

Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, October 17, 1996, at 10 a.m. in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

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

Persons that wish to present oral comments at the hearing must submit written comments by September 25, 1996 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Thursday, September 26, 1996.

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

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

Drafting information: The principal author of the temporary regulations is David B. Friedel of the Office of Assistant Chief Counsel (Corporate), IRS. Other personnel from the IRS and Treasury participated in their development.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published on February 4, 1991 (56 FR 4194) is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 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 as follows:

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

Section 1.1502-91 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-92 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-93 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-94 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-95 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-96 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-98 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-99 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502. * * *

Par. 2. Sections 1.1502-90 through 1.1502-99 are added to read as follows:

§ 1.1502-90 Table of contents.

§ 1.1502-91 Application of section 382 with respect to a consolidated group.

§ 1.1502-92 Ownership change of a loan group of a loss subgroup.

§ 1.1502-93 Consolidated section 382 limitation (or subgroup section 382 limitation).

§ 1.1502-94 Coordination with section 382 and the regulations thereunder when a corporation becomes a member of a consolidated group.

§ 1.1502-95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).

§ 1.1502-96 Miscellaneous rules.

§ 1.1502-97 Special rules under section 382 for members under the jurisdiction of a court in a title 11 or similar case.

[Reserved]

§ 1.1502-98 Coordination with section 383.

§ 1.1502-99 Effective dates.

[The text of the above proposed sections is the same as the text of §§ 1.1502-90T through 1.1502-99T published elsewhere in this issue of the Federal Register.]

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 96-15827 Filed 6-26-96; 8:45 am]

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26 CFR Part 1

[FI-48-95]

RIN 1545-AU09

Amortizable Bond Premium

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the federal income tax treatment of bond premium and bond issuance premium. The proposed regulations reflect changes to the law made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations in this

document would provide needed guidance to holders and issuers of debt instruments. This document also provides a notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by September 25, 1996. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for October 23, 1996, at 10 a.m. must be received by October 2, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (FI-48-95), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (FI-48-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. A public hearing will be held in the Commissioner's Conference Room, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William P. Cejudo, (202) 622-4016, or Jeffrey W. Maddrey, (202) 622-3940; concerning submissions and the hearing, Christina Vasquez, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collections of information should be received by August 26, 1996.

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

The collections of information are in proposed §§ 1.163-13(h)(3), 1.171-4(a)(1), and 1.171-5(c)(2)(iii). This information is required by the IRS to monitor compliance with the federal tax rules for amortizing bond premium and bond issuance premium. The likely respondents are taxpayers who either

acquire a bond at a premium or issue a bond at a premium. Responses to this collection of information are required to determine whether a holder of a bond has elected to amortize bond premium and to determine whether an issuer or a holder has changed its method of accounting for premium.

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 26 U.S.C. 6103.

Estimated total annual reporting burden: 50,000 hours. The estimated annual burden per respondent varies from 0.25 hours to 0.75 hours, depending on individual circumstances, with an estimated average of 0.5 hours.

Estimated number of respondents: 100,000.

Estimated annual frequency of responses: One time per respondent.

Background

Sections 1.171-1 through 1.171-4 of the Income Tax Regulations were promulgated in 1957 and last amended in 1968. In the Tax Reform Act of 1986, section 171(b) was amended to require that bond premium be amortized by reference to a constant yield. In the Technical and Miscellaneous Revenue Act of 1988, section 171(e) was amended to require that bond premium be amortized as an offset to interest income. The proposed regulations would substantially revise the existing regulations to reflect these amendments. In addition, the proposed regulations would revise existing guidance addressing the issuer's treatment of bond issuance premium.

Explanation of Provisions

In general, bond premium arises when a holder acquires a bond for more than the principal amount of the bond. Similarly, bond issuance premium arises when an issuer issues a bond for more than the principal amount of the bond. A holder will purchase, and an issuer will issue, a bond for more than its principal amount when the stated interest rate on the bond is higher than the current market yield for the bond.

The holder's treatment of bond premium is addressed in proposed regulations under section 171. The issuer's treatment of bond issuance premium is addressed in proposed regulations under section 163. In each case, the amortization of premium is based on constant yield principles. For this reason, the proposed regulations use concepts and definitions from the

original issue discount (OID) regulations (§§ 1.1271-0 through 1.1275-6).

Determination of Bond Premium

Under the proposed regulations, bond premium is defined as the excess of a holder's basis in a bond over the sum of the remaining amounts payable on the bond other than payments of qualified stated interest. The holder generally determines the amount of bond premium as of the date the holder acquires the bond.

The proposed regulations provide special rules that limit a holder's basis solely for purposes of determining bond premium. For example, if a bond is convertible into stock of the issuer at the holder's option, for purposes of determining bond premium, the holder must reduce its basis in the bond by the value of the conversion option. This reduction prevents the holder from inappropriately amortizing the cost of the embedded conversion option.

Amortization of Bond Premium

Under section 171, the holder of a taxable bond acquired at a premium may elect to amortize bond premium. The holder of a tax-exempt bond acquired at a premium must amortize the premium. As premium is amortized, the holder's basis in the bond is reduced by a corresponding amount under section 1016(a)(5).

Under the proposed regulations, a holder amortizes bond premium by offsetting qualified stated interest income with bond premium. An offset is calculated for each accrual period using constant yield principles. However, the offset for an accrual period is only taken into account when the holder takes qualified stated interest into account under the holder's regular method of accounting. Thus, a holder using the cash receipts and disbursements method of accounting does not take bond premium into account until a qualified stated interest payment is received.

For certain bonds (e.g., bonds that pay a variable rate of interest or that provide for an interest holiday), the amount of bond premium allocable to an accrual period could exceed the amount of qualified stated interest allocable to that period. The proposed regulations address this situation by providing that the excess bond premium is not allowed as a deduction but is carried forward to future accrual periods.

Variable Rate Debt Instruments

Because a variable rate debt instrument (VRDI) provides for variable interest payments, the yield and payment schedule of a VRDI cannot be

determined without making assumptions about the amount of the variable payments. Under the OID regulations, OID on a VRDI is determined and allocated among accrual periods by reference to an equivalent fixed rate debt instrument constructed as of the issue date of the VRDI. The proposed regulations provide that bond premium on a VRDI is determined and allocated in a similar manner. Under the proposed regulations, bond premium on a VRDI is determined and allocated by reference to an equivalent fixed rate debt instrument. However, the equivalent fixed rate debt instrument is constructed as of the date the holder acquires the VRDI rather than the issue date.

Bonds Subject to Certain Contingencies

If a bond provides for one or more alternative payment schedules, the yield of the bond cannot be determined without making assumptions about the actual payment schedule. The OID regulations provide three rules for making these assumptions. First, if one payment schedule is significantly more likely than not to occur, the yield of the debt instrument is determined by reference to this payment schedule. Second, if the debt instrument is subject to a mandatory sinking fund provision, the yield is determined without regard to the mandatory sinking fund provision. Third, notwithstanding the first two rules, if the debt instrument provides for an unconditional option or options to alter the payment schedule, the yield is determined by assuming that the issuer will exercise its options in the manner that minimizes the yield of the debt instrument and that the holder will exercise its options in the manner that maximizes the yield of the debt instrument.

