for excess deferred income taxes (EDFIT) with respect to those assets and, in certain circumstances, also permit the return of part or all of the reserve for accumulated deferred investment tax credits (ADITC) with respect to those assets.

**DATES:** *Effective Date:* These regulations are effective March 20, 2008.

*Applicability Date:* For dates of applicability, see § 1.46–6(k)(4) and § 1.168(i)–3(d) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Patrick Kirwan, at (202) 622–3040 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background and Explanation of Provisions**

This document amends the Income Tax Regulations (26 CFR part 1) relating to the normalization requirements of sections 168(f)(2) and 168(i)(9) of the Internal Revenue Code (Code), section 203(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2146), and former section 46(f) of the Code. Proposed regulations relating to the normalization requirements applicable to electric utilities that benefit (or have benefited) from accelerated depreciation methods or from the investment tax credit permitted under pre-1991 law [REG–104385–01] were published in the **Federal Register** on March 4, 2003 (the

2003 proposed regulations) and again on December 21, 2005 (the 2005 proposed regulations). The preambles of both the 2003 proposed regulations and the 2005 proposed regulations describe the normalization method of accounting and the reserves under the normalization method for excess deferred federal income tax (EDFIT) and accumulated deferred investment tax credits (ADITC).

The 2003 proposed regulations provided that electric utilities whose generation assets become deregulated public utility property could continue to flow through EDFIT reserves associated with those assets without violating the normalization requirements. The rate of flowthrough was limited to the rate that would have been permitted under a normalization method of accounting if the assets had remained public utility property.

The 2003 proposed regulations provided similar rules under which electric utilities could continue to flow through ADITC reserves associated with generation assets that become deregulated public utility property without violating the normalization requirements. The 2003 proposed regulations addressed the treatment of these assets under former section 46(f)(2) (relating to the use of the investment credit to reduce the taxpayer's cost of service) but did not address their treatment under former section 46(f)(1) (relating to the use of the

investment credit to reduce the taxpayer's rate base). The 2003 proposed regulations would have applied to public utility generation property deregulated after March 4, 2003. Utilities would have been permitted an election to apply the proposed rules to generation property that was deregulated on or before that date.

In response to the public comments and after further analysis, the 2003 proposed regulations were withdrawn and were replaced by the 2005 proposed regulations. The 2005 proposed regulations generally retain the rule of the 2003 proposed regulations regarding the return of EDFIT reserves and extend the application of the rule to all public utility property.

The 2005 proposed regulations permit flowthrough of the ADITC reserve with respect to deregulated public utility property to continue after its deregulation only to the extent the reduction in cost of service does not exceed, as a percentage of the ADITC with respect to the property at the time of deregulation, the percentage of the total stranded cost that the taxpayer is permitted to recover with respect to the property. In addition, the 2005 proposed regulations provide that the credit may not be flowed through more rapidly than the rate at which the taxpayer is permitted to recover the stranded cost with respect to the property. The 2005 proposed regulations provide similar rules for property to which former section 46(f)(1) (relating to rate base restoration) applies and extend the application of the ADITC flowthrough rules to all public utility property.

The 2005 proposed regulations generally apply to any public utility property that becomes deregulated public utility property after December 21, 2005. They do not include an election to apply the regulations retroactively. For public utility property that became deregulated public utility property on or before December 21, 2005, the preamble of the 2005 proposed regulations states that the IRS will follow the holdings set forth in the private letter rulings prohibiting flowthrough of the EDFIT and ADITC reserves associated with an asset after the asset's disposition. The 2005 proposed regulations provide, however, that flowthrough will be permitted if it is consistent with the 2003 proposed regulations and occurs during the period beginning on March 5, 2003, and ending on the earlier of (1) the last date on which the utility's rates are determined under the rate order in effect on December 21, 2005, or (2) December 21, 2007.

Written comments were received in response to the 2005 proposed regulations, and a public hearing was held on April 5, 2006. Three commentators spoke at the public hearing. After consideration of all the comments, the 2005 proposed regulations are adopted as amended by this Treasury decision. In general, the final regulations follow the approach of the 2005 proposed regulations.

