

Example— (i) *Facts.* On February 1, 1999, X issues for \$110,000 a debt instrument maturing on February 1, 2006, with a stated principal amount of \$100,000, payable at maturity. The debt instrument provides for unconditional payments of interest of \$10,000, payable on February 1 of each year. X uses the calendar year as its taxable year, X uses the cash receipts and disbursements method of accounting, and X decides to use annual accrual periods ending on February 1 of each year. X's calculations assume a 30-day month and 360-day year.

(ii) *Amount of bond issuance premium.* The issue price of the debt instrument is \$110,000. Because the interest payments on the debt instrument are qualified stated interest, the stated redemption price at maturity of the debt instrument is \$100,000. Therefore, the amount of bond issuance premium is \$10,000 (\$110,000 - \$100,000).

(iii) *Bond issuance premium allocable to the first accrual period.* Based on the payment schedule and the issue price of the debt instrument, the yield of the debt instrument is 8.07 percent, compounded annually. (Although, for purposes of simplicity, the yield as stated is rounded to two decimal places, the computations do not reflect this rounding convention.) The bond issuance premium allocable to the accrual period ending on February 1, 2000, is the excess of the qualified stated interest allocable to the period (\$10,000) over the product of the adjusted issue price at the beginning of the period (\$110,000) and the yield (8.07 percent, compounded annually). Therefore, the bond issuance premium allocable to the accrual period is \$1,118.17 (\$10,000 - \$8,881.83).

(iv) *Premium used to offset interest.* Although X makes an interest payment of \$10,000 on February 1, 2000, X only deducts interest of \$8,881.83, the qualified stated interest allocable to the period (\$10,000) offset with the bond issuance premium allocable to the period (\$1,118.17).

(g) *Effective date.* This section applies to debt instruments issued on or after March 2, 1998.

(h) *Accounting method changes—(1) Consent to change.* An issuer required to change its method of accounting for bond issuance premium to comply with this section must secure the consent of the Commissioner in accordance with the requirements of § 1.446-1(e). Paragraph (h)(2) of this section provides the Commissioner's automatic consent for certain changes.

(2) *Automatic consent.* The Commissioner grants consent for an issuer to change its method of accounting for bond issuance premium on debt instruments issued on or after March 2, 1998.

Because this change is made on a cut-off basis, no items of income or deduction are omitted or duplicated and, therefore, no adjustment under section 481 is allowed. The consent granted by this paragraph (h)(2) applies provided—

(i) The change is made to comply with this section;

(ii) The change is made for the first taxable year for which the issuer must account for a debt instrument under this section; and

(iii) The issuer attaches to its federal income tax return for the taxable year containing the change a statement that it has changed its method of accounting under this section.

[T.D. 8746, 62 FR 68176, Dec. 31, 1997, as amended by T.D. 8838, 64 FR 48547, Sept. 7, 1999]

§ 1.163(d)-1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 163(d)(4)(B)(iii), as added by section 13206(d) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, 107 Stat. 467), allows an electing taxpayer to take all or a portion of certain net capital gains, attributable to dispositions of property held for investment, into account as investment income. As a consequence, the capital gains affected by this election are not eligible for the maximum capital gain rate of 28 percent. The election may be made for net capital gains recognized by noncorporate taxpayers during any taxable year beginning after December 31, 1992.

(b) *Time and manner for making the election.* The election under section 163(d)(4)(B)(iii) 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. The election is to be made on Form 4952, Investment Interest Expense Deduction, in accordance with the Form and its instructions.

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

(d) *Effective date.* The rules set forth in this section are effective December 12, 1996.

[T.D. 8688, 61 FR 65322, Dec. 12, 1996]