

# Instructions for Form 8926

(December 2008)



Department of the Treasury  
Internal Revenue Service

## Disqualified Corporate Interest Expense Disallowed Under Section 163(j) and Related Information

Section references are to the Internal Revenue Code unless otherwise noted.

### General Instructions

#### Purpose of Form

Corporations are allowed to claim deductions for interest paid to related persons not subject to tax on the interest received, subject to the limitations imposed by section 163(j), if applicable. Corporations subject to this rule may carry forward the disallowed interest to a succeeding taxable year.

#### Who Must File

A corporation must file Form 8926 if it has disqualified interest and has excess interest for the year.

Corporations that do not have excess interest expense (see *Excess Interest Expense* below) or disqualified interest (see *Disqualified Interest* below) are not required to file this form.

#### Definitions

Except as otherwise indicated, the following terms are defined as shown below.

#### Disqualified Interest

Disqualified interest is:

1. Interest paid or accrued to a related person if no tax is imposed with respect to the interest,
2. Interest paid or accrued to an unrelated person where a related person not subject to tax has guaranteed the debt and where no gross basis tax has been imposed by the United States on the interest, and
3. Interest paid or accrued by a taxable Real Estate Investment Trust (REIT) subsidiary to that REIT (as defined in section 856(l)).

#### Excess Interest Expense

Excess interest expense means the excess (if any) of the corporation's net interest expense over the sum of 50 percent of the adjusted taxable income

of the corporation plus any excess limitation carryforward.

#### Debt to Equity

The ratio of debt to equity is the ratio which the total indebtedness of the corporation bears to the sum of its money and all other assets reduced (but not below zero) by such total indebtedness. In determining the amount of the corporation's assets, noncash assets are taken into account at their adjusted bases.

Also, for this purpose, the amount taken into account with respect to any indebtedness with original issue discount (OID) shall be its issue price plus the portion of the OID previously accrued as determined under the rules of section 1272 (determined without regard to section 1272(a)(7) or (b)(7)).

**Indebtedness.** Debt is determined in accordance with generally applicable tax principles. Thus, in general, a contingent liability for financial accounting purposes that has not accrued for tax purposes will not be treated as a liability for purposes of section 163(j).

#### Related Person

A related person is any person who is related under sections 267(b) or 707(b)(1) to the taxpayer. For this purpose, the attribution rules of section 267(c) apply. In determining whether persons are related, the substance of ownership, rather than its form, controls.

You determine relatedness as of the date on which an item of interest expense accrues. Consequently, changes in the relationship between the payor corporation and the payee after the accrual date are irrelevant.

**Partnerships.** Any interest paid or accrued to a partnership which is a related person shall not be treated as paid or accrued to a related person if less than 10 percent of the profits and capital interest in the partnership are held by persons with respect to whom no tax is imposed by the United States on the interest paid.

**Exception.** This exception does not apply to any interest allocable to any partner in such partnership who is a related person to the taxpayer.

#### Affiliated Groups

All members of the same affiliated group (under section 1504(a)) shall be treated as one corporation.

Corporations filing on behalf of an affiliated group that have been following the 1991 proposed regulations that were never finalized should continue to follow the proposed regulations when filing the form. Corporations filing on behalf of an affiliated group who have not been following the proposed regulations should use a method which is reasonably consistent with section 163(j) when filing the form.

**Disallowed interest.** Any amount disallowed for any taxable year shall be treated as disqualified interest paid or accrued in the succeeding taxable year. See *Line 5e* on page 3 for further information.

#### Treaties

If any treaty between the U.S. and any foreign country reduces the rate of tax imposed on a partner's share of any interest paid or accrued to a partnership, that partner's interests in such partnership shall be treated as held in part by a tax-exempt person and in part by a taxable person.

In that situation, such an interest shall be treated as tax-exempt to the extent of the same proportion of such interest as (i) the rate of tax imposed without regard to such treaty, reduced by the rate of tax imposed under the treaty, bears to (ii) the rate of tax imposed without regard to the treaty.

If any treaty between the United States and a foreign country reduces the rate of tax imposed on the interest paid or accrued by the corporation, the interest is treated as disqualified interest to the extent of the amount of the interest multiplied by the ratio that the rate of tax imposed without regard to the treaty reduced by the rate of tax imposed by the treaty bears to the rate

of tax imposed without regard to the treaty.

## Pass-Thru Entities

In the case of any interest paid or accrued to a partnership, the determination of whether any tax imposed by the U.S. on such interest shall be made at the partner level. Other pass-thru entities other than a partnership, tiered partnerships, and other entities share the same rules.

## Net Interest Expense

A corporation's net interest expense is defined as the excess (if any) of (a) the interest paid or accrued by the corporation during the taxable year over (b) the amount of interest includible in the gross income of the corporation for that tax year.

## Disqualified Guarantee

A guarantee is any arrangement under which a person, directly or indirectly through an entity or otherwise, assures, on a conditional or unconditional basis, the payment of another person's obligation under any indebtedness.

A disqualified guarantee is any guarantee by a related person which is a tax-exempt organization or a foreign person.

A disqualified guarantee, however, does not include a guarantee where the interest on the indebtedness would have been subject to a net basis tax if the interest had been paid to the guarantor or if the corporation owns a controlling interest in the guarantor.

**Controlling Interest.** For this purpose, a controlling interest means direct or indirect ownership of at least 80 percent of the total voting power and value of all classes of stock of a corporation, or 80 percent of the profit and capital interests in any other entity. For rules applicable to interest in entities other than corporations, see section 267(c)(1) and (5).

**Gross basis and net basis taxation.** Gross basis tax means any tax which is determined by reference to the gross amount of any item of income without any reduction for any deduction. A net basis tax means any tax which is not a gross basis tax.