The proposed regulations generally use similar assumptions to determine the holder's yield on a bond that provides for alternative payment schedules. However, in the case of an issuer's option on a taxable bond, the proposed regulations reverse the assumption by assuming that the issuer will exercise the option only if doing so would increase the yield on the bond. See section 171(b)(1)(B)(ii). As a result of this rule, a holder generally must amortize bond premium on a taxable bond by reference to the stated maturity date, even if it appears likely the bond will be called. In this case, if the bond is actually called, the proposed regulations provide that the holder may deduct the unamortized premium. If the bond is partially called and the partial call is not a pro-rata prepayment, the proposed regulations do not allow the

holder to deduct a portion of the unamortized premium. Instead, the holder must recompute the yield of the bond on the date of the partial call and amortize the remaining premium by reference to the recomputed yield.

Treasury and IRS request comments on the application of the alternative payment schedule rules. Specifically, comments are requested on whether the "significantly more likely than not to occur" standard is appropriate for taxable bonds, whether ignoring mandatory sinking fund provisions is appropriate for tax-exempt bonds, and whether the distinction between pro-rata and non-pro-rata calls is appropriate.

Bond Issuance Premium

Under existing § 1.61–12(c), a corporate issuer treats premium received upon issuance of a bond as a separate item of income. Over the term of the bond, the premium is taken into income, and the full amount of the stated interest is deducted. The proposed regulations would revise the treatment of bond issuance premium. Under the proposed regulations, bond issuance premium is amortized as an offset to the issuer's otherwise allowable interest deduction, not as a separate item of income. The amount of bond issuance premium amortized in any period is based on a constant yield. In addition, the proposed regulations would apply to all issuers, not just corporate issuers.

De Minimis Rules and Aggregate Rules

The proposed regulations do not provide rules for de minimis amounts of premium or for aggregate methods of accounting for premium. Treasury and IRS request comments on whether de minimis rules or aggregate rules are necessary or appropriate.

Bonds Not Subject to the Proposed Regulations

The proposed regulations generally apply to bonds acquired or issued at a premium. Certain bonds, however, are excluded from the application of the proposed regulations. For example, the proposed regulations exclude debt instruments subject to section 1272(a)(6) (relating to certain prepayable debt instruments). No inference is intended regarding the treatment of these debt instruments.

Proposed Effective Dates

The proposed regulations relating to bond premium provide that the final regulations generally will apply to bonds acquired on or after the date 60 days after the date final regulations are

published in the Federal Register. However, if a holder makes the election to amortize bond premium for the taxable year containing the date 60 days after the date final regulations are published, the regulations apply to bonds held on or after the first day of that taxable year.

The proposed regulations relating to bond issuance premium provide that the final regulations will apply to debt instruments issued on or after the date 60 days after the date final regulations are published in the Federal Register.

The proposed regulations also would provide automatic consent for a taxpayer to change its method of accounting for premium in certain circumstances. Because the change is made on a cut-off basis, no items of income or deduction are omitted or duplicated. Therefore, no adjustment under section 481 is allowed.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 23, 1996, at 10 a.m. in the Commissioner's Conference Room, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

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

Persons that wish to present oral comments at the hearing must submit written comments by September 25, 1996, and submit an outline of the topics to be discussed and the time to

be devoted to each topic (signed original and eight (8) copies) by October 2, 1996.

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

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

Drafting Information

The principal authors of these regulations are William P. Cejudo and Jeffrey W. Maddrey of the Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.171–2 also issued under 26 U.S.C. 171(e).

Section 1.171–3 also issued under 26 U.S.C. 171(e).

Section 1.171–4 also issued under 26 U.S.C. 171(c). * * *

Par. 2. Section 1.61–12 is amended by revising paragraph (c) to read as follows:

§ 1.61–12 Income from discharge of indebtedness.

* * * * *

(c) *Issuance and repurchase of debt instruments*—(1) *Issuance*. An issuer does not realize gain or loss upon the issuance of a debt instrument (as defined in § 1.1275–1(d)).

(2) *Repurchase*—(i) *In general*. An issuer does not realize gain or loss upon the repurchase of a debt instrument. For purposes of this paragraph (c)(2), the term *repurchase* includes the retirement of a debt instrument, the conversion of a debt instrument into stock of the issuer, and the exchange (including an exchange under section 1001) of a newly issued debt instrument for an existing debt instrument.

(ii) *Repurchase at a discount*. An issuer realizes income from the discharge of indebtedness upon the repurchase of a debt instrument for an amount less than its adjusted issue price (as defined in § 1.163–13(d)(5)). The

amount of discharge of indebtedness income is equal to the excess of the adjusted issue price over the repurchase price. To determine the repurchase price of a debt instrument that is repurchased through the issuance of a new debt instrument, see section 108(e)(10). See § 1.108-2 for rules relating to the realization of discharge of indebtedness income upon the acquisition of a debt instrument by a person related to the issuer.

(iii) *Repurchase at a premium.* An issuer may be entitled to a repurchase premium deduction upon the repurchase of a debt instrument for an amount greater than its adjusted issue price (as defined in § 1.163-13(d)(5)). See § 1.163-7(c) for the treatment of repurchase premium.

(3) *Bond issuance premium.* For rules relating to an issuer's interest deduction for a debt instrument issued with bond issuance premium, see § 1.163-13.

(4) *Effective date.* This paragraph (c) applies to debt instruments issued on or after the date that is 60 days after the date final regulations are published in the Federal Register.

* * * * *

Par. 3. Section 1.163-7 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 1.163-7 Deduction for OID on certain debt instruments.

* * * * *

(c) *Deduction upon repurchase.* Except to the extent disallowed by any other section of the Internal Revenue Code (e.g., section 249) or this paragraph (c), if a debt instrument is repurchased by the issuer for a price in excess of its adjusted issue price (as defined in § 1.163-13(d)(5)), the excess (repurchase premium) is deductible as interest for the taxable year in which the repurchase occurs. * * *

* * * * *

Par. 4. Section 1.163-13 is added to read as follows:

§ 1.163-13 Treatment of bond issuance premium.

(a) *General rule.* If a debt instrument is issued with bond issuance premium, this section limits the amount of the issuer's interest deduction otherwise allowable under section 163(a). In general, the issuer determines its interest deduction by offsetting the interest allocable to an accrual period with the bond issuance premium allocable to that period. Bond issuance premium is allocable to an accrual period based on a constant yield. The use of a constant yield to amortize bond issuance premium is intended to conform the treatment of debt

instruments having bond issuance premium with those having original issue discount. Unless otherwise provided, the terms used in this section have the same meaning as those terms in section 163(e), sections 1271 through 1275, and the corresponding regulations. Moreover, the provisions of this section apply in a manner consistent with those of section 163(e), sections 1271 through 1275, and the corresponding regulations. In addition, the anti-abuse rule in § 1.1275-2(g) applies for purposes of this section. For rules dealing with the treatment of bond premium by a holder, see §§ 1.171-1 through 1.171-5.