A number of commentators suggested that the proposed rules should apply on an elective basis to public utility property that was deregulated prior to March 5, 2003, if regulatory proceedings for the deregulated public utility property are pending. The preamble to the 2005 proposed regulations explains that the Secretary's authority under section 7805(b)(7) to provide for retroactive elections should not be exercised in a manner that impairs existing agreements between utilities and their regulators. Many commentators agreed with the objective of not disturbing previously settled and finalized agreements and believed that a retroactive election would likely result in taxpayers being compelled to reopen such agreements. The commentators suggested, however, that applying the regulations to regulatory proceedings that have yet to be finally decided would not impair any existing agreement, and that the final regulations should permit continued flowthrough of the EDFIT and ADITC reserves if no final order or settlement agreement prescribing the treatment of those reserves after deregulation was in effect on December 21, 2005. Other commentators suggested that the section 7805 limitations on retroactivity do not apply to these regulations because the normalization provisions were enacted before the effective date of those limitations. The IRS and Treasury Department agree that there is no statutory impediment that would prohibit the application of the regulations to previously deregulated property. Nevertheless, the IRS and Treasury Department have concluded that there is no compelling argument in this instance for frustrating the expectations of taxpayers who embarked upon deregulation of their public utility property before the publication of the new rules. Accordingly, the final regulations do not depart from the general practice of applying amendments to the regulations without retroactive effect and retain the prospective effective date of the 2005 proposed regulations without a retroactive election. The final regulations retain the proposed

transition rule under which flowthrough is permitted if it is consistent with the 2003 proposed regulations and occurs during the period beginning on March 5, 2003, and ending on the earlier of (1) the last date on which the utility's rates are determined under the rate order in effect on December 21, 2005, or (2) December 21, 2007.

One commentator suggested that the regulations should provide guidance concerning when deregulation occurs. Under the regulations, property becomes deregulated public utility property when it ceases to be public utility property with respect to the taxpayer. This depends on the particular facts and circumstances and is more appropriately addressed on a case-by-case basis.

Some commentators suggested that the final regulations should permit flowthrough of ADITC reserves even in cases in which ratepayers do not bear the cost of the asset giving rise to the credit. The comments generally argued that this would be consistent with Congressional intent to share the benefit of the credit between ratepayers and shareholders. The IRS and Treasury Department agree that the Code provides for such sharing in the typical situation in which ratepayers ultimately bear the full cost of an asset through ratemaking depreciation. On the other hand, neither the statutory provision nor the legislative history provides any indication that Congress intended for ratepayers to share in benefits attributable to costs that they do not bear. Accordingly, for the reasons set forth in the preamble of the 2005 proposed regulations, the final regulations retain the proposed rules relating to flowthrough of the ADITC reserve and rate base restoration, including the rule allowing flowthrough consistent with the 2003 proposed regulations during the transition period.

Commentators suggested that the use of terms other than deregulated public utility property in the preamble of the 2005 proposed regulations implies that a distinction exists between property that ceases to be public utility property because of deregulation and property that ceases to be public utility property because of a disposition or other event. To clarify that this is not the case, the term deregulated public utility property is the sole term used in the final regulations to describe property that ceases to be public utility property.

One commentator questioned whether the term deregulated public utility property includes normal retirements. The final regulations clarify that they do not apply to ordinary retirements within

the meaning of section 1.167(a)–11(d)(3)(ii).

One commentator suggested that deregulated public utility property should include property that is public utility property in the hands of a transferee. The commentator further suggested that if the transferee of public utility property will continue the flowthrough of the transferor's EDFIT and ADITC reserves, further flowthrough by the transferor should not be required. The IRS and Treasury Department agree with these suggestions. Accordingly, the final regulations provide, on a prospective basis, that they apply to a taxpayer with respect to public utility property that ceases to be public utility property with respect to the taxpayer. Thus, the regulations will apply even if the property remains regulated public utility property in the hands of a transferee. The regulations further provide an exception from the generally applicable rule permitting transferor flowthrough when the transferee will continue flowthrough of the EDFIT reserves. A similar exception was not provided for the ADITC reserve because transferor flowthrough of that reserve does not occur if the transferee, rather than the transferor, is recovering the cost of the property through ratemaking depreciation.

#### 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 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. Therefore, a Regulatory Flexibility Analysis is not required. 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 businesses.

