

# Section 163.—Interest

26 CFR 1.163(d)-1: Time and manner for making elections under the Omnibus Budget Reconciliation Act of 1993 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

## T.D. 9191

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Time and Manner of Making §163(d)(4)(B) Election to Treat Qualified Dividend Income as Investment Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to an election that may be made by noncorporate taxpayers to treat qualified dividend income as investment income for purposes of calculating the deduction for investment interest. The regulations reflect changes to the law made by the Jobs and Growth Tax Relief Reconciliation Act of 2003. The regulations affect taxpayers making the election under section 163(d)(4)(B) to treat qualified dividend income as investment income.

DATES: *Effective Date:* These regulations are effective March 18, 2005.

*Applicability Dates:* For dates of applicability, see §1.163(d)-1(d).

FOR FURTHER INFORMATION CONTACT: Amy Pfalzgraf, (202) 622-4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

This document contains amendments to 26 CFR part 1 under section 163(d) of the

Internal Revenue Code (Code). On August 5, 2004, temporary regulations (T.D. 9147, 2004-37 I.R.B. 461) were published in the **Federal Register** (69 FR 47364) relating to an election that may be made by noncorporate taxpayers to treat qualified dividend income as investment income for purposes of calculating the deduction for investment interest. A notice of proposed rulemaking (REG-171386-03, 2004-37 I.R.B. 477) cross-referencing the temporary regulations also was published in the **Federal Register** (69 FR 47395) on August 5, 2004. No comments in response to the notice of proposed rulemaking or requests to speak at a public hearing were received, and no hearing was held. This Treasury decision adopts the proposed regulations and removes the temporary regulations.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

The principal author of these regulations is Amy Pfalzgraf of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Part 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.163(d)–1 is revised to read as follows:

*§1.163(d)–1 Time and manner for making elections under the Omnibus Budget Reconciliation Act of 1993 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.*

(a) *Description.* Section 163(d)(4)(B)(iii), as added by section 13206(d) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66, 107 Stat. 467), allows an electing taxpayer to take all or a portion of certain net capital gain attributable to dispositions of property held for investment into account as investment income. Section 163(d)(4)(B), as amended by section 302(b) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108–27, 117 Stat. 762), allows an electing taxpayer to take all or a portion of qualified dividend income, as defined in section 1(h)(11)(B), into account as investment income. As a consequence, the net capital gain and qualified dividend income taken into account as investment income under these elections are not eligible to be taxed at the capital gains rates. An election may be made for net capital gain recognized by noncorporate taxpayers during any taxable year beginning after December 31, 1992. An election may be made for qualified dividend income received by noncorporate taxpayers during any taxable year beginning after December 31, 2002, but before January 1, 2009.

(b) *Time and manner for making the elections.* The elections for net capital gain and qualified dividend income must be made on or before the due date (including extensions) of the income tax return for the taxable year in which the net capital gain is recognized or the qualified dividend income is received. The elections are to be made on Form 4952, “*Investment Interest Expense Deduction*,” in accordance with the form and its instructions.

(c) *Revocability of elections.* The elections described in this section are revocable with the consent of the Commissioner.

(d) *Effective date.* The rules set forth in this section regarding the net capital gain election apply beginning December 12, 1996. The rules set forth in this section regarding the qualified dividend income election apply to any taxable year beginning after December 31, 2002, but before January 1, 2009.

Par. 3. Section 1.163–1T is removed.

Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved March 10, 2005.

Eric Solomon,  
*Acting Deputy Assistant Secretary  
of the Treasury.*

(Filed by the Office of the Federal Register on March 17, 2005, 8:45 a.m., and published in the issue of the Federal Register for March 18, 2005, 70 F.R. 13100)