

## **SUPPORTING STATEMENT (FI-59-91)**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

(a) Under section 1.1275-2(h)(5) of this regulation, the issuer's determination that a contingency is remote or incidental is binding on all holders. However, the issuer's determination is not binding on a holder that explicitly discloses that its determination is different from the issuer's determination. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed federal income tax return for the taxable year that includes the acquisition date of the debt instrument.

(b) In general, §1.1275-3(b)(1) of this regulation requires an issuer of a debt instrument issued with original issue discount (OID) to place certain information on the face of the debt instrument (the legending requirement). The legending requirement, however, only applies to a nonpublicly offered debt instrument that is issued in physical form. Under §1.1275-3(b)(1)(i), if the legending requirement applies to a debt instrument, the issuer of the debt instrument must (i) set forth on the face of the debt instrument the issue price, the amount of OID, the issue date, and the yield to maturity or (ii) provide the name, address, and telephone number of a representative of the issuer who will provide the information to the holder of the debt instrument.

Under §1.1275-4(b) of this regulation, if the noncontingent bond method applies to a contingent payment debt instrument, the issuer must create a projected payment schedule for the debt instrument. Because the projected payment schedule is used by the holder to compute interest and OID accruals, the regulation amends §1.1275-3(b)(1)(i) by adding the projected payment schedule to the list of information required for a contingent payment debt instrument subject to the legending requirement.

(c) In the case of a contingent payment debt instrument subject to the noncontingent bond method, §1.1275-4(b)(4)(iv) of this regulation provides that the projected payment schedule used by the issuer to compute interest accruals and adjustments determines the holder's interest accruals and adjustments. The issuer must provide the projected payment schedule to the holder in a manner consistent with the issuer disclosure rules of §1.1275-2(e). If the issuer does not

create a projected payment schedule for a debt instrument or the payment schedule set by the issuer is unreasonable, the holder of the debt instrument must set a projected payment schedule. A holder that sets its own projected payment schedule must explicitly disclose this fact and the reasons why the holder set its own schedule. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed Federal income tax return for the taxable year that includes the acquisition date of the debt instrument.

(d) Section 1.1275-6 of this regulation provides rules for the integration of a qualifying debt instrument with a hedge or combination of hedges. In the case of an integrated transaction, §1.1275-6(e) of the regulation provides that the taxpayer must enter and retain as part of its books and records the following information: (i) the date the qualifying debt instrument was issued or acquired by the taxpayer and the date the §1.1275-6 hedge was entered into by the taxpayer; (ii) a description of the qualifying debt instrument and the §1.1275-6 hedge; and (iii) a summary of the cash flows and accruals resulting from treating the qualifying debt instrument and §1.1275-6 hedge as an integrated transaction.

## **2. USE OF DATA**

The data is used by the Internal Revenue Service and taxpayers to verify that the proper amount of tax is reported.

## **3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

We have no plans to offer electronic filing. IRS publication, regulations, notices and letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

## **4. EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

## **5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

Not applicable.

**6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

**7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

Not applicable.

**8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

The notice of proposed rulemaking was published in the **Federal Register** on December 16, 1997 (59 FR 62884). The public hearing was held on March 16, 1995. The final regulations were published in the **Federal Register** on June 14, 1996 (61 FR 30133).

In response to the **Federal Register** notice dated October 22, 2009 (74 FR 54626), we received no comments during the comment period regarding Regulation FI-59-91 (TD 8674).

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

(a) Under section 1.1275-2(h)(5), the issuer's determination that a contingency is remote or incidental is binding on all holders. However, the issuer's determination is not binding on a holder that explicitly discloses that its determination is different from the issuer's determination. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's

timely filed federal income tax return for the taxable year that includes the acquisition date of the debt instrument.

The total reporting burden for this requirement is estimated to be 1,500 hours, based on 5,000 respondents and .30 hours per record.

(b) Under §1.1275-4(b) of the regulation, if the noncontingent bond method applies to a contingent payment debt instrument, the issuer must create a projected payment schedule for the debt instrument. Because the projected payment schedule is used by the holder to compute interest and OID accruals, the regulation amends §1.1275-3(b)(1)(i) by adding the projected payment schedule to the list of information required for a contingent payment debt instrument subject to the legending requirement.

The recordkeeping burden for this requirement is contained in 1545-1466, Third-Party Disclosure Requirements in IRS Regulations.

(c) In the case of a contingent payment debt instrument subject to the noncontingent bond method, §1.1275-4(b)(4)(iv) of this regulation provides that the projected payment schedule used by the issuer to compute interest accruals and adjustments determines the holder's interest accruals and adjustments. The issuer must provide the projected payment schedule to the holder in a manner consistent with the issuer disclosure rules of §1.1275-2(e). If the issuer does not create a projected payment schedule for a debt instrument or the payment schedule set by the issuer is unreasonable, the holder of the debt instrument must set a projected payment schedule. A holder that sets its own projected payment schedule must explicitly disclose this fact and the reasons why the holder set its own schedule. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed Federal income tax return for the taxable year that includes the acquisition date of the debt instrument.

The total reporting burden for this requirement is estimated to be 50,000 hours, based on 100,000 respondents and .5 hours per statement.

(d) Section 1.1275-6 of this regulation provides rules for the integration of a qualifying debt instrument with a hedge or combination of hedges. In the case of an integrated transaction, §1.1275-6(e) of the regulation provides that the taxpayer must enter and retain as part of its books and records the following information:

(i) the date the qualifying debt instrument was issued or acquired by the taxpayer and the date the §1.1275-6 hedge was entered into by the taxpayer; (ii) a description of the qualifying debt instrument and the §1.1275-6 hedge; and (iii) a summary of the cash flows and accruals resulting from treating the qualifying debt instrument and §1.1275-6 hedge as an integrated transaction.

The total recordkeeping burden for this requirement is estimated to be 37,500 hours, based on 75,000 recordkeepers and .5 hours per record.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our **Federal Register** notice dated October 22, 2009, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

Not applicable.

**15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

Not applicable.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the

OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I**

Not applicable.

**Note:** The following paragraph applies to all of the collections of information in this submission:

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. 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.