

(6) \* \* \* For purposes of this section and §§ 1.385–3 and 1.385–3T, and notwithstanding the one-corporation rule described in paragraph (b)(1) of this section, a partnership that is wholly owned by members of a consolidated group is treated as a partnership. \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \* For purposes of this section and §§ 1.385–3 and 1.385–3T, when a debt instrument ceases to be a consolidated group debt instrument as a result of a transaction in which the member of the consolidated group that issued the instrument (the *issuer*) or the member of the consolidated group holding the instrument (the *holder*) ceases to be a member of the same consolidated group but both the issuer and the holder continue to be members of the same expanded group, the issuer is treated as issuing a new debt instrument to the holder in exchange for property immediately after the debt instrument ceases to be a consolidated group debt instrument. \* \* \*

(d) \* \* \*

(3) \* \* \* If a departing member has issued a covered debt instrument (determined without regard to the one-corporation rule described in paragraph (b)(1) of this section) that is not a consolidated group debt instrument and that is not treated as stock immediately before the departing member ceases to be a consolidated group member, then the departing member (and not the consolidated group) is treated as issuing the covered debt instrument on the date and in the manner the covered debt instrument was issued. \* \* \*

(4) \* \* \* This paragraph (d)(4) applies when a departing member ceases to be a consolidated group member in a transaction other than a distribution to which section 355 (or so much of section 356 as relates to section 355) applies, and the consolidated group has made a regarded distribution or acquisition. \* \* \*

(i) If the departing member made the regarded distribution or acquisition (determined without regard to the one-corporation rule described in paragraph (b)(1) of this section), the departing member (and not the consolidated group) is treated as having made the regarded distribution or acquisition.

(ii) If the departing member did not make the regarded distribution or acquisition (determined without regard to the one-corporation rule described in paragraph (b)(1) of this section), then the consolidated group (and not the departing member) continues to be

treated as having made the regarded distribution or acquisition.

(e) \* \* \*

(3) *Disregarded distribution or acquisition.* The term *disregarded distribution or acquisition* means a distribution or acquisition described in § 1.385–3(b)(2) or (b)(3)(i) between members of a consolidated group that is disregarded under the one-corporation rule described in paragraph (b)(1) of this section.

(5) *Regarded distribution or acquisition.* The term *regarded distribution or acquisition* means a distribution or acquisition described in § 1.385–3(b)(2) or (b)(3)(i) that is not disregarded under the one-corporation rule described in paragraph (b)(1) of this section.

(f) \* \* \*

(3) \* \* \*

*Example 1.* \* \* \*

(ii) \* \* \* Pursuant to paragraph (b)(5)(i) of this section, the transaction is first analyzed without regard to the one-corporation rule described in paragraph (b)(1) of this section, and therefore UST is treated as issuing a covered debt instrument in exchange for expanded group stock. \* \* \*

\* \* \*

*Example 4.* \* \* \*

(ii) \* \* \* Under paragraph (c)(1)(i) of this section, for purposes of § 1.385–3, DS1 is treated as issuing a new debt instrument to USS1 in exchange for property immediately after DS1 Note ceases to be a consolidated group debt instrument. \* \* \*

*Example 5.* \* \* \*

(ii) \* \* \* Under paragraph (c)(1)(i) of this section, for purposes of § 1.385–3, DS1 is treated as issuing a new debt instrument to USS1 in exchange for property immediately after DS1 Note ceases to be a consolidated group debt instrument. \* \* \*

\* \* \*

(h) *Expiration date.* This section expires on October 13, 2019.

■ **Par. 7.** Section 1.752–2T is amended by revising paragraph (m)(2) to read as follows:

**§ 1.752–2T Partner's share of recourse liabilities (temporary).**

\* \* \*

(m) \* \* \*

(2) Paragraphs (c)(3) and (l)(4) of this section expire on October 13, 2019.

**Martin V. Franks,**

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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.

**FOR FURTHER INFORMATION CONTACT:** Austin M. Diamond-Jones, (202) 317–5363, or Joshua G. Rabon, (202) 317–6938 (not toll-free numbers).

#### 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)".

**Martin V. Franks,**

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Legal Processing Division, Associate Chief  
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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[DA 16-1453]

### Annual Adjustment of Civil Monetary Penalties To Reflect Inflation

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Act) requires the Federal Communications Commission to amend its forfeiture penalty rules to reflect annual adjustments for inflation in order to improve their effectiveness and maintain their deterrent effect. The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

**DATES:** Effective January 24, 2017.

**FOR FURTHER INFORMATION CONTACT:** Celia Lewis, Enforcement Bureau, 202-418-7456, or Gregory Haledjian, Enforcement Bureau, 202-418-7440.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, DA 16-1453, adopted and released on December 30, 2016. The document is

available for download at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db1230/DA-16-1453A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1230/DA-16-1453A1.pdf). The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554.

On November 2, 2015, President Obama signed into law the Bipartisan Budget Act of 2015, which included, as Section 701 thereto, the 2015 Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. Under the act, agencies are required to make annual inflationary adjustments by January 15 each year, beginning in 2017. The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance. OMB issued guidance on December 16, 2016, and this Order follows that guidance. We therefore update the civil monetary penalties set forth in the Commission's rules, to reflect an annual inflation adjustment that derives from OMB's cost-of-living multiplier of 1.01636. The cost-of-living adjustment is "the percentage (if any)" by which the "(A) Consumer Price Index for the month of October preceding the date of the adjustment, exceeds (B) the Consumer Price Index for the month of October 1 year before the month of October referred to in subparagraph (A)."

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

The Enforcement Bureau will coordinate with the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center to report this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.