

# Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

## Assumption of Liabilities

### REG-106736-00

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 final and temporary regulations (T.D. 9207) relating to the assumption of liabilities under section 752 of the Internal Revenue Code (Code). Those temporary regulations contain rules related to the assumption of certain liabilities under section 358(h). The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by August 24, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-106736-00), room 5203, Internal Revenue Service, PO Box 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:LPD:PR (REG-106736-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-106736-00).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Doug Bates, at (202) 622-7550; concerning submissions of comments and/or requests for a public hearing, Sonya Cruse, (202) 622-7180 (not toll-free numbers).

## SUPPLEMENTARY INFORMATION:

### Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend 26 CFR Part 1 relating to section 358(h)(1). The temporary regulations make unavailable the exception to section 358(h)(1) that is set forth in section 358(h)(2)(B) (which applies where substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange). The text of those temporary 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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the only impact of the regulations is to require taxpayers to calculate the basis of stock received in certain transactions more accurately. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) 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 its impact.

### Comments and Requests for a Public Hearing

Before these regulations are adopted as final regulations, consideration will be given to any written comments (a signed original with eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be made available for public inspection and copying. A public hearing may be scheduled. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

## Drafting Information

The principal author of these regulations is Douglas Bates, Office of the Associate Chief Counsel (Corporate), IRS. 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 \* \* \*

§1.358-5 also issued under 26 U.S.C. 358(h)(2). \* \* \*

Par. 2. Section 1.358-5 is added to read as follows:

*§1.358-5 Special rules for assumption of liabilities.*

[The text of proposed §1.358-5 is the same as the text of §1.358-5T published elsewhere in this issue of the Bulletin].

Mark E. Matthews,  
*Deputy Commissioner for Services and Enforcement.*

(Filed by the Office of the Federal Register on May 23, 2005, 11:17 a.m., and published in the issue of the Federal Register for May 26, 2005, 70 F.R. 30380)