of C pro rata within 6 months after the acquisition of X.

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the acquisition of X by D and the distribution of C are part of a plan. To determine whether the distribution of C and the acquisition of X by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) Under paragraph (d)(2) of this section, the following tends to show that the acquisition of X by D and the distribution of C are part of a plan: The acquisition and the distribution occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). Also, the distribution may be motivated by a business purpose to facilitate the acquisition or a similar acquisition because there is evidence of a business purpose to facilitate an acquisition by reason of the fact that the acquisition occurred after the public announcement of the planned distribution (paragraphs (d)(2)(vii) and (e)(1)(ii) of this section).

(v) Under paragraph (d)(3) of this section, D would assert that the following tends to show that the distribution of C and the acquisition of X by D are not part of a plan: The distribution was motivated by a corporate business purpose other than a business purpose to facilitate the acquisition or a similar acquisition (paragraph (d)(3)(vi) of this section), and the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition (paragraph (d)(3)(vii) of this section). That D decided to distribute C and announced that decision before it became aware of the opportunity to acquire X suggests that the distribution would have occurred at approximately the same time and in similar form regardless of D's acquisition of X. X's lack of participation in the decision also helps establish that fact.

(vi) In determining whether the distribution of C and acquisition of X by D are part of a plan, one should consider the importance of D's business purpose for the distribution in light of D's opportunity to acquire X. If D can establish that the distribution continued to be motivated by the stated business purpose, and if D would have distributed C regardless of D's acquisition of X, then D's acquisition of X and D's distribution of C are not part of a plan.

Example 7. Multiple acquisitions—(i) *Facts.* (A) D, the stock of which is listed on an established market, engages in business 1. C engages in business 2. D has a business strategy of growth through acquisitions and is interested in continually expanding business 1. D's ownership of C has been an impediment to acquisitions by D. D believes the distribution of C will make its acquisition program more economical overall, regardless of D's success with any particular acquisition target. D has no specific goals regarding how much D stock will be used for acquisitions.

(B) D and its investment banker identify X and Y as potential acquisition targets before D publicly announces the planned distribution. After D publicly announces the distribution, the sole purpose of which is to facilitate acquisitions by D, but before the distribution date, D negotiates with X, but has no contact with Y. D distributes all of the C stock. One month after the distribution, D consummates the negotiated acquisition of X. A, X's sole shareholder, receives 30 percent of D's stock. Seven months after the distribution, D begins negotiating with Y. One year after the distribution, D acquires Y. Y's shareholders receive 19 percent of D's stock. After the distribution, D and its investment banker identify Z as another desirable target. Eighteen months after the distribution, D acquires Z. Z's shareholders receive 17 percent of D's stock. If aggregated, the acquisitions of X, Y and Z would result in a change in the stock ownership of D of more than 50 percent.

(ii) *X acquisition.* (A) No Safe Harbor applies to the X acquisition.

(B) The issue is whether the distribution of C and the acquisition of X by D are part of a plan. To determine whether the distribution of C and the acquisition of X by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(C) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and the acquisition of X by D are part of a plan: D and X discussed the acquisition before the distribution (paragraph (d)(2)(i) of this section), D had a business purpose to facilitate the X acquisition or a similar acquisition (paragraph (d)(2)(vii) of this section), and the distribution and the X acquisition occurred within 6 months of each other (paragraph (d)(2)(viii) of this section).

(D) None of the facts and circumstances listed in paragraph (d)(3) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(E) The distribution of C and the acquisition of X are part of a plan under paragraph (b)(1) of this section.

(iii) *Y acquisition.* (A) No Safe Harbor applies to the Y acquisition. Safe Harbor I does not apply because the distribution was not motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate an acquisition. Safe Harbor II does not apply because D's business purpose to facilitate acquisitions was not limited to 33 percent or less of the D stock. Also, more than 20 percent of D's stock was acquired in an acquisition that motivated the distribution before the date that was 6 months after the distribution (D's acquisition of X using 30 percent of D's stock 1 month after the distribution).

(B) The issue is whether the distribution of C and the acquisition of Y by D are part of a plan. To determine whether the distribution of C and the acquisition of Y by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(C) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and the acquisition of Y by D are part of a plan: D and a potential acquirer (X) discussed an acquisition before the distribution and a similar acquisition with a different acquirer (Y) occurred (paragraph (d)(2)(ii) of this section) and D had a business purpose to facilitate the Y acquisition or a similar acquisition (paragraph (d)(2)(vii) of this section).

(D) None of the facts and circumstances listed in paragraph (d)(3) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(E) The distribution of C and the acquisition of Y are part of a plan under paragraph (b)(1) of this section.

(iv) *Z acquisition.* The analysis is identical to the Y acquisition. The distribution of C and the acquisition of Z are part of a plan under paragraph (b)(1) of this section.

(v) Under paragraph (c) of this section, all acquisitions of stock of D pursuant to a plan involving a distribution will be aggregated for purposes of the 50-percent test of paragraph (a)(2) of this section. Because the acquisitions by D of X, Y, and Z are each part of a plan involving D's distribution of C, those three acquisitions are aggregated.

