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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9810]

RIN 1535-BN06

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations effecting the repeal of the General Utilities doctrine by the Tax Reform Act of 1986. The final regulations address the length of time during which a RIC or a REIT may be subject to corporate level tax on certain dispositions of property. The final regulations affect RICs and REITs.

DATES: Effective Date: These regulations are effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

Applicability Dates: For dates of applicability, see §1.337(d)-7(g)(2)(iii).

FOR FURTHER INFORMATION CONTACT: Austin M. Diamond-Jones, (202) 317-5363 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On June 8, 2016, the Department of the Treasury (Treasury Department) and the IRS published temporary

regulations (TD 9770) under section 337(d) (temporary regulations) in the **Federal Register** (81 FR 36793) concerning certain transfers of property to regulated investment companies (RICs) and real estate investment trusts (REITs). A notice of proposed rulemaking cross-referencing the temporary regulations (REG-126452-15) (proposed regulations) was published in the **Federal Register** (81 FR 36816) on the same day. A correction to the temporary regulations was published in the **Federal Register** (81 FR 41800) on June 28, 2016. The Treasury Department and the IRS received one written comment in response to the proposed regulations. The comment requested a public hearing, and a hearing was held on November 9, 2016. After consideration of the written comment and the comments made at the public hearing, the proposed regulations are adopted in part and as amended by this Treasury decision, and the corresponding temporary regulations are removed in part. The revisions adopted by this Treasury decision are discussed below.

Summary of Comments and Explanation of Revisions

The comment requested that the temporary regulations and the proposed regulations with respect to the recognition period be immediately withdrawn and the recognition period with respect to REITs be defined with reference to the recognition period of section 1374(d)(7), which is currently a five-year period as a result of section 127(a) of the Protecting Americans Against Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Public Law 114-113, 129 Stat. 2422. The comment asserted that the change to the length of the recognition period in the temporary regulations and the proposed regulations was inconsistent with Congress's intent in the PATH Act and with prior administrative guidance. On October

18, 2016, the Chairmen and Ranking Members of the Ways and Means Committee of the U.S. House of Representatives and the Finance Committee of the U.S. Senate addressed a letter to the Secretary of the Treasury stating that the recognition period in the temporary regulations and the proposed regulations was inconsistent with congressional intent and the longstanding practice of treating REITs and RICs as having the same built-in gain recognition period as S corporations, currently five years. The Chairmen and Ranking Members also asked that the temporary regulations and the proposed regulations be modified to provide that REITs, RICs and S corporations are all subject to the same five-year built-in gain recognition period in order to be consistent with congressional intent and longstanding practice.

The Treasury Department and the IRS decline to withdraw the temporary regulations and the proposed regulations relating to the recognition period but agree with the comment relating to the length of the recognition period. Accordingly, these final regulations provide that the term recognition period means the recognition period described in section 1374(d)(7), beginning, in the case of a conversion transaction that is a qualification of a C corporation as a RIC or a REIT, on the first day of the RIC's or the REIT's first taxable year, and, in the case of other conversion transactions, on the day the RIC or the REIT acquires the property. The final regulations will apply prospectively from **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, but taxpayers may choose to apply the definition of recognition period in the final regulations, instead of the 10-year recognition period in the temporary regulations, for conversion transactions occurring on or after August 8, 2016, and on or

before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The Treasury Department and the IRS continue to study the other issues addressed in the temporary regulations and the proposed regulations, including other issues raised by the comment, and welcome further comment on those issues.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation will primarily affect large corporations with a substantial number of shareholders. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Austin M. Diamond-Jones, 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.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 * * *

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Par. 2. Section 1.337(d)-7 is amended by revising paragraphs (b)(2)(iii) and (g)(2)(iii) to read as follows:

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

* * * * *

(b) * * *

(2) * * *

(iii) Recognition period. For purposes of applying the rules of section 1374 and the regulations thereunder, as modified by paragraph (b) of this section, the term recognition period means the recognition period described in section 1374(d)(7), beginning--

(A) In the case of a conversion transaction that is a qualification of a C corporation as a RIC or a REIT, on the first day of the RIC's or the REIT's first taxable year; and

(B) In the case of other conversion transactions, on the day the RIC or the REIT acquires the property.

* * * * *

(g) * * *

(2) * * *

(iii) Recognition period. Paragraphs (b)(1)(ii) and (d)(2)(iii) of this section apply to conversion transactions that occur on or after August 8, 2016. Paragraph (b)(2)(iii) of this section applies to conversion transactions that occur after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For conversion transactions that occurred on or after August 8, 2016 and on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see §1.337(d)-7T(b)(2)(iii) in effect on August 8, 2016. However, taxpayers may apply paragraph (b)(2)(iii) of this section to conversion transactions that occurred on or after August 8, 2016 and on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For conversion transactions that occurred on or after January 2, 2002 and before August 8, 2016, see §1.337(d)-7 as contained in 26 CFR part 1 in effect on April 1, 2016.

Par. 3. Section 1.337(d)-7T is amended by revising paragraphs (b)(1) through (3) and (g)(2)(iii) to read as follows:

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

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(b)(1) through (3) [Reserved]. For further guidance, see §1.337(d)-7(b)(1) through (3).

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(g) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see §1.337(d)-7(g)(2)(iii).

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John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: December 30, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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