

properly marked containers. However, the third party processor fails to mark the new container after processing and repacking the article, as required under 19 U.S.C. 1304. In this example, the article is excepted from individual marking but each new container in which the article is repacked is required to be marked with the country of origin, until the article reaches the ultimate purchaser, in this case, the retail customer. As a result of the importer's failure to comply with the certification requirements of this section the importer may be subject to the assessment of marking duties and penalties as provided under paragraph (e) of this section.

10. It is proposed to amend redesignated § 134.34 as follows:

- a. Revise the heading;
- b. Redesignate current paragraphs (b), (c), (d), (e) and (f), respectively, as new paragraphs (c), (d), (e), (f) and (g);
- c. Add a new paragraph (b); and
- d. Add an example after redesignated paragraph (f).

The revisions and additions will read as follows:

**§ 134.34 Repacked marked articles.**

\* \* \* \* \*

(b) *Repacker*. A "repacker" means a person, including the importer, who repackages an article subject to these requirements, and includes a person who processes such article in the U.S. but, as a result of such processing is not the ultimate purchaser of the article under 19 CFR 134.1(d). An article may be repacked more than once before reaching the ultimate purchaser.

\* \* \* \* \*

(f) *Duties and penalties*.

\* \* \* \* \*

*Example*. The importer enters articles from China which are individually marked with their country of origin. He sells the articles in their bulk packaging to a customer in the U.S. who processes the articles and also repacks them in bulk for sale to a third party. The third party repacks them into blister packs for sale to retail customers. The U.S. processor is not the ultimate purchaser under 19 CFR 134.1(d). However, the blister packages obscure the country of origin marking on the article. Although it is clear that the articles will be repackaged for retail sale, the importer fails to follow the certification procedures of this section and does not notify its immediate customer of the marking requirements. In this example, having reasonable knowledge of the subsequent repacking of the articles into retail containers after release from Customs custody imposes an obligation upon the importer to notify its U.S. customer of the marking requirements and to provide the required certification to the port director. Since the importer has failed to comply with the certification requirements of this provision, and the retail packages obscure country of origin marking, the importer may be subject to duties and penalties as provided under paragraph (f) of this section.

\* \* \* \* \*

**§ 134.47 [Removed]**

11. It is proposed that § 134.47 (19 CFR 134.47) be removed.

**Raymond W. Kelly,**

*Commissioner of Customs.*

Approved: January 19, 2000.

**Dennis M. O'Connell,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00-1682 Filed 1-25-00; 8:45 am]

**BILLING CODE 4820-02-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG-105089-99]**

**RIN 1545-AX38**

**Guidance Under Section 356 Relating to the Treatment of Nonqualified Preferred Stock and Other Preferred Stock in Certain Exchanges and Distributions**

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

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

**SUMMARY:** This document contains proposed regulations providing guidance relating to nonqualified preferred stock. The proposed regulations address the effective date of the definition of nonqualified preferred stock and the treatment of nonqualified preferred stock and similar preferred stock received by shareholders in certain reorganizations and distributions. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for 10 a.m., May 31, 2000, must be received by May 10, 2000.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG-105089-99), 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-105089-99), 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/>

[taxregs/regslst.html](http://taxregs/regslst.html). The public hearing will be held in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Richard E. Coss, (202) 622-7790; concerning submissions of comments, 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 sections 354, 355, 356, and 1036 of the Internal Revenue Code (the Code). Section 1014 of the Taxpayer Relief Act of 1997 (TRA of 1997), Public Law 105-34, enacted on August 5, 1997, amended sections 351, 354, 355, 356, and 1036 of the Code. As amended, these sections, in general, provide that nonqualified preferred stock (as defined in section 351(g)(2)) (NQPS) received in an exchange or distribution will not be treated as stock or securities but, instead, will be treated as "other property" or "boot." As a result, the receipt of NQPS in a transaction occurring after the NQPS provisions are effective will, unless a specified exception applies, result in gain (or, in some instances, loss) recognition. Section 351(g)(4) provides authority to issue regulations to carry out the purposes of these provisions.

