situations through the selection of a particular location. This includes ROW acquisitions within a potential highway corridor under consideration where necessary to preserve the corridor for future highway purposes. Authorization of work under this paragraph shall be in accord with the provisions of 23 CFR part 712.

(5) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

(d) The authorization to proceed with a project under 23 CFR 630.106(c)(3) through (c)(5) shall contain the following statement: ''Authorization to proceed shall not constitute any commitment of Federal funds, nor shall it be construed as creating in any manner any obligation on the part of the Federal Government to provide Federal funds for that portion of the undertaking not fully funded herein.''

(e) When a project has received an authorization under 23 CFR 630.106 (c)(3) and (c)(4), subsequent authorizations beyond the location stage shall not be given until appropriate available funds have been obligated to cover eligible costs of the work covered by the previous authorization.

(f)(1) The Federal-aid share of eligible project costs shall be established at the time of project authorization in one of the following manners:

(i) Pro rata, with the authorization stating the Federal share as a specified percentage, or

(ii) Lump sum, with the authorization stating that Federal funds are limited to a specified dollar amount not to exceed the legal pro rata.

(2) The pro-rata or lump sum share may be adjusted to reflect any substantive change in the bids received as compared to the SHA's estimated cost of the project at the time of FHWA authorization, provided that Federal funds are available.

(g) Federal participation is limited to the agreed Federal share of eligible costs actually incurred by the State, not to exceed the maximum permitted by enabling legislation. Any private cash contributions to the project must be credited to, and thereby such contributions reduce, the total project cost and are not considered to be costs incurred by the State. Private cash contributions may be applied to participating or nonparticipating work. Cash contributions provided by a local government are considered the same as State funds.

(h) The sum of cash contributions from all sources plus the Federal funds may not exceed the total cost of the project.

(i) The State may contribute more than the normal non-Federal share of title 23, U.S.C., projects. However, proposals resulting in token Federal financing of a Federal-aid project shall not be approved.

[FR Doc. 95–4029 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–62–94]

RIN 1545–AT15

Continuity of Interest in Transfer of Target Assets After Qualified Stock Purchase of Target

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to the income tax treatment of the transfer of target assets to the purchasing corporation or another member of the same affiliated group as the purchasing corporation (the transferee) after a qualified stock purchase (QSP) of target stock, if a section 338 election is not made. These regulations provide guidance to parties to such transfers and their shareholders. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for June 7, 1995, must be received by May 19, 1995.

ADDRESSES: Send submissions to: CC:CORP:T:R (CO–62–94), 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:CORP:T:R (CO–62–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William Alexander, (202) 622–7780; concerning the submissions and requests for a hearing, Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes guidance as to the treatment of transfers of target assets to another corporation after a qualified stock purchase of target stock, if a section 338 election is not made for the target. It addresses the effect of section 338 on the result in *Yoc Heating v. Commissioner* and similar cases.

Under § 1.368–1(b), for a transfer of assets to be pursuant to a reorganization within the meaning of section 368, there must be a continuity of interest in the target's business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the reorganization.

In *Yoc Heating v. Commissioner*, 61 T.C. 168 (1973), a corporation bought 85 percent of a target corporation's stock for cash and notes. As part of the same plan, the target subsequently transferred its assets to a newly formed subsidiary of the purchaser and dissolved. The purchaser received additional stock of its subsidiary in exchange for the purchaser's target stock and the minority shareholders received cash in exchange for their target stock.

The Tax Court, viewing the stock purchase and asset acquisition as an integrated transaction in which the purchaser acquired all of the target's assets for cash and notes, held there was insufficient continuity of interest to qualify the asset transfer as a reorganization under section 368 because the shareholders of the target before the stock purchase received no stock in the acquiring entity. As a result, the subsidiary received a cost basis in the target's assets.

In addition to *Yoc Heating*, there are other cases in which courts have denied reorganization treatment and have given the transferee a stepped-up basis in the target's assets following the purchase of the target's stock and the merger of the target into the purchaser or a related corporation. See, e.g., *Russell v. Commissioner*, 832 F.2d 349 (6th Cir. 1987), *aff'g Cannonsburg Skiing Corp. v. Commissioner*, T.C. Memo 1986–150 (corporation purchased target stock and then target merged into purchaser); *Security Industrial Insurance Co. v. United States*, 702 F.2d 1234 (5th Cir. 1983) (corporation purchased stock of targets and then targets merged into purchaser, which then transferred the target assets to a subsidiary of the purchaser); *South Bay Corporation v. Commissioner*, 345 F.2d 698 (2d Cir. 1965) (individual purchased stock in two targets and then targets merged into a third corporation owned by the individual); *Superior Coach of Florida*