#### Drafting Information

The principal author of the regulations is Patrick S. Kirwan, Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 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 1.46–6 is amended by adding paragraph (k) to read as follows:

#### § 1.46–6 Limitation in case of certain regulated companies.

\* \* \* \* \*

(k) *Treatment of accumulated deferred investment tax credits upon the deregulation of public utility property—*

(1) *Scope—(i) In general.* This paragraph (k) provides rules for the application of former sections 46(f)(1) and 46(f)(2) of the Internal Revenue Code to a taxpayer with respect to public utility property that ceases, whether by disposition, deregulation, or otherwise, to be public utility property with respect to the taxpayer and that is not described in paragraph (k)(1)(ii) of this section (deregulated public utility property).

(ii) *Exception.* This paragraph (k) does not apply to property that ceases to be public utility property with respect to the taxpayer on account of an ordinary retirement within the meaning of § 1.167(a)–11(d)(3)(ii).

(2) *Ratable amount—(i) Restoration of rate base reduction.* A reduction in the taxpayer's rate base on account of the credit with respect to public utility property remaining to be restored does not, at any time during the period, exceed the restoration percentage of the recoverable stranded cost of the property at such time. For this purpose—

(A) The stranded cost of the property is the cost of the property reduced by the amount of such cost that the taxpayer has recovered through regulated depreciation expense during the period before the property becomes deregulated public utility property;

(B) The recoverable stranded cost of the property at any time is the stranded cost of the property that the taxpayer will be permitted to recover through rates after such time; and

(C) The restoration percentage for the property is determined by dividing the reduction in rate base remaining to be restored with respect to the property immediately before the property

becomes deregulated public utility property by the stranded cost of the property.

(ii) *Cost of service reduction.* Reductions in the taxpayer's cost of service on account of the credit with respect to public utility property that becomes deregulated public utility property are ratable during the period after the property becomes deregulated public utility property if the cumulative amount of the reduction during such period does not, at any time during the period, exceed the flowthrough percentage of the cumulative stranded cost recovery for the property at such time. For this purpose—

(A) The stranded cost of the property is the cost of the property reduced by the amount of such cost that the taxpayer has recovered through regulated depreciation expense during the period before the property becomes deregulated public utility property;

(B) The cumulative stranded cost recovery for the property at any time is the stranded cost of the property that the taxpayer has been permitted to recover through rates on or before such time; and

(C) The flowthrough percentage for the property is determined by dividing the amount of credit with respect to the property remaining to be used to reduce cost of service immediately before the property becomes deregulated public utility property by the stranded cost of the property.

(3) *Cross reference.* See § 1.168(i)–(3) for rules relating to the treatment of balances of excess deferred income taxes when public utility property becomes deregulated public utility property.

(4) *Effective/applicability dates—(i) In general.* Except as provided in paragraph (k)(4)(ii) of this section, this paragraph (k) applies to public utility property that becomes deregulated public utility property with respect to a taxpayer after December 21, 2005.

(ii) *Property that becomes public utility property of the transferee.* This paragraph (k) does not apply to property that becomes deregulated public utility property with respect to a taxpayer on account of a transfer on or before March 20, 2008 if after the transfer the property is public utility property of the transferee.

(iii) *Application of regulation project (REG–104385–01).* A reduction in the taxpayer's cost of service will be treated as ratable if it is consistent with the proposed rules in regulation project (REG–104385–01) (68 FR 10190) March 4, 2003, and occurs during the period beginning on March 5, 2003, and ending on the earlier of—

(A) The last date on which the utility's rates are determined under the rate order in effect on December 21, 2005; or

(B) December 21, 2007.

■ **Par. 3.** Section 1.168(i)-3 is added to read as follows:

**§ 1.168(i)-3 Treatment of excess deferred income tax reserve upon disposition of deregulated public utility property.**

(a) *Scope*—(1) *In general.* This section provides rules for the application of section 203(e) of the Tax Reform Act of 1986, Public Law 99-514 (100 Stat. 2146) to a taxpayer with respect to public utility property (within the meaning of section 168(i)(10)) that ceases, whether by disposition, deregulation, or otherwise, to be public utility property with respect to the taxpayer and that is not described in paragraph (a)(2) of this section (deregulated public utility property).

(2) *Exceptions.* This section does not apply to the following property:

(i) Property that ceases to be public utility property with respect to the taxpayer on account of an ordinary retirement within the meaning of § 1.167(a)-11(d)(3)(ii).

(ii) Property transferred by the taxpayer if after the transfer the property is public utility property of the transferee and the taxpayer's excess tax reserve with respect to the property (within the meaning of section 203(e) of the Tax Reform Act of 1986) is treated as an excess tax reserve of the transferee with respect to the property.