(b) *Exceptions.* This section does not apply to—

(1) A debt instrument to which section 1272(a)(6) applies (relating to certain interests in or mortgages held by a REMIC, and certain other debt instruments with payments subject to acceleration); or

(2) A debt instrument to which § 1.1275-4 applies (relating to certain debt instruments that provide for contingent payments).

(c) *Bond issuance premium.* Bond issuance premium is the excess, if any, of the issue price of a debt instrument over its stated redemption price at maturity. For purposes of this section, the issue price of a convertible bond (as defined in § 1.171-1(e)(1)(iii)(C)) does not include an amount equal to the value of the conversion option.

(d) *Offsetting qualified stated interest with bond issuance premium—*(1) *In general.* An issuer amortizes bond issuance premium by offsetting the qualified stated interest allocable to an accrual period with the bond issuance premium allocable to the accrual period. This offset occurs when the issuer takes the qualified stated interest into account under its regular method of accounting.

(2) *Qualified stated interest allocable to an accrual period.* See § 1.446-2(b) to determine the accrual period to which qualified stated interest is allocable and to determine the accrual of qualified stated interest within an accrual period.

(3) *Bond issuance premium allocable to an accrual period.* The bond issuance premium allocable to an accrual period is determined under this paragraph (d)(3). Within an accrual period, the bond issuance premium allocable to the period accrues ratably.

(i) *Step one: Determine the debt instrument's yield to maturity.* The yield to maturity of a debt instrument is determined under the rules of § 1.1272-1(b)(1)(i).

(ii) *Step two: Determine the accrual periods.* The accrual periods are

determined under the rules of § 1.1272-1(b)(1)(ii).

(iii) *Step three: Determine the bond issuance premium allocable to the accrual period.* The bond issuance premium allocable to an accrual period is the excess of the qualified stated interest allocable to the accrual period over the product of the adjusted issue price at the beginning of the accrual period and the yield. In performing this calculation, the yield must be stated appropriately taking into account the length of the particular accrual period. Principles similar to those in § 1.1272-1(b)(4) apply in determining the bond issuance premium allocable to an accrual period.

(4) *Bond issuance premium in excess of qualified stated interest.* If the bond issuance premium allocable to an accrual period exceeds the qualified stated interest allocable to the accrual period for a debt instrument, the excess is carried forward to the next accrual period and offsets qualified stated interest in that accrual period to the extent of the disallowed amount. If the amount carried forward to an accrual period exceeds the qualified stated interest for that period, the excess is carried forward to subsequent accrual periods, beginning with the next accrual period, and is used to offset qualified stated interest in those accrual periods to the extent of the excess. If an excess amount exists on the date the debt instrument is retired, the issuer takes this amount into account as ordinary income.

(5) *Adjusted issue price.* In general, the adjusted issue price of a debt instrument is determined under the rules of § 1.1275-1(b). In addition, the adjusted issue price of the debt instrument is decreased by the amount of bond issuance premium previously allocable under paragraph (d)(3) of this section.

(e) *Special rules—*(1) *Variable rate debt instruments issued with bond issuance premium.* Bond issuance premium on a variable rate debt instrument is determined by reference to the stated redemption price at maturity of the equivalent fixed rate debt instrument constructed as of the issue date. In addition, the issuer allocates bond issuance premium on a variable rate debt instrument among the accrual periods by reference to the equivalent fixed rate debt instrument. The equivalent fixed rate debt instrument is determined using the principles of § 1.1275-5(e).

(2) *Remote and incidental contingencies.* For purposes of determining and amortizing bond issuance premium, if a bond provides

for a contingency that is remote or incidental (within the meaning of § 1.1275-2(h)), the contingency is taken into account under the rules for remote and incidental contingencies in § 1.1275-2(h).

(f) *Example.* The following example illustrates the rules of this section.

Example—(i) Facts. On February 1, 1999, X issues for \$110,000 a debt instrument maturing on February 1, 2006, with a stated principal amount of \$100,000, payable at maturity. The debt instrument provides for unconditional payments of interest of \$10,000, payable on February 1 of each year. X uses the calendar year as its taxable year, X uses the cash receipts and disbursements method of accounting, and X decides to use annual accrual periods ending on February 1 of each year. X's calculations assume a 30-day month and 360-day year.

(ii) *Amount of bond issuance premium.* The issue price of the debt instrument is \$110,000. Because the interest payments on the debt instrument are qualified stated interest, the stated redemption price at maturity of the debt instrument is \$100,000. Therefore, the amount of bond issuance premium is \$10,000 (\$110,000 - \$100,000).

(iii) *Bond issuance premium allocable to the first accrual period.* Based on the payment schedule and the issue price of the debt instrument, the yield of the debt instrument is 8.07 percent, compounded annually. (Although, for purposes of simplicity, the yield as stated is rounded to two decimal places, the computations do not reflect this rounding convention.) The bond issuance premium allocable to the accrual period ending on February 1, 2000, is the excess of the qualified stated interest allocable to the period (\$10,000) over the product of the adjusted issue price at the beginning of the period (\$110,000) and the yield (8.07 percent, compounded annually). Therefore, the bond issuance premium allocable to the accrual period is \$1,118.17 (\$10,000 - \$8,881.83).

(iv) *Premium used to offset interest.* Although X makes an interest payment of \$10,000 on February 1, 2000, X only deducts interest of \$8,881.83, the qualified stated interest allocable to the period (\$10,000) offset with bond issuance premium allocable to the period (\$1,118.17).

(g) *Effective date.* This section applies to debt instruments issued on or after the date that is 60 days after the date final regulations are published in the Federal Register.

(h) *Consent to change method of accounting.* The Commissioner grants consent for an issuer to change its method of accounting for bond issuance premium on debt instruments issued on or after the date that is 60 days after the date final regulations are published in the Federal Register. However, this consent is granted only if—

(1) The change is made to comply with this section;

(2) The change is made for the first taxable year for which the issuer must

account for a debt instrument under this section; and

(3) The issuer attaches to its federal income tax return for the taxable year containing the change a statement that it has changed its method of accounting under this section.

Par. 5. Sections 1.171-1 through 1.171-4 are revised to read as follows:

§ 1.171-1 Bond premium.

(a) *Overview—(1) In general.* This section and §§ 1.171-2 through 1.171-5 provide rules for the determination and amortization of bond premium by a holder. In general, a holder amortizes bond premium by offsetting the interest allocable to an accrual period with the premium allocable to that period. Bond premium is allocable to an accrual period based on a constant yield. The use of a constant yield to amortize bond premium is intended generally to conform the treatment of bond premium to the treatment of original issue discount under sections 1271 through 1275. Unless otherwise provided, the terms used in this section and §§ 1.171-2 through 1.171-5 have the same meaning as those terms in sections 1271 through 1275 and the corresponding regulations. Moreover, the provisions of this section and §§ 1.171-2 through 1.171-5 apply in a manner consistent with those of sections 1271 through 1275 and the corresponding regulations. In addition, the anti-abuse rule in § 1.1275-2(g) applies for purposes of this section and §§ 1.171-2 through 1.171-5.

