

**Withdrawal of notice of proposed rulemaking**

The proposed amendments to 26 CFR part 1 relating to the exclusion of interest on certain savings certificates published in the *Federal Register* (46 FR 51588) on October 20, 1981, are hereby withdrawn.

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 83-20176 Filed 7-25-83; 8:45 a.m.]

BILLING CODE 4830-01-M

**26 CFR Part 1**

[LR-182-78]

**Transfers of Securities Under Certain Agreements**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to transfers of securities under certain agreements. Changes to the applicable tax law were made by the Act of August 15, 1978. The regulations would provide the public with the guidance needed to comply with that Act.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by September 28, 1983. The amendments are proposed to apply to transfers of securities under agreements described in section 1058 of the Internal Revenue Code, occurring after December 31, 1976, and are proposed to be effective on January 1, 1977.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, [LR-182-78] Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Howard A. Balikov of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. 202-566-3288, not a toll-free call.

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

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 1058 and 1223 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 2 of the Act of August 15, 1978, Pub. L. 95-345 (92 Stat. 481) and are to be issued under the authority contained in section 1058(b) of the Internal Revenue Code of 1954 (92 Stat. 483; 26 U.S.C. 1058) and in section

7805 of the Code (88A Stat. 917; 26 U.S.C. 7805).

**Additional Information**

Section 1058 and these regulations provide rules relating to the income tax treatment to be given to securities lending transactions. If the provisions of section 1058 and these regulations are met, the lender shall not recognize gain on the transfer of securities, or upon the return of identical securities.

**Comments and Requests for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

**Special Analyses**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

**List of Subjects**

26 CFR 1.1001-1—1.1102-3

Income taxes, Gain and loss, basis, Nontaxable exchanges.

26 CFR 1.1201-1—1.1252-2

Income taxes, Capital gains and losses, Recapture.

**Drafting Information**

The principal author of these proposed regulations is Howard A. Balikov of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**Proposed amendments to the regulations****PART 1—[AMENDED]**

The proposed amendments to 26 CFR Part 1 are as follows:

**Paragraph 1.** The following sections are added in the appropriate place.

**§ 1.1058-1 Transfers of securities under certain agreements.**

(a) *In general.* Section 1058 provides rules for the nonrecognition of gain or loss with respect to certain transfers of securities occurring after December 31, 1976. In order to qualify for treatment under this section, the transfer must be pursuant to an agreement which contains the provisions required by paragraph (b) of this section and those provisions must be complied with. If this section does apply, the lender will not recognize gain or loss on the exchange of the securities for the obligation of the borrower under the agreement nor will the lender recognize gain or loss on the exchange of the rights under such agreement in return for securities identical to the securities transferred by the lender.

(b) *Agreement requirements.* The agreement between the borrower and lender described in paragraph (a) of this section must be in writing and must—

(1) Require the borrower to return to the lender securities identical to those which were lent to the borrower. For the purposes of this section securities are defined in section 1236(c). Identical securities are securities of the same class and issue as the securities lent to the borrower. If, however, the agreement permits the borrower to return equivalent securities in the event of reorganization, recapitalization or merger of the issuer of the securities during the term of the loan, this requirement will be deemed to be satisfied.

(2) Require the borrower to make payments to the lender of amounts equivalent to all interest, dividends, and other distributions which the owner of

the securities is entitled to for the period during which the securities are borrowed.

(3) Not reduce the lender's risk of loss or opportunity for gain. Accordingly, the agreement must provide that the lender may terminate the loan upon notice of not more than 5 business days.

See section 512(a)(5) and the regulations thereunder for additional requirements with respect to loans of securities made by exempt organizations.

(c) *Basis*—(1) *Lender's basis in securities*. If this section applies, the lender's basis in the identical securities returned by the borrower shall be the same as the lender's basis in the securities lent to the borrower.

(2) *Lender's basis in contractual obligation*. If this section applies, the lender's basis in the contractual obligation received from the borrower in exchange for the lender's securities is equal to the lender's basis in the securities exchanged.

