

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Effect of Section 338(h)(10) Elections in Certain Multi-Step Transactions

REG-143679-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9071) that give effect to section 338(h)(10) elections made in certain multi-step transactions. The text of the temporary regulations published in this issue of the Bulletin also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by November 14, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG-143679-02), 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 4 p.m. to: CC:PA:RU (REG-143679-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Daniel Heins, Mary Goode or Reginald Mombrun at (202) 622-7930; concerning submissions of comments, Guy Traynor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations (T.D. 9071) in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 338. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issues of the proposed regulations.

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. 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. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. The number of corporations affected is limited because section 338(h)(10) elections are made only in extraordinary circumstances, the sale of a business. Furthermore, these regulations only affect transactions in which the stock of the acquiring corporation is a significant part of the consideration. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Comments and 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) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at www.irs.gov/regs. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Daniel Heins and Mary Goode, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department 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 part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.338(h)(10)-1 is also issued under 26 U.S.C. 337(d), 338 and 1502.

Par. 2. § 1.338(h)(10)-1 is amended as follows:

1. Paragraph (c)(2) is revised.
2. Paragraph (e) *Examples 11 through 14* are added.

The revision and additions read as follows:

§1.338(h)(10)-1 Deemed asset sale and liquidation.

* * * * *

(c) * * *

(2) [The text of the proposed amendment to §1.338(h)(10)–1(c)(2) is the same as the text of §1.338(h)(10)–1T(c)(2) published elsewhere in this issue of the Bulletin.]

* * * * *

(e) * * *

Examples 11 through 14 [The text of the proposed amendments to §1.338(h)(10)–1(e) *Examples 11 through 14* is the same as the text of §1.338(h)(10)–1T(e) *Examples 11 through 14* published elsewhere in the Bulletin.]

Robert E. Wenzel,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on July 8, 2003, 8:45 a.m., and published in the issue of the Federal Register for July 9, 2003, 68 F.R. 40848)
