Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131239–13]

RIN 1545–BL80

Acquiring Corporation for Purposes of Section 381

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 381 of the Internal Revenue Code (Code). The proposed regulations modify the definition of an acquiring corporation for purposes of section 381 with regard to certain acquisitions of assets. The proposed regulations affect corporations that acquire the assets of other corporations in corporate reorganizations.

DATES: Written or electronic comments and requests for a public hearing must be received by August 5, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–131239–13), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–131239–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Submissions may also be sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–131239–13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephanie D. Floyd at (202) 317–6065 or Isaac W. Zimbalist at (202) 317–5363; concerning submissions of comments and/or requests for a public hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 381 of the Code. Section 381(a) generally provides that in certain acquisitions of the assets of a distributor or transferor corporation by another corporation, the acquiring corporation succeeds to the tax attributes, including the earnings and profits, of the distributor or transferor corporation. For this purpose, § 1.381(a)–1(b)(2) defines the acquiring corporation with regard to transactions described in section 381(a)(2) (relating to certain reorganizations under section 368), as either the corporation that ultimately acquires all of the assets transferred by the transferor corporation, or the corporation that directly acquires the assets transferred by the transferor corporation if no single corporation ultimately acquires all of the assets so transferred.

1. Proposed Section 312 Regulations

A notice of proposed rulemaking containing proposed regulations (REG–141268–11) under section 312 was published in the **Federal Register** on April 16, 2012 (77 FR 22515) (proposed section 312 regulations) to clarify the regulations under § 1.312–11 regarding the allocation of earnings and profits in nonrecognition transfers of property from one corporation to another. The proposed section 312 regulations provide that, in a transfer described in section 381(a), the acquiring corporation, as defined in § 1.381(a)–1(b)(2), succeeds to the earnings and profits of the distributor or transferor corporation. For example, if in a reorganization under section 368(a)(1) by reason of section 368(a)(2)(C), the transferee corporation that directly acquires a transferor corporation's assets transfers some, but not all, of the acquired assets to a controlled subsidiary, the transferee corporation (the acquiring corporation under § 1.381(a)–1(b)(2)) retains the earnings and profits. However, if the transferee corporation instead transfers all of the transferor corporation's assets to a controlled subsidiary, then that controlled subsidiary (the acquiring corporation under § 1.381(a)–1(b)(2)) would succeed to the transferor corporation's earnings and profits. Comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held.

2. Summary of Comments Received With Respect to the Proposed Section 312 Regulations

Some commenters recommended that the definition of acquiring corporation under § 1.381(a)–1(b)(2) be changed for purposes of determining the location of the transferor corporation's earnings and profits. These commenters believed that the rule in the proposed section 312 regulations allowing the section 381 acquiring corporation to succeed to the earnings and profits of the transferor inappropriately allows electivity of the location of the transferor corporation's earnings and profits in connection with section 381(a)(2) transactions based on whether the transferee corporation that directly acquires the transferor corporation's assets retains a single asset. These commenters also expressed concern that this rule raises difficult practical issues in determining whether all of the acquired assets have been transferred to a controlled subsidiary.

As an alternative to the proposed section 312 regulations, some commenters recommended adopting a rule that provides that the corporation that acquires substantially all of the assets transferred by a transferor corporation in a section 381(a)(2) transfer succeeds to the transferor's earnings and profits. One commenter recommended that earnings and profits remain with the direct acquiring corporation even if all of the acquired assets are transferred to another corporation pursuant to the plan of reorganization. Another commenter suggested that there should not be disparate treatment of earnings and profits in nonrecognition transfers to controlled subsidiaries merely because a reorganization has occurred, and therefore the rule for determining the location of earnings and profits in connection with section 381(a)(2) transfers should be consistent with rules that govern nonrecognition transfers to controlled subsidiaries.