v. Commissioner, 80 T.C. 895 (1983) (individual purchased target stock and then target merged into another corporation controlled by the individual); *Estate of McWhorter v. Commissioner,* 69 T.C. 650 (1978), *aff'd,* 590 F.2d 340 (8th Cir. 1978) (corporation purchased target stock and then target merged into purchaser); and *Kass v. Commissioner,* 60 T.C. 218 (1973), *aff'd,* 491 F.2d 749 (3d Cir. 1974) (corporation purchased target stock and then target merged into purchaser).

The *Yoc Heating* court's analysis of the transaction as, in substance, a taxable asset acquisition by the subsidiary is consistent with generally applied federal income tax principles. For example, in *Kimbell-Diamond Milling Co. v. Commissioner,* 14 T.C. 74 (1950), *aff'd per curiam,* 187 F.2d 718 (5th Cir.), *cert. denied,* 342 U.S. 827 (1951), an acquiring corporation's purchase of a target corporation's stock followed by the liquidation of the target was treated for federal income tax purposes as, in substance, a direct purchase of the target's assets by the acquiring corporation. The Tax Court's characterization in *Kimbell-Diamond* was based on a finding that the acquiring corporation intended to obtain the target's assets rather than its stock. As a result, the acquiring corporation's basis in the target's assets was determined by reference to the purchase price of the target's stock.

In 1954, Congress codified principles derived from *Kimbell-Diamond* by enacting former section 334(b)(2) of the Internal Revenue Code of 1954, which created an objective test that permitted a stock purchase followed by liquidation of the target to be treated as an asset acquisition. S. Rep. No. 1622, 83d Cong., 2d Sess. 257 (1954).

In 1982, Congress repealed section 334(b)(2) and replaced it with section 338, which provides that, if a corporation makes a qualified stock purchase (QSP) of the stock of a target, the purchasing corporation may elect to have the target treated as having sold all of its assets at the close of the acquisition date in a single transaction and as a new corporation that purchased all such assets at the beginning of the following day. Section 338 was ''intended to replace any nonstatutory treatment of a stock purchase as an asset purchase under the *Kimbell-Diamond* doctrine.'' H.R. Conf. Rep. No. 760, 97th Cong., 2d Sess. 467, 536 (1982), 1982–2 C.B. 600, 632.

Under section 338(i), the IRS and Treasury are authorized to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 338. The IRS and Treasury believe that the result in *Yoc Heating* is inconsistent with the legislative intent behind section 338. As a result of the enactment of section 338, an intragroup merger or similar transaction following a QSP generally should not be treated as part of an overall asset acquisition. The qualified stock purchase must be accorded its intended effect. *Cf.* Rev. Rul. 90–95, 1990–2 C.B. 67 (applying sections 332 and 334 to a merger of the target into the purchasing corporation following a QSP). If a section 338 election is not made, in a subsequent intragroup merger or similar transaction, the target assets generally should preserve their historic basis maintained in the qualified stock purchase. The IRS and Treasury believe that applying the reorganization rules to the target and purchasing group in mergers and similar transactions following a QSP is the simplest and most effective means of achieving the congressional intent in repealing the *Kimbell-Diamond* doctrine.

Explanation of Provisions

Proposed § 1.338–2(c)(3) applies to the transfer of target assets to the purchasing corporation or another member of the same affiliated group as the purchasing corporation (the transferee) following a QSP of target stock, if the purchasing corporation does not make a section 338 election for the target.

As noted above, for the transfer of target assets to be pursuant to a reorganization within the meaning of section 368, there must be a continuity of interest in the target's business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the reorganization. See § 1.368–1(b). The proposed regulations generally provide that, by virtue of the application of section 338, the purchasing corporation's target stock acquired in the QSP represents an interest on the part of a person who was an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization for the purpose of determining whether the continuity of interest requirement is satisfied. A corollary provision enables the transfer to satisfy the requirements for an acquisitive reorganization under section 368(a)(1)(D).

Notwithstanding the general rule above, the proposed regulations provide that sections 354, 355, 356 and 358 do not apply to any person other than the purchasing corporation or another member of the same affiliated group as the purchasing corporation unless the transfer of target assets is pursuant to a reorganization under generally applicable rules without regard to the provisions of the proposed regulations. The legislative history of section 338 does not indicate any intent to eliminate the continuity of interest requirement generally and allow reorganization treatment to shareholders receiving stock in acquisitions where the overall consideration does not preserve continuity of interest. The rules provided in the proposed regulations reconcile Congress' concerns in enacting section 338 with general reorganization principles.

