

The foregoing indicates that Congress did not intend for the cross-reference to the '40 Act to incorporate into section 851(b)(2) an expansive construction of the term "securities." Particularly important was the specific inclusion in the 1986 amendment of foreign-currency-related gains. If the '40 Act were read expansively, there would be no need for special mention of these gains, because they would be included in the provision for "other income . . . derived with respect to [the RIC's] business of investing in securities." Moreover, the authority given to Treasury to exclude from qualifying income "foreign currency gains which are not directly related to the company's principal business of investing in stock or securities" indicates that the reason for the special treatment for foreign currency was to facilitate a RIC's principal activity, namely investing in qualifying stock or securities, when the stock or securities are denominated in a foreign currency.

A construction of the term "securities" that excludes derivative contracts providing for a total return exposure to a commodity index is consistent with Congress' intent in amending section 851(b)(2) in 1986. Accordingly, because the underlying property is a commodity (or commodity index), the Derivatives that *R* enters into are not securities for purposes of section 851(b)(2).

2. Application of the "other income" provision.

R invests substantially all of the funds it receives from shareholders in debt instruments, which are securities for purposes of section 851(b)(2). Even though *R*'s Derivatives are not themselves securities for purposes of section 851(b)(2), income from the Derivatives counts toward the 90-percent test if it is "other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to [*R*'s] business of investing in" stock, securities, or currencies.

R, however, does not enter into the Derivatives in connection with a business

of investing in stock, securities, or currencies. Nor does *R* enter into the Derivatives in order to reduce or hedge the level of risk in a business of investing in stock, securities, or currencies. *R*'s business is to create investment exposure to changes in commodity prices, and the Derivatives are the primary vehicle for doing so. *R* owns the debt instruments to facilitate its business of providing this commodity-derivative exposure. Because *R*'s Derivatives are not themselves securities and because *R* does not enter into those contracts with respect to a business of investing in stock, securities, or currencies, income from the Derivatives is not qualifying income for purposes of section 851(b)(2).

HOLDING

A derivative contract with respect to a commodity index is not a security for purposes of section 851(b)(2). Under the facts above, *R*'s income from such a contract is not qualifying income for purposes of section 851(b)(2) because the income from the contract is not derived with respect to *R*'s business of investing in stocks, securities or currencies.

PROSPECTIVE APPLICATION

Under the authority of section 7805(b)(8), the holding of this revenue ruling will not be applied adversely with respect to amounts of income that a taxpayer recognizes on or before June 30, 2006.

DRAFTING INFORMATION

The principal author of this revenue ruling is Dale S. Collinson of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact him at (202) 622-3900 or Susan Thompson Baker at (202) 622-3930 (not toll-free calls).

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for January 2006.

Rev. Rul. 2006-4

This revenue ruling provides various prescribed rates for federal income tax purposes for January 2006 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the deemed rate of return for transfers made during calendar year 2006 to pooled income funds described in § 642(c)(5) that have been in existence for less than 3 taxable years immediately preceding the taxable year in which the transfer was made.

REV. RUL. 2006-4 TABLE 1
Applicable Federal Rates (AFR) for January 2006

| | <i>Period for Compounding</i> | | | |
|-------------------|-------------------------------|-------------------|------------------|----------------|
| | <i>Annual</i> | <i>Semiannual</i> | <i>Quarterly</i> | <i>Monthly</i> |
| <i>Short-term</i> | | | | |
| AFR | 4.38% | 4.33% | 4.31% | 4.29% |
| 110% AFR | 4.82% | 4.76% | 4.73% | 4.71% |
| 120% AFR | 5.27% | 5.20% | 5.17% | 5.14% |
| 130% AFR | 5.71% | 5.63% | 5.59% | 5.57% |
| <i>Mid-term</i> | | | | |
| AFR | 4.48% | 4.43% | 4.41% | 4.39% |
| 110% AFR | 4.93% | 4.87% | 4.84% | 4.82% |
| 120% AFR | 5.39% | 5.32% | 5.29% | 5.26% |
| 130% AFR | 5.84% | 5.76% | 5.72% | 5.69% |
| 150% AFR | 6.76% | 6.65% | 6.60% | 6.56% |
| 175% AFR | 7.90% | 7.75% | 7.68% | 7.63% |
| <i>Long-term</i> | | | | |
| AFR | 4.73% | 4.68% | 4.65% | 4.64% |
| 110% AFR | 5.22% | 5.15% | 5.12% | 5.10% |
| 120% AFR | 5.70% | 5.62% | 5.58% | 5.56% |
| 130% AFR | 6.17% | 6.08% | 6.03% | 6.00% |

