

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also 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 the regulation does 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 Internal Revenue 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 on small business.

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. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 13, 1997, in room 2615. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by March 24, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 22, 1997.

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 Peter C. Friedman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

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. Section 1.468A-2 is amended as follows:

- 1. The text of paragraph (f)(3) is redesignated as paragraph (f)(3)(i).
2. Paragraph (f)(3)(ii) is added.

The addition reads as follows:

§ 1.468A-2 Treatment of electing taxpayer.

* * * * *

(f) * * *

(3) * * * (i) * * *

(ii) The requirement of this paragraph (f)(3) does not apply if the taxpayer determines its schedule of ruling amounts under a formula or method obtained under § 1.468A-3(a)(4) and the cost of service amount is a variable element of that formula or method.

* * * * *

Par. 3. Section 1.468A-3 is amended as follows:

- 1. Paragraph (a)(4) is revised.
2. Paragraph (e)(5) is added.
3. Paragraphs (i)(1)(ii)(A), (i)(1)(iii)(A)(3), and (i)(1)(iii)(B) are revised.

4. Paragraph (i)(1)(iii)(C) is added.

The revisions and additions read as follows:

§ 1.468A-3 Ruling amount.

(a) * * *

(4) The Internal Revenue Service will approve, at the request of the taxpayer, a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of this section. See paragraph (i)(1)(ii) of this section for a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

* * * * *

(e) * * *

(5) A formula or method obtained under paragraph (a)(4) of this section may provide for changes in an estimated date described in paragraph (e)(1) or (2) of this section to reflect changes in the ratemaking assumptions used to determine rates (whether interim or final) that are established or approved by the applicable public utility commission after the filing of the

request for approval of a formula or method.

* * * * *

(i) * * *

(1) * * *

(ii)(A) Any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year under paragraph (a)(4) of this section must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for a taxable year if the period for which the most recently issued formula or method has been in effect (the ruling period) began at least two taxable years before such year and—

(1) The ruling amount for the preceding taxable year and the ruling amount for any earlier taxable year in the ruling period differ by more than 25 percent of the smaller amount; or

(2) The ruling amounts for the two most recent taxable years differ by more than 10 percent of the smaller amount.

* * * * *

(iii) * * *

(A) * * *

(3) Reduces the amount of decommissioning costs to be included in cost of service for any taxable year;

(B) The taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Internal Revenue Service of such action by the public utility commission; and

(C) In the case of a taxpayer that determines its schedule of ruling amounts under a formula or method obtained under paragraph (a)(4) of this section, the item increased, adjusted, or reduced is a fixed (rather than a variable) element of that formula or method.

* * * * *

Margaret Milner Richardson, Commissioner of Internal Revenue. [FR Doc. 96-32122 Filed 12-20-96; 8:45 am]

BILLING CODE 3410-01-U

26 CFR Part 1

[REG-252231-96]

RIN 1545-AU72

Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing that the continuity of shareholder interest requirement for corporate reorganizations is satisfied if the

acquiring corporation furnishes consideration which represents a proprietary interest in the affairs of the acquiring corporation and such consideration represents a substantial part of the value of the stock or properties transferred. Dispositions of stock of the acquiring corporation by a former target shareholder generally are not taken into account in determining whether continuity of shareholder interest has been satisfied. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by March 24, 1997. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Wednesday, May 7, 1997 must be received by Wednesday, April 16, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-252231-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-252231-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Phoebe Bennett, (202) 622-7750; concerning submissions and the hearing, Christina Vasquez, (202) 622-6808 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 368. The proposed regulations provide that the continuity of shareholder interest (COSI) requirement is satisfied if the acquiring corporation furnishes consideration which represents a proprietary interest in the affairs of the acquiring corporation and such consideration represents a substantial part of the value of the stock or properties transferred.

Background

The Internal Revenue Code of 1986 (Code) provides general nonrecognition treatment for reorganizations

specifically described in section 368 of the Code. Literal compliance with the statutory requirements is not sufficient for nonrecognition. For example, to qualify as a reorganization the COSI requirement must also be satisfied.

