



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-140328-15]

RIN 1545-BN17

Guidance Regarding Predecessors and Successors Under Section 355(e); Limitation on Gain Recognition; Guidance Under Section 355(f)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking, 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 that provide guidance regarding the distribution by a distributing corporation of stock or securities of a controlled corporation without the recognition of income, gain, or loss. The temporary regulations provide guidance in determining whether a corporation is a predecessor or successor of a distributing or controlled corporation for purposes of the exception under section 355(e) of the Internal Revenue Code to the nonrecognition treatment afforded qualifying distributions, and they provide certain limitations on the recognition of gain in certain cases involving a predecessor of a distributing corporation. The temporary regulations also provide rules regarding the extent to which section 355(f) causes a distributing corporation (and in certain cases its shareholders) to recognize income or gain on the distribution of stock or securities of a controlled corporation. Those temporary regulations affect

corporations that distribute the stock or securities of controlled corporations and their shareholders or security holders of those distributing corporations. The text of those temporary regulations serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by **INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-140328-15), room 5203, Internal Revenue Service, PO 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-140328-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, 20224, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov/> (REG-140328-15).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Richard K. Passales at (202) 317-5024 or Marie C. Milnes-Vasquez, (202) 317-7700; concerning submission of comments, and/or requests for public hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On November 22, 2004, the Treasury Department and the IRS published in the **Federal Register** (69 FR 67873) a notice of proposed rulemaking (REG-145535-02) containing proposed regulations under section 355(e)(4)(D) (the 2004 proposed regulations). Those proposed regulations are withdrawn. This notice of proposed rulemaking cross-references to temporary regulations contained in a Treasury decision

published in the Rules and Regulations section of this issue of the **Federal Register** which amend the Income Tax Regulations (26 CFR part 1) relating to section 355(e) by adopting the 2004 proposed regulations with certain significant modifications. The Background and Explanation of Provisions contained in the preamble of the temporary regulations also serves as part of this preamble.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13653. Therefore, a regulatory impact assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations would primarily affect large corporations with a substantial number of shareholders, as well as corporations that are members of large corporate groups. Therefore, a regulatory flexibility analysis is not required. 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 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 as prescribed in this preamble under the "ADDRESSES" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. 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 hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Lynlee C. Baker, formerly of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-145535-02) that was published in the **Federal Register** on Monday, November 22, 2004 (69 FR 67873) is withdrawn.

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 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.355-8 also issued under 26 U.S.C. 336(e) and 355(e)(5).

Par. 2. Section 1.355-0 is amended by revising the introductory text and adding an entry for § 1.355-8 to read as follows:

§ 1.355-0 Outline of sections.

In order to facilitate the use of §§ 1.355-1 through 1.355-8, this section lists the major paragraphs in those sections as follows:

* * * * *

§1.355-8 Definition of predecessor and successor and limitations on gain recognition under section 355(e) and section 355(f).

- (a) In general.
 - (1) Scope.
 - (2) Purpose.
 - (3) Overview.
 - (4) References.
 - (i) References to Distributing or Controlled.
 - (ii) References to a Plan or distribution.
 - (iii) Plan Period.
- (b) Predecessor of Distributing.
 - (1) Definition.
 - (i) In general.
 - (ii) Pre-distribution requirements.
 - (A) Relevant Property.
 - (B) Reflection of basis.
 - (iii) Post-distribution requirement.
 - (2) Additional definitions and rules related to paragraph (b)(1) of this section.
 - (i) References to Distributing and Controlled.
 - (ii) Potential Predecessor.
 - (iii) Successors of Potential Predecessors.
 - (iv) Relevant Property; Relevant Stock.
 - (A) In general.
 - (B) Property held by Distributing.
 - (C) Certain reorganizations.
 - (v) Stock of Distributing as Relevant Property.
 - (A) In general.
 - (B) Certain reorganizations.
 - (vi) Substitute Asset.
 - (vii) Separated Property.
 - (viii) Underlying Property.
 - (ix) Scope of definition of Predecessor of Distributing.
 - (x) Deemed exchanges.
- (c) Additional definitions.
 - (1) Predecessor of Controlled.
 - (2) Successors.
 - (i) In general.
 - (ii) Determination of Successor status.
 - (3) Section 381 transaction.
 - (d) Special acquisition rules.

- (1) Deemed acquisitions of stock in section 381 transactions.
- (2) Deemed acquisitions of stock after section 381 transactions.
- (3) Separate counting for Distributing and each Predecessor of Distributing.
- (e) Special rules for gain recognition.
 - (1) In general.
 - (2) Planned 50-percent or greater acquisitions of a Predecessor of Distributing.
 - (i) In general.
 - (ii) Operating rules.
 - (A) Separated Property other than Controlled stock.
 - (B) Controlled stock that is Separated Property.
 - (C) Anti-duplication rule.
 - (3) Planned 50-percent Acquisition of Distributing in a section 381 transaction.
 - (4) Overall gain recognition.
 - (5) Section 336(e) election.
- (f) Predecessor or Successor as a member of the affiliated group.
- (g) Inapplicability of section 355(f) to certain intra-group distributions.
 - (1) In general.
 - (2) Alternative application of section 355(f).
 - (h) Examples.
 - (i) Effective/applicability date.
 - (1) In general.
 - (2) Transition rule.
 - (j) In general.
 - (k) Definition of distribution.
 - (l) Exception.

Par. 3. Section 1.355-8 is revised to read as follows:

§1.355-8 Definition of predecessor and successor and limitations on gain recognition under section 355(e) and section 355(f).

[The text of the proposed amendments to §1.355-8(a) through (i) is the same as the text of §1.355-8T published elsewhere in this issue of the **Federal Register**.]

John Dalrymple,

Deputy Commissioner for Services and Enforcement

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