REV. RUL. 2006-4 TABLE 2
Adjusted AFR for January 2006

| | <i>Period for Compounding</i> | | | |
|-------------------------|-------------------------------|-------------------|------------------|----------------|
| | <i>Annual</i> | <i>Semiannual</i> | <i>Quarterly</i> | <i>Monthly</i> |
| Short-term adjusted AFR | 3.17% | 3.15% | 3.14% | 3.13% |
| Mid-term adjusted AFR | 3.56% | 3.53% | 3.51% | 3.50% |
| Long-term adjusted AFR | 4.36% | 4.31% | 4.29% | 4.27% |

REV. RUL. 2006-4 TABLE 3
Rates Under Section 382 for January 2006

| | |
|--|-------|
| Adjusted federal long-term rate for the current month | 4.36% |
| Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.) | 4.40% |

REV. RUL. 2006-4 TABLE 4
Appropriate Percentages Under Section 42(b)(2) for January 2006

| | |
|--|-------|
| Appropriate percentage for the 70% present value low-income housing credit | 8.07% |
| Appropriate percentage for the 30% present value low-income housing credit | 3.46% |

REV. RUL. 2006-4 TABLE 5

Rate Under Section 7520 for January 2006

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

5.4%

REV. RUL. 2006-4 TABLE 6

Deemed Rate for Transfers to New Pooled Income Funds During 2006

Deemed rate of return for transfers during 2006 to pooled income funds that have been in existence for less than 3 taxable years

3.8%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2006. See Rev. Rul. 2006-4, page 264.

Section 1297.—Passive Foreign Investment Company

26 CFR 1.1297-3T: Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC (temporary).

T.D. 9232

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Guidance on Passive Foreign Investment Company (PFIC) Purging Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

SUMMARY: This document contains temporary regulations that provide certain elections for taxpayers that continue to be subject to the PFIC excess distribution regime of section 1291 even though the foreign corporation in which they own stock is no longer treated as a PFIC under section 1297(a) or (e). The regulations are necessary to provide guidance about purging the PFIC taint for such foreign

corporations. The regulations will affect U.S. persons that hold stock in a PFIC. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG-133446-03) on this subject in this issue of the Bulletin.

DATES: Effective Date: These regulations are effective December 8, 2005.

Applicability Date: For dates of applicability, see §§1.1291-9T(k), 1.1297-3T(f), and 1.1298-3T(f).

FOR FURTHER INFORMATION CONTACT: Ethan Atticks at (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1965. Responses to this collection of information are required to obtain a tax benefit.

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 OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the pream-

ble of the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin.

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.

Background

This document contains amendments to regulations under sections 1291(d)(2), 1297(e) and 1298(b)(1). The temporary regulations provide rules for a shareholder of a foreign corporation to make a deemed sale or a deemed dividend election under section 1298(b)(1) when section 1297(e) applies to a portion of the holding period. The temporary regulations also provide rules for such shareholders, or shareholders of foreign corporations that no longer meet the income or asset tests of section 1297(a), to make late deemed sale or deemed dividend elections.

Section 1297(e), added by the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 708), provides that a foreign corporation generally is not treated as a PFIC with respect to a shareholder during the qualified portion of the shareholder's holding period in the stock of the foreign corporation. The "qualified portion" is the portion of the shareholder's holding period which is after December 31, 1997, and during which the shareholder is a U.S. shareholder (as defined in section 951(b)) and the foreign corporation is a controlled foreign corporation. If the qualified portion of the U.S. shareholder's holding period in the stock of the foreign corporation is less than the shareholder's entire hold-