The early statutory definitions of reorganizations did not specify the type of consideration required for a transaction to qualify as a reorganization. As a result, a transaction may have satisfied the literal definition of a reorganization even if the transaction resembled a sale. To prevent such transactions from qualifying as reorganizations, the COSI requirement was established by the courts to ensure that the consideration furnished by the acquiring corporation represented a proprietary interest in the affairs of the acquiring corporation and that such consideration represented a substantial part of the value of the stock or properties transferred. See *Helvering v. Minnesota Tea Co.*, 296 U.S. 378 (1935); *Pinellas Ice & Cold Storage Co. v. Commissioner*, 287 U.S. 462 (1933); *Cortland Specialty Co. v. Commissioner*, 60 F.2d 937 (2d Cir. 1932), cert. denied 288 U.S. 599 (1933). "Reorganization, merger and consolidation are words indicating corporate readjustments of existing interests. They all differ fundamentally from a sale where the vendor corporation parts with its interest for cash and receives nothing more." *Cortland*, 60 F.2d at 939.

The cases that gave rise to the COSI requirement did not involve situations in which shareholders of the target corporation disposed of stock consideration from the acquiring corporation after having received it. In those cases, the relevant inquiry was whether the acquiring corporation furnished the proper type of consideration in the reorganization. Over the years, issues have arisen regarding whether the COSI requirement is satisfied if the target shareholders, as contemplated at the time of the reorganization, subsequently dispose of the stock received from the acquiring corporation. Compare *McDonald's Restaurants of Illinois, Inc. v. Commissioner*, 688 F.2d 520 (7th Cir. 1982), rev'g *McDonald's of Zion v. Commissioner*, 76 T.C. 972 (1981), with *Penrod v. Commissioner*, 88 T.C. 1415 (1987). Various bar associations have asked the Treasury Department and the IRS to provide guidance to clarify existing law and reduce uncertainty in applying COSI principles in the context of postreorganization sales. See New York State Bar Association Tax Section, Postreorganization Continuity of Interest, reprinted in 73 Tax Notes 481 (1996); Committee on Taxation of

Corporations of the Association of the Bar of the City of New York, Postreorganization Transactions and Continuity of Shareholder Interest, reprinted in 72 Tax Notes 1401 (1996).

Explanation of Proposed Regulations

The proposed regulations provide that the COSI requirement is satisfied if the acquiring corporation furnishes consideration in the reorganization that represents a proprietary interest in the affairs of the acquiring corporation and such consideration represents a substantial part of the value of the stock or properties transferred. Dispositions of stock of the acquiring corporation by a former target shareholder generally are not taken into account in determining whether COSI has been satisfied. However, the proposed regulations emphasize that all facts and circumstances must be considered in determining whether the acquiring corporation has in substance furnished the required consideration. For example, if the acquiring corporation or a related party (within the meaning of section 707(b)(1) or section 267(b) (without regard to section 267(e))) purchases the acquiring corporation stock shortly after the reorganization, all of the facts and circumstances may indicate that the transaction should be properly recast to treat the acquiring corporation as furnishing cash in the reorganization, in which case the reorganization would not satisfy the COSI requirement. This approach refocuses the COSI requirement on its initial purpose of ensuring that the acquiring corporation furnishes the proper type of consideration and also promotes simplicity and administrability in applying the COSI requirement.

Effect on Other Authorities

The proposed regulations do not specifically address the effect on COSI of dispositions of target stock before a transaction potentially qualifying as a reorganization. See, e.g., *King Enterprises, Inc. v. United States*, 418 F.2d 511 (Ct. Cl. 1969); *J.E. Seagram Corp. v. Commissioner*, 104 T.C. 75 (1995); *Superior Coach of Florida, Inc. v. Commissioner*, 80 T.C. 895 (1983); *Yoc Heating Corp. v. Commissioner*, 61 T.C. 168 (1973). The Treasury Department and IRS are studying this question and also the role of the COSI requirement in section 368(a)(1)(D) reorganizations and section 355 transactions. See § 1.355-2(c). The Treasury Department and IRS solicit comments on these issues.