(2) *Cross-references.* For rules dealing with the adjustments to a holder's basis to reflect the amortization of bond premium, see § 1.1016-5(b). For rules dealing with the treatment of bond issuance premium by an issuer, see § 1.163-13.

(b) *Scope—(1) In general.* Except as provided in paragraph (b)(2) of this section, this section and §§ 1.171-2 through 1.171-5 apply to any bond that, upon its acquisition by the holder, is held with bond premium. For purposes of this section and §§ 1.171-2 through 1.171-5, the term *bond* has the same meaning as the term *debt instrument* in § 1.1275-1(d).

(2) *Exceptions.* This section and §§ 1.171-2 through 1.171-5 do not apply to—

(i) A bond to which section 1272(a)(6) applies (relating to certain interests in or mortgages held by a REMIC, and certain other debt instruments with payments subject to acceleration);

(ii) A bond to which § 1.1275-4 applies (relating to certain debt instruments that provide for contingent payments);

(iii) A bond held by a holder that has made a § 1.1272-3 election with respect to the bond;

(iv) A bond that is stock in trade of the holder, a bond of a kind that would properly be included in the inventory of the holder if on hand at the close of the taxable year, or a bond held primarily for sale to customers in the ordinary course of the holder's trade or business; or

(v) A bond issued before September 28, 1985, unless the bond bears interest and was issued by a corporation or by a government or political subdivision thereof.

(c) *General rule—(1) Tax-exempt obligations.* A holder must amortize bond premium on a bond that is a tax-exempt obligation. See § 1.171-2(c) *Example 4.*

(2) *Taxable bonds.* A holder may elect to amortize bond premium on a taxable bond. Except as provided in paragraph (c)(3) of this section, a taxable bond is any bond other than a tax-exempt obligation. See § 1.171-4 for rules relating to the election to amortize bond premium on a taxable bond.

(3) *Bonds the interest on which is partially excludable.* For purposes of this section and §§ 1.171-2 through 1.171-5, a bond the interest on which is partially excludable from gross income (e.g., a securities acquisition loan under section 133) is treated as two instruments, a tax-exempt obligation and a taxable bond. The holder's basis in the bond and each payment on the bond are allocated between the two instruments based on the ratio of the interest excludable to the total interest payable on the bond.

(d) *Determination of bond premium—(1) In general.* A holder acquires a bond at a premium if the holder's basis in the bond immediately after its acquisition by the holder exceeds the sum of all amounts payable on the bond after the acquisition date (other than payments of qualified stated interest). This excess is bond premium, which is amortizable under § 1.171-2.

(2) *Additional rules for amounts payable on certain bonds.* Additional rules apply to determine the amounts payable on a variable rate debt instrument and on a bond that provides for certain alternative payment schedules. See § 1.171-3.

(e) *Basis.* A holder determines its basis in a bond under this paragraph (e). This determination of basis applies only for purposes of this section and §§ 1.171-2 through 1.171-5. Because of the application of this paragraph (e), the holder's basis in the bond for purposes of these sections may differ from the

holder's basis for determining gain or loss on the sale or exchange of the bond.

(1) *Determination of basis*—(i) *In general.* In general, the holder's basis in the bond is the holder's basis for determining loss on the sale or exchange of the bond.

(ii) *Bonds acquired in certain exchanges.* If the holder acquired the bond in exchange for other property (other than in a reorganization defined in section 368) and the holder's basis in the bond is determined in whole or in part by reference to the holder's basis in the other property, the holder's basis in the bond may not exceed its fair market value immediately after the exchange. See paragraph (f) *Example 1* of this section. If the bond is acquired in a reorganization, see section 171(b)(4)(B).

(iii) *Convertible bonds*—(A) *General rule.* If the bond is a convertible bond, the holder's basis in the bond is reduced by an amount equal to the value of the conversion option. The value of the conversion option may be determined under any reasonable method. For example, the holder may determine the value of the conversion option by comparing the market price of the convertible bond to the market prices of similar bonds that do not have conversion options. See paragraph (f) *Example 2* of this section.

(B) *Convertible bonds acquired in certain exchanges.* If the bond is a convertible bond acquired in a transaction described in paragraph (e)(1)(ii) of this section, the holder's basis in the bond may not exceed its fair market value immediately after the exchange reduced by the value of the conversion option.

(C) *Definition of convertible bond.* A convertible bond is a bond that provides the holder with an option to convert the bond into stock of the issuer, stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of that stock or debt.

(2) *Basis in bonds held by certain transferees.* Notwithstanding paragraph (e)(1) of this section, if the bond is transferred basis property (as defined in section 7701(a)(43)) and the transferor had acquired the bond at a premium, the holder's basis in the bond is—

(i) The holder's basis for determining loss on the sale or exchange of the bond; reduced by

(ii) Any amounts that the transferor could not have amortized under this paragraph (e) or under § 1.171-4(c).

(f) *Examples.* The following examples illustrate the rules of this section.

Example 1. Bond received in liquidation of a partnership interest—(i) *Facts.* PR is a

partner in partnership PRS. PRS does not have any unrealized receivables or substantially appreciated inventory items as defined in section 751. On January 1, 1997, PRS distributes to PR a taxable bond, issued by an unrelated corporation, in liquidation of PR's partnership interest. At that time, the fair market value of PR's partnership interest is \$40,000 and the basis is \$100,000. The fair market value of the bond is \$40,000.

(ii) *Determination of basis.* Under section 732(b), PR's basis in the bond is equal to PR's basis in the partnership interest. Therefore, PR's basis for determining loss on the sale or exchange of the bond is \$100,000. However, under paragraph (e)(1)(ii) of this section, PR's basis in the bond is \$40,000 for purposes of this section and §§ 1.171-2 through 1.171-5.

Example 2. Convertible bond—(i) *Facts.* On January 1, 1997, A purchases for \$1,100 B corporation's bond maturing on January 1, 2000, with a stated principal amount of \$1,000, payable at maturity. The bond provides for unconditional payments of interest of \$30 on January 1 and July 1 of each year. In addition, the bond is convertible into 15 shares of B corporation stock at the option of the holder. On January 1, 1997, B corporation's nonconvertible, publicly-traded, three-year debt with similar credit rating trades at a price that reflects a yield of 6.75 percent, compounded semiannually.

(ii) *Determination of basis.* A's basis for determining loss on the sale or exchange of the bond is \$1,100. As of January 1, 1997, discounting the remaining payments on the bond at the yield at which B's similar nonconvertible bonds trade (6.75 percent, compounded semiannually) results in a present value of \$980. Thus, the value of the conversion option is \$120. Under paragraph (e)(1)(iii)(A) of this section, A's basis is \$980 (\$1,100-\$120) for purposes of this section and §§ 1.171-2 through 1.171-5. The sum of all amounts payable on the bond other than qualified stated interest is \$1,000. Because A's basis (as determined under paragraph (e)(1)(iii)(A) of this section) does not exceed \$1,000, A does not acquire the bond at a premium.

