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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9790]

RIN 1545-BN40

Treatment of Certain Interests in Corporations as Stock or Indebtedness; Correction.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correction.

SUMMARY: This document contains corrections to the final and temporary regulations (T.D. 9790) that were published in the Federal Register on Friday, October 21, 2016 (81 FR 72858). The regulations relate to the determination of whether an interest in a corporation is treated as stock or indebtedness for all purposes of the Internal Revenue Code.

DATES: These corrections are effective on January 23, 2017, and applicable October 21, 2016.

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SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction are under sections 385 and 752 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

Correction of Publication

Accordingly, the final and temporary regulations (TD 9790) that are the subject of FR Doc. 2016-25105 are corrected as follows:

1. On page 72877, in the preamble, second column, the fourth sentence of the second full paragraph, “The Treasury Department and the IRS have considered this comment and determined that it would be appropriate to disregard subordination if the recharacterization occurred as a result of §1.385-3 and the final regulations reflect that decision” is corrected to read “The Treasury Department and the IRS have considered this comment and determined that it would be appropriate to disregard subordination if the recharacterization occurred as a result of §1.385-3 or if a recharacterized EGI provides creditor’s rights under commercial law and the final regulations reflect that decision”.
2. On page 72906, second column, the last paragraph, “The Treasury Department and the IRS have determined that the proposed regulations already properly provided for this result. As a result of an issuance described in the subsidiary stock issuance exception, the issuer (S2) becomes a successor to the transferor (S1) to the extent of the value of the expanded group stock acquired from the issuer, but only with respect to a debt instrument of the issuer issued during the per se period determined with respect to the issuance. If the issuer (S2) engages in another transaction

described in the subsidiary stock issuance exception as a transferor, the acquisition of the stock of the expanded group member (the second issuer) would also not constitute an acquisition of expanded group stock by reason of the exception. Therefore, under a second application of the subsidiary stock issuance exception, the acquisition of the stock of S3 by the issuer (S2), a successor to the transferor (S1), is not treated as described in the second prong of the funding rule and thus cannot be treated as funded by a covered debt instrument issued by the transferor (S1). After the second issuance, the second issuer (S3) is a successor to both the first transferor (S1) and the first issuer (S2), which remains a successor to the first transferor (S1). The final and temporary regulations change the terminology, but do not change the result of the proposed regulations in this regard.” is corrected to read, “The Treasury Department and the IRS have determined that the proposed regulations already properly provided for this result in the situation where S2 controls S3 within the meaning of §1.385-3(c)(2)(i)(B). However, the final regulations further clarify the application of the subsidiary stock acquisition exception in other tiered transfer situations, for instance where S2 subsequently engages in a transaction with an expanded group member controlled by S1, but not controlled by S2. See §1.385-3(g)(24)(ii)(B).”.

3. On page 72916, second column, the second sentence of the first full paragraph from the bottom, “The comments cited leases treated as loans under section 467; receivables and payables resulting from correlative adjustments under section 482; production payments under section 636;

- coupon stripping transactions under section 1286; and debt (or instruments treated as debt) described in section 856(m)(2), 860G(a)(1), or 1361(c)(5)” is corrected to read “The comments cited leases treated as loans under section 467; receivables and payables resulting from conforming adjustments under section 482; production payments under section 636; coupon stripping transactions under section 1286; and debt (or instruments treated as debt) described in section 856(m)(2), 860G(a)(1), or 1361(c)(5)”.
4. On page 72916, third column, the first complete sentence of the incomplete paragraph at the top, “The final and temporary regulations also provide an exception for debt instruments deemed to arise as a result of transfer pricing adjustments under section 482” is corrected to read “The final and temporary regulations also provide an exception for debt instruments that arise due to conforming adjustments under §1.482-1(g)(3)”.

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