

comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 23, 1998.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 98-33404 Filed 12-16-98; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Ch. I

#### **Notice of Intent To Form a Negotiated Rulemaking Committee and Accept Applications for Membership Under Section 1115 of the Transportation Equity Act for the 21st Century (TEA-21)**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of intent to form a Negotiated Rulemaking Committee.

**SUMMARY:** As required by the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561 *et seq.*, the Secretary of the Interior (Secretary) is giving notice of his intent to establish an Indian Reservation Roads Negotiated Rulemaking Committee (Committee) to negotiate and develop proposed rules establishing an Indian Reservation Roads program funding formula for fiscal year 2000 and subsequent years; and proposed regulations governing the Indian Reservation Roads program authorized by 23 U.S.C. 202(b).

**DATES:** Applications and comments on the establishment of this Committee must be received no later than January 16, 1999.

**ADDRESSES:** Send applications and comments to Mr. LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, U.S. Department of the Interior, MS-4058-MIB, 1849 C Street, NW, Washington, DC 20240.

Applications and comments received by the BIA will be available for inspection at the address listed above from 9 a.m. to 3 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, at the address listed above, or by telephone at (202) 208-4359 or fax at (202) 208-4696. Additional information may be posted on the Indian Reservation Roads web site at

www.irr.bia.gov, as it becomes available.

**SUPPLEMENTARY INFORMATION:** As required by 23 U.S.C. 202, and amended by TEA-21, the Secretary shall, pursuant to a negotiated rulemaking process, issue regulations governing the Indian Reservation Roads program and establish a formula for allocating all contractible funds among Indian tribes for fiscal year 2000 and subsequent years. Section 202 also requires that in establishing this Committee, the Secretary of the Interior: (1) Apply the procedures of negotiated rulemaking under the Negotiated Rulemaking Act in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States; and (2) ensure that the membership of the Committee includes only representatives of the Federal government and of geographically diverse small, medium, and large Indian tribes.

In negotiating a proposed regulation establishing a funding formula, section 202 requires the Committee to base its proposal on factors that reflect: (1) The relative needs of the Indian tribes, and reservation or tribal communities, for transportation assistance; and (2) the relative administrative capacities of, and challenges faced by, various Indian tribes. The latter include the cost of road construction in each Bureau of Indian Affairs (BIA) Area; geographic isolation; and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources. Also, section 202 requires the Committee to develop a regulation governing the Indian reservation roads program. As required by 23 U.S.C. 202, we must issue these regulations in final form no later than April 1, 1999.

Committee members will not receive pay for their membership, but will be compensated for travel and per diem expenses while performing official committee business, consistent with the provisions of 5 U.S.C. 568(c). BIA will provide administrative support for the Committee.

In keeping with the requirements outlined above, the Secretary invites the tribes in each of the twelve BIA Areas to nominate two representatives to serve on the Committee, and two alternates to serve if the representatives are unavailable. Given the requirement that the Committee membership reflect the diversity of tribal interests, tribes are encouraged to nominate representatives and alternates that will result in a committee membership that represents the interests of:

(1) Members of geographically diverse small, medium, and large Indian tribes;

(2) Members of tribes identified as Direct Service, Self-Determination and Self-Governance tribes;

(3) Members of tribes with various levels and types of experience in the diverse concerns of transportation development and management (e.g., jurisdictional issues, complexity of transportation systems, climatic concerns, environmental issues, geographic isolation, etc.).

The BIA Area Offices will offer assistance to the tribes in coordinating the selection of nominees and preparing nominations. Representatives and alternates nominated by tribes will be considered by the Secretary.

The BIA has contracted with the Federal Mediation and Conciliation Service (FMCS) to provide convening and facilitation services for the negotiated rulemaking. The FMCS is an independent agency of the Federal government, established in 1947, whose responsibilities include providing neutral, third-party assistance in regulatory negotiations. The first meeting of the Committee is tentatively scheduled for the week of March 2-4, 1999.

#### **Submitting Nominations**

After selecting two representatives and two alternates from their respective Areas as nominees, tribes are asked to provide the following information about each nominee:

(1) The name of the nominee.

(2) The tribal interest(s) to be represented by the nominee (based on the interests listed above).

(3) Evidence that the nominee is authorized by the tribes in that BIA Area to represent the interest(s) identified above.

