

his ministry provided the service performed includes such services as are ordinarily the duties of a minister.

(b) For purposes of section 107, the term “home” means a dwelling place (including furnishings) and the appurtenances thereto, such as a garage. The term “rental allowance” means an amount paid to a minister to rent or otherwise provide a home if such amount is designated as rental allowance pursuant to official action taken prior to January 1, 1958, by the employing church or other qualified organization, or if such amount is designated as rental allowance pursuant to official action taken in advance of such payment by the employing church or other qualified organization when paid after December 31, 1957. The designation of an amount as rental allowance may be evidenced in an employment contract, in minutes of or in a resolution by a church or other qualified organization or in its budget, or in any other appropriate instrument evidencing such official action. The designation referred to in this paragraph is a sufficient designation if it permits a payment or a part thereof to be identified as a payment of rental allowance as distinguished from salary or other remuneration.

(c) A rental allowance must be included in the minister’s gross income in the taxable year in which it is received, to the extent that such allowance is not used by him during such taxable year to rent or otherwise provide a home. Circumstances under which a rental allowance will be deemed to have been used to rent or provide a home will include cases in which the allowance is expended (1) for rent of a home, (2) for purchase of a home, and (3) for expenses directly related to providing a home. Expenses for food and servants are not considered for this purpose to be directly related to providing a home. Where the minister rents, purchases, or owns a farm or other business property in addition to a home, the portion of the rental allowance expended in connection with the farm or business property shall not be excluded from his gross income.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6691, 28 FR 12817, Dec. 3, 1963]

§ 1.108-1 Stock-for-debt exception not to apply in de minimis cases.

(a) *Overview.* Section 108(e)(8) provides that the common law stock-for-debt exception does not apply if stock issued for indebtedness is nominal or token or if a proportionality test is not met. Paragraph (b) of this section provides rules for the nominal or token determination under section 108(e)(8)(A). Paragraph (c) of this section provides rules for the proportionality test under section 108(e)(8)(B). Paragraph (d) of this section provides certain general rules and definitions. Paragraph (e) of this section provides an effective date.

(b) *Issuance of nominal or token stock.* Under section 108(e)(8)(A), the common law stock-for-debt exception does not apply to indebtedness discharged for stock that is nominal or token. All relevant facts and circumstances must be considered in making this determination. If common and preferred stock are issued for indebtedness, the determination is made separately with respect to the common stock and the preferred stock. The determination of whether common stock issued for unsecured indebtedness is nominal or token is made on an aggregate basis with respect to all common stock issued for unsecured indebtedness in the title 11 case or insolvency workout. Preferred stock issued for unsecured indebtedness is also tested on an aggregate basis with respect to all preferred stock issued for unsecured indebtedness in the title 11 case or insolvency workout.

(c) *Issuance of a disproportionately small amount of stock for unsecured indebtedness—(1) Common stock issued for unsecured indebtedness—(i) In general.* The common law stock-for-debt exception does not apply to an unsecured indebtedness discharged for common stock in a title 11 case or insolvency workout if the individual common stock ratio does not equal at least one-half of the group common stock ratio.

(ii) *Individual common stock ratio defined.* The individual common stock ratio is the ratio of the value of the common stock issued for an unsecured indebtedness to the amount of the unsecured indebtedness allocated to that common stock. The amount of unsecured indebtedness allocated to the

common stock is the amount of the indebtedness for which the common stock is issued (as defined in paragraph (d)(5) of this section), reduced by the amount of other consideration, if any, transferred in exchange for the indebtedness, including—

(A) The amount of any money;

(B) The issue price (determined under section 1273 or 1274) of any new indebtedness;

(C) With respect to any preferred stock, the amount of indebtedness allocated to the preferred stock under paragraph (c)(2)(ii) of this section; and

(D) The value of any other property, including any disqualified stock.

(iii) *Group common stock ratio defined.*

The group common stock ratio is the ratio of the aggregate value of all common stock issued for unsecured indebtedness in the title 11 case or insolvency workout to the aggregate amount of unsecured indebtedness allocated to that common stock. The amount of unsecured indebtedness allocated to the common stock is the aggregate amount of all unsecured indebtedness exchanged for stock or cancelled in the title 11 case or insolvency workout, reduced by the amount of other consideration, if any, issued for that indebtedness, including—

(A) The amount of any money;

(B) The issue price (determined under section 1273 or 1274) of any new indebtedness;

(C) With respect to any preferred stock, the amount of indebtedness allocated to the preferred stock under paragraph (c)(2)(iii) of this section; and

(D) The value of any other property, including any disqualified stock.

(iv) *Example.* The following example illustrates these provisions.

Example. (A) X Corporation has three outstanding debts, Debt 1, Debt 2, and Debt 3. Debts 1 and 2 are unsecured and each has an adjusted issue price of \$100,000. Debt 3 is also unsecured, and it has an adjusted issue price of \$90,000 and accrued but unpaid interest of \$10,000. In a title 11 case, Debt 1 is exchanged for \$50,000 cash and \$20,000 of common stock, Debt 2 is exchanged for \$10,000 cash, and Debt 3 is exchanged for \$5,000 common stock. The individual common stock ratio for Debt 1 is 40 percent, which is determined by comparing the value of the common stock issued for the indebtedness (\$20,000) to the amount of unsecured indebtedness allocated to that stock (\$100,000 adjusted issue price less

\$50,000 cash received). The individual common stock ratio for Debt 2 is 0 percent because no stock is received in exchange for the indebtedness. The individual common stock ratio for Debt 3 is 5 percent, which is determined by comparing the value of the common stock issued for the indebtedness (\$5,000) to the amount of unsecured indebtedness allocated to that stock (\$100,000 = \$90,000 adjusted issue price and \$10,000 of accrued but unpaid interest).

