

and V-417, which include the Tuscaloosa, AL, VORTAC as part of their route structures. Currently, the Tuscaloosa VORTAC and the Tuscaloosa Municipal Airport share the same name and location identifier. The fact that the VORTAC and the airport are not co-located has led to confusion among users and presents a potential safety problem. In order to alleviate this problem, the "Tuscaloosa VORTAC" is being renamed the "Crimson VORTAC" and its location identifier is being changed to "LDK." This rulemaking action is being taken to change all references in the affected VOR Federal airway route descriptions that read "Tuscaloosa, AL" to read "Crimson, AL." This action makes an additional minor correction to the legal description for V-66 by adding the State abbreviation "TX" following the first use of the word "Hudspeth." This abbreviation was inadvertently omitted in the previous legal description.

Section 553(b) permits an agency for good cause to forego notice and comment rulemaking when such action would be impracticable, unnecessary, or contrary to the public interest. In this instance, the FAA finds that this action is needed to improve safety and eliminate confusion. Thus, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

VOR Federal airways are published in paragraph 6010(a), of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E, AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V-18 [Revised]

From Guthrie, TX, via INT Guthrie 156° and Millsap, TX, 274° radials; Millsap; Glen Rose, TX; Cedar Creek, TX; Quitman, TX; Belcher, LA; Monroe, LA; Jackson, MS; Meridian, MS; Crimson, AL; Vulcan, AL; Talladega, AL; Atlanta, GA; Colliers, SC; Charleston, SC.

* * * * *

V-66 [Revised]

From Mission Bay, CA; Imperial, CA; 13 miles, 24 miles, 25 MSL; Bard, AZ; 12 miles, 35 MSL; INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL; Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide; Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; to Millsap, TX. From Crimson, AL, Brookwood, AL; LaGrange, GA; INT LaGrange 120° and

Columbus, GA, 068° radials; INT Columbus 068° and Athens, GA, 195° radials; Athens; Greenwood, SC; Sandhills, NC; Raleigh-Durham, NC; Franklin, VA, excluding the airspace above 13,000 feet MSL from the INT of Tucson, AZ, 122° and Cochise, AZ, 257° radials to the INT of Douglas, AZ, 064° and Columbus, NM, 277° radials.

* * * * *

V-245 [Revised]

From Alexandria, LA, via Natchez, MS; Jackson, MS; Bigbee, MS; INT Bigbee 082° and Crimson, AL, 304° radials; to Crimson.

* * * * *

V-417 [Revised]

From Monroe, LA, via INT Monroe 105° and Jackson, MS, 256° radials; Jackson; INT Jackson 111° and Meridian, MS, 262° radials; Meridian; Crimson, AL; Vulcan, AL; Rome, GA; INT Rome 060° and Electric City, SC, 274° radials; INT Electric City 274° and Athens, GA, 340° radials; Athens; Colliers, SC; Allendale, SC; to Charleston, SC.

* * * * *

Issued in Washington, DC, on July 2, 2003.
Reginald C. Matthews,
Manager, Airspace and Rules Division.
 [FR Doc. 03-17361 Filed 7-8-03; 8:45 am]
BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9071]

RIN 1545-BB78

Effect of Elections in Certain Multi-step Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document gives effect to section 338(h)(10) elections in certain multi-step transactions. These regulations affect corporations and their shareholders. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on or after July 9, 2003.

Applicability Date: For dates of applicability, see § 1.338(h)(10)-1T(h).

FOR FURTHER INFORMATION CONTACT: Daniel Heins, Mary Goode or Reginald Mombrun at (202) 622-7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A. Section 338 Generally

In the case of any qualified stock purchase, section 338 allows a purchasing corporation to elect to treat the target corporation as having sold all of its assets at the close of the acquisition date at fair market value and then treats the target corporation as a new corporation that purchased all of its assets as of the beginning of the day after the acquisition date. Section 338 was enacted to replace former section 334(b)(2) and to repeal the Kimbell-Diamond doctrine. See H.R. Rep. No. 97-760 at 536 (1982), 1982-2 C.B. 600, 632 (reflecting that section 338 replaces “any nonstatutory treatment of a stock purchase as an asset purchase under the Kimbell-Diamond doctrine”). In *Kimbell-Diamond Milling Co. v. Commissioner*, 14 T.C. 74, aff’d per curiam, 342 U.S. 827 (1951), the court held that the purchase of the stock of a target corporation for the purpose of obtaining its assets through a prompt liquidation should be treated by the purchaser as a purchase of the target corporation’s assets with the purchaser receiving a cost basis in the assets.

