

# Notice of Proposed Rulemaking and Notice of Public Hearing

## Certain Asset Transfers to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs)

REG-209135-88

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. 8872 on page 639, the IRS is issuing temporary regulations which apply with respect to the net built-in gain of C corporation assets that become assets of a Regulated Investment Company (RIC) or Real Estate Investment Trust (REIT) by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT in a carryover basis transaction. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for May 10, 2000, at 10 a.m. in the IRS Auditorium, must be received by April 19, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-209135-88), 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-209135-88), 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 Home Page or by submitting comments directly to the IRS Internet site at: [http://www.irs.us-treas.gov/tax\\_regs/regslst.html](http://www.irs.us-treas.gov/tax_regs/regslst.html). The public hearing has been scheduled for May 10, 2000, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CON-

TACT: Concerning the proposed regulations, Christopher W. Schoen, (202) 622-7750, concerning submissions and the hearing, LaNita Van Dyke (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. section 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, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by April 7, 2000. 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)-5. This information is necessary for the Service to determine whether liquidation treatment or section 1374 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 to be subject to section 1374 in lieu of liquidation treatment. The likely re-

spondents are Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

The regulation provides that a section 1374 election is made by filing a statement, signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return. The burden for the collection of information in §1.337(d)-5T(b)(3) is as follows:

Estimated total annual reporting burden: 50 hours

Estimated average annual burden per respondent: 30 minutes

Estimated number of respondents: 100

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. section 6103.

### Background

Temporary regulations in T.D. 8872, page 639, amend the Income Tax Regulations (26 CFR part 1) relating to section 337(d). The temporary regulations provide rules that when a C corporation (1) qualifies to be taxed as a RIC or REIT, or (2) transfers assets to a RIC or REIT in a carryover basis transaction, the C corporation is treated as if it sold all of its assets at their respective fair market values and immediately liquidated, unless the RIC or REIT elects to be subject to tax under section 1374 of the Code. 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 Treasury decision 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 Ad-

ministrative 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 temporary regulations will be submitted to the Chief Counsel of 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 (preferably a signed original and eight (8) copies) that are submitted 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 has been scheduled for May 10, 2000, at 10 a.m., in the IRS Auditorium. 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 at the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed (signed original and eight (8) copies) by [Insert date].

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

An agenda showing the scheduling of 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 these regulations is Christopher W. Schoen of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury 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

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.337(d)–5 also issued under 26 U.S.C. 337. \* \* \*

Par. 2. Section 1.337(d)–5 is added to read as follows:

*§1.337(d)–5 Tax on C assets becoming RIC or REIT assets.*

[The text of proposed §1.337(d)–5 of this section is the same as the text of §1.337(d)–5T published in T.D. 8872.]

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

(Filed by the Office of the Federal Register on February 4, 2000, 8:45 a.m., and published in the issue of the Federal Register for February 7, 2000, 65 F.R. 5805)