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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9259

RIN 1545-BF36

Statutory Mergers and Consolidations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends final regulations concerning statutory mergers and consolidations under section 368(a)(1)(A) of the Internal Revenue Code. These regulations affect corporations engaging in statutory mergers and consolidations, and their shareholders. This amendment provides transitional relief for certain transactions initiated before January 23, 2006.

DATES: Effective Date: These regulations are effective January 23, 2006.

Applicability Date: For dates of applicability, see §1.368-2(b)(1)(v).

FOR FURTHER INFORMATION CONTACT: Richard M. Heinecke, (202) 622-7930 (not a toll free-number).

SUPPLEMENTARY INFORMATION:

Background

The IRS and Treasury Department published final regulations (TD 9242) in the **Federal Register** on January 26, 2006 (71 FR 4259) concerning statutory mergers and consolidations under section 368(a)(1)(A) of the Internal Revenue

Code. These regulations, §1.368-2(b), generally apply to transactions occurring on or after January 23, 2006. Temporary regulations, §1.368-2T(b), generally applied to transactions occurring in the three years preceding that date (see §1.368-2T as contained in 26 CFR part 1, revised April 1, 2005).

This amendment provides transitional relief for certain transactions initiated before January 23, 2006. Parties to transactions within the scope of the relief may elect to apply the prior temporary regulations instead of the new final regulations. Certain parties must adopt consistent treatment to obtain this relief. This election requirement will be satisfied if none of the specified parties adopts inconsistent treatment.

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. This Treasury decision provides certain taxpayers with an alternative means of compliance with respect to section 368(a)(1)(A). Accordingly, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that prior notice and public procedure is unnecessary and contrary to the public interest. For this reason, it has also been determined, pursuant to 5 U.S.C. 553(d)(1) and (3), that a delayed effective date is not required. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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 final regulations is Richard M. Heinecke of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of 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, in part, as follows:

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

Par. 2. Section 1.368-2 is amended by revising paragraph (b)(1)(v) to read as follows:

§1.368-2 Definition of terms.

* * * * *

(b) (1) * * *

(v) Effective date--(A) In general. This paragraph (b)(1) applies to transactions occurring on or after January 23, 2006. For rules regarding statutory mergers or consolidation occurring before January 23, 2006, see ' 1.368-2T as contained in 26 CFR part 1, revised April 1, 2005, and ' 1.368-2(b)(1) as in effect before January 24, 2003 (see 26 CFR part 1, revised April 1, 2002).

(B) Transitional rule. A taxpayer may elect to apply the provisions of §1.368-2T(b) as contained in 26 CFR part 1, revised April 1, 2005 (the temporary regulations), instead of the provisions of this paragraph (b), to a transaction that occurs on or after January 23, 2006, pursuant to a written agreement which is (subject to customary conditions) binding on January 22, 2006, and at all times thereafter, or pursuant to a tender offer announced prior to January 23, 2006. However, the combining entity of the transferor unit, the combining entity of the transferee unit, any controlling corporation of the combining entity of the transferee unit if stock thereof is provided as consideration in the transaction, and any direct or indirect transferee of transferred basis property from any of the

foregoing, may not elect to apply the provisions of the temporary regulations unless all such taxpayers elect to apply the provisions of the temporary regulations.

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Cono R. Namorato

Acting Deputy Commissioner for Services and Enforcement.

Approved: April 17, 2006

Eric Solomon

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).