

## Notice of Proposed Rulemaking and Notice of Public Hearing

### Continuity of Interest

REG-120882-97

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In T.D. 8761, page 13 of this Bulletin, the IRS is issuing temporary regulations providing guidance regarding satisfaction of the continuity of interest requirement for corporate reorganizations. The temporary regulations affect corporations and their shareholders. The text of those temporary regulations also serves as the text of these proposed regulations. In addition, this document provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments and outlines of topics to be discussed at the hearing scheduled for Tuesday, May 26, 1998, must be received by Tuesday, May 5, 1998.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG-120882-97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-120882-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Phoebe Bennett, (202) 622-7750; concerning submissions and the hearing,

LaNita Van Dyke, (202) 622-7190 (not toll-free numbers).

### SUPPLEMENTARY INFORMATION:

#### *Background*

In T.D. 8761, temporary regulations amend the Income Tax Regulations (26 CFR part 1) under section 368. The temporary regulations provide that in determining whether the continuity of interest requirement for corporate reorganizations is satisfied with respect to a potential reorganization, a proprietary interest in the target corporation is not preserved if, in connection with a potential reorganization, it is redeemed or acquired by a person related to the target corporation, or to the extent that, prior to and in connection with a potential reorganization, an extraordinary distribution is made with respect to it.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations describes the temporary regulations.

The temporary regulations do not provide guidance on the determination of whether a distribution will be treated as an extraordinary distribution, except that the rules of section 1059 do not apply for this purpose. The IRS and Treasury Department invite comments on whether the regulations should provide more specific guidance in this area.

#### *Special Analyses*

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 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 Public Hearing*

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled at 10 a.m. on Tuesday, May 26, 1998, in room 2615, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by Tuesday, May 5, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by Tuesday, May 5, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### *Proposed Effective Date*

These regulations are proposed to apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is (subject to customary conditions) binding on January 28, 1998, and at all times thereafter.

\* \* \* \* \*

#### *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 1.368-1 is amended as follows:

1. Revising paragraphs (e)(1)(ii)(A), (e)(1)(ii)(B), (e)(2)(ii), and (f).

2. Adding paragraph (e)(6) *Example 10* and *Example 11*.

The addition and revisions read as follows:

*§1.368— Purpose and scope of exception of reorganization exchanges.*

[The text of proposed paragraphs (e)(1)(ii)(A) and (B), (e)(2)(ii), (e)(6) *Example 10* and *Example 11*, and (f) is the same as the text of §1.368–1T published in T.D. 8761.]

Michael P. Dolan,  
*Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on January 23, 1998, 12:15 p.m., and published in the issue of the Federal Register for January 28, 1998, 63 F.R. 4204)