Section 351(g)(2)(A) defines NQPS as preferred stock if (1) the holder has the right to require the issuer or a related person to redeem or purchase the stock, (2) the issuer or a related person is required to redeem or purchase the stock, (3) the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or (4) the dividend rate on the stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices. Factors (1), (2), and (3) above will cause an instrument to be NQPS only if the right or obligation may be exercised within 20 years of the date the instrument is issued and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

These rights or obligations do not cause preferred stock to be NQPS in certain circumstances described in section 351(g)(2)(C). In one such

exception, contained in section 351(g)(2)(C)(i)(II), a redemption or purchase right shall not cause stock to be NQPS if the stock containing the right is transferred in connection with the performance of services for the issuer or a related person (and represents reasonable compensation), and the right may be exercised only upon the holder's separation from service.

The NQPS provisions also provide certain exceptions to the treatment of NQPS as boot. Under sections 354(a)(2)(C), 355(a)(3)(D), and 356(e)(2), NQPS is treated as stock, and not other property, in cases where the NQPS is received in exchange for, or in a distribution with respect to, NQPS. As a result, the receipt of NQPS in exchange for NQPS will not result in gain or loss recognition.

Under prior law, preferred stock generally did not constitute boot in a reorganization or in a distribution under section 355 of the Code. The legislative history of the NQPS provisions indicates that Congress was concerned about nonrecognition transactions in which a secure preferred stock instrument is received in exchange for common stock or riskier preferred stock. The committee reports state that "[c]ertain preferred stocks have been widely used in corporate transactions to afford taxpayers non-recognition treatment, even though the taxpayers may receive relatively secure instruments in exchange for relatively risky investments," and that "[t]he Committee believes that when such preferred stock instruments are received in certain transactions, it is appropriate to view such instruments as taxable consideration, since the investor has often obtained a more secure form of investment." H.R. Rep. No. 148, 105th Cong., 1st Sess. 472 (1997); S. Rep. 33, 105th Cong., 1st Sess. (1997).

The NQPS provisions apply to transactions after June 8, 1997, but will not apply to any transaction (1) made pursuant to a written agreement which was binding on such date and at all times thereafter, (2) described in a ruling request submitted to the IRS on or before such date, or (3) described in a public announcement or filing with the Securities and Exchange Commission on or before such date. Section 1014(f) of TRA of 1997.

A temporary regulation published as T.D. 8753 in the **Federal Register** on January 6, 1998, provides that, notwithstanding contemporaneously issued final regulations treating certain rights to acquire stock as securities that can be received tax-free in reorganizations and section 355

distributions, a right to acquire NQPS received in exchange for stock other than NQPS (or for a right to acquire stock other than NQPS) will not be treated as a security, and that NQPS received in exchange for stock other than NQPS (or for a right to acquire stock other than NQPS) will not be treated as stock or a security. The temporary regulation added § 1.356-6T, and applies to NQPS (or a right to acquire such stock) received in connection with a transaction occurring on or after March 9, 1998 (other than transactions described in section 1014(f)(2) of TRA of 1997).

#### Explanation of Provisions

The proposed regulations address three technical issues relating to the question of whether certain preferred stock instruments qualify as NQPS.

The first issue addressed by the proposed regulations is whether stock described in section 351(g)(2) that was issued in a transaction on or before June 8, 1997, qualifies as NQPS (even though the receipt of such stock would not have been boot because the transaction in which it was received occurred prior to the NQPS provisions' effective date). Although the NQPS provisions generally are effective with respect to transactions occurring after June 8, 1997, neither the effective date provisions of section 1014(f) of TRA of 1997 nor the legislative history of the NQPS provisions addresses this issue.

The proposed regulations provide that stock described in section 351(g)(2) is NQPS regardless of the date on which the stock is issued. The IRS and Treasury believe that this represents the proper interpretation of the NQPS provisions; a contrary interpretation would give rise to results that are inconsistent with other NQPS provisions and their underlying policy.