§ 1.171-2 Amortization of bond premium.

(a) *Offsetting qualified stated interest with premium*—(1) *In general.* A holder amortizes bond premium by offsetting the qualified stated interest allocable to an accrual period with the bond premium allocable to the accrual period. This offset occurs when the holder takes the qualified stated interest into account under the holder's regular method of accounting.

(2) *Qualified stated interest allocable to an accrual period.* See § 1.446-2(b) to determine the accrual period to which qualified stated interest is allocable and to determine the accrual of qualified stated interest within an accrual period.

(3) *Bond premium allocable to an accrual period.* The bond premium allocable to an accrual period is determined under this paragraph (a)(3). Within an accrual period, the bond

premium allocable to the period accrues ratably.

(i) *Step one: Determine the holder's yield.* The holder's yield is the discount rate that, when used in computing the present value of all remaining payments to be made on the bond (including payments of qualified stated interest), produces an amount equal to the holder's basis in the bond as determined under § 1.171-1(e). For this purpose, the remaining payments include only payments to be made after the date the holder acquires the bond. The yield is calculated as of the date the holder acquires the bond, must be constant over the term of the bond, and must be calculated to at least two decimal places when expressed as a percentage.

(ii) *Step two: Determine the accrual periods.* A holder determines the accrual periods for the bond under the rules of § 1.1272-1(b)(1)(ii).

(iii) *Step three: Determine the bond premium allocable to the accrual period.* The bond premium allocable to an accrual period is the excess of the qualified stated interest allocable to the accrual period over the product of the holder's adjusted acquisition price (as defined in paragraph (b) of this section) at the beginning of the accrual period and the holder's yield. In performing this calculation, the yield must be stated appropriately taking into account the length of the particular accrual period. Principles similar to those in § 1.1272-1(b)(4) apply in determining the bond premium allocable to an accrual period.

(4) *Bond premium in excess of qualified stated interest.* If the bond premium allocable to an accrual period exceeds the qualified stated interest allocable to the accrual period for that bond, the excess is carried forward to the next accrual period and offsets qualified stated interest in that accrual period to the extent of the disallowed amount. If the bond premium carried forward to an accrual period exceeds the qualified stated interest for that period, the excess is carried forward to subsequent accrual periods, beginning with the next accrual period, and is used to offset qualified stated interest in those accrual periods to the extent of the excess.

(5) *Additional rules for certain bonds.* Additional rules apply to determine the amortization of bond premium on a variable rate debt instrument and on a bond that provides for certain alternative payment schedules. See § 1.171-3.

(b) *Adjusted acquisition price.* The adjusted acquisition price of a bond at the beginning of the first accrual period is the holder's basis as determined under § 1.171-1(e). Thereafter, the

adjusted acquisition price is the holder's basis in the bond decreased by—

(1) The amount of bond premium previously allocable under paragraph (a)(3) of this section; and

(2) The amount of any payment previously made on the bond other than a payment of qualified stated interest.

(c) *Examples.* The following examples illustrate the rules of this section. Each example assumes the holder uses the calendar year as its taxable year and has elected to amortize bond premium, effective for all relevant taxable years. In addition, each example assumes a 30-day month and 360-day year. Although, for purposes of simplicity, the yield as stated is rounded to two decimal places, the computations do not reflect this rounding convention.

Example 1. Taxable bond—(i) Facts. On February 1, 1999, A purchases for \$110,000 a taxable bond maturing on February 1, 2006, with a stated principal amount of \$100,000, payable at maturity. The bond provides for unconditional payments of interest of \$10,000, payable on February 1 of each year. A uses the cash receipts and disbursements method of accounting, and A decides to use annual accrual periods ending on February 1 of each year.

(ii) *Amount of bond premium.* The interest payments on the bond are qualified stated interest. Therefore, the sum of all amounts payable on the bond (other than the interest payments) is \$100,000. Under § 1.171-1, the amount of bond premium is \$10,000 (\$110,000-\$100,000).

(iii) *Bond premium allocable to the first accrual period.* Based on the remaining payment schedule of the bond and A's basis in the bond, A's yield is 8.07 percent, compounded annually. The bond premium allocable to the accrual period ending on February 1, 2000, is the excess of the qualified stated interest allocable to the period (\$10,000) over the product of the adjusted acquisition price at the beginning of the period (\$110,000) and A's yield (8.07 percent, compounded annually). Therefore, the bond premium allocable to the accrual period is \$1,118.17 (\$10,000-\$8,881.83).

(iv) *Premium used to offset interest.* Although A receives an interest payment of \$10,000 on February 1, 2000, A only includes in income \$8,881.83, the qualified stated interest allocable to the period (\$10,000) offset with bond premium allocable to the period (\$1,118.17). Under § 1.1016-5(b), A's basis in the bond is reduced by \$1,118.17 on February 1, 2000.

Example 2. Alternative accrual periods—(i) Facts. The facts are the same as in *Example 1* of this paragraph (c) except that A decides to use semiannual accrual periods ending on February 1 and August 1 of each year.

(ii) *Bond premium allocable to the first accrual period.* Based on the remaining payment schedule of the bond and A's basis in the bond, A's yield is 7.92 percent, compounded semiannually. The bond premium allocable to the accrual period ending on August 1, 1999, is the excess of the qualified stated interest allocable to the

period (\$5,000) over the product of the adjusted acquisition price at the beginning of the period (\$110,000) and A's yield, stated appropriately taking into account the length of the accrual period (7.92 percent/2). Therefore, the bond premium allocable to the accrual period is \$645.29 (\$5,000 - \$4,354.71). Although the accrual period ends on August 1, 1999, the qualified stated interest of \$5,000 is not taken into income until February 1, 2000, the date it is received. Likewise, the bond premium of \$645.29 is not taken into account until February 1, 2000. The adjusted acquisition price of the bond on August 1, 1999, is \$109,354.71 (the adjusted acquisition price at the beginning of the period (\$110,000) less the bond premium allocable to the period (\$645.29)).

(iii) *Bond premium allocable to the second accrual period.* Because the interval between payments of qualified stated interest contains more than one accrual period, the adjusted acquisition price at the beginning of the second accrual period must be adjusted for the accrued but unpaid qualified stated interest. Therefore, the adjusted acquisition price on August 1, 1999, is \$114,354.71 (\$109,354.71+\$5,000). The bond premium allocable to the accrual period ending on February 1, 2000, is the excess of the qualified stated interest allocable to the period (\$5,000) over the product of the adjusted acquisition price at the beginning of the period (\$114,354.71) and A's yield, stated appropriately taking into account the length of the accrual period (7.92 percent/2). Therefore, the bond premium allocable to the accrual period is \$472.88 (\$5,000 - \$4,527.12).