(b) *Amount of reduction.* If public utility property of a taxpayer becomes deregulated public utility property to which this section applies, the reduction in the taxpayer's excess tax reserve permitted under section 203(e) of the Tax Reform Act of 1986 is equal to the amount by which the reserve could be reduced under that provision if all such property had remained public utility property of the taxpayer and the taxpayer had continued use of its normalization method of accounting with respect to such property.

(c) *Cross reference.* See § 1.46-6(k) for rules relating to the treatment of accumulated deferred investment tax credits when utilities dispose of regulated public utility property.

(d) *Effective/applicability dates*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to public utility property that becomes deregulated public utility property after December 21, 2005.

(2) *Property that becomes public utility property of the transferee.* This section does not apply to property that

becomes deregulated public utility property with respect to a taxpayer on account of a transfer on or before March 20, 2008 if after the transfer the property is public utility property of the transferee.

(3) *Application of regulation project (REG-104385-01).* A reduction in the taxpayer's excess deferred income tax reserve will be treated as ratable if it is consistent with the proposed rules in regulation project (REG-104385-01) (68 FR 10190) March 4, 2003, and occurs during the period beginning on March 5, 2003, and ending on the earlier of—

(i) The last date on which the utility's rates are determined under the rate order in effect on December 21, 2005; or

(ii) December 21, 2007.

**Linda E. Stiff,**

*Acting Deputy Commissioner for Services and Enforcement.*

Approved: March 6, 2008.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E8-5619 Filed 3-19-08; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### 31 CFR Part 356

[Docket No. BPD GSRS 08-01]

#### **Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds—Minimum and Multiple Amounts Eligible for STRIPS, Legacy Treasury Direct, and Certification Requirements**

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury ("Treasury" or "We") is issuing in final form amendments to the Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds. The first change lowers the minimum and multiple par amounts of Treasury marketable notes, bonds, and Treasury inflation-protected securities (TIPS) that may be stripped from \$1,000 to \$100. The second change eliminates the provisions allowing depository institutions and dealers to submit customer bids in Treasury marketable securities auctions for securities that will be held in Legacy Treasury Direct. The third change eliminates the requirement that submitters that submit bids by computer provide a written

certification that they are in compliance with the auction rules. Finally, this final rule adds technical clarification to the calculation of accrued interest for Treasury bonds and notes.

**DATES:** *Effective Date:* This rule is effective on March 20, 2008.

*Applicability Date:* The changes to 31 CFR 356.31 apply to all Treasury marketable securities eligible for stripping (notes, bonds, plus TIPS issued after January 15, 1985) outstanding on and after April 7, 2008.

*Applicability Date:* The change to 31 CFR Part 356, Appendix B, Section I, Paragraph C applies to all Treasury notes, bonds, and TIPS issued on or after the date of the first Treasury marketable securities auction with a \$100 minimum purchase amount announced through an offering announcement.

*Applicability Date:* The changes to 31 CFR 356.2, 356.4, 356.16, 356.17 and 356.25 apply to all auctions of Treasury marketable securities beginning with the first Treasury marketable securities auction with a \$100 minimum purchase amount announced through an offering announcement.

**ADDRESSES:** You may download this final rule from the Bureau of the Public Debt's Web site at <http://www.treasurydirect.gov> or from the Electronic Code of Federal Regulations (e-CFR) Web site at <http://www.gpoaccess.gov/ecfr>. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622-0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamorenna (Executive Director), Chuck Andreatta (Associate Director), or Aaron Gregg (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 504-3632 or e-mail us at [govsecreg@bpd.treas.gov](mailto:govsecreg@bpd.treas.gov). *Policy Information:* Karthik Ramanathan (Director), Department of the Treasury, Office of Debt Management, (202) 622-2042 or e-mail at [debt.management@do.treas.gov](mailto:debt.management@do.treas.gov).

**SUPPLEMENTARY INFORMATION:** The Uniform Offering Circular (UOC), in conjunction with the announcement for each auction, provides the terms and conditions for the sale and issuance to the public of marketable Treasury bills, notes, bonds and TIPS.<sup>1</sup>

<sup>1</sup> The Uniform Offering Circular was first published as a final rule on January 5, 1993 (58 FR Continued