For example, assume that corporation (T) issues preferred stock described in section 351(g)(2) to shareholder (X) in 1996, and that X surrenders the T stock and receives NQPS of acquiring corporation (P) in a reorganization occurring after June 8, 1997 (when the NQPS provisions are effective). If the T preferred stock received in 1996 is not NQPS, X will recognize gain (if any) on the exchange. This result is unwarranted, because X is not receiving a more secure type of investment for a relatively risky type of investment, and exchanges of NQPS for NQPS are otherwise governed by the nonrecognition rules of sections 354, 355, and 356.

The second issue addressed by the proposed regulations is the treatment of NQPS received in a reorganization in

exchange for (or in a distribution with respect to) preferred stock that is not NQPS solely because, at the time the original stock was issued, a redemption or purchase right was not exercisable until after a 20-year period beginning on the issue date, or a redemption or purchase right was exercisable within a 20-year period but was subject to a contingency which made remote the likelihood of the redemption or purchase, or, in the case of an issuer's right to redeem or purchase stock described in section 351(g)(2)(A)(iii), was unlikely to be exercised within a 20-year period beginning on the issue date (or because of any combination of these reasons). To illustrate, assume that after June 8, 1997, T issues preferred stock to X that permits the holder to require T to redeem the stock on demand, but not before the stock is held for 22 years. Assume that seven years later, the T stock is exchanged in a reorganization for P preferred stock with substantially identical terms that permits the holder to require P to redeem the stock after 15 years.

Technically, this transaction could be viewed as a taxable exchange because X is receiving P stock that meets the definition of NQPS in exchange for T stock that is not NQPS (QPS). However, the IRS and Treasury believe that nonrecognition treatment is appropriate because the P stock represents a continuation of the original investment in the T stock.

The proposed regulations provide a rule that treats the P stock received in such transactions as QPS if the P stock is substantially identical to the T preferred stock surrendered (or the T stock on which a distribution is made). The substantially identical requirement is necessary to ensure that this rule does not permit the NQPS provisions to be circumvented through exchanges of QPS for more secure NQPS. The P stock is considered to be substantially identical to the T stock if two conditions are met. The first condition is that the P stock does not contain any terms which, in relation to the terms of the T stock, decrease the period in which a redemption or purchase right will be exercised, increase the likelihood that such a right will be exercised, or accelerate the timing of the returns from the stock instrument (including the receipt of dividends or other distributions). The second condition is that, as a result of the receipt of P stock in the transaction, the exercise of the right or obligation does not become more likely than not to occur within a 20-year period beginning on the issue date of the T stock. To illustrate the two conditions, if the P stock contains a

term that permits the stock to be redeemed before the date on which the T stock could be redeemed, or if, at the time of the transaction, the T stock is not more likely than not to be redeemed within a 20-year period beginning on the issue date of the T stock but the P stock is more likely than not to be redeemed within a 20-year period beginning on the issue date of the T stock, the P stock is not substantially identical to the T stock.

Under this rule, the P stock received will continue to be treated as QPS in subsequent transactions, and similar principles will apply to those transactions. For example, if the P stock is later exchanged in a reorganization for substantially identical stock of another acquiring corporation, the acquiring corporation stock will also be treated as QPS. However, if the P stock is later exchanged for stock described in section 351(g)(2) that is not substantially identical, the receipt of the stock will be treated as boot.

The third issue addressed by the proposed regulations is how to interpret the provision that exempts from the definition of NQPS certain preferred stock containing a purchase or redemption right that may only be exercised on the holder's separation from service (compensation stock). To be exempted from the definition of NQPS under this provision, stock must be "transferred in connection with the performance of services" and must represent "reasonable compensation." A commentator has questioned how these requirements apply in the context of a reorganization or distribution. The concern is that, when an employee of T receives P preferred stock in a reorganization in exchange for T stock of equal value, the P stock received could be considered transferred in exchange for stock (rather than for services), or could be considered not to represent reasonable compensation (because the P stock received in the equal value exchange represents no additional compensation to the employee). The legislative history of the NQPS provisions does not address these ambiguities.