(d) *Treatment of payments to lender*. Except as otherwise provided in section 512(a)(5), a payment of amounts required to be paid by the borrower that are equivalent to all interest, dividends, and other distributions as provided in paragraph (b)(2) of this section, shall be treated by the lender as a fee for the temporary use of property. Thus, for example, an amount received by the lender that is equivalent to a dividend paid during the term of the loan shall not constitute a dividend to the lender for purposes of the Internal Revenue Code, but shall be taken into account as ordinary income.

(e) *Noncompliance with section 1058*. (1) If a transfer of securities is intended to comply with section 1058 and fails to do so because the contractual obligation does not meet the requirements of section 1058(b) and § 1.1058-1(b), gain or loss is recognized in accordance with section 1001 and § 1.1001-1(a) upon the initial transfer of the securities. However, see section 1091 of the Code for disallowance of loss from wash sales of stock or securities.

(2) If securities are transferred pursuant to an agreement which meets the requirements of section 1058(b) and § 1058-1(b) and the borrower fails to return to the lender securities identical to the securities transferred as required by the agreement, or otherwise defaults under the agreement, gain or loss is recognized on the day the borrower fails to return identical securities as required by the agreement, or otherwise defaults under the agreement. However, see section 1091 of the Code for disallowance of loss from wash sales of stock or securities.

(f) *Special rule*. For purposes of determining the tax consequences to the lender of securities when a merger, recapitalization or reorganization (including, but not limited to, a reorganization described in section 368(a)(1) of the Internal Revenue Code) of the issuer occurs during the term of a loan to which section 1058 applies, the section 1058 loan transaction is deemed terminated immediately prior to the merger, recapitalization or reorganization and a second section 1058 transaction is deemed entered into immediately following the merger, recapitalization or reorganization. Therefore, the borrower of the securities is deemed to have returned the securities to the lender immediately prior to the merger, recapitalization or reorganization and immediately following the merger, recapitalization or reorganization the lender and borrower are deemed to have entered into a second section 1058 loan transaction, on terms identical to the original section 1058 loan transaction. The special rule in this paragraph (f) shall not apply in the case where the lender ultimately is repaid with securities identical to the securities originally transferred.

(g) *Cross reference*. For rules relating to the lender's holding period, see § 1.1223-2

#### § 1.1058-2 Examples.

The provisions of § 1.1058-1 may be illustrated by the following examples:

*Example (1)*. A owns 1,000 shares of XYZ common stock. A instructs A's broker, B, to sell the XYZ stock. B sells to C. After the sale, B learns that A will not be able to deliver to B certificates representing the 1,000 shares in time for B to deliver them to C on the settlement date. B decides to effect the delivery by borrowing stock from a third party. To this end, B enters into a written agreement with D, an non-exempt corporation having a large stock portfolio of XYZ common stock. The agreement includes the following terms:

(i) D will transfer to B certificates representing 1,000 shares of XYZ common stock.

(ii) B will pay D an amount equivalent to any dividends or other distributions paid on the XYZ stock during the period of the loan.

(iii) Regardless of any increases or decreases in the market value of XYZ common stock, B will transfer to D 1,000 shares of XYZ common stock of the same issue as that of the XYZ common stock transferred from D to B.

(iv) B agrees that upon notice of 5 business days, B will return identical securities to D.

The agreement between B and D satisfies the requirements of paragraph (b) of § 1.1058-1. The agreement is in writing. It requires the borrower, B, to return to the lender, D, identical securities and to pay to the lender, D, amounts equivalent to any dividends or other distributions paid on the stock during

the period of the loan. It does not reduce D's risk of loss or opportunity for gain because, regardless of fluctuations in the market value of XYZ common stock, B is obligated to return 1,000 shares of XYZ common stock.

