

Notice of Proposed Rulemaking and Notice of Public Hearing

Reorganizations; Nonqualified Preferred Stock

REG-121755-97

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. 8753, page 6 of this Bulletin, the IRS and Treasury Department are issuing a temporary regulation under section 356(e) of the Internal Revenue Code (Code) relating to the receipt of nonqualified preferred stock in certain exchanges. The temporary regulation provides guidance on when nonqualified preferred stock (as defined in section 351(g)(2)) will not be treated as stock or securities for purposes of sections 354, 355, and 356. The guidance also addresses the treatment of the receipt of a right to acquire nonqualified preferred stock. The temporary regulation provides that in certain circumstances the terms *stock* and *securities* will not include nonqualified preferred stock, or a right to acquire such stock, when received in exchange for stock or rights to acquire stock. The text of the temporary regulation also serves as the text of this proposed regulation. This document also provides notice of a public hearing on this proposed regulation.

DATES: Written comments must be received by April 6, 1998. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for May 5, 1998, at 10 a.m. must be received by April 14, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R [REG-121755-97], 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

March 2, 1998

[REG-121755-97], 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. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Michael J. Danbury, (202) 622-7750; concerning submissions and the public hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A temporary regulation in T.D. 8753 amends the Income Tax Regulations (26 CFR part 1) relating to section 356 by adding §1.356-6T. The text of that temporary regulation also serves as the text of this proposed regulation. The preamble to the temporary regulation explains the reason for the addition.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. 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 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 this proposed regulation is adopted as a final regulation, consideration will be given to any written comments (a signed original and eight (8)

copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 5, 1998, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

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

Persons who wish to present oral comments at the hearing must submit written comments by April 6, 1998, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 14, 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.

Drafting Information

The principal author of this regulation is Michael J. Danbury of the Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in its 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

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par 2. Section 1.356-6 is added to read as follows:

§1.356-6 Rules for treatment of nonqualified preferred stock as "other property."

[The text of this proposed section is the same as the text of §1.356-6T published in T.D. 8753.]

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.