The IRS and Treasury believe that the exemption for compensation stock is intended to apply in situations where an employee previously received compensation stock and then surrenders that stock in a reorganization in exchange for new compensation stock containing a similar purchase or redemption right that can only be exercised upon separation from service. The proposed regulations provide a rule that treats the P preferred stock received in such transactions as satisfying the

"transferred in connection with the performance of services" and the "reasonable compensation" requirements if the T stock surrendered (or the T stock on which a distribution is made) was originally transferred to the T employee in connection with the performance of services and represented reasonable compensation at the time of the transfer. This rule applies regardless of whether the T stock is common or preferred stock. No inference is intended regarding the meaning of the phrases "transferred in connection with the performance of services" and "reasonable compensation" for purposes other than the exemption from the definition of NQPS in section 351(g)(2)(C)(i)(II).

The proposed regulations also provide that the principles of the rules described above apply to transactions involving rights to acquire NQPS that are subject to § 1.356-6T.

#### Proposed Effective Date

The proposed regulations are proposed to be effective for transactions on the date that final regulations are published in the **Federal Register**. Notwithstanding the prospective effective date of the proposed regulations, the IRS and Treasury believe that the regulations prescribe the proper treatment of the transactions they address, and the IRS generally will not challenge return positions consistent with the regulations. However, a transaction involving rights to acquire NQPS that occurs before the effective date of § 1.356-6T will be treated in accordance with the law governing rights to acquire stock in effect at that time.

#### 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 has also been determined that section 553(b) of the Administrative Procedures 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 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 Public Hearing

Before these proposed regulations are adopted as final regulations,

consideration will be given to any written comments (preferably a signed original and eight (8) copies, if written) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how the regulations may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 31, 2000, beginning at 10 a.m., in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. 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 more than 15 minutes before the hearing starts. For information about having your name placed on the hearing 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 the hearing. Persons who wish to present oral comments at the hearing must request to speak, and submit written comments and 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 10, 2000. A period of 10 minutes will be allotted 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 proposed regulations is Richard E. Coss, Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury 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 is amended by adding the

following entries in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.354-1 also issued under 26 U.S.C. 351(g)(4).

Section 1.355-1 also issued under 26 U.S.C. 351(g)(4). \* \* \*

Section 1.356-7 also issued under 26 U.S.C. 351(g)(4). \* \* \*

Section 1.1036-1 also issued under 26 U.S.C. 351(g)(4). \* \* \*

**Par. 2.** Section 1.354-1 is amended by adding paragraph (f) as follows:

**§ 1.354-1 Exchanges of stock and securities in certain reorganizations.**

\* \* \* \* \*

(f) *Nonqualified preferred stock.* See § 1.356-7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for nonqualified preferred stock or preferred stock. See § 1.356-7(c) for the treatment of preferred stock received in certain exchanges for common or preferred stock described in section 351(g)(2)(C)(i)(II).

**Par. 3.** Section 1.355-1 is amended by adding paragraph (d) as follows:

**§ 1.355-1 Distributions of stock and securities of a controlled corporation.**

\* \* \* \* \*

(d) *Nonqualified preferred stock.* See § 1.356-7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for (or in certain distributions with respect to) nonqualified preferred stock or preferred stock. See § 1.356-7(c) for the treatment of the receipt of preferred stock in certain exchanges for (or in certain distributions with respect to) common or preferred stock described in section 351(g)(2)(C)(i)(II).

**Par. 4.** Section 1.356-7 is added to read as follows:

**§ 1.356-7 Rules for treatment of nonqualified preferred stock and other preferred stock received in certain transactions.**

(a) *Stock issued prior to effective date.* Stock described in section 351(g)(2) is nonqualified preferred stock (NQPS) regardless of the date on which the stock is issued. However, sections 351(g), 354(a)(2)(C), 355(a)(3)(D), 356(e), and 1036(b) do not apply to any transaction occurring prior to June 9, 1997, or to any transaction occurring after June 8, 1997, that is described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788, 921.

