

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-132232-08]

RIN 1545-BI13

Use of Controlled Corporations to Avoid the Application of Section 304

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 and the Treasury Department are issuing temporary regulations under section 304 of the Internal Revenue Code (Code). The temporary regulations apply to certain transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the application of section 304 to a corporation controlled by the issuing corporation in the transaction, or to a corporation that controls the acquiring corporation in the transaction. The temporary regulations affect shareholders treated as receiving distributions in redemption of stock by reason of section 304. The text of temporary regulations published in this issue of the **Federal Register** serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by [INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-132232-08), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-132232-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-132232-08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sean W. Mullaney, (202) 622-3860; concerning submissions of comments or requests for a public hearing, Richard Hurst at (202) 622-7180 (not toll-free numbers) or Richard.A.Hurst@irsounsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 304 of the Code. The text of the temporary regulations serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed 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. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a

substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations primarily will affect United States persons that are large corporations engaged in corporate transactions among their controlled corporations. Thus, the number of affected small entities—in whichever of the three categories defined in the Regulatory Flexibility Act (small businesses, small organizations, and small governmental jurisdictions)—will not be substantial. The IRS and the Treasury Department estimate that small organizations and small governmental jurisdictions are likely to be affected only insofar as they transfer the stock of a controlled corporation to a related corporation. While a certain number of small entities may engage in such transactions, the IRS and the Treasury Department do not anticipate the number to be substantial. Pursuant to section 7805(f) of the Code, this regulation 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 a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. Comments are also requested as to whether the regulations should include factors that are indicative of a principal purpose, or lack of a principal purpose, to avoid the application of section 304. If such factors should be included, specific examples are requested. See, for example, Prop. Treas. Reg. §1.987-2(b)(3)(ii) and (iii).

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 proposed regulations is Sean W. Mullaney of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the 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* * *

Par. 2. Section 1.304-4 is revised to read as follows:

§1.304-4 Special rule for the use of related corporations to avoid the application of section 304.

[The text of proposed §1.304-4 is the same as the text of §1.304-4T(a) through (d) published elsewhere in this issue of the **Federal Register**].

Linda E. Stiff
Deputy Commissioner for Services and Enforcement.

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