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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-147144-06

RIN 1545-BG09

Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 367(a) of the Internal Revenue Code (Code) regarding gain recognition agreements. These regulations are necessary to respond to comments requested in Notice 2005-74. The regulations primarily affect U.S. persons that transfer stock or securities to foreign corporations or corporations engaged in transactions that affect existing gain recognition agreements. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by May 7, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-147144-06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8

a.m. and 4 p.m. to CC:PA:LPD:PR (REG-147144-06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-147144-06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Daniel McCall, (202) 622-3860; concerning submissions of comments, requests for a public hearing, and/or to be placed on the building access list to attend a hearing, contact Richard Hurst at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 7, 2007.

Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital and start-up costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation is in §1.367(a)-8(b)(3)(iii), (e)(1) through (e)(8), and (g). Responses to these collections of information are required to prevent triggering gain recognition agreements—for example, by submitting new gain recognition agreements or by submitting elections to reduce basis in certain stock. Responses are also required to facilitate electronic filing. These regulations include a rule requiring that gain or interest due under section 367(a) be included in a schedule that can be attached to a taxpayer's electronically-filed return. Response to these collections of information is mandatory. The likely respondents are large corporations.

Estimated total annual reporting burden: 240.

Estimated average annual burden hours per respondent: from 1 hour to 2 hours, depending on individual circumstances.

Estimated number of respondents: 170.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 367(a) of the Internal Revenue Code (Code) and gain recognition agreements. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations primarily will affect United States persons that are large corporations engaged in cross-border corporate transactions. Thus, the number of affected small entities—in

whichever of the three categories defined in the Regulatory Flexibility Act (small businesses, small organizations, and small governmental jurisdictions)—will not be substantial. The IRS and Treasury Department estimate that small organizations and small governmental jurisdictions are likely to be affected only insofar as they might hold a portfolio interest in stock or securities and in the unlikely event that they transfer such stock or securities to a foreign corporation. While a certain number of small entities may transfer stock or securities to a foreign corporation in connection with an acquisition or reorganization, the IRS and Treasury Department do not anticipate the number to be substantial. Furthermore, the IRS and Treasury Department estimate that those small entities that are affected by the regulations will likely face a burden of approximately two hours at an hourly rate of \$200. Considering that the collections of information enable taxpayers to defer or avoid the recognition of potentially large amounts of gain that is subject to a gain recognition agreement, IRS and Treasury believe that \$400 is not a significant economic impact. Comments about the accuracy of this certification may be submitted to the addresses provided in the preamble. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules

and how they can be made easier to understand. For additional requests for comments, see the section “Request for Comments,” in the preamble to the cross-referenced temporary regulations of this issue of the **Federal Register**. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Daniel McCall of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding new entries to read as follows:

Authority: 26 U.S.C. 7805* * *

Section 1.367(a)-3T(e) also issued under 367(a) and (b).* * *

Section 1.367(a)-8T also issued under 367(a) and (b).* * *

Par. 2. Section 1.367(a)-3 is amended by revising paragraphs (e) and (f) to read as follows:

§1.367(a)-3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(e) [The text of this proposed amendment is the same as the text of §1.367(a)-3T(e) published elsewhere in this issue of the **Federal Register**].

(f) [The text of this proposed amendment is the same as the text of §1.367(a)-3T(f) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 1.367(a)-8 is revised to read as follows:

§1.367(a)-8 Gain recognition agreement requirements.

[The text of proposed §1.367(a)-8 is the same as the text of §1.367(a)-8T published elsewhere in this issue of the **Federal Register**.]

Kevin M. Brown
Deputy Commissioner for Services and Enforcement.