

changes its state of incorporation to State N by merging into newly organized New P under the laws of State M and State N. Third, P redeems all the stock issued to A in respect of his T stock for cash. Without regard to the other steps, the merger of T into S qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D). Without regard to the other steps, the merger of P into New P qualifies as a reorganization under section 368(a)(1)(F). Under paragraph (m)(3)(ii) of this section, related events that precede or follow the transaction or series of transactions that constitute a mere change do not cause that transaction to fail to qualify as a reorganization under section 368(a)(1)(F). Therefore, the merger of P into New P qualifies as a reorganization under section 368(a)(1)(F). However, under paragraph (m)(3)(ii) of this section, the qualification of the merger of P into New P as a reorganization under section 368(a)(1)(F) does not alter the tax treatment of the merger of T into S. Because the P shares received by A in respect of the T shares are redeemed for cash pursuant to the plan, the merger of T into S does not satisfy the continuity of interest requirement and does not qualify as a reorganization under section 368(a)(1)(A).

*Example 8.* Corporation P owns all of the stock of S, a State A corporation. The management of P determines that it would be in the best interest of S to change its form from a State A corporation to a State A limited partnership. Accordingly, P contributes one percent of the S stock to newly formed LLC, a limited liability company, in exchange for all of the membership interests in LLC. Under § 301.7701-3 of this chapter, LLC is disregarded as an entity separate from its owner, P. Under a State A statute, S converts to a State A limited partnership. In the conversion, P's interest as a 99 percent shareholder of S is converted into a 99 percent limited partner interest, and LLC's interest as a one percent shareholder of S is converted into a one percent general partner interest. S then elects, under § 301.7701-3(c), to be classified as a corporation for federal income tax purposes, effective on the date of the conversion. The conversion of S from a State A corporation to a State A limited partnership, together with the election to treat S as a corporation for federal tax purposes, constitutes a mere change and is a reorganization under section 368(a)(1)(F).

(6) *Effective Date.* This paragraph (m) applies to transactions occurring on or after [the date these regulations are published as final regulations in the **Federal Register**].

**Linda M. Kroening,**

*Acting Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-124872-04]

RIN 1545-BD37

#### Clarification of Definitions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** This issue of the **Federal Register** contains temporary regulations that provide clarification of the definitions of a corporation and a domestic entity in circumstances where the business entity is considered to be created or organized in more than one jurisdiction. These regulations will affect business entities that are created or organized under the laws of more than one jurisdiction. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments and must be received by November 10, 2004. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 3, 2004 must be received by October 15, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-124872-04), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday (excluding Federal holidays) between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-124872-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent electronically, via either the IRS internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS and REG-124872-04). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Thomas Beem, (202) 622-3860; concerning submissions of comments or the public hearing, Sonya Cruse, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background and Explanation of Provisions

Temporary regulations in this issue of the **Federal Register** amend 26 CFR part 301 relating to section 7701 of the Internal Revenue Code of 1986 (Code). The temporary regulations provide guidance as to the definitions of a corporation and of domestic and foreign entities in circumstances in which an entity is created or organized under the laws of more than one jurisdiction (a dually chartered entity). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains both the temporary regulations and these proposed regulations.

#### 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 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 regulations do 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 7806(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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 3, 2004 at 10 a.m. in the Auditorium of the Internal Revenue building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area earlier than 30 minutes prior to the start of the hearing. For information about having your name placed on the building access list to

attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time devoted to each topic (signed original and eight (8) copies) by October 15, 2004. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of 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.

#### Proposed Effective Date

The regulations proposed in this document would apply on August 12, 2004 to all business entities existing on or after that date.

#### Drafting Information

The principal author of these proposed regulations is Thomas Beem of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** In § 301.7701–1, paragraph (d) is revised to read as follows:

##### § 301.7701–1 Classification of organizations for federal tax purposes.

(d) [The text of the proposed amendment revising § 301.7701–1(d) is the same as the text of § 301.7701–1T(d) published elsewhere in this issue of the **Federal Register**.]