(iv) *Premium used to offset interest.* Although A receives an interest payment of \$10,000 on February 1, 2000, A only includes in income \$8,881.83, the qualified stated interest of \$10,000 (\$5,000 allocable to the accrual period ending on August 1, 1999, and \$5,000 allocable to the accrual period ending on February 1, 2000) offset with bond premium of \$1,118.17 (\$645.29 allocable to the accrual period ending on August 1, 1999, and \$472.88 allocable to the accrual period ending on February 1, 2000). As indicated in *Example 1* of this paragraph (c), this same amount would be taken into income at the same time had A used annual accrual periods.

Example 3. Holder uses accrual method of accounting—(i) Facts. The facts are the same as in *Example 1* of this paragraph (c) except that A uses the accrual method of accounting. Thus, for the accrual period ending on February 1, 2000, the qualified stated interest allocable to the period is \$10,000, and the bond premium allocable to the period is \$1,118.17. Because the accrual period extends beyond the end of A's taxable year, A must allocate these amounts between the two taxable years.

(ii) *Amounts allocable to the first taxable year.* The qualified stated interest allocable to the first taxable year is \$9,166.67 (\$10,000 × 11/12). The bond premium allocable to the first taxable year is \$1,024.99 (\$1,118.17 × 11/12).

(iii) *Premium used to offset interest.* For 1999, A includes in income \$8,141.68, the

qualified stated interest allocable to the period (\$9,166.67) offset with bond premium allocable to the period (\$1,024.99). Under § 1.1016-5(b), A's basis in the bond is reduced by \$1,024.99 in 1999.

(iv) *Amounts allocable to the next taxable year.* The remaining amounts of qualified stated interest and bond premium allocable to the accrual period ending on February 1, 2000, are taken into account for the taxable year ending on December 31, 2000.

Example 4. Tax-exempt obligation—(i) Facts. On January 15, 1999, C purchases for \$120,000 a tax-exempt obligation maturing on January 15, 2006, with a stated principal amount of \$100,000, payable at maturity. The obligation provides for unconditional payments of interest of \$9,000, payable on January 15 of each year. C uses the cash receipts and disbursements method of accounting, and C decides to use annual accrual periods ending on January 15 of each year.

(ii) *Amount of bond premium.* The interest payments on the obligation are qualified stated interest. Therefore, the sum of all amounts payable on the obligation (other than the interest payments) is \$100,000. Under § 1.171-1, the amount of bond premium is \$20,000 (\$120,000 - \$100,000).

(iii) *Bond premium allocable to the first accrual period.* Based on the remaining payment schedule of the obligation and C's basis in the obligation, C's yield is 5.48 percent, compounded annually. The bond premium allocable to the accrual period ending on January 15, 2000, is the excess of the qualified stated interest allocable to the period (\$9,000) over the product of the adjusted acquisition price at the beginning of the period (\$120,000) and C's yield (5.48 percent, compounded annually). Therefore, the bond premium allocable to the accrual period is \$2,420.55 (\$9,000 - \$6,579.45).

(iv) *Premium used to offset interest.* Although C receives an interest payment of \$9,000 on January 15, 2000, C only receives tax-exempt interest income of \$6,579.45, the qualified stated interest allocable to the period (\$9,000) offset with bond premium allocable to the period (\$2,420.55). Under § 1.1016-5(b), C's basis in the obligation is reduced by \$2,420.55 on January 15, 2000.

§ 1.171-3 Special rules for certain bonds.

(a) *Variable rate debt instruments.* Bond premium on a variable rate debt instrument is determined by reference to the stated redemption price at maturity of the equivalent fixed rate debt instrument constructed for the variable rate debt instrument. In addition, a holder allocates bond premium on a variable rate debt instrument among the accrual periods by reference to the equivalent fixed rate debt instrument. The equivalent fixed rate debt instrument is determined as of the date the variable rate debt instrument is acquired by the holder and is constructed using the principles of § 1.1275-5(e). See paragraph (d) *Example 1* of this section.

(b) *Yield and remaining payment schedule of certain bonds subject to*

contingencies—(1) *Applicability*. This paragraph (b) provides rules that apply in determining the yield and remaining payment schedule of certain bonds that provide for an alternative payment schedule (or schedules) applicable upon the occurrence of a contingency (or contingencies). This paragraph (b) applies, however, only if the timing and amounts of the payments that comprise each payment schedule are known as of the date the holder acquires the bond (the *acquisition date*) and the bond is subject to paragraph (b)(2), (3), or (4) of this section. A bond does not provide for an alternative payment schedule merely because there is a possibility of impairment of a payment (or payments) by insolvency, default, or similar circumstances. See § 1.1275-4 for the treatment of a bond that provides for a contingency that is not described in this paragraph (b).

(2) *Remaining payment schedule that is significantly more likely than not to occur*. If, based on all the facts and circumstances as of the acquisition date, a single remaining payment schedule for a bond is significantly more likely than not to occur, this remaining payment schedule is used to determine and amortize bond premium under §§ 1.171-1 and 1.171-2.

(3) *Mandatory sinking fund provision*. Notwithstanding paragraph (b)(2) of this section, if a bond is subject to a mandatory sinking fund provision described in § 1.1272-1(c)(3) and the use and terms of the provision meet reasonable commercial standards, the provision is ignored for purposes of determining and amortizing bond premium under §§ 1.171-1 and 1.171-2.

(4) *Treatment of certain options*—(i) *Applicability*. Notwithstanding paragraphs (b) (2) and (3) of this section, the rules of this paragraph (b)(4) determine the remaining payment schedule of a bond that provides the holder or issuer with an unconditional option or options, exercisable on one or more dates during the remaining term of the bond, to alter the bond's remaining payment schedule.

(ii) *Operating rules*. A holder determines the remaining payment schedule of a bond by assuming that each option will (or will not) be exercised under the following rules:

(A) *Issuer options*. The issuer of a tax-exempt obligation is deemed to exercise or not exercise an option or combination of options in the manner that minimizes the holder's yield on the obligation. The issuer of a taxable bond is deemed to exercise or not exercise an option or combination of options in the manner that maximizes the holder's yield on the bond.

(B) *Holder options*. A holder is deemed to exercise or not exercise an option or combination of options in the manner that maximizes the holder's yield on the bond.

(C) *Multiple options*. If both the issuer and the holder have options, the rules of paragraphs (b)(4)(ii) (A) and (B) of this section are applied to the options in the order that they may be exercised. Thus, the deemed exercise of one option may eliminate other options that are later in time.

(5) *Subsequent adjustments*—(i) *In general*. Except as provided in paragraph (b)(5)(ii) of this section, if a contingency described in this paragraph (b) (including the exercise of an option described in paragraph (b)(4) of this section) actually occurs or does not occur, contrary to the assumption made pursuant to this paragraph (b) (a *change in circumstances*), then solely for purposes of section 171, the bond is treated as retired and reacquired by the holder on the date of the change in circumstances for an amount equal to the adjusted acquisition price of the bond as of that date. If, however, the change in circumstances results in a substantially contemporaneous pro-rata prepayment as defined in § 1.1275-2(f)(2), the pro-rata prepayment is treated as a payment in retirement of a portion of the bond. See paragraph (d) *Example 2* of this section. (ii) *Bond premium deduction on the issuer's call of a taxable bond*. If a change in circumstances results from an issuer's call of a taxable bond or a partial call that is a pro-rata prepayment, the holder may deduct as bond premium an amount equal to the excess, if any, of the adjusted acquisition price of the bond over the greater of the amount received on redemption or the amount payable on maturity.

