

Supporting Statement
OMB No. 1545-1353

T.D. 8517, Debt Instruments with Original Issue Discount;
Imputed Interest on Deferred Payment Sales or Exchanges of Property;
TD 9599, Property Traded on an Established Market

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Regulations relating to the tax treatment of debt instruments with original issue discount and the imputation of interest on deferred payments under certain contracts for the sale or exchange of property have been codified under 26 CFR Part 1. The final regulations provide needed guidance to holders and issuers of debt instruments with original issue discount and to buyers and sellers of property. The information collection requirements are prescribed under the following sections of this part:

- Section 1.1272-3 of the regulations allows the holder of a debt instrument to elect to treat all interest on the debt instrument as an original issue discount (OID). The election is made on the holder's timely filed Federal income tax return for the taxable year the instrument is acquired by the holder.
- Section 1.1273-2(h) of the regulations provides that the issuer's allocation of the issue price of an investment unit is binding on all holders of the unit, except the holder who discloses on the holder's Federal income tax return that the holder is using an inconsistent allocation. 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 tax year that includes the acquisition date of the investment unit.
- Section 1.1274-3(d) of the regulations provides that the issuer's determination that a debt instrument is or is not issued in a potentially abusive situation is binding on all holders of the debt instrument. However, the issuer's determination is not binding on a holder who explicitly discloses a position that is inconsistent with 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 tax year that includes the acquisition date of the debt instrument.
- Section 1.1274-5(b)(2) of the regulations provides new rules for debt instruments that are materially modified in connection with an assumption of a debt instrument as part of a sale or exchange of property. In general, if the seller knew or had reason to know about the modification, the modification is treated as a separate transaction that takes place immediately before the sale or exchange and is attributed to the seller. The seller and buyer, however may jointly elect to treat the transaction as one in which the buyer first assumed the unmodified debt instrument and subsequently modified the debt instrument. The buyer and seller make the election by jointly signing a statement that includes the names, addresses, and taxpayer identification numbers of the buyer and seller, and a clear indication that the election is being made. The buyer and seller

should attach this statement to their timely filed Federal income tax returns.

- Section 1274A provides that section 1274 does not apply to a debt instrument issued for property if, among other things, the parties to the transaction jointly elect not to have section 1274 apply. Section 1.1274A-1(c)(1) of the regulations provides that the borrower and lender make the election by jointly signing a statement that includes the names, addresses, and taxpayer identification numbers of the borrower and lender, a clear indication that an election is being made under section 1274A(c)(2), and a declaration that the debt instrument otherwise qualifies as a cash method debt instrument. The borrower and lender should attach this statement to their timely filed Federal income tax returns.

Subsequent revisions to this part were made by final regulations (TD 9599) that apply to determine when property is traded on an established market (that is, publicly traded) for purposes of determining the issue price of a debt instrument.

- Section 1.1273-2(f)(8) requires the issue of a debt instrument to make the fair market value of property (which can be stated as the issue price of the debt instrument) available to holders in a commercially reasonable fashion within 90 days of the date that the debt instruments are issued, including by electronic publication. The issuer's determinations are binding on all holders of the debt instrument unless the holder explicitly discloses that its determinations are different from the issuer's determinations on a timely filed Federal income tax return for the taxable year that includes the acquisition date of the debt instrument. The disclosure must include how the holder determined the value or issue price that it is using.

2. USE OF DATA

The information required under section 1275(c)(1) is used by the holder of the debt instrument to determine whether the debt instrument has OID and, if so, the amount of OID. The information required under section 1275(c)(1) is not submitted to the Internal Revenue Service.

The election under §1.1272-3 is made by attaching a statement to the federal income tax return of the person making the election. The other elections in the regulations are made when the parties to the transaction agree to make the election in a statement signed by both parties. The statements are then attached to the federal income tax return of the persons making the election. The statements are used to determine whether an election has been made.

For certain sections of the regulations, if the holder takes a position that is inconsistent with the issuer's position, the holder must disclose the inconsistency on a statement attached to the holder's timely filed Federal income tax return for the tax year that includes the acquisition date of the debt instrument. The disclosures are intended to notify the Commissioner that the issuer and the holder are taking inconsistent positions for purposes of determining the income and deductions related to a debt instrument with OID.

This information is required under Section 1.1273-2(f)(8) by the IRS to ensure consistent treatment between the issuer and the holders or to alert the IRS when inconsistent positions are being taken by the issuer and one or more holders. This information will be used for audit and examination purposes.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, 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 (FI-189-84) was published in the *Federal Register* on December 22, 1992 (57 FR 60750) and a public hearing on the notice was held on February 16, 1993. The final regulations, TD 8517, were published in the *Federal Register* on February 2, 1994 (59 FR 4799).

A notice of proposed rulemaking and notice of public hearing (REG-131947-10) was published in the *Federal Register* on January 7, 2011 (76 FR 1101), relating to determining when property is traded on an established market for purposes of determining the issue price of a debt instrument. No public hearing was requested or held. Final regulations (TD 9599) were published on September 13, 2012 (77 FR 56533).