The IRS and the Treasury Department believe that adopting a substantially all approach would introduce unnecessary uncertainty surrounding the measurement of ''substantially all.'' The IRS and the Treasury Department, however, agree with the recommendation that the direct

acquiring corporation should succeed to the earnings and profits. The IRS and the Treasury Department believe that this approach addresses the other comments received regarding consistency among nonrecognition transactions. Moreover, after considering all comments received with regard to the proposed section 312 regulations, the IRS and the Treasury Department have concluded that this recommended change is appropriate not merely with respect to the determination of the location of the transferor corporation's earnings and profits but also with respect to the other tax attributes governed by section 381. Accordingly, this notice of proposed rulemaking (proposed section 381 regulations) revises the definition of acquiring corporation as described under the Explanation of Provisions. Because the proposed section 312 regulations merely cross-reference the section 381 regulations, those proposed regulations will remain outstanding. It is anticipated that the proposed section 312 regulations and the proposed section 381 regulations will be concurrently published as final regulations in the **Federal Register** after the comment period for the proposed section 381 regulations has closed on August 5, 2014 and the IRS and the Treasury Department have had an opportunity to consider the comments received.

Explanation of Provisions

1. Direct Transferee Corporation Is the Acquiring Corporation

The proposed section 381 regulations provide that, in a transaction described in section 381(a)(2), the acquiring corporation is the corporation that directly acquires the assets transferred by the transferor corporation, even if the transferee corporation ultimately retains none of the assets so transferred. The current regulations under section 381 yield an identical result, except when a single controlled subsidiary of the direct transferee corporation acquires all of the assets transferred by the transferor corporation pursuant to a plan of reorganization. In that case, the current regulations treat the subsidiary as the acquiring corporation, a result that effectively permits a taxpayer to choose the location of a transferor corporation's attributes by causing the direct transferee corporation either to retain or not to retain a single asset. The IRS and the Treasury Department believe the proposed rule produces more appropriate results because it would eliminate this electivity. The proposed rule also eliminates the administrative burden under the current regulations associated with determining whether a particular corporation in fact has acquired all of the assets transferred by the transferor corporation pursuant to a plan of reorganization. In addition, it eliminates the disparate effect of the presence or absence of a plan of reorganization and produces results consistent with those obtained if a corporation that has not engaged in a reorganization transfers assets to a controlled subsidiary in a nonrecognition transaction.

Finally, the IRS and the Treasury Department believe the proposed rule is appropriate with respect to determining the location of the earnings and profits of a transferor corporation because the proposed rule generally maintains such earnings and profits at the corporation closest to the transferor corporation's former shareholders, except in the case of triangular reorganizations. The IRS and the Treasury Department considered an alternative approach that would achieve this result in all cases by treating the corporation that issues stock pursuant to a plan of reorganization (the ''issuing corporation'') as the acquiring corporation. An issuing corporation approach would, however, present complex considerations in the context of cross-border transactions, potentially requiring a number of special rules to preclude opportunities for the avoidance of tax. Accordingly, the IRS and the Treasury Department believe that the proposed rule produces more appropriate results than the current regulations (including in the context of cross-border transactions) while preserving simplicity and administrability.

2. Removal of § 1.381(a)–1(b)(3)(ii)

The proposed section 381 regulations also remove § 1.381(a)–1(b)(3)(ii) relating to a transfer by the acquiring corporation of the acquired assets to a controlled subsidiary. Section 1.381(a)–1(b)(3)(ii) provides that if the corporation that directly acquires the assets transferred by the transferor corporation is the acquiring corporation, and it transfers any acquired assets to one or more controlled subsidiaries, then the carryover of items described in section 381(c) to any controlled subsidiary is not governed by section 381. Although that rule is correct, it is unnecessary in light of the proposed section 381 regulations. Accordingly, the paragraph is removed.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 proposed regulations, and because these 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 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for 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 the Treasury Department request comments on all aspects of the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Stephanie D. Floyd of the Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and the 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 1.381(a)–1 is amended by:

■ 1. Removing the third, fourth, and fifth sentences of paragraph (b)(2)(i) and adding one sentence in its place.

■ 2. Removing from the last sentence of paragraph (b)(2)(ii) *Example 2* ''Y'' and adding ''X'' in its place.
■ 3. Redesignating paragraph (b)(3)(i) as paragraph (b)(3).
■ 4. Removing paragraph (b)(3)(ii).
■ 5. Adding a sentence at the end of paragraph (e).