The IRS and Treasury request comments on the proposed rules, including, particularly, comments regarding the collateral consequences of treating the transaction as a reorganization to the target and to the purchasing corporation and its affiliates, but not to persons unaffiliated with the purchasing corporation. The IRS and Treasury also solicit comments as to whether guidance is needed as to the proper treatment of post-QSP mergers and similar transactions if a section 338 election is made for the target.

Proposed Effective Date

Section 1.338–2(c)(3) is proposed to be effective for transfers of target assets occurring on or after the date final regulations are filed with the Office of 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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. 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 this proposed regulation is adopted as a final regulation, 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 June 7, 1995, at 10 a.m. in room

3313, Internal Revenue Building, 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 submit written comments by May 19, 1995, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 19, 1995.

A period of 10 minutes will be allocated 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 William Galanis, Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. 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 1.338–0 is amended by adding entries for § 1.338–2(c)(3) to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338–2 Miscellaneous issues under section 338.

* * * * *

(c)* * *

(3) Consequences of post-acquisition elimination of target.

(i) Scope.

(ii) Continuity of interest.

(iii) Control requirement.

(iv) Example.

(v) Effective date.

* * * * *

Par. 3. Section 1.338–2 is amended by adding paragraph (c)(3) to read as follows:

§ 1.338–2 Miscellaneous issues under section 338.

* * * * *

(c) * * *

(3) *Consequences of post-acquisition elimination of target*—(i) *Scope.* The rules of this paragraph (c)(3) apply to the transfer of target assets to the purchasing corporation (or another member of the same affiliated group as the purchasing corporation) (the transferee) following a qualified stock purchase of target stock, if the purchasing corporation does not make a section 338 election for target.

(ii) *Continuity of interest.* By virtue of section 338, in determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied on the transfer of assets from target to the transferee, the purchasing corporation's target stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization. Notwithstanding the preceding sentence, sections 354, 355, 356 and 358 do not apply to any person other than the purchasing corporation or another member of the same affiliated group as the purchasing corporation unless the transfer is pursuant to a reorganization under generally applicable rules without regard to this paragraph (c)(3)(ii).

(iii) *Control requirement.* By virtue of section 338, the purchasing corporation is treated as a shareholder of the target transferor for the purpose of determining whether, immediately after the transfer of target assets, a shareholder of the transferor is in control of the corporation to which the assets are transferred within the meaning of section 368(a)(1)(D).

(iv) *Example.* This paragraph (c)(3) is illustrated by the following example:

Example. (A) *Facts.* P, T, and X are domestic corporations. T and X each operate a trade or business. A and K, individuals unrelated to P, own 85 and 15 percent, respectively, of the stock of T. P owns all of the stock of X. The total adjusted basis of T's property exceeds the sum of T's liabilities plus the amount of liabilities to which T's property is subject. P purchases all of A's T stock for cash in a qualified stock purchase. P does not make an election under section 338(g) with respect to its acquisition of T stock. Shortly after the acquisition date, and as part of the same plan, T merges under applicable state law into X in a transaction that, but for the question of continuity of interest, satisfies all the requirements of section 368(a)(1)(A). In the merger, all of T's assets are transferred to X. P and K receive X stock in exchange for their T stock. P intends to retain the stock of X indefinitely.

(B) *Status of transfer as a reorganization.* By virtue of section 338, for the purpose of determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied, P's T stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of T's business enterprise prior to the transfer that can be continued in a reorganization through P's continuing ownership of X. Thus, the continuity of interest requirement is satisfied and the merger of T into X is a reorganization within the meaning of section 368(a)(1)(A). Moreover, by virtue of section 338, the requirement of section 368(a)(1)(D) that a target shareholder control the transferee immediately after the transfer is satisfied because P controls X immediately after the transfer. In addition, all of T's assets are transferred to X in the merger and P and K receive the X stock exchanged therefor in pursuance of the plan of reorganization. Thus, the merger of T into X is also a reorganization within the meaning of section 368(a)(1)(D).

(C) *Treatment of T and X.* Under section 361(a), T recognizes no gain or loss in the merger. Under section 362(b), X's basis in the assets received in the merger is the same as the basis of the assets in T's hands. X succeeds to and takes into account the items of T as provided in section 381.