(n) *Effective date.* This section applies to distributions occurring after these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–32774 Filed 12–29–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116733–98]

RIN 1545–AW79

Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition that was published in the **Federal Register** on August 24, 1999. The withdrawal is in response to written comments received and oral comments presented at a public hearing.

FOR FURTHER INFORMATION CONTACT: Brendan O'Hara, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1999, the IRS issued proposed regulations (REG–116733–98) in the **Federal Register** (64 FR 46155)

under section 355(e), relating to the recognition of gain on certain distributions of stock or securities in connection with an acquisition of stock of the distributing corporation or of stock of the corporation whose stock is distributed. In response to written comments received and comments presented at a public hearing held on March 2, 2000, these proposed regulations are being withdrawn. New proposed regulations (REG–107566–00) covering the same matters as the withdrawn proposed regulations are being issued elsewhere in this issue of the **Federal Register**.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805 and 26 U.S.C. 355(e)(5), the notice of proposed rulemaking (REG–116733–98) that was published in the **Federal Register** on August 24, 1999 (64 FR 46155) is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–32775 Filed 12–29–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–104906–99]

RIN 1545–AX04

Third Party Contacts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance on third-party contacts made with respect to the determination or collection of tax liabilities. The proposed regulations reflect changes to section 7602 of the Internal Revenue Code made by section 3417 of the Internal Revenue Service Restructuring and Reform Act of 1998. The proposed regulations potentially affect all taxpayers whose Federal tax liabilities are being determined or collected by the IRS.

DATES: Written and electronic comments and requests for a public hearing must be received on or before April 2, 2001.

ADDRESSES: Send submission to: CC:M&SP:RU (REG–104906–99), 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:M&SP:RU (REG–104906–99), 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.gov/tax_regs/reglist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bryan T. Camp, 202–622–3620 (not a toll-free number); concerning submissions, Sonya Cruse at 202–622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) relating to the exercise by officers and employees of the IRS of the authority given them under section 7602 of the Internal Revenue Code (Code). Section 3417 of the IRS Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685), amends section 7602 to prohibit IRS officers or employees from contacting any person other than the taxpayer with respect to the determination or collection of the taxpayer's liability without first giving the taxpayer reasonable advance notice that such contacts may be made. The section further requires that a record of the persons contacted be provided to the taxpayer both periodically and upon the taxpayer's request. The section sets forth a number of exceptions to its requirements. These proposed regulations interpret and implement the amendments made by section 3417 of RRA 1998.

Explanation of Provisions

Section 3417 of RRA 1998 amended section 7602 to prohibit IRS officers or employees from contacting any person other than the taxpayer with respect to the determination or collection of the taxpayer's liability without giving the taxpayer reasonable advance notice that contacts with persons other than the taxpayer may be made.

Section 3417 was added to the bill by the Senate Finance Committee. In explaining the reasons for its proposal, the Senate Finance Committee expressed a concern that third-party contacts ''may have a chilling effect on the taxpayer's business and could damage the taxpayer's reputation in the community,'' and that taxpayers ''should have the opportunity to resolve issues and volunteer information before the IRS contacts third parties.'' S. Rep. No. 174, 105th Cong., 2nd Sess. 77 (1998). At the same time, the Senate Finance Committee stated that ''[c]ontacts with government officials relating to matters such as the location of assets or the taxpayer's current address are not restricted by this provision.'' *Id.*

As originally drafted by the Senate Finance Committee, the third-party contact rule would have prohibited most IRS contacts with third parties prior to taxpayer notification of the specific contact to be made. It contained exceptions for notification of contacts (i) that were authorized by a taxpayer, (ii) that would jeopardize collection, or (iii) with respect to pending criminal investigations. The requirement for specific pre-contact notice was modified by the Conference Committee to require only a generalized notice of IRS intent to contact third parties, followed by post-contact notice of specific contacts. Further, the exceptions were expanded to include situations that might involve reprisal against the third party or any other person. With regard to the general, pre-contact notice, the Conference Report states that ''this notice will be provided as part of an existing IRS notice provided to taxpayers.'' H.R. Rep. No. 599, 105th Cong., 2nd Sess. at 277 (1998).

The provision as enacted and the particular changes made by the Conference Committee to the Senate proposal support an interpretative approach that balances taxpayers' business and reputational interests, articulated as the principal impetus for the Senate proposal, with third parties' privacy interests and the IRS' responsibility to administer the internal revenue laws effectively. The replacement of specific pre-contact identification of intended third-party contacts, as proposed by the Senate, with a general pre-contact notice accompanied by post-contact identification, still enables taxpayers to come forward with information before third parties are contacted. The modifications still allow taxpayers to address business or reputational concerns arising from IRS contact with third parties, but accomplish this result without impeding the ability of the IRS to make those third-party contacts that are necessary to administer the internal revenue laws. The maintenance of the exceptions proposed in the Senate