Effect on Other Documents

The IRS will modify or obsolete publications as necessary to conform with this regulation as of the date of publication in the Federal Register of the final regulations. See, e.g., Rev. Proc. 86-42 (1986-2 C.B. 722); Rev. Proc. 77-37 (1977-2 C.B. 568). The IRS solicits comments as to whether other publications should be modified or obsoleted.

Proposed Effective Date

The revisions and additions in the proposed regulations apply to transactions occurring after these regulations are published as final regulations in the Federal Register, except that they shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the Federal Register.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 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 the regulation does 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 Internal Revenue 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 on small business.

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 copies) or comments transmitted via Internet that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled at 10 a.m. on Wednesday, May 7, 1997, in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must request to speak by Wednesday, April 16, 1997,

and submit an outline of the topics to be discussed and the time to be devoted to each topic by Wednesday, April 16, 1997.

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 Phoebe Bennett of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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. Section 1.368-1 is amended by:

- 1. Revising the third sentence of paragraph (b).
- 2. Adding two sentences between the fourth and fifth sentences of paragraph (b).
- 3. Adding paragraph (e).

The revisions and additions read as follows:

§ 1.368-1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(b) * * * Requisite to a reorganization under the Code are a continuity of the business enterprise under the modified corporate form, and (except as provided in section 368(a)(1)(D)) a continuity of shareholder interest. * * * The continuity of shareholder interest requirement is described in paragraph (e) of this section. The third and fifth sentences of this paragraph apply to transactions occurring after these regulations are published as final regulations in the Federal Register, except that they shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the Federal Register.

* * * * *

(e) *Continuity of shareholder interest*—(1) *General rule.* The purpose of the continuity of shareholder interest requirement is to prevent transactions that resemble sales from qualifying for nonrecognition of gain or loss available to corporate reorganizations. Continuity of shareholder interest requires that the acquiring corporation furnish consideration representing a proprietary interest in the affairs of the acquiring corporation and that such consideration represents a substantial part of the value of the stock or properties transferred. In determining whether the acquiring corporation has furnished such consideration, all facts and circumstances must be considered, including any plan or arrangement for the acquiring corporation or its successor corporation (or a person related to the acquiring corporation or its successor corporation within the meaning of section 707(b)(1) or section 267(b) (without regard to section 267(e))) to redeem or acquire the consideration provided in the reorganization. Thus, for example, if based on all the facts and circumstances the acquiring corporation has furnished solely cash, the continuity of shareholder interest requirement is not satisfied.

(2) *Triangular reorganizations.* For purposes of this paragraph (e), in the case of a triangular reorganization described in § 1.358-6(b), the continuity of shareholder interest requirement will be applied with reference to the stock of the corporation which is in control of the acquiring corporation (in a forward triangular merger) or in control of the merged corporation (in a reverse triangular merger).

(3) *Examples.* The following examples illustrate the application of this paragraph (e):

Example 1. A owns all of the stock of T. T merges into P. In the merger, A receives stock of P having a fair market value of \$50x and cash of \$50x. Immediately after the merger, and pursuant to a preexisting binding contract negotiated by A, A sells all of the stock of P received by A in the merger to B, a party not related to P. The transaction satisfies the continuity of shareholder interest requirement because A received stock of P representing a substantial part of the value of the total consideration transferred in the acquisition.

Example 2. A owns 80 percent of the stock of T and none of the stock of P, which is widely held. T merges into P. In the merger, A receives stock of P. In addition, A obtains registration rights pursuant to an agreement with P to register the P stock and sells such stock shortly after the acquisition in the open market. The transaction satisfies the continuity of shareholder interest requirement.

