



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-139633-08]

RIN 1545-BI18

Transactions Involving the Transfer of No Net Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the remaining part of a notice of proposed rulemaking containing proposed regulations that would have required an exchange or distribution of net value for certain corporate formations and reorganizations to qualify for nonrecognition treatment under the Internal Revenue Code (Code). Other parts of the notice of proposed rulemaking were previously adopted as final regulations. The proposed regulations being withdrawn also addressed the treatment of certain distributions not qualifying for tax-free treatment under section 332 of the Code. The proposed regulations being withdrawn would have affected corporations and their shareholders.

DATES: As of **INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**, the proposed revisions to §1.332-2(b) and (e); the proposed addition of Example 2 to §1.332-2(e); the proposed additions of §1.351-1(a)(1)(iii) and (a)(1)(iv); the proposed addition of Example 4 to §1.351-1(a)(2); the proposed amendments to §1.368-1(a) and (b); the proposed addition of §1.368-1(f); and the proposed revision to §1.368-2(d)(1) in

the notice of proposed rulemaking (REG-163314-03) that was published in the **Federal Register** (70 FR 11903) on March 10, 2005 are withdrawn.

FOR FURTHER INFORMATION CONTACT: Jean Broderick at (202) 317-6848 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

On March 10, 2005, the Department of the Treasury (the Treasury Department) and the IRS published a notice of proposed rulemaking (REG-163314-03) in the **Federal Register** (70 FR 11903) containing proposed regulations under sections 332, 351, and 368 (2005 Proposed Regulations). The 2005 Proposed Regulations generally would have provided that the non-recognition rules in subchapter C of chapter 1 of subtitle 1 of the Code do not apply unless there is an exchange (or, in the case of section 332, a distribution) of net value (the net value requirement). The 2005 Proposed Regulations also provided that section 332 would apply only if the recipient corporation receives some payment for each class of stock it owns in the liquidating corporation. Finally, the 2005 Proposed Regulations provided guidance on the circumstances in which (and the extent to which) creditors of a corporation are treated as proprietors of the corporation in determining whether continuity of interest is preserved in a potential reorganization (Creditor Continuity of Interest).

On December 12, 2008, the Treasury Department and the IRS adopted the Creditor Continuity of Interest provisions of the 2005 Proposed Regulations as final regulations (TD 9434) published in the **Federal Register** (73 FR 75566). Minor portions of the 2005 Proposed Regulations that reflected statutory changes to sections 332 and

351 were adopted as final regulations as part of a Treasury decision adopting final regulations under sections 334(b)(1)(B) and 362(e)(1) (TD 9759), published in the **Federal Register** (81 FR 17066) on March 28, 2016. The Treasury Department and the IRS have decided to withdraw the remainder of the 2005 Proposed Regulations.

The Treasury Department and the IRS are of the view that current law is sufficient to ensure that the reorganization provisions and section 351 are used to accomplish readjustments of continuing interests in property held in modified corporate form. With respect to section 332, the holdings of H.K. Porter Co. v. Commissioner, 87 T.C. 689 (1986), Spaulding Bakeries Inc. v. Commissioner, 27 T.C. 684 (1957), aff'd, 252 F.2d 293 (2d Cir., 1958), H.G. Hill Stores, Inc. v. Commissioner, 44 B.T.A. 1182 (1941), Rev. Rul. 2003-125, 2003-2 C.B. 1243, Rev. Rul. 68-602, 1968-2 C.B. 135, Rev. Rul. 68-359, 1968-2 C.B. 161, and Rev. Rul. 59-296, 1959-2 C.B. 87, continue to reflect the position of the Treasury Department and the IRS.

### **Drafting Information**

The principal author of this withdrawal notice is Jean Broderick of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in its development.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Partial Withdrawal of Proposed Rulemaking**

Accordingly, under the authority of 26 U.S.C. 7805, the Treasury Department and the IRS withdraw the proposed revisions to §1.332-2(b) and (e); the proposed addition

of Example 2 to §1.332-2(e); the proposed additions of §1.351-1(a)(1)(iii) and (a)(1)(iv); the proposed addition of Example 4 to §1.351-1(a)(2); the proposed amendments to §1.368-1(a) and (b); the proposed addition of §1.368-1(f); and the proposed revision to §1.368-2(d)(1) in the notice of proposed rulemaking (REG-163314-03) that was published in the **Federal Register** (70 FR 11903) on March 10, 2005.

Kirsten B. Wielobob

Deputy Commissioner of Services and Enforcement.

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