## Corporate Partners

With respect to corporations that own (directly or indirectly) an interest in a partnership,

- A corporation's distributive share of interest income paid or accrued to such

partnership shall be treated as interest income paid or accrued to such corporation,

- A corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and
- A corporation's share of the liabilities of the partnership shall be treated as the liabilities of the corporation.

## Other Limitations on the Deductibility of Interest

Other Code sections limiting the deductibility of interest, such as sections 267(a)(3) or 163(e)(3), apply before section 163(j).

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# Specific Instructions

## Affiliated Group Checkbox

A single form must be filed for all members of an affiliated group as defined in section 163(j)(6)(C), including those that are not members of the same consolidated group.

**Corporations that rely on the debt to equity safe harbor test.** Corporations that rely on the debt to equity safe harbor test must complete lines 1a to 1j, as applicable. However, corporations that do not rely on the safe harbor test do not need to complete these lines. For more information, see Proposed Regulations 1.163(j)-1(b).

## Line 1d

Enter the total amount of the corporation's indebtedness as of the last day of the tax year. Enter all indebtedness owed to related parties and all indebtedness owed to third parties. See *Debt to Equity* on page 1 for more information.

## Line 1f. Debt to Equity Ratio

Divide line 1d by line 1e.

Divide the total amount of the corporation's indebtedness as of the last day of the tax year by the sum of money and adjusted basis of all the corporation's other assets reduced by the total indebtedness.

## Line 1g

Is the corporation including as part of its assets on line 1b stock described in Regulations section 1.7874-1(d) that it holds in a corporation to whom it paid disqualified interest?

If yes, check "Yes" and enter the adjusted basis of such stock. Otherwise, check "No."

## Line 1h

Is the corporation including as part of its assets on line 1b stock it holds in foreign subsidiaries?

If yes, check "Yes" and enter the adjusted basis of such stock. Otherwise, check "No."

## Line 1i

Is the corporation including as part of its assets on line 1b tangible assets it directly holds which are located in a foreign country?

Enter all assets that are directly owned by the corporation, including assets held through a partnership or trust.

**Note.** Partnerships and simple trusts are treated as aggregates.

If yes, check "Yes" and enter the adjusted basis of such tangible assets. Otherwise, check "No."

## Line 1j

Is the corporation including as part of its assets on line 1b any intangible assets?

If yes, check "Yes" and enter the adjusted basis of such intangible assets. Otherwise, check "No."

## Line 2a

Enter the interest paid or accrued by the corporation for the tax year.

## Line 2b

Enter the amount of interest includible in the gross income of the corporation for the tax year.

## Line 2c. Net Interest Expense

Subtract line 2b from line 2a. If zero or less, enter -0-.

## Line 3a

Enter the corporation's taxable income (loss) before the application of section 163(j).

### Line 3b

Enter the corporation's net interest expense from line 2c. Enter this amount on line 3b as a positive number. This amount must be added back to the corporation's taxable income or loss to determine its adjusted taxable income under section 163(j)(6).

### Line 3c

Enter the corporation's net operating loss, if any, under section 172. Enter this amount on line 3c as a positive number. This amount must be added back to the corporation's taxable income or loss to determine its adjusted taxable income under section 163(j)(6).

### Line 3d

Enter the corporation's domestic production activities deduction from line 23 of Form 8903, Domestic Production Activities Deduction. Enter this amount on line 3d as a positive number. This amount must be added back to the corporation's taxable income or loss to determine its adjusted taxable income under section 163(j)(6).

### Line 3f

Enter any additional adjustments the corporation has made to its taxable income (loss) in arriving at its adjusted taxable income under section 163(j)(6). This would include any adjustments the corporation is making as a result of Proposed Regulations section 1.163(j)-2(f) to compute its adjusted taxable income under section 163(j)(6).

Attach to your return a separate sheet showing:

- A list of each adjustment item and the amount for each adjustment item; and
- Enter the total of all adjustments at the bottom.

Enter the total of all adjustments on line 3f.

### Line 4b

Enter the amount of any unused excess limitation carried forward (if any) from

the corporation's first preceding tax year and, to the extent not previously taken into account in a prior tax year, the second and third preceding tax years.

### Line 5e

Enter the amount disallowed as disqualified interest paid or accrued in the preceding taxable year which is treated as paid or accrued in the current tax year.

### Line 5f. Total Disqualified Interest for the Tax Year

If the taxpayer is a domestic corporation, subtract the disallowed interest shown on line 5f from the amount of interest expense the corporation would have otherwise entered on Form 1120, line 18. Attach Form 8926 to Form 1120.

If the taxpayer is a foreign corporation, include the disallowed interest from Form 8926, line 5f, on Schedule I (Form 1120-F), line 24b. Attach Form 8926 to Schedule I (Form 1120-F).

### Line 8a

Enter unused excess limitation carryforward from the prior 2 tax years.

### Line 8b. Excess Limitation for the Current Tax Year

Subtract line 2c from line 4a. If zero or less, enter -0-. This is the excess limitation carryforward created in the current tax year.

### Line 8c. Excess limitation carryforward to the next tax year

If the corporation has an excess limitation for any taxable year, the

amount of such excess limitation shall be an excess limitation carryforward to the first succeeding tax year and to the second and third succeeding tax years to the extent not previously taken into account in a prior tax year.

Add lines 8a and 8b. This is your excess limitation carryforward to your next tax year. Generally, this should be the amount you will enter on line 4b of Form 8926 in the following tax year.

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#### Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

<b>Recordkeeping</b> . . . . .	xx hr., xx min.
<b>Learning about the law or the form</b> . . . . .	xx hr., xx min.
<b>Preparing and sending the form to the IRS</b> . . . . .	xx hr., xx min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

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