

§ 240.17Ad-14 Tender and reorganization agents

(a) *Establishing book-entry depository accounts for tender or exchange offers and reorganization events.* (1) When securities of a subject company have been declared eligible by one or more qualified registered securities depositories for the services of those depositories at the time a tender or exchange offer is commenced, no registered transfer agent shall act on behalf of the bidder as a depository, in the case of a tender offer, or an exchange agent, in the case of an exchange offer, in connection with a tender or exchange offer, unless that transfer agent has established, within two business days after commencement of the offer, specially designated accounts. These accounts shall be maintained throughout the duration of the offer, including protection periods, with all qualified registered securities depositories holding the subject company's securities, for purposes of receiving from depository participants securities being tendered to the bidder by book-entry delivery pursuant to transmittal letters and other documentation and for purposes of allowing depositories to return to depository participants by book-entry movement securities withdrawn from the offer.

(2) When securities of an issuer have been declared eligible by one or more qualified registered securities depositories for the services of those depositories at the time a reorganization event is commenced, no registered transfer agent shall act as a reorganization agent on behalf of any issuer in connection with a reorganization event unless that registered transfer agent has established, within two business days after commencement of the reorganization event, specially designated accounts. These accounts shall be maintained with all qualified registered securities depositories holding the issuer's securities until the depository's close of business on the record date, expiration date, or payment date, as the case may be, including any protect periods, of the reorganization event for purposes of receiving from depository participants securities presented to registered transfer agents by book-entry delivery pursuant to proper documentation and for purposes of allowing reorganization agents to return securities to depository participants by book-entry movement in connection with the reorganization event.

(3) No registered transfer agent acting as a depository, exchange agent, or reorganization agent shall require a

qualified registered securities depository to deliver any physical security pursuant to a tender offer, exchange offer, or reorganization event prior to:

(i) In the case of a tender or exchange offer, the third business day following the qualified registered securities depository's close of business on the expiration date of a tender or exchange offer, including any protect periods or

(ii) In the case of a reorganization event, the third business day following the qualified registered securities depository's close of business on the record date, payment date, or expiration date, as applicable, including any protect periods, of the reorganization event.

(b) *Exclusions.* This section shall not apply to tender or exchange offers or reorganization events:

(1) That are made for a class of securities of a subject company or issuer that has fewer than:

(i) 500 security holders of record for that class; or

(ii) 500,000 shares of that class outstanding; or

(2) That are made exclusively to security holders of fewer than 100 shares of a class of securities.

(c) *Definitions.* For purposes of this section:

(1) The terms *bidder*, *subject company*, *business day*, *security holders*, and *transmittal letter* shall have the meanings provided in § 240.14d-1(e);

(2) Unless the context otherwise requires, a tender or exchange offer shall be deemed to have commenced as specified in § 240.14d-2;

(3) The term *qualified registered securities depository* shall mean a registered clearing agency having rules and procedures approved by the Commission pursuant to section 19 of the Act (15 U.S.C. 78s) to enable book-entry delivery of the securities of the subject company or issuer to, and return of those securities from, a transfer agent or reorganization agent, as the case may be, through the facilities of that registered clearing agency;

(4) The term *depository* refers to that agent of the bidder receiving securities from tendering depository participants during a tender offer and paying those participants for shares tendered. The term *exchange agent* refers to the agent performing like functions in connection with an exchange offer. The term *reorganization agent* refers to the agent performing like functions in connection with a reorganization event; and

(5) The term *reorganization event* shall mean and include conversions, maturities, full and partial redemptions,

calls, put option exercises, and warrant and rights exercises involving corporate and municipal securities of an issuer.

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any registered transfer agent, reorganization agent, tender or exchange offer, class of tender or exchange offers, or reorganization event if the Commission determines that an exemption is consistent with the public interest, the protection of investors, the prompt and accurate clearance and settlement of securities transactions, the maintenance of fair and orderly markets, or the removal of impediments to a national clearance and settlement system.

Dated: August 31, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-101363-98]

RIN 1545-AV94

Section 411(d)(6) Protected Benefits (Taxpayer Relief Act of 1997); Qualified Retirement Plan Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations providing for changes to the rules regarding qualified retirement plan benefits that are protected from reduction by plan amendment, that have been made necessary by the Taxpayer Relief Act of 1997. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by December 3, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-101363-98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-101363-98),

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.

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Linda S. F. Marshall, (202) 622-6030 (not a toll-free call); concerning submissions, Michael Slaughter, (202) 622-7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 411(d)(6), to provide for changes that have been made necessary by the Taxpayer Relief Act of 1997 (TRA '97), Public Law 105-34, 111 Stat. 788 (1997). The temporary regulations change the existing regulations to conform with the TRA '97 rules regarding in-kind distribution requirements for certain employee stock ownership plans, and specify the time period during which certain plan amendments for which relief has been granted by TRA '97 may be made without violating the prohibition against plan amendments that reduce accrued benefits.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

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 Requests for a 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 may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel, Employee Benefits and Exempt Organizations. 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 1.411(d)-4 is amended by:

1. Revising paragraph (d)(1)(ii) of Q&A-2.
2. Adding Q&A-11.

The addition and revisions read as follows:

§ 1.411(d)-4 Section 411(d)(6) protected benefits.

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Q-2 * * *

(d)(1)(ii) [The text of proposed paragraph (d)(1)(ii) of Q&A-2 is the same as the text of § 1.411(d)-4T Q&A-2(d)(1)(ii) published elsewhere in this issue of the **Federal Register**.]

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Q&A-11 [The text of proposed Q&A-11 is the same as the text of § 1.411(d)-4T Q&A-11 published elsewhere in this issue of the **Federal Register**.]

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 98-7]

Notice and Recordkeeping for Making and Distributing Phonorecords

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The Copyright Office of the Library of Congress is requesting comments on the requirements by which copyright owners shall receive reasonable notice of the use of their works in the making and distribution of phonorecords. The Digital Performance Right in Sound Recordings Act of 1995 requires the Librarian of Congress to establish these regulations to ensure proper payment to copyright owners for the use of their works.

DATES: Comments are due October 19, 1998. Reply comments are due November 18, 1998.

ADDRESSES: If sent by mail, an original and ten copies of the comments, or the reply comments, should be addressed to: David Carson, General Counsel, Copyright GC/I&R, PO. Box 70400, Southwest Station, Washington, DC 20024. If hand delivered, an original and ten copies of the comments, or the reply comments, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-407, First and Independence Avenue, SE, Washington, DC 20599-6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707-8380 or Telefax (202) 707-8366.

SUPPLEMENTARY INFORMATION:

Background

What Is the Digital Performance Right in Sound Recordings Act of 1995?

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (DPRSRA), Pub. L. 104-39 (1995). Among other things, this law clarified that the compulsory license for making and distributing phonorecords includes the distribution of a phonorecord of a nondramatic musical work by means of a digital phonorecord delivery. 17 U.S.C. 115(c)(3). A "digital phonorecord delivery" is each individual delivery of a phonorecord by digital transmission of