B. Revenue Ruling 2001-46

Rev. Rul. 2001-46 (2001-2 C.B. 321) considers whether the step transaction doctrine should apply to treat certain acquisitions of stock of a target corporation followed by mergers of the target corporation into the acquiring corporation as reorganizations under section 368(a)(1)(A). In Situation 1 of that ruling, Corporation X owns all of the stock of Corporation Y. Pursuant to an integrated plan, X acquires all of the stock of Corporation T in a statutory merger of Y into T (the “Acquisition Merger”), with T surviving. In the Acquisition Merger, the T shareholders exchange their T stock for consideration, 70 percent of which is X voting stock and 30 percent of which is cash. Following the Acquisition Merger and as part of the plan, T merges into X in a statutory merger (the “Upstream Merger”). If viewed separately from the Upstream Merger, the Acquisition Merger would qualify as a qualified stock purchase. If viewed separately from the Acquisition Merger, the Upstream Merger would qualify as a liquidation described in section 332. However, if the step transaction doctrine were applied to the Acquisition Merger and the Upstream Merger, the integrated transaction would be treated as an integrated acquisition of T’s assets by X in a single statutory merger qualifying as a reorganization under section 368(a).

Considering the appropriate treatment of the Acquisition Merger and the Upstream Merger, Rev. Rul. 2001-46 examines, among other authorities, Rev. Rul. 67-274 (1967-2 C.B. 141) and Rev. Rul. 90-95 (1990-2 C.B. 67). In Rev. Rul. 67-274, a corporation’s acquisition of stock of a target corporation that, viewed independently, qualifies as a reorganization under section 368(a)(1)(B), is followed by a liquidation of the target corporation into the acquiring corporation that, viewed independently, qualifies as a liquidation described in section 332. Rev. Rul. 67-274 holds that the transaction is an acquisition by the acquiring corporation of the target corporation’s assets in a reorganization under section 368(a)(1)(C). In Rev. Rul. 90-95, a subsidiary of the acquiring corporation merges into the target corporation with the target corporation shareholders receiving solely cash in exchange for their stock. Immediately following this merger, the target corporation merges into the acquiring corporation. Rev. Rul. 90-95 rules that the first step is accorded independent significance from the subsequent liquidation of the target corporation and, therefore, is treated as a qualified stock purchase, regardless of whether an election under section 338 is made.

In Rev. Rul. 2001-46, the IRS concluded that treating the Acquisition Merger and the Upstream Merger as a single statutory merger of T into X would not violate the policy underlying section 338 because that treatment results in a transaction that qualifies as a reorganization under section 368(a)(1)(A) in which X acquires the assets of T with a carryover basis under section 362, not a cost basis under section 1012. Finally, Rev. Rul. 2001-46 states that the IRS and Treasury are considering whether to issue regulations that would reflect the general principles of the revenue ruling, but would allow taxpayers to make an election under section 338(h)(10) with respect to a step in a multi-step transaction that, viewed independently, is a qualified stock purchase and is pursuant to a written agreement that requires, or permits, the purchasing corporation to cause a section 338(h)(10) election in respect of such step to be made. The IRS requested and received comments on this issue.

Explanation of Provisions

The IRS and Treasury have studied the comments received in response to the request made in Rev. Rul. 2001-46, all of which urge the IRS and Treasury to allow taxpayers to make section 338(h)(10) elections in certain transactions as contemplated by Rev.

Rul. 2001-46. These final and temporary regulations adopt this recommendation and provide that the step transaction doctrine will not be applied if a taxpayer makes a valid section 338(h)(10) election with respect to a step in a multi-step transaction, even if the transaction would otherwise qualify as a reorganization, if the step, standing alone, is a qualified stock purchase. The IRS and Treasury are continuing to study the other comments received. In particular, the IRS and Treasury are considering whether any amendments to the portion of the regulations under section 338 related to the corporate purchaser requirement are appropriate.

Effective Date

These final and temporary regulations are applicable to acquisitions of stock occurring on or after the date of publication of the regulations.

Special Analyses

These final and temporary regulations are necessary in order to provide taxpayers with immediate guidance regarding the validity of certain elections made under section 338(h)(10). Accordingly, good cause is found for dispensing with the notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with providing a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. These final and temporary regulations have been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal authors of these final and temporary regulations are Daniel Heins and Mary Goode, Office of Associate Chief Counsel (Corporate). 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.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 is amended by adding an entry in

numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.338(h)(10)-1T also issued under 26 U.S.C. 337(d), 338 and 1502. * * *

■ 2. Section 1.338-3 is amended by adding a sentence at the end of paragraph (c)(1)(i) to read as follows:

§ 1.338-3 Qualification for the section 338 election.

* * * * *

(c) * * *

(1) * * *

(i) * * * See § 1.338(h)(10)-1T(c)(2) for special rules concerning section 338(h)(10) elections in certain multi-step transactions.

■ 3. Section 1.338(h)(10)-1 is amended as follows:

■ 1. Paragraphs (c)(2), (c)(3) and (c)(4) are redesignated as paragraphs (c)(3), (c)(4) and (c)(5) respectively.

■ 2. A newly designated paragraph (c)(2) is added.

The revisions and addition read as follows:

§ 1.338(h)(10)-1 Deemed asset sale and liquidation.

* * * * *

(c) * * *

(2) [Reserved] For further guidance see § 1.338(h)(10)-1T(c)(2).

* * * * *

■ 4. Section 1.338(h)(10)-1T is added to read as follows:

§ 1.338(h)(10)-1T Deemed asset sale and liquidation (temporary).

