[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-124627-11]

RIN 1545-BK43

Corporate Reorganizations; Guidance on the Measurement of Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking that would have provided guidance on how to determine whether certain transactions satisfy the continuity of interest (COI) requirement under §1.368-1(e), applicable to certain corporate reorganizations described in section 368 of the Internal Revenue Code of 1986 (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 The proposed regulations being withdrawn would have affected corporations and their shareholders.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 amendment to §1.368-1 in the notice of proposed rulemaking (REG-124627-11) that was published in the **Federal Register** (76 FR 78591) on December 19, 2011, is withdrawn.

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

SUPPLEMENTARY INFORMATION:

Background

The provisions of subchapter C, chapter 1, of the Code generally provide nonrecognition treatment for corporate transactions that are described as reorganizations in section 368. The COI requirement is one of a number of requirements that a transaction must satisfy in order to qualify as a reorganization. The COI requirement prevents transactions that resemble sales from qualifying as reorganizations. Pinellas Ice & Cold Storage Co. v. Commissioner, 287 U.S. 462 (1933).

The COI requirement requires that, in substance, a substantial part of the value of the target corporation (Target) shareholders' proprietary interests (i.e., stock) in Target be preserved. Section 1.368-1(e)(1)(i); John A. Nelson Co. v. Helvering, 296 U.S. 374 (1935). A Target shareholder's proprietary interest in Target is preserved to the extent it is exchanged for either the stock of the acquiring corporation (Acquiror) or, in the case of a triangular reorganization (as defined in §1.358-6(b)(2)), the stock of a corporation in control (within the meaning of section 368(c)) of Acquiror (in either case, Issuing Corporation stock). To the extent the Target shareholders' proprietary interests are exchanged for money or other property, their proprietary interests are not preserved. Section 1.368-1(e)(1)(i).

To determine whether a substantial part of the Target shareholders' proprietary interests has been preserved, the value of the Issuing Corporation stock the Target shareholders received is compared to the aggregate value of the consideration the Target shareholders received. Prior to 2011, the determination of whether the COI requirement is satisfied had been based on the value of the Issuing Corporation stock "as of the effective date of the reorganization" (Closing Date). Rev. Proc. 77-37 (1977-2 C.B. 568).

On December 19, 2011, the Department of the Treasury (Treasury Department) and the IRS issued final regulations (TD 9565, 76 FR 78540) that include a special rule (Signing Date Rule) that applies if a binding contract to effect a potential reorganization provides for fixed consideration (as defined in §1.368-1(e)(2)(iii)(A)) to be exchanged for the Target shareholders' proprietary interests. Section 1.368-1(e)(2)(i). If the Signing Date Rule applies, the consideration is valued as of the end of the last business day before the first date there is a binding contract (Pre-signing Date), rather than on the Closing Date.

On the same date, the Treasury Department and the IRS published proposed regulations (2011 Proposed Regulations) (REG-124627-11, 76 FR 78591) that identified situations, other than those covered by the Signing Date Rule, in which the value of Issuing Corporation stock could be determined based on a value other than its actual trading price on the Closing Date. In one of these situations, the 2011 Proposed Regulations would have allowed the parties to use an average of the trading prices of Issuing Corporation stock over a number of days, in lieu of its actual trading price on the Closing Date, for purposes of determining whether the COI requirement is satisfied.

The Treasury Department and the IRS have determined that current law generally provides sufficient guidance to taxpayers with respect to the COI requirement. Therefore, the Treasury Department and the IRS have decided to withdraw the 2011 Proposed Regulations. However, after considering comments received on the 2011

Proposed Regulations, the IRS has concluded that, in certain circumstances, taxpayers should be able to rely on certain average stock valuation methods for purposes of measuring COI. Accordingly, the IRS issued a revenue procedure effective January 23, 2018, that provides the circumstances under which the IRS will not challenge a taxpayer's use of certain stock valuation methods to value certain Issuing Corporation stock for purposes of determining whether the COI requirement is satisfied. *See* Rev. Proc. 2018-12, I.R.B. 2018-6.

Statement of Availability of IRS Documents

Rev. Proc. 2018-12 is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at http://www.irs.gov.

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.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-124627-11) that was published in the **Federal Register** (76 FR 78591) on December 19, 2011, is withdrawn.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019-06159 Filed: 3/29/2019 8:45 am; Publication Date: 4/1/2019]