(b) *Receipt of preferred stock in exchange for (or distribution on) substantially identical preferred stock*

(1) *General rule.* For purposes of sections 354(a)(2)(C)(i), 355(a)(3)(D), and

356(e)(2), preferred stock is not NQPS, even though it is described in section 351(g)(2), if it is received in exchange for (or in a distribution with respect to) preferred stock (the original preferred stock) that is not NQPS (QPS), provided—

(i) The original preferred stock is QPS solely because, on its issue date, a right or obligation described in clause (i), (ii), or (iii) of section 351(g)(2)(A) was not exercisable until after a 20-year period beginning on the issue date, the right or obligation was exercisable within the 20-year period beginning on the issue date but was subject to a contingency which made remote the likelihood of the redemption or purchase, or the issuer's (or a related party's) right to redeem or purchase the stock was not more likely than not to be exercised within a 20-year period beginning on the issue date, or because of any combination of these reasons; and

(ii) the stock received is substantially identical to the original preferred stock.

(2) *Substantially identical.* The stock received is substantially identical to the original preferred stock if—

(i) the stock received does not contain any term or terms which, in relation to any term or terms of the original preferred stock, decrease the period in which a right or obligation described in clause (i), (ii), or (iii) of section 351(g)(2)(A) may be exercised, increase the likelihood that such a right or obligation may be exercised, or accelerate the timing of the returns from the stock instrument, including the timing of actual or deemed dividends or other distributions received on the stock; and

(B) as a result of the exchange or distribution, exercise of the right or obligation does not become more likely than not to occur within a 20-year period beginning on the issue date of the original preferred stock.

(3) *Treatment of stock received.* The stock received will continue to be treated as QPS in subsequent transactions involving such stock, and the principles of this paragraph (b) apply to such transactions as though the stock received is the original preferred stock issued on the same date as the original preferred stock.

(c) *Stock transferred for services.* For purposes of sections 354(a)(2)(C)(i), 355(a)(3)(D), and 356(e)(2), preferred stock containing a right or obligation described in clause (i), (ii) or (iii) of section 351(g)(2)(A) that is exercisable only upon the holder's separation from service from the issuer or a related person (as described in section 351(g)(3)(B)) will be treated as transferred in connection with the

performance of services (and representing reasonable compensation) within the meaning of section 351(g)(2)(C)(i)(II), if such preferred stock is received in exchange for (or in a distribution with respect to) existing stock containing a similar right or obligation (exercisable only upon separation from service) and the existing stock was transferred in connection with the performance of services for the issuer or a related person (and represented reasonable compensation when transferred). In applying the rules relating to NQPS, the preferred stock received will continue to be treated as transferred in connection with the performance of services (and representing reasonable compensation) in subsequent transactions involving such stock, and the principles of this paragraph (c) apply to such transactions.

(d) *Rights to acquire stock.* For purposes of § 1.356-6T, the principles of paragraphs (a), (b), and (c) of this section apply.

(e) *Examples.* The following examples illustrate paragraphs (a), (b), and (c) of this section. For purposes of the examples in this paragraph (e), T and P are corporations, A is a shareholder of T, and, except for in *Example 1*, A surrenders and receives (in addition to the stock exchanged in the examples) common stock in the reorganizations described.

*Example 1.* In 1995, A transfers property to T and receives T preferred stock that is described in section 351(g)(2) in a transaction under section 351. In 2002, pursuant to a reorganization under section 368(a)(1)(B), A surrenders the T preferred stock in exchange for P NQPS. Under paragraph (a) of this section, the T preferred stock issued to A in 1995 is NQPS. However, because section 351(g) does not apply to transactions occurring before June 9, 1997, the T NQPS was not "other property" within the meaning of section 351(b) when issued in 1995. Under sections 354(a)(2)(C) and 356(e)(2), the P NQPS received by A in 2002 is not "other property" within the meaning of section 356(a)(1)(B) because it is received in exchange for NQPS.

*Example 2.* T issues QPS to A on January 1, 2000 that is not NQPS solely because the holder cannot require T to redeem the stock until January 1, 2022. In 2007, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A surrenders the T preferred stock in exchange for P preferred stock with terms that are identical to the terms of the T preferred stock, including the term that the holder cannot require the redemption of the stock until January 1, 2022. Because the P stock and the T stock have identical terms, and because the redemption did not become more likely than

not to occur within the 20-year period that begins on January 1, 2000 (which is the issue date of the T preferred stock) as a result of the exchange, under paragraph (b) of this section, the P preferred stock received by A is treated as QPS. Thus, the P preferred stock received is not "other property" within the meaning of section 356(a)(1)(B).

