

resell. Paragraph (1) enumerates real underwriters that participate in a classical underwriting. A person is an underwriter if he purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, with a view to distribution or interest. This provision covers the purchase of a certificate of indebtedness issued under proposed 11 U.S.C. 364 and purchased from the debtor, if the purchase of the certificate was with a view to distribution.

A person is also an underwriter if he offers to sell securities offered or sold under the plan for the holders of such securities, or offers to buy securities offered or sold under the plan from the holders of such securities, if the offer to buy is with a view to distribution of the securities and under an agreement made in connection with the plan, with the consummation of the plan or with the offer or sale of securities under the plan. Finally, a person is an underwriter if he is an issuer, as used in section 2(11) of the Securities Act of 1933 [15 U.S.C. 77b(11)].

Paragraph (2) of subsection (b) exempts from the definition of underwriter any entity to the extent that any agreement that would bring the entity under the definition in paragraph (1) provides only for the matching combination of fractional interests in the covered securities or the purchase or sale of fractional interests. This paragraph and paragraph (1) are modeled after former rule 133 of the Securities and Exchange Commission.

Paragraph (3) specifies that if an entity is not an underwriter under the provisions of paragraph (1), as limited by paragraph (2), then the entity is not an underwriter for the purposes of the Securities Act of 1933 [15 U.S.C. 77a et seq.] with respect to the covered securities, that is, those offered or sold in an exempt transaction specified in subsection (a)(2). This makes clear that the current definition of underwriter in section 2(11) of the Securities Act of 1933 [15 U.S.C. 77b(11)] does not apply to such a creditor. The definition in that section technically applies to any person that purchases securities with “a view to distribution.” If literally applied, it would prevent any creditor in a bankruptcy case from selling securities received without filing a registration statement or finding another exemption.

Subsection (b) is a first run transaction exemption and does not exempt a creditor that, for example, some years later becomes an underwriter by reacquiring securities originally issued under a plan.

Subsection (c) makes an offer or sale of securities under the plan in an exempt transaction (as specified in subsection (a)(2)) a public offering, in order to prevent characterization of the distribution as a “private placement” which would result in restrictions, under rule 144 of the SEC, on the resale of the securities.

REFERENCES IN TEXT

Section 5 of the Securities Act of 1933, referred to in subsec. (a), is classified to section 77e of Title 15, Commerce and Trade.

Sections 13 and 15(d) of the Securities Exchange Act of 1934, referred to in subsec. (a)(3)(B)(i), are classified to sections 78m and 78o(d), respectively, of Title 15, Commerce and Trade.

The Trust Indenture Act of 1939, referred to in subsec. (d), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, as amended, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77aaa of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-327 substituted “2(a)(11)” for “2(11)” wherever appearing.

1994—Subsec. (a). Pub. L. 103-394, §501(d)(33)(A), in introductory provisions struck out “(15 U.S.C. 77e)” after “Act of 1933” and substituted “do not apply” for “does not apply” and in par. (3)(B)(i) struck out “(15 U.S.C. 78m or 78o(d))” after “Act of 1934”.

Subsec. (b)(1). Pub. L. 103-394, §501(d)(33)(B), struck out “(15 U.S.C. 77b(11))” after “Act of 1933”.

Subsec. (d). Pub. L. 103-394, §501(d)(33)(C), struck out “(15 U.S.C. 77aaa et seq.)” after “Act of 1939”.

1984—Subsec. (a)(3)(B)(i). Pub. L. 98-353, §516(a)(1), inserted “or 15(d)” after “13”, and “or 78o(d)” after “78m”.

Subsec. (a)(3)(B)(ii). Pub. L. 98-353, §516(a)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “in compliance with all applicable requirements for the continuance of trading in such security on the date of such offer or sale; and”.

Subsec. (a)(4). Pub. L. 98-353, §516(a)(3), substituted “stockbroker” for “stockholder” in two places.

Subsec. (b)(1). Pub. L. 98-353, §516(b)(1), inserted “and except with respect to ordinary trading transactions of an entity that is not an issuer”.

Subsec. (b)(1)(C). Pub. L. 98-353, §516(b)(2), substituted “from” for “for”.

Subsec. (b)(2)(A)(i). Pub. L. 98-353, §516(b)(3), substituted “or combining” for “combination”.

Subsec. (b)(2)(A)(ii). Pub. L. 98-353, §516(b)(4), substituted “from or to” for “among”.

Subsec. (d). Pub. L. 98-353, §516(c), struck out “commercial” before “note”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1146. Special tax provisions

(a) The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

(b) The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) the date on which such governmental unit responds to the request under this subsection; or

(2) 270 days after such request.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2641; Pub. L. 98-353, title III, §517, July 10, 1984, 98 Stat. 388; Pub. L. 109-8, title VII, §719(b)(3), Apr. 20, 2005, 119 Stat. 133.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1146 of the House amendment represents a compromise between the House bill and Senate amendment.

