

MEMO# 31949

September 6, 2019

IRS Clarifies Application of Section 451(b) to Original Issue Discount

[31949]

September 6, 2019 TO: ICI Members

Tax Committee SUBJECTS: Tax RE: IRS Clarifies Application of Section 451(b) to Original Issue Discount

The Internal Revenue Service (IRS) and the Treasury Department have released proposed regulations (attached) regarding the application of section 451(b) to discount and income on certain debt instruments. As requested by the Institute,[\[1\]](#) the proposed regulations clarify that section 451(b) does not apply to the general timing rules for original issue discount (OID), other than with respect to credit card fees and similar items that are treated as something other than discount for book purposes. The proposed regulations also restate the guidance issued last year clarifying that section 451(b) does not apply to accrued market discount.[\[2\]](#)

Section 451(b), as amended by the 2017 tax legislation, generally requires taxpayers to include certain items into income for tax purposes no later than when they are included in revenue for financial accounting purposes.[\[3\]](#) The legislative history was clear that the changes were intended to override application of the OID rules to credit card and other fees, that were treated as discount for tax purposes but as current income for financial reporting purposes. It was unclear, however, how these changes affected the accrual of market discount and OID on debt held by regulated investment companies (RICs) and other taxpayers.

The preamble to the proposed regulations states that the IRS and the Treasury Department agree with the Institute's comments that section 451(b) was not intended to apply to the general timing rules on OID other than with respect to items not treated as discount for book purposes. The government also agrees that the application of this rule to OID outside the context of certain fees would result in significant administrative burden with little corresponding increase in tax revenue.

Accordingly, the proposed regulations provide that section 451(b) does not apply to several special methods of accounting, including the following:

- Timing rules for OID under sections 811(b)(3) or 1272, income under the contingent payment debt instrument rules in Treas. Reg. § 1.1275-4, income under the variable

rate debt instrument rules in Treas. Reg. § 1.1275-5, income and gain associated with a transaction that is integrated under § 1.1275-6, and income under the inflation-indexed debt instrument rules in Treas. Reg. § 1.1275-7;

- Timing rules for *de minimis* OID under Treas. Reg. § 1.1273-1(d) and *de minimis* market discount as defined in section 1278(a)(2)(C);
- Timing rules for accrued market discount under sections 1276 and 1278(b); and
- Methods of accounting for gain on shares in a money market fund under Treas. Reg. § 1.446-7 (the NAV method).

Taxpayers generally may rely on these proposed regulations for taxable years beginning after December 31, 2017.

Karen Lau Gibian
Associate General Counsel

[Attachment](#)

endnotes

[1] See Institute Memorandum No. 31195, dated May 4, 2018, which can be found at: https://www.ici.org/my_ici/memorandum/memo31195.

[2] See Institute Memorandum No. 31414, dated September 27, 2018, which can be found at: https://www.ici.org/my_ici/memorandum/memo31414.

[3] See Institute Memorandum No. 30991, dated December 21, 2017, which can be found at: https://www.ici.org/my_ici/memorandum/memo30991.

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