**Example 3.** The facts are the same as in Example 2, except that, in addition, in 2010, pursuant to a recapitalization of P under section 368(a)(1)(E), A exchanges the P preferred stock above for P NQPS that permits the holder to require P to redeem the stock in 2020. Under paragraph (b) of this section, the P preferred stock surrendered by A is treated as QPS. Because the P preferred stock received by A in the recapitalization is not substantially identical to the P preferred stock surrendered, the P preferred stock received by A is not treated as QPS. Thus, the P preferred stock received is "other property" within the meaning of section 356(a)(1)(B).

**Example 4.** T issues preferred stock to A on January 1, 2000 that permits the holder to require T to redeem the stock on January 1, 2018, or at any time thereafter, but which is not NQPS solely because, as of the issue date, the holder's right to redeem is subject to a contingency which makes remote the likelihood of redemption on or before January 1, 2020. In 2007, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A surrenders the T preferred stock in exchange for P preferred stock with terms that are identical to the terms of the T preferred stock. Immediately before the exchange, the contingency to which the holder's right to cause redemption of the T stock is subject makes remote the likelihood of redemption before January 1, 2020, but the P stock, although subject to the same contingency, is more likely than not to be redeemed before January 1, 2020. Because, as a result of the exchange of T stock for P stock, the exercise of the redemption right became more likely than not to occur within the 20-year period beginning on the issue date of the T preferred stock, the P preferred stock received by A is not substantially identical to the T stock surrendered, and is not treated as QPS. Thus, the P preferred stock received is "other property" within the meaning of section 356(a)(1)(B).

**Example 5.** The facts are the same as in Example 4, except that, immediately before the merger of T into P in 2007, the contingency to which the holder's right to cause redemption of the T stock is subject makes it more likely than not that the T stock will be redeemed before January 1, 2020. Because exercise of the redemption right did not become more likely than not to occur within the 20-year period beginning on the issue date of the T preferred stock as a result of the exchange, the P preferred stock received by A is substantially identical to the T stock surrendered, and is treated as QPS. Thus, the P preferred stock received is not "other property" within the meaning of section 356(a)(1)(B).

**Example 6.** A is an employee of T. In connection with A's performance of services for T, T transfers to A in 2000 an amount of

T common stock that represents reasonable compensation. The T common stock contains a term granting A the right to require T to redeem the common stock, but only upon A's separation from service from T. In 2005, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A receives, in exchange for A's T common stock, P preferred stock granting a similar redemption right upon A's separation from P's service. Under paragraph (c) of this section, the P preferred stock received by A is treated as transferred in connection with the performance of services (and representing reasonable compensation) within the meaning of section 351(g)(2)(C)(i)(II). Thus, the P preferred stock received by A is QPS.

(f) **Effective dates.** This section applies to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

**Par. 5.** Section 1.1036-1 is amended by adding paragraph (d) as follows:

**§ 1.1036-1 Stock for stock of the same corporation.**

\* \* \* \* \*

(d) **Nonqualified preferred stock.** See § 1.356-7(a) for the applicability of the definition of nonqualified preferred stock in section 351(g)(2) for stock issued prior to June 9, 1997, and for stock issued in transactions occurring after June 8, 1997, that are described in section 1014(f) of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788,921.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 00-1529 Filed 1-21-00 11:59 am]

**BILLING CODE 4380-01-U**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[IN 87-1b; FRL-6527-9]

**Approval of Post-1996 Rate of Progress Plan: Indiana**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to approve Indiana's Post-1996 Rate of Progress Plan for Lake and Porter Counties, Indiana, submitted on December 17, 1997, and January 22, 1998. The Plan identifies volatile organic compound control measures and documents projections that those measures provide 3% per year (9% total) emission reductions in Lake and Porter Counties between 1996 and 1999. Our approval

means that EPA finds the State Plan meets Clean Air Act (Act) requirements. In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before February 25, 2000.

**ADDRESSES:** Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Ryan Bahr, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4366.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: January 6, 2000.

**Francis X. Lyons,**

*Regional Administrator, Region 5.*

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