(B) The group common stock ratio is 10.4 percent, which is determined by comparing the value of all of the common stock issued for unsecured indebtedness in the title 11 case (\$25,000) to the amount of unsecured indebtedness allocated to the stock (\$290,000 aggregate adjusted issue price of all indebtedness exchanged for stock or cancelled in the title 11 case plus \$10,000 accrued but unpaid interest less \$60,000 cash received). Accordingly, section 108(e)(8)(B) is satisfied only with respect to the common stock issued for Debt 1. The stock-for-debt exception does not apply to Debt 2 or Debt 3.

(2) *Preferred stock issued for unsecured indebtedness—(i) In general.* The common law stock-for-debt exception does not apply to an unsecured indebtedness discharged for preferred stock in a title 11 case or insolvency workout if the individual preferred stock ratio does not equal at least one-half of the group preferred stock ratio.

(ii) *Individual preferred stock ratio defined.* The individual preferred stock ratio is the ratio of the value of the preferred stock issued for an unsecured indebtedness to the amount of the unsecured indebtedness allocated to the preferred stock. The amount of the unsecured indebtedness allocated to preferred stock is equal to the lesser of the lowest redemption price (if any) or lowest liquidation preference (if any) of the preferred stock (determined at issuance). However, the allocable indebtedness may not be less than the fair market value of the preferred stock or greater than the amount of the unsecured indebtedness.

(iii) *Group preferred stock ratio defined.* The group preferred stock ratio is the ratio of the aggregate value of all preferred stock issued for unsecured indebtedness in the title 11 case or insolvency workout to the aggregate amount of unsecured indebtedness allocated to the preferred stock under paragraph (c)(2)(ii) of this section.

(d) *Definitions and special rules.* For purposes of this section:

(1) *Common stock.* Common stock is all stock other than disqualified stock and preferred stock.

(2) *Disqualified stock.* Disqualified stock is disqualified stock as defined in section 108(e)(10)(B)(i).

(3) *Liquidation preference.* A liquidation preference exists if the stock's right to share in liquidation proceeds is limited and preferred.

(4) *Preferred stock.* Preferred stock is any stock (other than disqualified stock) that has a limited or fixed redemption price or liquidation preference and does not upon issuance have a right to participate in corporate growth to a meaningful extent. Preferred stock that is convertible into common stock is not treated as preferred stock if the conversion right represents, in substance, a meaningful right to participate in corporate growth. Solely for purposes of this paragraph (d)(4), a right to participate in corporate growth is not established by the fact that the redemption price or liquidation preference exceeds the fair market value of the preferred stock.

(5) *Amount of indebtedness.* Generally, the amount of indebtedness is the adjusted issue price of the indebtedness. Appropriate adjustments are made for accrued but unpaid stated interest. (See the example in paragraph (c)(1)(iv) of this section.)

(6) *Undersecured indebtedness—(i) General rule.* If an indebtedness is secured by property with a value less than its adjusted issue price, the indebtedness is considered to be two separate debts: a secured indebtedness with an adjusted issue price equal to the value of the property, and an unsecured indebtedness with an adjusted issue price equal to the remainder. Absent strong evidence to the contrary, the value of the property securing the indebtedness is presumed to be equal to the issue price of any new secured indebtedness received for the indebtedness plus the value of any other consideration (except stock or new unsecured indebtedness) received for the indebtedness. A valuation of that property by a court in a title 11 case is a factor in determining value, but is not controlling.

(ii) *Example.* The following example illustrates these provisions:

Example Corporation X owes an indebtedness with an adjusted issue price of \$100,000. The indebtedness is secured by certain property owned by Corporation X. Corporation X exchanges the indebtedness for \$10,000 of stock and new secured indebtedness with an issue price of \$70,000. Under paragraph (d)(6)(i) of this section, the indebtedness is bifurcated into a secured indebtedness of \$70,000 (the issue price of the new secured indebtedness received in exchange therefor) and an unsecured indebtedness of \$30,000 (the remainder of the adjusted issue price of the indebtedness).

(e) *Effective date.* This section is effective with respect to any issuance of stock for indebtedness on or before December 31, 1994, or any issuance of stock for indebtedness in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code) that was filed on or before December 31, 1993—

(1) Pursuant to a plan confirmed by the court in a title 11 case after May 17, 1994; or

(2) If there is no title 11 case, pursuant to an insolvency workout in which all issuances of stock for indebtedness occur after May 17, 1994.

[59 FR 12831, Mar. 18, 1994]

§ 1.108-2 Acquisition of indebtedness by a person related to the debtor.

(a) *General rules.* The acquisition of outstanding indebtedness by a person related to the debtor from a person who is not related to the debtor results in the realization by the debtor of income from discharge of indebtedness (to the extent required by section 61(a)(12) and section 108) in an amount determined under paragraph (f) of this section. Income realized pursuant to the preceding sentence is excludible from gross income to the extent provided in section 108(a). The rules of this paragraph apply if indebtedness is acquired directly by a person related to the debtor in a direct acquisition (as defined in paragraph (b) of this section) or if a holder of indebtedness becomes related to the debtor in an indirect acquisition (as defined in paragraph (c) of this section).

(b) *Direct acquisition.* An acquisition of outstanding indebtedness is a direct acquisition under this section if a person related to the debtor (or a person who becomes related to the debtor on