Special tax provisions: reorganization: The House bill provided rules on the effect of bankruptcy on the taxable year of the debtor and on tax return filing requirements for State and local taxes only. The House bill also exempted from State or local stamp taxes the issu-

ance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan. The House bill also authorized the bankruptcy court to declare the tax effects of a reorganization plan after the proponent of the plan had requested a ruling from State or local tax authority and either had received an unfavorable ruling or the tax authority had not issued a ruling within 270 days.

The Senate amendment deleted the rules concerning the taxable years of the debtor and tax return filing requirements since the Federal rules were to be considered in the next Congress. It broadened the rule exempting transfers of securities to include Federal stamp or similar taxes, if any. In addition, the Senate amendment deleted the provision which permitted the bankruptcy court to determine the tax effects of a plan.

The House amendment retains the State and local rules in the House bill with one modification. Under the House amendment, the power of the bankruptcy court to declare the tax effects of the plan is limited to issues of law and not to questions of fact such as the allowance of specific deductions. Thus, the bankruptcy court could declare whether the reorganization qualified for taxfree status under State or local tax rules, but it could not declare the dollar amount of any tax attributes that survive the reorganization.

SENATE REPORT NO. 95-989

Section 1146 provides special tax rules applicable to Title 11 reorganizations. Subsection (a) provides that the taxable period of an individual debtor terminates on the date of the order for relief, unless the case has been converted into a reorganization from a liquidation proceeding.

Subsection (b) requires the trustee of the estate of an individual debtor in a reorganization to file a tax return for each taxable period while the case is pending after the order for relief. For corporations in chapter 11, the trustee is required to file the tax returns due while the case is pending (sec. 346(c)(2)).

Subsection (c) exempts from Federal, State, or local stamp taxes the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan. This subsection is derived from section 267 of the present Bankruptcy Act [section 667 of former title 11].

Subsection (d) permits the court to authorize the proponent of a reorganization plan to request from the Internal Revenue Service (or State or local tax authority) an advance ruling on the tax effects of the proposed plan. If a ruling is not obtained within 270 days after the request was made, or if a ruling is obtained but the proponent of the plan disagrees with the ruling, the bankruptcy court may resolve the dispute and determine the tax effects of the proposed plan.

Subsection (e) provides that prepetition taxes which are nondischargeable in a reorganization, and all taxes arising during the administration period of the case, may be assessed and collected from the debtor or the debtor's successor in a reorganization (see sec. 505(c) of the bill).

HOUSE REPORT NO. 95-595

Section 1146 of title 11 specifies five subsections which embody special tax provisions that apply in a case under chapter 11 of title 11. Subsection (a) indicates that the tax year of an individual debtor terminates on the date of the order for relief under chapter 11. Termination of the taxable year of the debtor commences the tax period of the estate. If the case was converted from chapter 7 of title 11 then the estate is created as a separate taxable entity dating from the order for relief under chapter 7. If multiple conversion of the case occurs, then the estate is treated as a separate taxable entity on the date of the order for relief under the first chapter under which the estate is a separate taxable entity.

Subsection (d) permits the court to authorize the proponent of a plan to request a taxing authority to de-

clare the tax effects of such plan. In the event of an actual controversy, the court may declare the tax effects of the plan of reorganization at any time after the earlier of action by such taxing authority or 270 days after the request. Such a declaration, unless appealed, becomes a final judgment and binds any tax authority that was requested by the proponent to determine the tax effects of the plan.

AMENDMENTS

2005—Pub. L. 109-8 redesignated subsecs. (c) and (d) as (a) and (b), respectively, and struck out former subsecs. (a) and (b) which read as follows:

“(a) For the purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

“(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.”

1984—Subsec. (c). Pub. L. 98-353, §517(a), struck out “State or local” before “law imposing a stamp tax”.

Subsec. (d)(1). Pub. L. 98-353, §517(b), substituted “or” for “and”.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER IV—RAILROAD REORGANIZATION

§ 1161. Inapplicability of other sections

Sections 341, 343, 1102(a)(1), 1104, 1105, 1107, 1129(a)(7), and 1129(c) of this title do not apply in a case concerning a railroad.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2641.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

This section makes inapplicable sections of the bill which are either inappropriate in railroad reorganizations, or relate to matters which are otherwise dealt with in subchapter IV.

§ 1162. Definition

In this subchapter, “Board” means the “Surface Transportation Board”.

(Added Pub. L. 104-88, title III, §302(1), Dec. 29, 1995, 109 Stat. 943.)

PRIOR PROVISIONS

A prior section 1162, Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2641, defined “Commission”, prior to repeal by Pub. L. 104-88, title III, §302(1), Dec. 29, 1995, 109 Stat. 943.

EFFECTIVE DATE

Section effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as a note under section 701 of Title 49, Transportation.

§ 1163. Appointment of trustee

As soon as practicable after the order for relief the Secretary of Transportation shall submit a