

otherwise identical terms) issued to the creditor for the deemed satisfaction proceeds. Similar principles apply to other transactions and to transactions involving intercompany obligations other than debt.

* * * * *

(4) * * *

(i) * * *

(B) *Exception.* This paragraph (g)(4) does not apply to an obligation if the obligation becomes an intercompany obligation by reason of an event described in § 1.108-2(e) (exceptions to the application of section 108(e)(4)).

* * * * *

(5) *Examples.*

* * * * *

Example 2. Nonrecognition transactions.

(a) *Facts.* On January 1 of Year 1, B borrows \$100 from S in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of Year 5. B fully performs its obligations with the same tax consequences as described in paragraph (a) of Example 1. At the end of Year 3, S transfers the note to a newly formed subsidiary, Newco, in exchange for Newco stock. Section 351 applies to the exchange. The interest is adequate stated interest within the meaning of section 1274(c)(2) (determined on the date of the transfer). Neither B's note nor Newco's stock is publicly traded.

(b) *Deemed satisfaction and reissuance of note.* Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied for \$100 (the issue price of the reissued note, determined under section 1273(b)(4)) immediately before S's transfer of the note to Newco. Zero gain or loss is recognized by S and B on the deemed satisfaction of B's note. S is then treated as transferring the deemed proceeds of the satisfaction of the note (\$100) to Newco in exchange for the Newco stock. S's basis in the Newco stock is \$100. Under paragraph (g)(3)(iii) of this section, B is treated as reissuing the note to Newco for \$100. Newco's basis in B's note is \$100.

(c) *Intercompany obligation transferred in section 332 transaction.* The facts are the same as in paragraph (a) of this Example 2, except that S transfers the note to P in a complete liquidation under section 332. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied for \$100 (the issue price of the reissued note, determined under section 1273(b)(4)) immediately before S's transfer of the note to P. Zero gain or loss is recognized by S and B on the deemed satisfaction of the note. S is then treated as transferring the deemed proceeds of the satisfaction of the note, with its other assets, to P in complete liquidation. Under paragraph (g)(3)(iii) of this section, B is treated as reissuing the note to P for \$100. P's basis in the note is \$100.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98-32930 Filed 12-18-98; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-113694-98]

RIN 1545-AW59

Increase in Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations providing guidance relating to the increase from \$3,500 to \$5,000 of the limit on distributions from qualified retirement plans that can be made without participant consent. This increase is contained in the Taxpayer Relief Act of 1997. The text of those temporary regulations also serves as a portion of the text of these proposed regulations. In addition, these proposed regulations propose the elimination, for all distributions, of the "lookback rule" pursuant to which the qualified plan benefits of certain participants are deemed to exceed this limit on mandatory distributions. These proposed regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans. The text of those temporary regulations also serves as a portion of the text of these proposed regulations. **DATES:** Written comments and requests for a public hearing must be received by March 22, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-113694-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-113694-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Michael J. Karlan, (202) 622-6030 (not a toll-free

call); concerning submissions, Michael Slaughter, (202) 622-7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to the increase from \$3,500 to \$5,000 of the "cash-out limit" described in sections 411(a)(7), 411(a)(11), and 417(e)(1) of the Internal Revenue Code, as amended by section 1071 of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788 (1997).

The text of the temporary regulations also serves as a portion of the text of the proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

As also discussed in the preamble to the temporary regulations, § 1.411(a)-11(c)(3), interpreting the law prior to the enactment of TRA '97, provides that the written consent of a participant is required before the commencement of the distribution of any portion of the participant's accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than \$3,500. If the present value does not exceed \$3,500, the consent requirements are deemed satisfied, and the plan may distribute that portion to the participant as a single sum. The regulation further provides that, if the present value determined at the time of a distribution to the participant exceeds \$3,500, then the present value at any subsequent time shall be deemed to exceed \$3,500; this is commonly referred to as the "lookback rule." Section 1.417(e)-1(b)(2)(i) includes a parallel lookback rule.

The temporary regulations remove the lookback rule under section 411(a)(11) for most distributions, but preserve the rule for distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution is still payable.

These proposed regulations remove the lookback rule under §§ 1.411(a)-11(c)(3) and 1.417(e)-1(b)(2)(i). In accordance with section 417(e)(1), these proposed regulations also provide that, in the case of plans subject to sections 401(a)(11) and 417, consent is required after the annuity starting date for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value. Where only a portion of an accrued benefit is being distributed,

this provision applies only to that portion (and not to the portion with respect to which no distributions are being made).

Under this removal of the lookback rule, the present value of a participant's nonforfeitable accrued benefit could be distributed without consent if the present value does not exceed \$5,000, even if the present value of the participant's nonforfeitable accrued benefit exceeded \$5,000 at the time of a previous distribution. Thus, if the present value of a participant's nonforfeitable accrued benefit previously had been \$6,000, but is presently \$4,000, these proposed regulations would permit the plan to be amended to permit the present value of that participant's nonforfeitable accrued benefit to be distributed without consent (provided that the distribution would not fail to satisfy section 417(e)(1)). The complete removal of the lookback rule described in these proposed regulations would become effective 90 days after the publication of final regulations.

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) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the 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 Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and

place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Michael J. Karlan, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). 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 an entry in numerical order to read in part as follows:

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

§ 1.411(a)–7 also issued under 26 U.S.C. 411(a)(7)(B)(i). * * *

Par. 2. Section 1.411(a)–7 is amended by revising paragraphs (d)(4)(i) and (d)(4)(vi) to read as follows:

§ 1.411(a)–7 Definitions and special rules.
* * * * *

(d) *Rules relating to certain distributions and cash-outs of accrued benefits.* * * *

(4) *Certain cash-outs of accrued benefits.* (i) and (vi) [The text of proposed paragraphs (d)(4)(i) and (vi) is the same as the text of § 1.411(a)–7T(d)(4)(i) and (vi) published elsewhere in this issue of the **Federal Register**.]
* * * * *

Par. 3. Section 1.411(a)–11 is amended by revising paragraph (c)(3) to read as follows:

§ 1.411(a)–11 Restriction and valuation of distributions.
* * * * *

(c) * * *
(3) *Cash-out limit.* (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose

must be determined in the same manner as under section 417(e); see § 1.417(e)–1(d).

(ii) [The text of proposed paragraph (c)(3)(ii) is the same as the text of § 1.411(a)–11T(c)(3)(ii) published elsewhere in this issue of the **Federal Register**.]
* * * * *

Par. 4. Section 1.417(e)–1 is amended by revising the last sentence of paragraph (b)(2)(i) to read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.
* * * * *

(b) * * *
(2) * * * (i) * * * After the annuity starting date, consent is required for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity regardless of the amount of such present value.
* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 98–32929 Filed 12–18–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–120168–97]

RIN 1545–AW73

Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the due diligence requirements in determining eligibility for the earned income credit for paid preparers of federal income tax returns or claims for refund. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by March 22, 1999. Outlines of