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<PREAMB>

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-139068-08

RIN 1545-BI31

Modification to Consolidated Return Regulation Permitting an Election to Treat a Liquidation of a Target, Followed by a Recontribution to a New Target, as a Cross-Chain Reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking 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 under section 1502 of the Internal Revenue Code (Code). The temporary regulations modify the election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. This modification was made necessary in light of the regulations under section 368 that were issued in October 2007 addressing transfers of assets or stock following a reorganization. The temporary regulations apply to corporations filing consolidated returns. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by December 4, 2009.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-139068-08), room 5203,

Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG-139068-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-139068-08).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mary W. Lyons, (202) 622-7930; concerning submission of comments and the hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by December 4, 2009. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of

information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §1.1502-13(f)(5)(ii)(E) as contained in 26 CFR part 1, revised April 1, 2009, and proposed §1.1502-13(f)(5)(ii)(B)(2). This information is required by the IRS to allow certain parties to make an election to apply §1.1502-13(f)(5)(ii)(B). The likely recordkeepers are corporations filing consolidated income tax returns. No additional burden is anticipated with respect to these proposed regulations over that already required in the regulations currently in effect (CO-11-91 Final and CO-24-95 Final).

Estimated total annual reporting burden: 100 hours.

Estimated average annual burden hours per respondent: 2 hours.

Estimated number of respondents: 50.

Estimated annual frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 1502. The temporary regulations provide that if the election to apply §1.1502-13(f)(5)(ii)(B) is made for a transaction in which old T liquidates into B on or after the effective date of the regulations under §1.368-2(k), issued in October 2007, followed by B's transfer of substantially all of old T's assets to new T, then, for all Federal income tax purposes, old T's liquidation into B and B's transfer of substantially all of old T's assets to new T will be disregarded and, instead, the transaction will be treated as if old T transferred substantially all of its assets to new T in exchange for new T stock in a reorganization described in section 368(a). This election is available only if a direct transfer of the old T assets to new T would qualify as a reorganization. Thus, S's gain from the sale of the T stock to B is not taken into account upon the liquidation of T but instead is taken into account with respect to the new T stock, the successor asset to the old T stock.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the reasons for the modifications to the final regulations contained in the temporary regulations.

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. Further, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations do not have a substantial economic impact because they merely provide for an election in the context of a taxpayer that has triggered deferred gain on subsidiary stock upon the liquidation of the subsidiary. Moreover, the regulations apply only to transactions involving consolidated groups which tend to be larger businesses. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In addition to the specific requests for comments made elsewhere in this preamble or the preamble to the temporary regulations, 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 may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Mary W. Lyons of the Office of 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.

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 in part as follows:

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

Section 1.1502-13 also issued under 26 U.S.C. 1502 * * *

Par. 2. Section 1.1502-13 is amended by revising paragraphs (f)(5)(ii)(B) and adding paragraph (f)(5)(ii)(F) to read as follows:

§1.1502-13 Intercompany transactions.

* * * * *

(f) * * *

(5) * * *

(ii) * * *

(B)(1) [The text of the proposed amendments to §1.1502-13(B)(1) is the same as the text of §1.1502-13T(B)(1) published elsewhere in this issue of the **Federal Register**].

(2) [The text of the proposed amendments to §1.1502-13(B)(2) is the same as

the text of §1.1502-13T(B)(2) published elsewhere in this issue of the **Federal Register**].

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(F) [The text of the proposed amendments to §1.1502-13(F) is the same as the text of §1.1502-13T(F) published elsewhere in this issue of the **Federal Register**].

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Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

<FRDOC> [FR Doc. E9–21323 Filed 9–3–09; 8:45 am]
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