*Example (2)*. Assume the same facts as in Example (1) except that the agreement between B and D includes the following additional terms:

(1) Upon D's transfer to B of the certificates representing the 1,000 shares of XYZ common stock, B will transfer to D, cash equal to the market value of the XYZ common stock on the business day preceding the transfer, as collateral for the stock. The collateral will be increased or decreased daily to reflect increases or decreases in the market value of the XYZ stock during the period of the loan.

(2) B agrees that upon notice of 5 business days, B will return to D 1,000 shares of XYZ common stock, or the equivalent thereof in the event of reorganization, recapitalization, or merger of XYZ during the term of the loan. Upon delivery of the stock to D, D will return the cash collateral to B.

The agreement between B and D satisfies the requirements of paragraph (b) of this section. If XYZ is merged into another corporation and B returns to D an equivalent amount of stock in the resulting corporation, paragraph (f) of this section provides that the section 1058 transaction is deemed terminated immediately before the merger. Thus, D is deemed to be the owner of the XYZ common stock at the time of the merger. Furthermore, paragraph (a) of this section provides that D does not recognize gain or loss upon the transfer of the XYZ common stock to B or upon the return of the stock of the resulting corporation to D. Nonetheless, gain or loss may be recognized with respect to the merger. If the merger is described in section 368(a)(1), gain will be recognized to the extent section 354(a)(2) or 356 applies to the merger. If the merger is not described in section 368(a)(1), D generally will recognize the entire gain or loss with respect to such stock as a result of the merger.

*Example (3)*. Assume the same facts as in example (2) and in addition that on March 1, D transfers certificates representing 1,000 shares of XYZ common stock to B. D's basis in the stock is \$60,000. On the business day preceding the transfer, the stock has a market value of \$75 a share. Consequently, B transfers to D \$75,000 as collateral for the stock. B then uses the certificates to complete a timely delivery to C. On March 20, when the market value of XYZ common stock is \$69 a share, D gives B notice of termination. On March 24, B delivers to D 1,000 shares of XYZ common stock of the same issue as that of the XYZ common stock transferred to B on March 1. D returns the \$69,000 cash collateral to B. (Because the market value of the stock had declined during the period of the loan, the collateral was adjusted to reflect the new market value and the \$6,000 had previously been returned to B.) Because the agreement between B and D contains the provisions required by paragraph (b) of § 1.1058-1 and such provisions were complied with, D does not recognize gain on the transfer of the XYZ common stock to B. Nor does D recognize gain upon the return of XYZ common stock.

D's basis in the XYZ common stock returned to it by B is \$60,000. As to the holding period of the XYZ common stock returned to D, see § 1.1223-2(a).

**Example (4).** Assume the same facts as in example (3) and in addition that on March 3, XYZ pays a dividend on its common stock. B pays to D an amount equivalent to the dividend. The amount paid by B does not constitute a dividend to D, but rather constitutes a fee for the temporary use of property as provided in § 1.1058-1(d).

**Example (5), (i)** Assume the same facts as in example (3) except that on March 24 B notifies D that delivery of the 1000 shares of XYZ common stock, of the same issue as that of the XYZ common stock transferred to B on March 1, cannot be completed on March 24. Assume further that B informs D that delivery would be completed on March 27.

(ii) If B and D agree to extend the time period in which B is to return the identical securities to D till March 27, then the section 1058 agreement will not be treated as breached when B delivers the securities on March 27, pursuant to the modified section 1058 agreement. As a result, D does not recognize gain on the transfer of XYZ common stock to B. Nor does D recognize gain upon the return of XYZ common stock.

(iii) If B and D do not agree to extend the time period, in which B is to return the identical securities to D, then as of March 25 B's failure to transfer the identical securities as required by the agreement will be treated as a breach of the agreement. As a result D will be treated as selling the XYZ common stock on March 25. D must then recognize gain or (subject to 1091) loss, whichever is appropriate, on the sale of the securities.

