

[4830-01-p]

Published March 1, 2007

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9313

RIN 1545-BG29

Corporate Reorganizations; Additional guidance on distributions under sections 368(a)(1)(D) and 354(b)(1)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations amending §1.368-2T(l), which provides guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation are issued and distributed in the transaction. These regulations clarify that the rules in §1.368-2T(l) are not intended to affect the qualification of related party triangular asset acquisitions as reorganizations described in section 368. These regulations affect corporations engaging in such transactions and their shareholders. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on March 1, 2007.

Applicability Date: For dates of applicability, see §1.368-2T(l)(4)(i).

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker at (202) 622-7550  
(not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

On December 19, 2006, the IRS and Treasury Department published temporary regulations (TD 9303) under § 1.368-2T(l) in the **Federal Register** (71 FR 75879) providing guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation are issued and distributed in the transaction. Under the temporary regulations, in cases where it is determined that the same person or persons own, directly or indirectly, all of the stock of the transferor and transferee corporations in identical proportions, the distribution requirement under sections 368(a)(1)(D) and 354(b)(1)(B) will be treated as satisfied even though no stock is actually issued in the transaction.

In each case where it is determined that the same person or persons own all of the stock of the transferor and transferee corporations in identical proportions, a nominal share of stock of the transferee corporation will be deemed issued in addition to the actual consideration exchanged in the transaction. The nominal share of stock in the transferee corporation will then be deemed distributed by the transferor corporation to its shareholders and, in appropriate circumstances, further transferred to the extent necessary to reflect the actual ownership of the transferor and transferee corporations.

The IRS and Treasury Department have become aware that the temporary regulations may have unintended consequences regarding related

party triangular asset acquisitions otherwise qualifying under section 368.

Specifically, the temporary regulations may cause certain related party asset acquisitions that would otherwise qualify as tax-free triangular reorganizations to be treated as reorganizations described in section 368(a)(1)(D) with boot.

For example, the temporary regulations may cause a related party transaction that would otherwise qualify as a tax-free reorganization described in section 368(a)(1)(C) in which substantially all of the target corporation's properties are acquired solely in exchange for voting stock of the corporation in control of the acquiring corporation to also be described in section 368(a)(1)(D). If so, section 368(a)(2)(A) would preclude the transaction from being treated as described in section 368(a)(1)(C). Accordingly, the transaction would be treated as described only in section 368(a)(1)(D), and the voting stock of the corporation in control of the acquiring corporation would be treated as boot. Further, the temporary regulations may cause a related party transaction that would otherwise qualify as a tax-free reorganization described in section 368(a)(1)(A) by reason of section 368(a)(2)(D) from so qualifying because the deemed issuance of a nominal share of stock of the acquiring corporation would violate the requirements of section 368(a)(2)(D)(i). If so, the transaction would be treated as described only in section 368(a)(1)(D), and the stock of the corporation in control of the acquiring corporation would be treated as boot.

The IRS and Treasury Department did not intend for the temporary regulations to apply to such transactions.

### **Explanation of Provisions**

These temporary regulations clarify and amend the temporary regulations (TD 9303) under §1.368-2T(l) by providing that the deemed issuance of the nominal share of stock of the transferee corporation in a transaction otherwise described in section 368(a)(1)(D) does not apply if the transaction otherwise qualifies as a triangular reorganization described in §1.358-6(b)(2) or section 368(a)(1)(G) by reason of section 368(a)(2)(D). Accordingly, if a transaction qualifies as a triangular reorganization described in §1.358-6(b)(2) or section 368(a)(1)(G) by reason of section 368(a)(2)(D) without regard to the temporary regulations, it will not be treated as a reorganization described in section 368(a)(1)(D).

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Drafting Information**

The principal author of these regulations is Bruce A. Decker of the Office of the Associate Chief Counsel (Corporate).

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

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

Par. 2. Section 1.368-2T is amended by adding paragraph (l)(2)(iv) to read as follows:

§1.368-2T Definition of terms (temporary).

\* \* \* \* \*

(l) \* \* \*

(2) \* \* \*

(iv) Exception. Paragraph (l)(2) of this section does not apply to a

transaction otherwise described in §1.358-6(b)(2) or section 368(a)(1)(G) by reason of section 368(a)(2)(D).

\* \* \* \* \*

Kevin M. Brown

Deputy Commissioner for Services and Enforcement.

Approved: February 21, 2007

Eric Solomon

Assistant Secretary of the Treasury (Tax Policy).