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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9182

RIN 1545-BD31

Reorganizations under Section 368(a)(1)(E) and Section 368(a)(1)(F)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations regarding reorganizations under section 368(a)(1)(E) and section 368(a)(1)(F) of the Internal Revenue Code. The regulations affect corporations and their shareholders.

DATES: Effective Date: These regulations are effective on February 25, 2005.

Applicability Date: These regulations apply to transactions occurring on or after February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Robert B. Gray, at (202) 622-7550 (not a toll free number).

SUPPLEMENTARY INFORMATION:

**Background and Explanation of Provisions**

On August 12, 2004, the IRS and Treasury Department published a notice of proposed rulemaking (REG-106889-04) in the **Federal Register** (69 FR 49836) proposing regulations regarding the requirements for a reorganization under section 368(a)(1)(E) and section 368(a)(1)(F) of the Internal Revenue

Code (Code). Generally, a transaction must satisfy the continuity of interest and continuity of business enterprise requirements to qualify as a reorganization under section 368(a). The notice proposed amending §1.368-1(b) to provide that a continuity of interest and a continuity of business enterprise are not required for a transaction to qualify as a reorganization under section 368(a)(1)(E) (E reorganization) or section 368(a)(1)(F) (F reorganization). The notice also proposed amending §1.368-2 to include rules regarding the requirements for a transaction to qualify as an F reorganization and regarding the effects of an F reorganization.

The IRS and Treasury Department have received oral comments urging that the rule providing that the continuity of interest and continuity of business enterprise requirements do not apply to E and F reorganizations be finalized quickly. For the reasons expressed in the preamble to the proposed regulations, this Treasury decision adopts that rule for transactions on or after February 25, 2005. The IRS and Treasury Department continue to study the other issues addressed in the notice of proposed rulemaking, and welcomes further comment on those issues.

#### **Effect on Other Documents**

The following publications are obsolete as of February 25, 2005:

Rev. Rul. 69-516 (1969-2 C.B. 56).

Rev. Rul. 77-415 (1977-2 C.B. 311).

Rev. Rul. 77-479 (1977-2 C.B. 119).

Rev. Rul. 82-34 (1982-1 C.B. 59).

**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, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Robert B. Gray of the Office of Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## Adoption of Amendment 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 in part as follows:

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

Par. 2. Section 1.368-1(b) is amended by adding a sentence after the seventh sentence to read as follows:

§1.368-1 Purpose and scope of exception of reorganization exchanges.

\* \* \* \* \*

(b) Purpose. \* \* \* Notwithstanding the requirements of this paragraph (b), for transactions occurring on or after February 25, 2005, a continuity of the business

enterprise and a continuity of interest are not required for the transaction to qualify as a reorganization under section 368(a)(1)(E) or (F). \* \* \*

\* \* \* \* \*

Mark E. Matthews,  
Deputy Commissioner for Services and Enforcement.

Approved: February 14, 2005.

Eric Solomon,  
Acting Deputy Assistant Secretary of the Treasury.