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 U.S.C. 6103.

11. **JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

(1) Section 1.1272-3 of the regulations allows the holder of a debt instrument to elect to treat all interest on the debt instrument as OID. The election is made by attaching a statement to the holder's timely filed Federal income tax return for the taxable year the instrument is acquired by the holder.

- The total burden for this requirement is estimated to be 100,000 hours, based on 200,000 respondents and .5 hour per election.

(2) Section 1.1273-2(h) of the regulations provides that the issuer's allocation of the issue price of an investment unit is binding on all holders of the unit, unless the holder discloses on the holder's Federal income tax return that the holder is using an inconsistent allocation. 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 tax year that includes the acquisition date of the investment unit.

- The total burden for this requirement is estimated to be 16,500 hours, based on 50,000 respondents and .33 hour per record.

(3) Section 1.1274-3(d) of the regulations provides that the issuer's determination that a debt instrument is or is not issued in a potentially abusive situation is binding on all holders of the debt instrument. However, the issuer's determination is not binding on a holder who explicitly discloses a position that is inconsistent with 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 tax year that includes the acquisition date of the instrument.

- The total burden for this requirement is estimated to be 16,500 hours, based on 50,000 respondents and .33 hour per record.

(4) Section 1.1274-5(b)(2) of the regulations provides new rules for debt instruments that are materially modified in connection with an assumption of a debt instrument as part of a sale or exchange of property. In general, if the seller knew or had reason to know about the modification, the modification is treated as a separate transaction that takes place immediately before the sale or exchange and is attributed to the seller. The seller and buyer, however, [nay] jointly elect to treat the transaction as one in which the buyer first assumed the unmodified debt instrument and subsequently modified the debt

instrument. The buyer and seller make the election by jointly signing a statement that includes the names, addresses, and taxpayer identification numbers of the buyer and seller, and a clear indication that the election is being made. The buyer and seller should attach this statement to their timely filed Federal income tax returns.

- The total burden for this requirement is estimated to be 20,000 hours, based on 100,000 respondents and .2 hour per election.

(5) Section 1.1274A-1(c) of the regulations prescribes the time and manner of an election required by section 1274A if parties to a transaction desire not to have section 1274 apply to the transaction. Under the regulations, the borrower and lender must each make the election on or before the last day (including extensions) for filing each of their Federal income tax returns for the taxable year in which the debt instrument is issued. The borrower and lender make the election by jointly signing a statement that includes the names, addresses, and taxpayer identification numbers of the borrower and lender, a clear indication that an election is being made under section 1274A(c)(2), and a declaration that the debt instrument otherwise qualifies as a cash method debt instrument. The borrower and lender should attach this statement to their timely filed Federal income tax returns.

- The total burden for this requirement is estimated to be 20,000 hours, based on 100,000 respondents and .2 hour per election.

(6) Section 1.1275-3(b) of the regulations requires an issuer of debt instruments having OID to set forth on the face of the instrument that the instrument has OID and either (i) the amount of OID, the issue date, the yield to maturity, and the issue price or (ii) the name and address or telephone number of a representative of the issuer who will make the information available.

- The total burden for this requirement is estimated to be 12,500 hours, based on 25,000 respondents and .5 hours per record.

(7) Under § 1.1273-2(f)(9), the issuer of a debt instrument is required to make the fair market value of property (which can be stated as the issue price of the debt instrument) available to holders in a commercially reasonable fashion within 90 days of the date that the debt instruments are issued, including by electronic publication.

- The total burden for this requirement is estimated to be 100,000 hours; based on 200,000 respondents; 5 minutes per response at 0.50 hours per respondent.

TD 8517

Section	No. Respondents	No. Responses Per Respondent	Annual Responses	Hours Per Response	Total Burden
1.1272-3	200,000	1	200,000	0.5	100,000
1.1273-2(h)	50,000	1	50,000	0.33	16,500
1.1274-3(d)	50,000	1	50,000	0.33	16,500
1.1274-5(b)(2)	100,000	1	100,000	0.2	20,000
1.1274A-1(c)	100,000	1	100,000	0.2	20,000
1.1275-3(b)	25,000	1	25,000	0.5	12,500
Totals	525,000	1	525,000	0.35	185,500

TD 9599

Section	No. Respondents	No. Responses Per Respondent	Annual Responses	Hours Per Response	Total Burden
1.1273-2(f)(9)	200,000	6	120,000	0.083333 3	100,000

Total	645,000	195,500
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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 January 25, 2012, (77 FR 3840) for the renewal of TD 8517, the IRS 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 responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

Additional burden was not realized at the NPRM stage (January 7, 2011; 76 FR 1101; REG-131947-10), but further amendments codified in the final regulations (TD 9599), based on public comments, revised paragraph (f) of §1.1273-2 with the provision that requires the issue of a debt instrument to make a fair market value of property available to holders. The issuer's determinations are binding on all holders of the debt instrument unless the holder discloses that its determinations are different from the issuer's. The reporting requirement under §1.1273-2(f)(8) increases the burden by 120,000 responses and 10,000 hours.

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 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.