

Example 3. Deep in the money options. (i) LP is a limited partnership engaged in an internet start-up venture. In exchange for a premium of \$14x, LP issues a noncompensatory option to C to acquire a 5 percent interest in LP for \$6x at any time during a 10-year period commencing on the date on which the option is issued. At the time of the issuance of the option, a 5 percent interest in LP has a fair market value of \$15x. Because of the riskiness of LP's business, the option is not reasonably certain to be exercised. Nevertheless, because C has paid a \$14x premium for a partnership interest that has a fair market value of \$15x, C has substantially the same economic benefits and detriments as a result of purchasing the option as C would have had if C had purchased a partnership interest. Therefore, the option provides C with rights that are substantially similar to the rights afforded to a partner (partner attributes). See paragraph (c)(3) of this section. If there is a strong likelihood that failure to treat C as a partner would result in a substantial reduction in the partners' and C's aggregate tax liabilities, C will be treated as a partner. In such a case, C's distributive share of LP's income, gain, loss, deduction, or credit (or items thereof) is determined in accordance with C's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704-1(b)(3).

(ii) The facts are the same as in paragraph (i) of this Example 3, except that C transfers \$150x to LP in exchange for a note from LP that matures 10 years from the date of issuance and a warrant to acquire a 5 percent interest in LP for an exercise price of \$6x. The warrant issued with the debt is exercisable at any time during the 10-year term of the debt. The debt instrument and the warrant comprise an investment unit with the meaning of section 1273(c)(2). Under § 1.1273-2(h), the issue price of the investment unit, \$150x, is allocated \$136x to the debt instrument and \$14x to the warrant. As in paragraph (i), C has substantially the same economic benefits and detriments as a result of purchasing the warrant as C would have had if C had purchased a partnership interest. Therefore, the warrant provides C with rights that are substantially similar to the rights afforded to a partner. If there is a strong likelihood that failure to treat C as a partner would result in a substantial reduction in the partners' and C's aggregate tax liabilities, then C will be treated as a partner. In such a case, C's distributive share of LP's income, gain, loss, deduction, or credit (or items thereof) is determined in accordance with C's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704-1(b)(3).

(e) *Effective Date.* This section applies to noncompensatory options that are issued on or after the date final regulations are published in the **Federal Register**.

6. Section 1.1272-1 is amended by adding a sentence at the end of paragraph (e) to read as follows:

§ 1.1272-1 Current inclusion of OID in income.

* * * * *

(e) * * * For debt instruments issued on or after the date final regulations are published in the **Federal Register**, the term *stock* in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

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7. Section 1.1273-2 is amended by adding a sentence at the end of paragraph (j) to read as follows:

§ 1.1273-2 Determination of issue price and issue date.

* * * * *

(j) * * * For debt instruments issued on or after the date final regulations are published in the **Federal Register**, the term *stock* in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

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8. Section 1.1275-4 is amended by adding a sentence at the end of paragraph (a)(4) to read as follows:

§ 1.1275-4 Contingent payment debt instruments.

(a) * * *

(4) * * * For debt instruments issued on or after the date final regulations are published in the **Federal Register**, the term *stock* in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 18

RIN 1219-AA98 (Phase 10)

Alternate Locking Devices for Plug and Receptacle-Type Connectors on Mobile Battery-Powered Machines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: MSHA is proposing to amend the existing regulation by allowing the

optional use of alternative locking devices for plugs and receptacles to secure battery plugs to receptacles. The proposed rule would eliminate the need to file petitions for modification to use this alternative means of securing battery plugs to receptacles.

MSHA is using direct final rulemaking for this action because the Agency expects that there will be no significant adverse comments on the rule. If no significant adverse comments are received, MSHA will confirm the effective date of the direct final rule. If significant adverse comments are received, MSHA will withdraw the direct final rule and proceed with rulemaking on this proposed rule. A subsequent **Federal Register** document will be published to announce MSHA's action.

DATES: Comments must be received on or before February 21, 2003. Submit written comments on the information collection requirements by February 21, 2003. The direct final rule will become effective March 10, 2003, unless we receive significant adverse comments by February 21, 2003. If we receive such comments, we will publish a timely withdrawal of the direct final rule and proceed with notice and comment rulemaking.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to comments@msha.gov, by facsimile to (202) 693-9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209-3939. You may contact MSHA with any format questions. Comments are posted for public viewing at <http://www.msha.gov/currentcomments.htm>.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693-9442; facsimile: (202) 693-9441; E-mail: nichols-marvin@msha.gov. You can view comments filed on this rulemaking at <http://www.msha.gov/currentcomments.htm>.

SUPPLEMENTARY INFORMATION:

I. Direct Final Rules

Concurrent with this proposed rule, we also are publishing a separate, substantively identical direct final rule in the Final Rule section of this **Federal Register**. The simultaneous publication of these documents will speed notice and comment rulemaking under § 553 of the Administrative Procedure Act should we have to withdraw the direct final rule. All interested parties should