

# **Notice of Proposed Rulemaking by Cross- Reference to Temporary Regulations**

## **Certain Transfers of Property to Regulated Investment Companies and Real Estate Investment Trusts**

**REG-142299-01,  
REG-209135-88**

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document contains proposed regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or

Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. The text of the temporary regulations published in this issue of the Bulletin serves as the text of this proposed regulation.

**DATES:** Written or electronic comments must be received by April 2, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU [REG-142299-01], room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU [REG-142299-01], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. or sent to the IRS Internet site at: [http://www.irs.gov/tax\\_regs/reglist.html](http://www.irs.gov/tax_regs/reglist.html).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Lisa A. Fuller (202) 622-7750; concerning submissions of comments, Donna Poindexter (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, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by March 4, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the collection 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 collection 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 and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.337(d)-6T and 1.337(d)-7T. This information is necessary for the IRS to determine whether section 1374 treatment or deemed sale treatment is appropriate for the entity for which the regulation applies. The collection of information is required to obtain a benefit, *i.e.*, to elect section 1374 treatment in lieu of deemed sale treatment in § 1.337(d)-6T, or to elect deemed sale treatment in lieu of section 1374 treatment in § 1.337(d)-7T. The likely respondents for deemed sale elections are C corporations. The likely respondents for section 1374 elections are RICs and REITs.

Section 1.337(d)-6T provides that a section 1374 election is made by filing a statement and attaching it to any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods. Alternatively, a RIC or REIT can also make a section 1374 election by informing the IRS prior to January 2, 2002, of its intent to make a section 1374 election. Section 1.337(d)-7T provides that a deemed sale election is made by filing a statement and attaching it to the C corporation's Federal income tax return for the taxable year in which the deemed sale occurs.

Estimated total annual reporting burden: 70 hours.

Estimated average annual burden per respondent: 30 minutes.

Estimated number of respondents: 140.

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 it 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**

Temporary regulations (T.D. 8975) in this issue of the Bulletin revise and add the Income Tax Regulations (26 CFR part 1) relating to section 337(d). The temporary regulations generally provide that, if property owned by a C corporation or property subject to section 1374 owned by a RIC, a REIT, or an S corporation becomes the property of a RIC or REIT by (1) the qualification of the C corporation as a RIC or REIT, or (2) certain transfers of property to a RIC or REIT, then the RIC or REIT will be subject either to section 1374 treatment or the C corporation will be subject to deemed sale treatment. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains 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. 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. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small

Business Administration for comment on their impact on small business.

## Comments and 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. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying. A public hearing may be scheduled. When 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 Lisa A. Fuller of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

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## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.337(d)–6 also issued under 26 U.S.C. 337.

Section 1.337(d)–7 also issued under 26 U.S.C. 337. \* \* \*

Par. 2. Sections 1.337(d)–6 and 1.337(d)–7 are added to read as follows:

*§ 1.337(d)–6 New transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT.*

[The text of proposed § 1.337(d)–6 is the same as the text of § 1.337(d)–6T published elsewhere in this issue of the **Federal Register**.]

*§ 1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.*

[The text of proposed §1.337(d)–7 is the same as the text of §1.337(d)–7T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,  
*Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on December 31, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 2, 2002, 67 F.R. 48)