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Washington Report

July 17, 1989, Volume XVIII, Issue 20

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GENERAL ACCOUNTING OFFICE

The comment period has been extended on an exposure draft, entitled "Proposed Framework for Establishing Federal Government Accounting Standards," the GAO announced (see the 7/12/89 Fed. Reg., p. 29389). The GAO said that "because of the significant interest expressed" in the exposure draft, the comment period has been extended to 8/31/89. The exposure draft was originally published in the 6/5/89 Federal Register (see the 6/5/89 Wash. Rpt.). Copies of the exposure draft are available by writing the Director, Accounting Principles and Standards, Accounting and Financial Management Division, General Accounting Office, Room 6023, 441 G St., N.W., Washington, D.C. 20548. For further information after reading the exposure draft, contact Ronald Young at the GAO at 202/275-9578.

LABOR, DEPARTMENT OF

Form 5500 annual report filings for 1988 and 1989 plan years will not be rejected solely because the plan administrator determines realized and unrealized gains and losses for those plan years utilizing a historical cost approach consistent with that utilized by the plan for the 1987 plan year annual report, the Department of Labor has determined. However, for plan years beginning on or after 1/1/90, plan administrators will be expected to comply with the revised Form 5500 instructions relating to the utilization of current value adjusted cost bases to determine realized and unrealized gains and losses. The clarification was issued, the Labor Department said, because "there has been some confusion on the part of some banks and other employee benefit service providers with respect to the appropriate methodology for determining and reporting realized and unrealized gains and losses." Instructions to the 1988 Form 5500 issued in the 3/1/89 Federal Register (see the 3/13/89 Wash. Rpt.) state that gains and losses should be calculated by subtracting the current value of assets at the beginning of the year from the current value of assets at the end of the preceding year (basis adjusted to current value annually). The prior year's instructions to Form 5500 stated that the realized and unrealized gains and losses be calculated by subtracting the cost or adjusted basis of assets at the beginning of the year from the current value of assets at the end of the year. The Labor Department was informed by the AICPA that, in practice, many employee benefit plans have understood the prior year's instructions to mean that a historical cost basis approach was an acceptable method of determining realized and unrealized gains and losses.

In a 6/2/89 letter to the Labor Department, Andrew J. Capelli, chairman of the AICPA Employee Benefit Plans Committee, wrote, "Several banks that maintain plan asset information have indicated that their accounting systems do not capture fair value information at the beginning of the year and that the new instructions would require them to significantly change their accounting systems. We understand that there has been no change in the Federal regulations regarding reporting realized and unrealized gains or losses. Because of the change in instructions of the Form 5500, however, it is not clear whether the Department of Labor intends that filers of Form 5500s change their method of reporting realized and unrealized gains or losses from the prior year." Mr. Capelli asked for "early and specific guidance on this matter."

The Labor Department, in its 7/6/89 letter responding to the American Bankers Association which initially raised the concerns, said the Labor Department "does not intend to modify the current value reporting requirements applicable to determining realized and unrealized gains and losses...." However, the Labor Department did grant the relief described above for 1988 and 1989 plan year Form 5500 filings.

SECURITIES AND EXCHANGE COMMISSION

Whether Rule 32a-3 under the Investment Company Act of 1940 should be adopted will be considered at a 7/20/89 open meeting. Rule 32a-3 would expand the time period during which certain registered management investment companies must select an independent public accountant. The meeting is scheduled to begin at 10:00 a.m. in Room 1C30 of the SEC Headquarters Building, 450 Fifth St., N.W., Washington, D.C. For further information, contact C. Christopher Sprague at 202/272-7779.

Staff Accounting Bulletin (SAB) No. 82, which concerns accounting for transfers of nonperforming assets by financial institutions, and disclosure of the impact of financial assistance from regulators, has been published in the Federal Register (see the 7/12/89 Fed. Reg., pp. 29333-34). SAB No. 82 was released 7/5/89 (see the 7/10/89 Wash. Rpt.). For further information after reading SAB No. 82, contact Teresa Iannaconi at the SEC at 202/272-2130.