**Par. 2.** The following is added immediately after § 1.1223-1.

**§ 1.1223-2 Rules relating to securities lending transactions.**

(a) **General rule.** In the case of a transfer of securities pursuant to an agreement which meets the requirements of section 1058 (relating to transfers of securities under certain agreements), the holding period in the hands of the lender of the securities received by the lender from the borrower shall include—

(1) The period for which the lender held the securities which were transferred to the borrower; and

(2) The period between the transfer of the securities from the lender to the borrower and the return of the securities to the lender.

(b) **Failure to comply with section 1058.** (1) If a transfer of securities is intended to comply with section 1058 and fails to do so because the contractual obligation does not meet the requirements of section 1058(b) and § 1.1058(b), the holding period in the hands of the lender of the securities transferred to the borrower, shall terminate on the day the securities are transferred to the borrower and the holding period in the hands of the

borrower of the property transferred to it shall begin on the date that the securities are delivered pursuant to the transfer loan agreement.

(2) If securities are transferred pursuant to an agreement which meets the requirements of section 1058(b) and § 1.1058(b) and the borrower fails to return identical securities as required by the agreement or otherwise defaults under the agreement, the holding period in the hands of the lender of the securities transferred to the borrower shall terminate on the day the borrower fails to return identical securities as required by the agreement or otherwise defaults under the agreement, and the holding period in the hands of the borrower of the securities transferred to it shall begin on the day the borrower fails to return identical securities as required by the agreement or otherwise defaults under the agreement.

**James I. Owens,**

*Acting Commissioner of Internal Revenue.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[A-5-FRL 2359-4]

#### Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations, Ohio

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to change the Total Suspended Particulate (TSP) attainment status designatin for portions of Cuyahoga County, Ohio. This revision is based on a request from the State of Ohio to redesignate this area and on the supporting data the State submitted. Under the Clear Air Act (Act), designations can be changed if sufficient data are available to warrant such change.

**DATE:** Comments must be received on or before August 25, 1983.

**ADDRESSES:** Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses: U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361

East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch (5AP-26), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Anne E. Tenner, (312) 886-6036.

**SUPPLEMENTARY INFORMATION:** Under Section 107(d) of the Act, the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of every state. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrant.

The primary TSP NAAQS is violated when, in a year, either: (1) The geometric mean value of monitored TSP concentrations exceeds 75 micrograms per cubic meter of air (75 ug/m<sup>3</sup>) (the annual primary standard), or (2) the maximum 24-hour concentration of TSP exceeds 260 ug/m<sup>3</sup> more than once (the 24-hour standard). The secondary TSP is violated when, in a year, the maximum 24-hour concentration exceeds 150 ug/m<sup>3</sup> more than once.

The current designations for TSP in Cuyahoga County, Ohio, as codified in 40 CFR 81.336 are:

**Primary Nonattainment**—Cities of Brooklyn Heights, Newburgh Heights, Bratenahl and the City of Cleveland east of W. 117th Street and Highland Avenue.

**Attainment**—Townships of Olmsted and Chagrin Falls, and the Cities of Bay Village, Westlake, North Olmsted, Olmsted Falls, Strongsville, North Royalton, Broadview Heights, Brecksville, Glenwillow, Solon, Bentleyville, Grange, Moreland Hills, Chagrin Falls, Pepper Pike, Hunting Valley, Lyndhurst, Mayfield Heights, Highland Heights, Mayfield, and Gates Mills.

**Secondary Attainment**—Remainder of the County.

On November 2, 1982, and February 11, 1983, the State of Ohio requested EPA to revise the TSP designation of Cuyahoga County, Ohio to:

**Primary Nonattainment**—The area enclosed by Lake Erie on the north and a line running from Edgewater Park on the Lake, south on West 65th Street to Denison Avenue, east on Denison Avenue to State Route 3, south on State Route 3 to Broadview Road, South on Broadview Road to the Penn Central (Conrail) Railroad (tracks are parallel to and just north of Brook Park Road), the Penn Central (Conrail) tracks northeast to East 71st Street, East 71st Street North to Fleet Avenue, Fleet Avenue northeast to East 75th Street, East 75th Street north to Union Avenue, Union Avenue east to East 79th