

<< Electronic Public Inspection

---

**Fr. Doc. E7-3533**

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-157834-06]

RIN 1545-BG28

Corporate Reorganizations; Additional Guidance on 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 amend §1.368-2T(1), 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(1) 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 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 May 30, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-157834-06), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to CC:PA:LPD:PR (REG-157834-06), Courier Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-157834-06).

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, Kelly Banks, (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 amend §1.368-2T(1), 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. 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 regulations clarify that the rules in §1.368-2T(1) are not intended to affect the qualification of related party triangular asset acquisitions as reorganizations described in section 368.

#### 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 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 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. 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 adding paragraph (1)(2)(iv) to read as follows:

§1.368-2 Definition of terms.

\* \* \* \* \*

[The text of this proposed amendment to §1.368-2(1)(2)(iv) is the same as the text of §1.368-2T(1)(2)(iv) published elsewhere in this issue of the Federal Register].

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

5

[FR Doc. E7-3533 Filed 2-28-07; 8:45 am]

BILLING CODE 4830-01-P

---

<< Electronic Public Inspection

<< Electronic Public Inspection

---

**Fr. Doc. E7-3534**

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(1), 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(1) 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(1)(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(1) 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(1) 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 (1)(2)(iv) to read as follows:

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

\* \* \* \* \*

(1) \* \* \*

(2) \* \* \*

(iv) Exception. Paragraph (1)(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).

6

[FR Doc. E7-3534 Filed 2-28-07; 8:45 am]

BILLING CODE 4830-01-P

---

<< Electronic Public Inspection