

# Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations; Notice of Public Hearing; and Withdrawal of Previous Notice of Proposed Rulemaking

## Statutory Mergers and Consolidations

**REG-126485-01**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing; and withdrawal of previous notice of proposed rulemaking.

SUMMARY: In T.D. 9038 on page 524 of this issue of the Bulletin, the IRS is issuing temporary regulations relating to transactions involving corporations engaging in statutory mergers and consolidations. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations. This document also withdraws the notice of proposed rulemaking published in the **Federal Register** (REG-126485-01, 2001-2 C.B. 555 [66 FR 57400]) on November 15, 2001.

DATES: Written or electronic comments and outlines of topics to be discussed at the public hearing scheduled for May 21, 2003, at 10 a.m. must be received by April 24, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-126485-01), 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-126485-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/reg](http://www.irs.gov/reg). The public hearing will be held in room 4718 of the Internal Revenue

Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Richard M. Heinecke or Reginald Mombrun at (202) 622-7930; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor, (202) 622-7180 (not toll-free numbers).

### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

On November 15, 2001, the IRS and Treasury published in the **Federal Register** at 66 FR 57400 a notice of proposed rulemaking (REG-126485-01) under section 368(a)(1)(A) of the Internal Revenue Code of 1986 (Code). Those proposed regulations are withdrawn.

Temporary regulations on page 524 of this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 368(a)(1)(A). The temporary regulations set forth certain definitions and explanations with respect to certain transactions that qualify as statutory mergers and consolidations. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

#### 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 these regulations do 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 their impact.

## Comments and Requests for a 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 Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 21, 2003, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

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 and 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 24, 2003. 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 these regulations is Richard M. Heinecke, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

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## **Withdrawal of Proposed Amendments**

Accordingly, under the authority of 26 U.S.C. 7805, the proposed amendment to 26 CFR part 1 that was published in the **Federal Register** on Thursday, November 15, 2001 (66 FR 57400) 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 continues to read in part as follows:

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

Par. 2. In §1.368–2, paragraph (b)(1) is revised to read as follows:

#### *§1.368–2 Definition of terms.*

[The text of proposed §1.368–2 is the same as the text of §1.368–2T published elsewhere in this issue of the **Federal Register**.]

David A. Mader,  
*Assistant Deputy Commissioner  
of Internal Revenue.*

(Filed by the Office of the Federal Register on January 23, 2003, 8:45 a.m., and published in the issue of the Federal Register for January 24, 2003, 68 F.R. 3477)