

§ 1.168(i)–6(b)(8)) of the acquired MACRS property and begins to depreciate the depreciable exchanged basis (as defined in § 1.168(i)–6(b)(9)) of the acquired MACRS property in accordance with § 1.168(i)–6(c). The depreciable excess basis (as defined in § 1.168(i)–6(b)(10)) of the acquired MACRS property continues to be depreciated by the taxpayer in accordance with the first sentence of this paragraph (f)(5)(v)(B).

\* \* \* \* \*

(vi) \* \* \*

*Example 1.* (i) \* \* \* Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)–6(k)(2)(i), EE decided to apply § 1.168(i)–6 to the involuntary conversion of Canopy V1 with the replacement of Canopy W1, the acquired MACRS property.

\* \* \* \* \*

*Example 3.* (i) \* \* \* Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)–6(k)(2)(i), FF decided to apply § 1.168(i)–6 to the exchange of Computer X2 for Computer Y2, the acquired MACRS property.

\* \* \* \* \*

*Example 4.* (i) \* \* \* Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)–6(k)(2)(i), GG decided to apply § 1.168(i)–6 to the exchange of Equipment X3 for Equipment Y3, the acquired MACRS property.

\* \* \* \* \*

*Example 5.* (i) \* \* \* Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)–6(k)(2)(i), GG decided to apply § 1.168(i)–6 to the exchange of Equipment Y3 for Equipment Z1, the acquired MACRS property.

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(ii) Paragraphs (f)(5)(ii)(F)(2) and (f)(5)(v) of this section apply to a like-kind exchange or an involuntary conversion of MACRS property and computer software for which the time of disposition and the time of replacement both occur after February 27, 2004. For a like-kind exchange or an involuntary conversion of MACRS property for which the time of disposition, the time of replacement, or both occur on or before February 27, 2004, see § 1.168(i)–6(k)(2)(ii). For a like-kind exchange or involuntary conversion of computer software for which the time of disposition, the time of replacement, or both occur on or before February 27, 2004, a taxpayer may rely on prior guidance issued by the Internal Revenue Service for determining the depreciation deductions of the acquired computer software and the exchanged or involuntarily converted computer software (for further guidance, see § 1.168(k)–1T(f)(5) published in the **Federal Register** on September 8, 2003 (68 FR 53000)). In relying on such

guidance, a taxpayer may use any reasonable, consistent method of determining depreciation in the year of disposition and the year of replacement.

\* \* \* \* \*

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 23, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## 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).

\* \* \* \* \*

(1) \* \* \*

(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).*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R08-ND-2006-0001; FRL-8274-6]

#### Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for North Dakota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is revising the format of 40 CFR part 52 for materials submitted by the State of North Dakota that are incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by North Dakota and approved by EPA.

**DATES:** *Effective Date:* This action is effective March 1, 2007.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection Monday through Friday, 8 a.m. to 4

p.m., excluding Federal holidays, at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that, if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to arrange a time to view the hard copy of the North Dakota SIP compilation. An electronic copy of the North Dakota regulations we have approved for incorporation into the SIP are also available by accessing <http://www.epa.gov/region8/air/sip.html>. A hard copy of the regulatory and source-specific portions of the compilation will also be maintained at the Air and Radiation Docket and Information Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460 and the National Archives and Records Administration (NARA). If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number (202) 566-1742. For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

#### FOR FURTHER INFORMATION CONTACT:

Amy Platt, EPA Region 8, at (303) 312-6449, or [Platt.Amy@epa.gov](mailto:Platt.Amy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, wherever “we” or “our” is used it means the EPA.

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#### I. Change in IBR Format

This format revision will affect the “Identification of plan” section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA); the Air and Radiation Docket and Information Center located at EPA