(c) *Remote and incidental contingencies*. For purposes of determining and amortizing bond premium, if a bond provides for a contingency that is remote or incidental (within the meaning of § 1.1275-2(h)), the contingency is taken into account under the rules for remote and incidental contingencies in § 1.1275-2(h).

(d) *Examples*. The following examples illustrate the rules of this section. Each example assumes the holder uses the calendar year as its taxable year and, except as otherwise stated, has elected to amortize bond premium, effective for all relevant taxable years. In addition, each example assumes a 30-day month and 360-day year. Although, for purposes of simplicity, the yield as stated is rounded to two decimal places,

the computations do not reflect this rounding convention.

Example 1. Variable rate debt instrument—

(i) *Facts*. On March 1, 1999, E purchases for \$110,000 a taxable bond maturing on March 1, 2007, with a stated principal amount of \$100,000, payable at maturity. The bond provides for unconditional payments of interest on March 1 of each year based on the percentage appreciation of a nationally-known commodity index. On March 1, 1999, it is reasonably expected that the bond will yield 12 percent, compounded annually. E uses the cash receipts and disbursements method of accounting, and E decides to use annual accrual periods ending on March 1 of each year. Assume that the bond is a variable rate debt instrument under § 1.1275-5.

(ii) *Amount of bond premium*. Because the bond is a variable rate debt instrument, E determines and amortizes its bond premium by reference to the equivalent fixed rate debt instrument constructed for the bond as of March 1, 1999. Because the bond provides for interest at a single objective rate that is reasonably expected to yield 12 percent, compounded annually, the equivalent fixed rate debt instrument for the bond is an eight-year bond with a principal amount of \$100,000, payable at maturity. It provides for annual payments of interest of \$12,000. E's basis in the equivalent fixed rate debt instrument is \$110,000. The sum of all amounts payable on the equivalent fixed rate debt instrument (other than payments of qualified stated interest) is \$100,000. Under § 1.171-1, the amount of bond premium is \$10,000 (\$110,000-\$100,000).

(iii) *Bond premium allocable to each accrual period*. E allocates bond premium to the remaining accrual periods by reference to the payment schedule on the equivalent fixed rate debt instrument. Based on the payment schedule of the equivalent fixed rate debt instrument and E's basis in the bond, E's yield is 10.12 percent, compounded annually. The bond premium allocable to the accrual period ending on March 1, 2000, is the excess of the qualified stated interest allocable to the period for the equivalent fixed rate debt instrument (\$12,000) over the product of the adjusted acquisition price at the beginning of the period (\$110,000) and E's yield (10.12 percent, compounded annually). Therefore, the bond premium allocable to the accrual period is \$870.71 (\$12,000 - \$11,129.29). The bond premium allocable to all the accrual periods is listed in the following schedule:

Accrual period ending	Adjusted acquisition price at beginning of accrual period	Premium allocable to accrual period
3/1/00	\$110,000.00	\$870.71
3/1/01	109,129.29	958.81
3/1/02	108,170.48	1,055.82
3/1/03	107,114.66	1,162.64
3/1/04	105,952.02	1,280.27
3/1/05	104,671.75	1,409.80
3/1/06	103,261.95	1,552.44
3/1/07	101,709.51¶	1,709.51
		10,000.00

(iv) *Qualified stated interest for each accrual period.* Assume the bond actually pays the following amounts of qualified stated interest:

Accrual period ending	Qualified stated interest
3/1/00	\$15,000.00
3/1/01	0.00
3/1/02	0.00
3/1/03	10,000.00
3/1/04	8,000.00
3/1/05	12,000.00
3/1/06	15,000.00

Accrual period ending	Qualified stated interest
3/1/07	8,500.00

(v) *Premium used to offset interest.* E's interest income for each accrual period is determined by offsetting the qualified stated interest allocable to the period with the bond premium allocable to the period. For the accrual period ending on March 1, 2000, E includes in income \$14,129.29, the qualified stated interest allocable to the period (\$15,000) offset with the bond premium allocable to the period (\$870.71). For the accrual period ending on March 1, 2001, the

bond premium allocable to the period (\$958.81) exceeds the qualified stated interest allocable to the period (\$0). Therefore, the excess of \$958.81 (\$958.81 – \$0) is carried forward to the next accrual period. For the next accrual period, the qualified stated interest for the period is insufficient to offset the bond premium allocable to the period (\$1,055.82) and the amount carried forward from the prior period (\$958.81). Thus, \$2,014.63 (\$1,055.82 + \$958.81) is carried forward to the accrual period ending on March 1, 2003, and offsets qualified stated interest allocable to that period. The amount E includes in income for each accrual period is shown in the following schedule:

Accrual period ending	Qualified stated interest	Premium allocable to accrual period	Interest income	Premium carry forward
3/1/00	\$15,000.00	\$870.71	\$14,129.29
3/1/01	0.00	958.81	0.00	958.81
3/1/02	0.00	1,055.82	0.00	2,014.63
3/1/03	10,000.00	1,162.64	6,822.73
3/1/04	8,000.00	1,280.27	6,719.73
3/1/05	12,000.00	1,409.80	10,590.20
3/1/06	15,000.00	1,552.44	13,447.56
3/1/07	8,500.00	1,709.51	6,790.49
		10,000.00		

Example 2. Partial call that results in a pro-rata prepayment—(i) Facts. On April 1, 1999, M purchases for \$110,000 N's taxable bond maturing on April 1, 2006, with a stated principal amount of \$100,000, payable at maturity. The bond provides for unconditional payments of interest of \$10,000, payable on April 1 of each year. N has the option to call all or part of the bond on April 1, 2001, at a 5 percent premium over the principal amount. M uses the cash receipts and disbursements method of accounting.

(ii) *Determination of yield and the remaining payment schedule.* M's yield determined without regard to the call option is 8.07 percent, compounded annually. M's yield determined by assuming N exercises its call option is 6.89 percent, compounded annually. Under paragraph (b)(4)(ii)(A) of this section, it is assumed N will not exercise the call option because exercising the option would minimize M's yield. Thus, for purposes of determining and amortizing bond premium, the bond is assumed to be a seven-year bond with a single principal payment at maturity of \$100,000.

(iii) *Amount of bond premium.* The interest payments on the bond are qualified stated interest. Therefore, the sum of all amounts payable on the bond (other than the interest payments) is \$100,000. Under § 1.171–1, the amount of bond premium is \$10,000 (\$110,000–\$100,000).