Example 3. A owns 80 percent of the stock of T and none of the stock of P. T merges into P. In the merger, A receives stock of P. In addition, A arranges with an independent investment banker to hedge the risk of loss on the P stock received in the merger. Neither P nor a party related to P enters directly or indirectly into the hedging transaction. The transaction satisfies the continuity of shareholder interest requirement.

Example 4. A owns 80 percent of the stock of T and none of the stock of P. T merges into P. In the merger, A receives stock of P but with an agreement that it will be redeemed shortly by P. Pursuant to the agreement, shortly after the merger P redeems all of the stock of P received by A in the merger for cash. Under all of the facts and circumstances, the cash is treated as furnished by P in the merger, so that the merger does not satisfy the continuity of shareholder interest requirement. The result is the same if S, P's wholly owned subsidiary, buys all of the stock of P received by A in the merger for cash. The result is also the same if pursuant to a plan between P, its investment banker, and A, P's investment banker buys all of the stock of P received by A in the merger for cash and, shortly thereafter, P redeems the stock held by the investment banker for cash.

(4) *Effective date.* Paragraph (e) applies to transactions occurring after these regulations are published as final regulations in the Federal Register, except that it shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the Federal Register.

Par. 3. In § 1.368-2, paragraph (a) is amended by removing the second sentence and adding two new sentences in its place to read as follows:

§ 1.368-2 Definition of terms.

(a) * * * The term does not embrace the mere purchase by one corporation of the properties of another corporation. The preceding sentence applies to transactions occurring after these regulations are published as final regulations in the Federal Register, except that it shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the Federal Register.

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Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 96-32120 Filed 12-20-96; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 290

RIN 1010-AC21

Administrative Appeals Process

AGENCY: Mineral Management Service (MMS), Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: MMS hereby gives notice that it is extending the public comment period on a Notice of proposed rule which was published in the Federal Register on October 28, 1996 (61 FR 55607). The proposed rule would amend the regulations governing MMS' administrative appeals process. In response to a request for additional time from the Subcommittee on Appeals and Alternative Dispute Resolution of the Royalty Policy Committee, MMS will extend the comment period from December 27, 1996, to March 27, 1997. This extension should provide sufficient time for the Subcommittee to submit to the full Royalty Policy Committee its report on improving the appeals process, and for the Royalty Policy Committee to provide advice to the Department of the Interior within the comment period.

DATES: Comments must be submitted on or before March 27, 1997.

ADDRESSES: Comments should be sent to: Bettine Montgomery, Office of Policy and Management Improvement, Minerals Management Service, 1848 C Street, N.W., MS 4230, Washington, D.C. 20240; courier delivery to Department of the Interior, 1849 C Street, N.W., Washington, D.C. 20240; telephone (202) 208-3976; fax (202) 208-3118; e-Mail Elizabeth.Montgomery@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Hugh Hilliard, Office of Policy and Management Improvement, Minerals Management Service, 1849 C Street, N.W., MS 4230, Washington, D.C. 20240; telephone (202) 208-3398; fax (202) 208-4891; e-Mail Hugh.Hilliard@smtp.mms.gov.

Dated: December 17, 1996.

Lucy R. Querques,
Associate Director for Policy and Management Improvement.

[FR Doc. 96-32516 Filed 12-20-96; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO24-1-5701b, CO25-1-5700b, CO26-1-5702b; FRL-5664-2]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; 1990 Base Year Carbon Monoxide Emission Inventories for Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the 1990 base year carbon monoxide (CO) emission inventories for Colorado Springs, Denver/Longmont, and Fort Collins that were submitted by the State to satisfy certain requirements of the Clean Air Act (CAA), as amended in 1990. In the Final Rules Section of this Federal Register, EPA is approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 22, 1997.

ADDRESSES: Written comments should be addressed to: Richard R. Long, Director, Air Program (8P2-A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202-2466

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202-2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program (8P2-A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202-2466 ph. (303) 312-6479.