**Par. 3.** In § 301.7701–2 paragraph (b)(9) is added to read as follows:

##### § 301.7701–2 Business entities; definitions.

\* \* \* \* \*

(b) \* \* \*

(9) [The text of the proposed amendment adding § 301.7701–2(b)(9) is the same as the text of § 301.7701–2T(b)(9) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**Par. 4.** Section 301.7701–5 is revised to read as follows:

##### § 301.7701–5 Domestic and foreign business entities.

[The text of the proposed amendment revising § 301.7701–5 is the same as the text of § 301.7701–5T published elsewhere in this issue of the **Federal Register**.]

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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#### DEPARTMENT OF THE INTERIOR

#### National Park Service

#### 36 CFR Part 7

**RIN 1024–AD26**

#### Apostle Islands National Lakeshore; Designation of Snowmobile and Off-road Motor Vehicle Routes, and Use of Portable Ice Augers or Power Engines

**AGENCY:** National Park Service, Interior.  
**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is proposing to designate areas and routes on Lake Superior and the mainland unit for use by snowmobiles, off-road motor vehicles, and ice augers or power engines within Apostle Islands National Lakeshore. The existing regulations prohibit such use unless routes, areas and water surfaces are specifically identified and promulgated as special regulations. Unless otherwise provided for by special regulation, the operation of snowmobiles and off-road motor vehicles within areas of the National Park System is prohibited under existing regulations. The intended effect of the special regulations is to designate the routes, areas and frozen water surfaces identified herein and remove the requirement for a permit to operate an ice auger or power engine. All other portions of the existing regulation, governing use, safety, and operating requirements would remain in effect.

**DATES:** Written comments will be accepted through October 12, 2004.

**ADDRESSES:** Comments should be addressed to: Superintendent, Apostle

Islands National Lakeshore, Route 1, Box 4, Bayfield, Wisconsin 54814. Comments may also be submitted electronically to: [APIS\\_Winter\\_Use@nps.gov](mailto:APIS_Winter_Use@nps.gov).

#### FOR FURTHER INFORMATION CONTACT:

Gregory F. Zeman, Chief of Protection, Apostle Islands National Lakeshore, Route 1, Box 4, Bayfield, Wisconsin 54814. Telephone: (715) 779–3398, extension 201.

#### SUPPLEMENTARY INFORMATION:

#### Background

The enabling legislation for Apostle Islands National Lakeshore (PL–424, enacted September 26, 1970) specifically authorized recreational use of the lakeshore by the public. It further included provisions for hunting, fishing, and trapping on the lands and waters within the boundaries, with certain limitations allowed for public safety administration, fish or wildlife management, or public use and enjoyment.

The lakeshore comprises 21 islands and a 12-mile strip of mainland shoreline lying at the northern end of the Bayfield peninsula in Northern Wisconsin. Jurisdiction extends for a distance of one-quarter mile offshore on the waters of Lake Superior surrounding each island and along the mainland coast. During the winter months, safe access up to shoreline areas and traditional hunting, fishing, and trapping areas frequently requires over ice travel by snowmobile and various forms of off-road motor vehicle transportation within the quarter-mile jurisdiction.

The Federal legislation that established the Lakeshore in 1970 includes the water areas of Lake Superior that surround every island and extend seaward from the mainland shoreline for a distance of one-quarter mile.

The use of snowmobiles, off-road motor vehicles, and ice augers or power engines was common prior to the establishment of the lakeshore and for a number of years following it. The use of ice augers or power engines is necessary to provide access to the water through the ice for authorized fishing activities. Ice augers are typically operated only once a day at the beginning of ice fishing activities. The length of operation is chiefly dependent on the thickness of the ice, which can vary from four inches to more than three feet. Most ice augers can cut through the ice surface in less than a few minutes. The exclusive purpose of operation is to cut or bore small holes in the frozen surface