

December 18, 2008.

Michele M. Leonhart,

Acting Administrator.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 180

Consolidated HUD Hearing Procedures for Civil Rights Matters

CFR Correction

In title 24 of the Code of Federal Regulations, parts 0 to 199, revised as of April 1, 2008, on pages 733 and 734, in § 180.670, remove paragraphs (b)(3)(iii)(A) through (b)(3)(iii)(C).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9442]

RIN 1545-BA11

Consolidated Returns; Intercompany Obligations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code (Code). The regulations provide guidance regarding the treatment of transactions involving obligations between members of a consolidated group. These final regulations will affect affiliated groups of corporations filing consolidated returns.

DATES: *Effective Date:* These regulations are effective on *December 24, 2008.*

Applicability Date: For dates of applicability, see §§ 1.1502-13(g)(8) and 1.1502-28(d).

FOR FURTHER INFORMATION CONTACT: Frances Kelly, (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2007, the IRS and the Treasury Department published a notice of proposed rulemaking (REG-107592-00) in the **Federal Register** (72 FR 55139) (the 2007 Proposed Regulations) which proposed to amend

§ 1.1502-13(g) (regarding the treatment of transactions involving obligations between members of a consolidated group) and to add § 1.1502-13(e)(2)(ii)(C) (regarding the treatment of certain transactions involving the provision of insurance between members of a consolidated group). The 2007 Proposed Regulations replaced an earlier proposal (REG-105964-98) [63 FR 70354], published in the **Federal Register** on December 21, 1998, which was withdrawn.

On February 25, 2008, the IRS and the Treasury Department published a notice (Announcement 2008-25) in the **Federal Register** (73 FR 9972) withdrawing the portion of the 2007 Proposed Regulations relating to the treatment of intercompany insurance transactions. No public hearing regarding the remaining portion of the 2007 Proposed Regulations was requested or held. However, written, electronic, and oral comments were received. After consideration of all of the comments, the 2007 Proposed Regulations are adopted as revised by this Treasury decision. The principal comments and changes are discussed in this preamble.

Explanation of Provisions

Former Regulations Under § 1.1502-13(g) (the Former Regulations)

An intercompany obligation is generally defined as an obligation between members of a consolidated group, but only for the period during which both the creditor and debtor are members of the group. The Former Regulations under § 1.1502-13(g) (the 1995 regulations and the 1998 proposed regulations, as in effect before these final regulations), prescribe rules relating to the treatment of transactions involving such obligations, and apply generally to three broad categories of transactions; transactions in which an obligation between a group member and a nonmember becomes an intercompany obligation (inbound transactions), transactions in which an intercompany obligation ceases to be an intercompany obligation (outbound transactions), and transactions in which an intercompany obligation is assigned or extinguished within the consolidated group (intragroup transactions).

For all three types of transactions, the intercompany obligation is treated as satisfied and, if it remains outstanding, reissued as a new obligation (the deemed satisfaction-reissuance model).

Significant Changes Made by the 2007 Proposed Regulations

The 2007 Proposed Regulations make several significant changes to the Former Regulations, principally with respect to intragroup and outbound transactions.

First, the 2007 Proposed Regulations simplify the mechanics of the deemed satisfaction-reissuance model by separating the deemed transactions from the actual transaction. In general, the new model deems the following sequence of events to occur immediately before, and independently of, the actual transaction: (i) the debtor is deemed to satisfy the obligation for a cash amount equal to the obligation's fair market value, and (ii) the debtor is deemed to immediately reissue the obligation to the original creditor for that same cash amount. The parties are then treated as engaging in the actual transaction but with the new obligation.

Second, the 2007 Proposed Regulations provide that for transactions where it is appropriate to require a deemed satisfaction and reissuance, the intercompany obligation generally should be deemed satisfied and reissued for its fair market value (rather than issue price determined under the original issue discount principles of sections 1273 and 1274).

Third, the 2007 Proposed Regulations narrow the scope of intragroup and outbound transactions that trigger the deemed satisfaction-reissuance model by providing a number of exceptions to its application. A deemed satisfaction and reissuance generally is not required for these excepted transactions either because it is not necessary to apply the deemed satisfaction-reissuance model to carry out the purposes of § 1.1502-13(g) or because the burdens associated with valuing the obligation or applying the mechanics of the deemed satisfaction-reissuance model outweigh the benefits achieved by its application.

Finally, the 2007 Proposed Regulations include two anti-abuse rules, the "material tax benefit rule" and the "off-market issuance rule," which are intended to prevent distortions of consolidated taxable income resulting from the shifting of built-in items from intercompany obligations, or from the issuance of obligations at a materially off-market rate of interest through the manipulation of a member's tax attributes or stock basis. These rules are aimed at intragroup transactions otherwise excepted from the deemed satisfaction-reissuance model (to ensure that the exceptions cannot be used to distort consolidated taxable income