

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 184

[Docket No. 99P-5332]

#### Substances Affirmed as Generally Recognized as Safe: Menhaden Oil; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of February 26, 2002 (67 FR 8744). The document proposes to amend the regulation on menhaden oil which has been affirmed as generally recognized as safe as a direct human food ingredient with specific limitations. The document was published with some errors in the **FOR FURTHER INFORMATION CONTACT** section. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:** Andrew Zajac, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 202-418-3095.

**SUPPLEMENTARY INFORMATION:** In the FR Doc. 02-4327, appearing in the **Federal Register** of Tuesday, February 26, 2002, the following correction is made:

1. On page 8744, in the third column, **FOR FURTHER INFORMATION CONTACT** section is corrected to read: "Andrew Zajac, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 202-418-3095."

Dated: March 29, 2002.

**Leslye M. Fraser,**  
*Acting Director, Regulations and Policy,*  
*Center for Food Safety and Applied Nutrition.*  
[FR Doc. 02-9363 Filed 4-16-02; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-108697-02]

RIN 1545-BA60

#### Required Distributions From Retirement Plans

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

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

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance concerning required minimum distributions for defined benefit plans and annuity contracts providing benefits under qualified plans, individual retirement plans, and section 403(b) contracts. The regulations will provide the public with guidance necessary to comply with the law and will affect administrators of, participants in, and beneficiaries of qualified plans; institutions that sponsor and individuals who administer individual retirement plans, individuals who use individual retirement plans for retirement income, and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts. The text of those temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments must be received by July 16, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-108697-02), 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:ITA:RU (REG-108697-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at <http://www.irs.gov/regs>.

**FOR FURTHER INFORMATION CONTACT:** Cathy Vohs at 622-6090.

#### SUPPLEMENTARY INFORMATION:

##### Background

Final and Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 401(a)(9). The temporary regulations (§ 1.401(a)(9)-6T) contain rules relating to minimum distribution requirements for defined benefit plans and annuity contracts purchased with an employee's account balance under a defined contribution plan. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because § 1.401(a)(9)-6 imposes no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) 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 Requests for a 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 may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal authors of these regulations are Marjorie Hoffman and Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

**List of Subjects 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 an entry in numerical order to read in part as follows:

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

§ 1.401(a)(9)–6 is also issued under 26 U.S.C. 401(a)(9). \* \* \*

**Par. 2.** Section 1.401(a)(9)–6 is added to read as follows:

**§ 1.401(a)(9)–6 Required minimum distributions from defined benefit plans.**

[The text of proposed § 1.401(a)(9)–6 is the same as the text of § 1.401(a)(9)–6T published elsewhere in this issue of the **Federal Register**].

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02–8964 Filed 4–16–02; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG–113526–98; REG–105369–00]

RIN 1545–AW44; 1545–AY12

**Arbitrage and Private Activity Restrictions Applicable to Tax-exempt Bonds Issued by State and Local Governments; Investment-type Property (Prepayment); Private Loan (Prepayment)**

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

**ACTION:** Withdrawal of previous notice of proposed rulemaking; notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed amendments to the final regulations on the arbitrage and private

activity restrictions applicable to tax-exempt bonds issued by State and local governments. The proposed amendments affect issuers of tax-exempt bonds and provide guidance on the definitions of investment-type property and private loan to help issuers comply with the arbitrage and private activity restrictions. This document also provides notice of a public hearing on these proposed regulations.

The previous notice of proposed rulemaking (REG–113526–98), published on August 25, 1999, relating to arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments, is withdrawn.

**DATES:** Written or electronic comments must be received by July 16, 2002. Outlines of topics to be discussed at the public hearing scheduled for September 24, 2002, at 10 a.m., must be received by September 10, 2002.

The previous notice of proposed rulemaking (REG–113526–98), published on August 25, 1999, relating to arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments, is withdrawn.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–105369–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–105369–00), courier's desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, submissions may be made electronically to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Johanna Som de Cerff, (202) 622–3980; concerning submissions and the hearing, Sonya Cruse, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains proposed amendments to 26 CFR part 1 (the proposed regulations). On August 25, 1999, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–113526–98) (64 FR 46320) (the 1999 proposed regulations) proposing to modify § 1.148–1(e) of the Income Tax Regulations to establish which prepayments for property or services give rise to investment-type property under section 148(b)(2)(D) of

the Internal Revenue Code (Code). Numerous written comments responding to the 1999 proposed regulations were received, and a public hearing was held on January 12, 2000. In response to the extensive comments, particularly with regard to certain natural gas prepayment transactions discussed below, the 1999 proposed regulations are withdrawn and amendments to § 1.148–1(e) are proposed in accordance with this notice of proposed rulemaking. This notice of proposed rulemaking also proposes corresponding amendments to § 1.141–5(c)(2) (relating to the private loan financing test).

**Explanation of Provisions***I. Existing Definition of Investment-type Property*

With certain exceptions, section 148 prohibits the use of proceeds of a tax-exempt bond issue to acquire investment property with a yield that materially exceeds the yield on the issue. Section 148(b)(2)(D) provides that the term *investment property* includes *investment-type property*. Section 148(b)(2)(D) was added to the Code by the Tax Reform Act of 1986, Pub. L. No. 99–514, 100 Stat. 2085 (1986) (1986 Act). The Conference Committee Report states that the legislation “expands the types of investments of bond proceeds that are subject to the arbitrage restrictions to include all investment-type property (including other than customary prepayments) \* \* \*.” H.R. Conf. Rep. No. 99–841, pt. 2, at 745.

As an economic matter, prepayments for property or services generally contain a built-in investment return. That is, if a buyer of property or services makes a cash payment to the seller in advance of the seller's performance, the buyer may expect to receive an implicit investment return based on the time value of money. In the case of a prepayment financed with tax-exempt bond proceeds, the presence of a built-in investment return raises the issue of whether the prepayment gives rise to investment-type property.

The existing regulations, at § 1.148–1(e)(2), contain rules for determining when a prepayment for property or services results in investment-type property. Under that provision, a prepayment generally gives rise to investment-type property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. However, a prepayment does not give rise to investment-type property under the existing regulations if (1) it is made