(a) through (c)(1) [Reserved]. For further guidance, see § 1.338(h)(10)-1(a) through (c)(1).

(c)(2) Availability of section 338(h)(10) election in certain multi-step transactions. Notwithstanding anything to the contrary in § 1.338-3(c)(1)(i), a section 338(h)(10) election may be made for T where P's acquisition of T stock, viewed independently, constitutes a qualified stock purchase and, after the stock acquisition, T merges or liquidates into P (or another member of the affiliated group that includes P), whether or not, under relevant provisions of law, including the step transaction doctrine, the acquisition of the T stock and the merger or liquidation of T qualify as a reorganization described in section 368(a). If a section 338(h)(10) election is made in a case where the acquisition of T stock followed by a merger or liquidation of T into P qualifies as a reorganization described in section 368(a), for all Federal tax purposes, P's acquisition of T stock is treated as a qualified stock purchase and is not

treated as part of a reorganization described in section 368(a).

(c)(3) through (e) (Example 10) [Reserved]. For further guidance, see § 1.338(h)(10)-1(c)(3) through (e) (Example 10).

(e) Example 11. Stock acquisition followed by upstream merger—without section 338(h)(10) election. (i) P owns all the stock of Y, a newly formed subsidiary. S owns all the stock of T. Each of P, S, T and Y is a domestic corporation. P acquires all of the T stock in a statutory merger of Y into T, with T surviving. In the merger, S receives consideration consisting of 50% P voting stock and 50% cash. Viewed independently of any other step, P's acquisition of T stock constitutes a qualified stock purchase. As part of the plan that includes P's acquisition of the T stock, T subsequently merges into P. Viewed independently of any other step, T's merger into P qualifies as a liquidation described in section 332. Absent the application of paragraph (c)(2) of this section, the step transaction doctrine would apply to treat P's acquisition of the T stock and T's merger into P as an acquisition by P of T's assets in a reorganization described in section 368(a). P and S do not make a section 338(h)(10) election with respect to P's purchase of the T stock.

(ii) Because P and S do not make an election under section 338(h)(10) for T, P's acquisition of the T stock and T's merger into P is treated as part of a reorganization described in section 368(a).

Example 12. Stock acquisition followed by upstream merger—with section 338(h)(10) election. (i) The facts are the same as in Example 11 except that P and S make a joint election under section 338(h)(10) for T.

(ii) Pursuant to paragraph (c)(2) of this section, as a result of the election under section 338(h)(10), for all Federal tax purposes, P's acquisition of the T stock is treated as a qualified stock purchase and P's acquisition of the T stock is not treated as part of a reorganization described in section 368(a).

Example 13. Stock acquisition followed by brother-sister merger—with section 338(h)(10) election. (i) The facts are the same as in Example 12, except that, following P's acquisition of the T stock, T merges into X, a domestic corporation that is a wholly owned subsidiary of P. Viewed independently of any other step, T's merger into X qualifies as a reorganization described in section 368(a). Absent the application of paragraph (c)(2) of this section, the step transaction doctrine would apply to treat P's acquisition of the T stock and T's merger into X as an acquisition by X of T's assets in a reorganization described in section 368(a).

(ii) Pursuant to paragraph (c)(2) of this section, as a result of the election under section 338(h)(10), for all Federal tax purposes, P's acquisition of T stock is treated as a qualified stock purchase and P's acquisition of T stock is not treated as part of a reorganization described in section 368(a).

Example 14. Stock acquisition that does not qualify as a qualified stock purchase followed by upstream merger. (i) The facts are

the same as in Example 11, except that, in the statutory merger of Y into T, S receives only P voting stock.

(ii) Pursuant to section 1.338-3(c)(1)(i) and paragraph (c)(2) of this section, no election under section 338(h)(10) can be made with respect to P's acquisition of the T stock because, pursuant to relevant provisions of law, including the step transaction doctrine, that acquisition followed by T's merger into P is treated as a reorganization under section 368(a)(1)(A), and that acquisition, viewed independently of T's merger into P, does not constitute a qualified stock purchase under section 338(d)(3). Accordingly, P's acquisition of the T stock and T's merger into P is treated as a reorganization under section 368(a).

(f) through (g) [Reserved]. For further guidance, see § 1.338(h)(10)-1(f) through (g).

(h) Effective date. This section is applicable to stock acquisitions occurring on or after July 9, 2003.

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: June 27, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03-17225 Filed 7-8-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9070]

RIN 1545-BB22

Authority To Charge Fees for Furnishing Copies of Exempt Organizations' Material Open to Public Inspection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations amend the existing regulations regarding fees for copies of exempt organizations' material the IRS must make available to the public under section 6104 of the Internal Revenue Code (Code), to provide that copying fees shall be no more than under the fee schedule promulgated pursuant to the Freedom of Information Act (FOIA) by the Commissioner of Internal Revenue (Commissioner) (the "IRS" FOIA fee schedule"). The existing regulations authorize the IRS to charge fees for such copies, but do not stipulate the amount of the fees. These temporary regulations also make a conforming amendment to