The revisions and additions read as follows:

§ 1.381(a)–1 General rule relating to carryovers in certain corporate acquisitions.

* * * * *

(b) * * *

(2) * * * (i) * * * In a transaction to which section 381(a)(2) applies, the acquiring corporation is the corporation that, pursuant to the plan of reorganization, directly acquires the assets transferred by the transferor corporation, even if that corporation ultimately retains none of the assets so transferred.

* * * * *

(e) * * * Paragraph (b)(2) of this section applies to transactions occurring on or after the date of publication of the Treasury decision adopting this rule as a final regulation in the **Federal Register**.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2014–10500 Filed 5–6–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB65

Health Care Continuation Coverage

AGENCIES: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rules.

SUMMARY: These proposed regulations contain amendments to notice requirements of the health care continuation coverage (COBRA) provisions of Part 6 of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to better align the provision of guidance under the COBRA notice requirements with the Affordable Care Act provisions already in effect, as well as any provisions of federal law that will become applicable in the future.

DATES: Written comments on this notice of proposed rulemaking are invited and must be received by July 7, 2014.

ADDRESSES: Written comments may be submitted to the Department of Labor as specified below. Any comment that is submitted will be shared with the other Departments and will also be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Comments, identified by ''Health Care Continuation Coverage,'' may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail or Hand Delivery: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Health Care Continuation Coverage.

Comments received will be posted without change to *www.regulations.gov* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Elizabeth Schumacher, Employee Benefits Security Administration, Department of Labor.

Customer service information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*www.dol.gov/ebsa*).

SUPPLEMENTARY INFORMATION:

I. Background

The continuation coverage provisions, sections 601 through 608 of title I of the Employee Retirement Income Security Act (ERISA), were enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), which also promulgated parallel provisions of the Internal Revenue Code (the Code) and the Public Health Service Act (the PHS Act).[1] These provisions are commonly referred to as the COBRA provisions, and the continuation coverage that they mandate is commonly referred to as COBRA coverage. COBRA, as enacted, provides that the Secretary of Labor (the Secretary) has the authority under section 608 to carry out the provisions of part 6 of title I of ERISA. The Conference Report that accompanied COBRA divided interpretive authority over the COBRA provisions between the Secretary and the Secretary of the Treasury (the Treasury) by providing that the Secretary has the authority to issue regulations implementing the notice and disclosure requirements of COBRA, while the Treasury is authorized to issue regulations defining the required continuation coverage.[2]

On May 26, 2004, the Department of Labor (Department) issued final regulations implementing various provisions of the COBRA notice requirements and model notices to facilitate compliance with the requirement to provide the general notice of continuation coverage (general notice) as well as COBRA continuation election notice (election notice).[3] The model general notice was issued in an appendix to § 2590.606–1 and the model election notice was issued in an appendix to § 2590.606–4.

In general, under COBRA, group health plans must provide a written notice of COBRA rights to each covered employee and spouse (if any) ''at the time of commencement of coverage'' under the plan. Generally, the notice must be furnished to each covered employee and to the employee's spouse (if covered under the plan) not later than the earlier of: (1) Either 90 days from the date on which the covered employee or spouse first becomes covered under the plan or, if later, the date on which the plan first becomes subject to the continuation coverage requirements; or (2) the date on which

[1] The Code and PHS Act COBRA provisions, although very similar in other ways, are not identical to the COBRA provisions in title I of ERISA in their scope of application. The PHS Act provisions apply only to State and local governmental plans, and the Code provisions grant COBRA rights to individuals who would not be considered participants or beneficiaries under ERISA. *See* PHS Act, 42 U.S.C. 300bb–8; Code section 5000(b)(1).

[2] H.R. Conf. Rep. No. 99–453, 99th Cong., 1st Sess., at 562–63 (1985). The Conference Report further indicates that the Secretary of Health and Human Services, who is to issue regulations implementing the continuation coverage requirements for State and local governments, must conform the actual requirements of those regulations to the regulations issued by the Secretary and the Treasury. *Id.* at 563.

[3] 69 FR 30084 (May, 26, 2004).