(iv) *Bond premium allocable to the first two accrual periods.* For the accrual period ending on April 1, 2000, M includes in income \$8,881.83, the qualified stated interest allocable to the period (\$10,000) offset with bond premium allocable to the period (\$1,118.17). The adjusted acquisition price on April 1, 2000, is \$108,881.83 (\$110,000–\$1,118.17). For the accrual period

ending on April 1, 2001, M includes in income \$8,791.54, the qualified stated interest allocable to the period (\$10,000) offset with bond premium allocable to the period (\$1,208.46). The adjusted acquisition price on April 1, 2001, is \$107,673.37 (\$108,881.83–\$1,208.46).

(v) *Partial call.* Assume N calls one-half of M's bond for \$52,500 on April 1, 2001. Because it was assumed the call would not be exercised, the call is a change in circumstances. However, the partial call is also a pro-rata prepayment within the meaning of § 1.1275–2(f)(2). As a result, the call is treated as a retirement of one-half of the bond. Under paragraph (b)(5)(ii) of this section, M may deduct \$1,336.68, the excess of its adjusted acquisition price in the retired portion of the bond (\$107,673.37/2, or \$53,836.68) over the amount received on redemption (\$52,500). M's adjusted basis in the portion of the bond that remains outstanding is \$53,836.68 (\$107,673.37 – \$53,836.68).

§ 1.171–4 Election to amortize bond premium on taxable bonds.

(a) *Time and manner of making the election—(1) In general.* A holder makes the election to amortize bond premium by offsetting interest income with bond premium in the holder's timely filed federal income tax return for the first taxable year to which the holder desires the election to apply. The holder should attach to the return a statement that the holder is making the election under this section.

(2) *Coordination with OID election.* If a holder makes an election under § 1.1272–3 for a bond with bond

premium, the holder is deemed to have made the election under this section.

(b) *Scope of election.* The election under this section applies to all taxable bonds held during or after the taxable year for which the election is made.

(c) *Election to amortize made in a subsequent taxable year—(1) In general.* If a holder elects to amortize bond premium and holds a taxable bond acquired before the taxable year for which the election is made, the holder may not amortize amounts that would have been amortized in prior taxable years had an election been in effect for those prior years.

(2) *Example.* The following example illustrates the rule of this paragraph (c).

Example—(i) Facts. On May 1, 1999, C purchases for \$130,000 a taxable bond maturing on May 1, 2006, with a stated principal amount of \$100,000, payable at maturity. The bond provides for unconditional payments of interest of \$15,000, payable on May 1 of each year. C uses the cash receipts and disbursements method of accounting and the calendar year as its taxable year. C has not previously elected to amortize bond premium, but does so for 2002.

(ii) *Amount to amortize.* C's basis for determining loss on the sale or exchange of the bond is \$130,000. Thus, under § 1.171–1, the amount of bond premium is \$30,000. Under § 1.171–2, if a bond premium election were in effect for the prior taxable years, C would have amortized \$3,257.44 of bond premium on May 1, 2000, and \$3,551.68 of bond premium on May 1, 2001, based on annual accrual periods ending on May 1.

Thus, for 2002 and future years to which the election applies, C may amortize only \$23,190.88 (\$30,000-\$3,257.44-\$3,551.68).

(d) *Revocation of election.* The election under this section may not be revoked unless approved by the Commissioner.

Par. 6. Section 1.171-5 is added to read as follows:

§ 1.171-5 Effective date and transition rules.

(a) *Effective date*—(1) *In general.* This section and §§ 1.171-1 through 1.171-4 apply to bonds acquired on or after the date 60 days after the date final regulations are published in the Federal Register. However, if a holder makes the election under § 1.171-4 for the taxable year containing the date 60 days after the date final regulations are published in the Federal Register, this section and §§ 1.171-1 through 1.171-4 apply to bonds held on or after the first day of that taxable year.

(2) *Transition rule for use of constant yield.* Notwithstanding paragraph (a)(1) of this section, § 1.171-2(a)(3) (providing that the bond premium allocable to an accrual period is determined with reference to a constant yield) does not apply to a bond issued before September 28, 1985.

(b) *Coordination with existing election.* A holder is deemed to have made the election under § 1.171-4 if the holder elected to amortize bond premium under section 171 and that election is effective on the date 60 days after the date final regulations are published in the Federal Register.

(c) *Accounting method changes*—(1) *Consent to change.* A holder required to change its method of accounting for bond premium to comply with §§ 1.171-1 through 1.171-3 must secure the consent of the Commissioner in accordance with the requirements of § 1.446-1(e). Paragraph (c)(2) of this section provides the Commissioner's automatic consent for certain changes. A holder making the election does not need the Commissioner's consent.

(2) *Automatic consent.* The Commissioner grants consent for a holder to change its method of accounting for bond premium with respect to bonds to which §§ 1.171-1 through 1.171-3 apply. The consent granted by this paragraph (c)(2) applies provided—

(i) The holder elected to amortize bond premium under section 171 for a taxable year prior to the taxable year containing the date 60 days after the date final regulations are published in the Federal Register and that election has not been revoked;

(ii) The change is made for the first taxable year for which the holder must account for a bond under §§ 1.171-1 through 1.171-3; and

(iii) The holder attaches to its return for the taxable year containing the change a statement that it has changed its method of accounting under this section.

Par. 7. Section 1.1016-5 is amended by revising paragraph (b) to read as follows:

§ 1.1016-5 Miscellaneous adjustments to basis.

* * * * *

(b) *Amortizable bond premium.* A holder's basis in a bond is reduced by the amount of bond premium used to offset qualified stated interest income under § 1.171-2. This reduction occurs when the holder takes the qualified stated interest into account under the holder's regular method of accounting. In addition, a holder's basis in a taxable bond is reduced by the amount of bond premium allowed as a deduction under § 1.171-3(b)(5)(ii) (relating to the issuer's call of a taxable bond).

* * * * *

§ 1.1016-9 [Removed]

Par. 8. Section 1.1016-9 is removed. Margaret Milner Richardson,
Commissioner of Internal Revenue.
[FR Doc. 96-16350 Filed 6-26-96; 8:45 am]
BILLING CODE 4830-01-P

26 CFR Part 1

[FI-28-96]

RIN 1545-AU39

Arbitrage Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the arbitrage restrictions applicable to tax-exempt bonds issued by state and local governments. Changes to applicable law were made by the Tax Reform Act of 1986. These proposed regulations affect issuers of tax-exempt bonds and would provide guidance for complying with the arbitrage regulations.

DATES: Written comments must be received by September 25, 1996. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Thursday, October 24, 1996, at 10 a.m. must be received by October 3, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (FI-28-96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (FI-28-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the Commissioner's Conference Room, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Loretta J. Finger, (202) 622-3980; concerning submissions and the hearing, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collections 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, T:FP, Washington, DC 20224. Comments on the collections of information should be received by August 26, 1996.

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

The collections of information are in proposed § 1.148-5(d)(6) (v), (vi), and (vii). This information is required by the IRS to verify compliance with section 148. This information will be used to establish a rebuttable presumption that a Treasury obligation is purchased at fair market value. The likely respondents and/or recordkeepers are state or local governments. Responses to this collection of information are required to establish a rebuttable presumption that a Treasury obligation is purchased at fair market value.

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