(D) *Treatment of P.* By virtue of section 338, the transfer of T assets to X is a reorganization. Pursuant to that reorganization, P exchanges its T stock solely for stock of X, a party to the reorganization. Because P is the purchasing corporation, section 354 applies to P's exchange of T stock for X stock in the merger of T into X. Thus, P recognizes no gain or loss on the exchange. Under section 358, P's basis in the X stock received in the exchange is the same as the basis of P's T stock exchanged therefor.

(E) *Treatment of K.* Because K is not the purchasing corporation (or an affiliate thereof), section 354 does not apply to K's exchange of T stock for X stock in the merger of T into X unless the transfer is pursuant to a reorganization under generally applicable rules without regard to paragraph (c)(3)(ii) of this section. Under general income tax principles applicable to reorganizations, the continuity of interest requirement is not satisfied because P's stock purchase and the merger of T into X are pursuant to an integrated transaction in which A, the owner of 85 percent of the stock of T, received solely cash in exchange for A's T stock. See, e.g., *Yoc Heating v. Commissioner,* 61 T.C. 168 (1973); *Kass v. Commissioner,* 60 T.C. 218 (1973), *aff'd,* 491 F.2d 749 (3d Cir. 1974). Thus, the requisite continuity of interest under § 1.368–1(b) is lacking and section 354 does not apply to K's exchange of T stock for X stock. K recognizes gain or loss, if any, pursuant to section 1001(c) with respect to its T stock.

(v) *Effective date.* The provisions of this paragraph (c)(3) are effective for transfers of target assets on or after the

date final regulations are filed with the Office of the Federal Register.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–3771 Filed 2–16–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AB96

Flaring or Venting Gas and Burning Liquid Hydrocarbons

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations governing the restrictions on flaring or venting gas to include restrictions on burning liquid hydrocarbons. The MMS is proposing to amend these regulations because of the increased interest in burning liquid hydrocarbons and to clarify the restrictions on burning this natural resource. The amendment would conserve liquid hydrocarbons and protect the environment from the possible effects of burning liquid hydrocarbons.

DATES: Comments on this proposed rule must be postmarked or received on or before April 18, 1995 to be considered for this rulemaking.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: Requests for burning liquid hydrocarbons (crude oil and condensate) have become more frequent in the Outer Continental Shelf. In the interest of conserving natural resources, and because of the environmental concerns associated with this burning, MMS proposes to amend the regulations at 30 CFR 250.175, which currently include restrictions on flaring and venting of gas, to include restrictions on burning liquid hydrocarbons.

Under proposed new paragraph (c) of 30 CFR 250.175, lessees will not be permitted to burn liquid hydrocarbons without the prior approval of the Regional Supervisor. To obtain approval, the lessee must demonstrate that the amounts to be burned would be minimal or that the alternatives, such as transporting the liquids or storing and re-injecting the liquids, are infeasible or pose a significant risk to offshore personnel or the environment. The term ''lessee'' also includes their agents and designees.

Authors

Sharon Buffington and Jo Ann Lauterbach, Engineering and Technology Division, MMS, prepared this document.

Executive Order (E.O.) 12866

The Department of the Interior (DOI) reviewed this proposed rule under E.O 12866 and determined that it is not a significant rule.

Regulatory Flexibility Act

The DOI determined that this proposed rule will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore activities are not considered small due to the technical and financial resources and experience necessary to safety conduct such activities.

Paperwork Reduction Act

The proposed information collection requirements contained in § 250.175 were submitted to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

The DOI will not require the collection on this information until OMB has approved its collection.

The MMS estimates the public reporting burden for this information to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2053, 381 Elden Street; Herndon, Virginia 22070–4817, and the Office of Management and Budget, Paperwork Reduction Project (1010–0041), Washington, DC 20503.

Takings Implication Assessment

The DOI determined that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment does not need to be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

E.O. 12778

The DOI certified to OMB that this proposed rule meets the applicable civil justice reform standards provided in Sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Pubic lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 23, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth above, MMS proposes to amend 30 CFR part 250 to read as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. Section 250.175 is revised to read as follows:

§ 250.175 Flaring or venting gas and burning liquid hydrocarbons.

(a) Lessees must not flare or vent oil-well gas or gas-well gas without the prior approval of the Regional Supervisor except in the following situations:

(1) When gas vapors are flared or vented in small volumes from storage vessels or other low-pressure production vessels and cannot be economically recovered.

(2) During temporary situations such as a compressor or other equipment