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Published December 19, 2006

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-125632-06

RIN 1545-BF83

Corporate Reorganizations; Distributions under sections 368(a)(1)(D) and 354(b)(1)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rule making 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 that provide 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 is issued and distributed in the transaction. These regulations affect corporations engaging in such transactions and their shareholders. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 19, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-125632-06), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand delivered to CC:PA:LPD:PR (REG-147144-06), Courier Desk, Internal Revenue Service, Crystal Mall 4, 1901 South Bell Street, Arlington, Virginia, 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-125632-06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bruce A. Decker, (202) 622-7550; concerning submission of comments, requests for a public hearing, and/or a publication and regulations specialist, Treena Garrett, (202) 622-7180.

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1. The temporary regulations provide guidance on circumstances where the distribution of stock and/or securities under section 354(b)(1)(B) will be deemed satisfied in the absence of an actual issuance of stock and/or securities pursuant to a reorganization described in section 368(a)(1)(D). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Explanation of Provisions

These temporary regulations provide guidance regarding the circumstances in which the distribution requirement under sections 368(a)(1)(D) and 354(b)(1)(B) is deemed satisfied despite the fact that no stock and/or securities are actually issued in a transaction otherwise described in section 368(a)(1)(D). These regulations will affect certain cash sales of assets between two corporations that have the same direct or indirect shareholders or a de minimis variation in shareholder identity and proportionality.

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 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 the regulation does 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 Internal Revenue Code, this notice of proposed rulemaking will be 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 (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. The IRS and Treasury Department request comments on several issues relating to acquisitive reorganizations described in section 368(a)(1)(D). Specifically, the IRS and Treasury Department request comments on whether the meaningless gesture doctrine is inconsistent with the distribution requirement in sections 368(a)(1)(D) and 354(b)(1)(B), especially in situations in which the cash consideration received equals the full fair market value of the property transferred such that there is no missing consideration for which the nominal share of stock deemed received and distributed could substitute. The IRS and

Treasury Department also request comments on the extent, if any, to which the continuity of interest requirement should apply to a reorganization described in section 368(a)(1)(D).

The IRS and Treasury Department request comments on whether these temporary regulations should apply when the parties to the reorganization are members of a consolidated group. Finally, the IRS and Treasury Department request comments on the continued vitality of various liquidation-reincorporation authorities after the enactment of the Tax Reform Act of 1986, Public Law 99-514 (100 Stat. 2085 (1986)). 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 regulations is Bruce A. Decker, Office of Associate Chief Counsel (Corporate).

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 continues to read as follows:

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

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

§1.368-2 Definition of terms.

* * * * *

(l) [The text of this proposed amendment to §1.368-2(l) is the same as the text of §1.368-2T(l)(1) through (l)(4)(i) published elsewhere in this issue of the **Federal Register**]

Deputy Commissioner for Services and Enforcement.