To be considered, nominations must be received by the close of business January 15, 1999, at the location indicated in the "Addresses" section. If nominations do not reflect adequately the statutory requirements for representation of geographically diverse small, medium, and large tribes, the Secretary may select additional representatives to achieve a balanced committee. Interested and qualified persons, other than nominees from the Areas, may apply for membership on the committee within the time limits and at the address indicated in the **ADDRESSES** section. The Secretary's decision regarding the addition of representatives will also be based on whether an interest will be affected significantly by the proposed rule, whether that interest is already adequately represented by tribal nominees, and whether the potential

addition would adequately represent that interest.

Dated: December 11, 1998.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 98-33443 Filed 12-16-98; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-106219-98]

RIN 1545-AW32

#### Acquisition of an S Corporation by a Member of a Consolidated Group

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

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

**SUMMARY:** This document contains proposed regulations under section 1502. The proposed regulations provide specific rules that apply to the acquisition of the stock of an S corporation by an affiliated group of corporations that joins in the filing of a consolidated return. These rules eliminate the compliance burdens associated with filing a separate return for the day that an S corporation is acquired by a consolidated group. Additionally, the proposed regulations clarify that § 1.1502-76(c) continues to provide rules for the filing of the separate return for a corporation's items for the period not included in the consolidated return. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments must be received by March 10, 1999. Outlines of topics to be discussed at the public hearing scheduled for March 31, 1999, at 10 a.m. must be received by March 17, 1999.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG-106219-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-106219-98), 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](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Jeffrey L. Vogel, (202) 622-7770; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1502 of the Internal Revenue Code of 1986 (the consolidated return regulations). The amendments apply to acquisitions by a consolidated group of at least eighty percent of the stock of an S corporation. When a consolidated group acquires an S corporation, the interaction of the consolidated return regulations and the subchapter S rules requires the filing of a separate return for the day of the acquisition. In most situations, complying with this requirement results in an unnecessary administrative burden for taxpayers.

The proposed regulations also clarify the impact of the 1994 revisions to § 1.1502-76(b) (TD 8560, 1994-2 C.B. 200). The 1994 revisions provided taxpayers greater certainty and prevented inconsistent allocations of items between a separate and a consolidated return. The proposed regulations clarify that the due date for the filing of the separate return for the period not included in the consolidated return continues to be governed by the rules in § 1.1502-76(c).

##### Acquisition of an S Corporation

Section 1.1502-76(b)(1)(i) provides that a consolidated return must include the common parent's items of income, gain, deduction, loss, and credit for the consolidated return year and each subsidiary's items for the portion of the year for which the subsidiary is a member. Generally under § 1.1502-76(b)(1)(ii)(A), a subsidiary becomes a member of the consolidated group at the end of the day on which its status as a member changes, and its tax year ends at that time for all Federal income tax purposes. The subsidiary's items for the period beginning on the day after it becomes a member of the consolidated group are generally included in the consolidated return of the group. The subsidiary's items for the period prior to its becoming a member generally are included in a separate return.

A small business corporation's selection under section 1362(a) to be an S corporation terminates under section 1362(d)(2) if it ceases to be a small business corporation. A small business corporation cannot have a corporate shareholder. Thus, an S corporation election terminates when the corporation has another corporation as a shareholder. The termination is effective on the day the corporation becomes a shareholder. When the termination of an S corporation election becomes effective on any day other than the first day of the taxable year, the taxable year in which the termination occurs is an S termination year under section 1362(e)(4). The S termination year is comprised of a short taxable year for which the corporation is an S corporation (the portion of the S termination year ending on the day before the terminating event occurs, or S short year) and a short taxable year for which the corporation is a C corporation (the remainder of the S termination year, or C short year).

Under section 1362(e)(6)(D), if there is a change in ownership of 50 percent or more of the stock in a corporation during the S termination year, items of income, gain, loss, deduction, and credit must be allocated between the S short year and the C short year on the basis of the corporation's normal method of accounting, as determined under section 446 (also referred to as a closing of the corporation's books) as of the close of the S short year, rather than a daily proration or other method. The S short year and the C short year are treated as two separate taxable years for most purposes. Separate returns are required for the S short year and the C short year, and the due date for the S short year return is the date by which the C short year return must be filed.

When an S corporation becomes a member of a consolidated group, the interaction of the consolidated return regulations and the subchapter S rules results in the corporation having three taxable periods for the year of the acquisition for which Federal income tax returns are due: (1) an S short year that ends on the day before the acquisition by the consolidated group, (2) a C short year consisting solely of the day of the acquisition, and (3) a short taxable year (included in the consolidated return) for any items occurring after the day of the acquisition. Although three separate taxable periods are created when an S corporation becomes a member of a consolidated group, existing rules preclude an allocation of items properly attributable to either the C short year or the consolidated year to the S short