TREASURY, DEPARTMENT OF

Temporary arbitrage rebate regulations will be amended, the IRS announced in Notice 89-78. The temporary regulations under section 148 of the Internal Revenue Code, which provide guidance about computing the rebatable arbitrage and the yield on the issues, were published in the 5/15/89 Federal Register (see the 5/22/89 Wash. Rpt.). The amendments to the temporary regulations relate to the definition of "guarantor" in section 1.148-3T, the special allocation rules for refundings in section 1.148-4T, and certain other provisions. The IRS said the amendments will be effective "as if originally included in the temporary regulations." In addition, the IRS said the period for commenting on the proposed arbitrage rebate regulations, which were also published in the 5/15/89 Federal Register, will be extended from 7/14/89 to 9/14/89. Notice 89-78 is scheduled to be published in Internal Revenue Bulletin 1989-30, dated 7/24/89. For further information after reading the notice, contact George Delduke at the IRS at 202/566-4545.

The branch-level interest tax is the subject of Notice 89-90 issued recently by the IRS. The notice provides guidance concerning the terms "interest paid by a U.S. trade or business" and "excess interest" in section 1.884-4T of the Temporary Income Tax Regulations. The notice also provides that the tax on excess interest is not prohibited by any provision in any income tax treaty to which the United States is a party and which was in force on or after 1/1/87. In addition, the notice makes two changes regarding the definition of the term "qualified resident." Simplified rules are provided under which shares of a corporation that are held by a pension trust are treated as owned by the participants of the trust. The notice also reduced from 30 percent to 10 percent the share turnover requirement, which must be met in order for a foreign corporation to be treated as primarily and regularly traded on an established securities market in a foreign country. The notice also includes new rules for determining the interest paid by a U.S. trade or business of a foreign bank and amends the regulations to treat a portion of the excess interest of a foreign bank as interest on deposits, and thus exempt from tax under section 881(d) of the Internal Revenue Code. In addition, the double tax benefit rule will no longer apply to foreign banks, the IRS said, because under these new rules a foreign bank will no longer be able to identify liabilities of a U.S. trade or business. New rules are also provided for determining the interest paid by a U.S. trade or business of a foreign

corporation that is not a bank and delete the double tax benefit rule for such corporations. The IRS said the new rules are in response to comments received on proposed regulations regarding the branch tax, which were published in the 9/2/88 Federal Register (see the 9/5/88 Wash. Rpt.). Notice 89-80 is scheduled to be published in Internal Revenue Service Bulletin 1989-30, dated 7/24/89. For further information after reading the notice, contact Richard Elliott at the IRS at 202/566-6457.

The deadline has been extended for taxpayers to make an election for the possessions tax credit, the IRS announced in Notice 89-82. The IRS explained that guidance in Notice 87-27 permitted a taxpayer, who had elected the cost sharing method, to change to the profit split method or the method permitted under Internal Revenue Code section 936(h)(1) through (4) for years to which the amendments made to section 936 by the Tax Reform Act of 1986 apply. Notice 88-97, the IRS said, provided an extension of time for making the change in method referred to in Notice 87-27, and Notice 89-82 provides a further extension. The change may now be made on an amended tax return for the possessions corporation's first taxable year beginning after 12/31/86, if such amended return is filed not later than the due date for the possessions corporation's tax return for its third taxable year beginning after 12/31/86. The change will apply to the first taxable year beginning after 12/31/86 and all subsequent taxable years. Notice 89-82 is scheduled to be published in Internal Revenue Bulletin 1989-82, dated 8/7/89. For further information after reading the notice, contact Steven R. Marcuse at the IRS at 202/566-6645.

For further information contact Shirley Twillman at 202/737-6600.

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