7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 22. In supplement No. 1 to part 774, Category 1, Export Control Classification Number 1C202, revise the heading to read as follows:

1C202 Alloys other than those controlled by 1C002.b.3 or 1C002.b.4 as follows (see List of Items Controlled)

* * * * *

■ 24. In Supplement No. 1 to part 774, Category 5 ''Telecommunications and Information Security'', Part I—''Telecommunications'', immediately following the text of Export Control Classification Number 5B001 and immediately preceding the header that reads ''C. Materials'' add Export Control Classification Number 5B991 to read as follows:

5B991 Telecommunications test equipment, n.e.s.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry ...	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:
The list of items controlled is contained in the ECCN heading.

■ 25. In Supplement No. 1 to part 774, Category 5 ''Telecommunications and Information Security'', Part II ''Information Security,'' immediately following the end of Note 3, paragraph .d and immediately preceding Export Control Classification Number 5A002 revise the header that reads ''Systems, Equipment and Components'' to read ''A. Systems, Equipment and Components''

■ 26. In Supplement No. 1 to part 774, Category 5 ''Telecommunications and Information Security'', Part II ''Information Security,'' immediately following Export Control Classification Number 5A002 and immediately preceding Export Control classification Number 5A992, remove the heading that reads ''Part 2—Information Security.''

■ 27. In Supplement No. 1 to part 774, Category 5 ''Telecommunications and Information Security'', Part II—''Information Security,'' immediately following Export Control Classification Number 5A992 and immediately preceding Export Control classification Number 5B002, insert a heading reading ''B. Test, Inspection and Production Equipment.''

■ 28. In Supplement No. 1 to part 774, Category 5 ''Telecommunications and Information Security'', Part II—''Information Security,'' immediately following the text of Export Control Classification Number 5D992 and immediately preceding Export Control Classification Number 5E002 revise the header that reads ''Technology'' to read ''E. Technology''.

Dated: December 8, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–29604 Filed 12–12–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9435]

RIN 1545–BH61

Guidance Regarding the Treatment of Stock of a Controlled Corporation Under Section 355(a)(3)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance regarding the distribution of stock of a controlled corporation acquired in a transaction described in section 355(a)(3)(B) of the Internal Revenue Code (Code). This action is necessary in light of amendments to section 355(b). These temporary regulations will affect corporations and their shareholders. The text of these 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 final and temporary regulations are effective on *December 15, 2008.*

Applicability Date: For dates of applicability, see § 1.355–2T(i).

FOR FURTHER INFORMATION CONTACT: Russell P. Subin, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 355 provides the rules for tax-free distributions of the stock of certain controlled corporations. Since 2006 Congress has enacted several amendments to section 355. See sections 202 and 507 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345); Division A, Section 410 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922, 2963); Section 4(b) of the Tax Technical Corrections Act of 2007, Public Law 110–172 (121 Stat. 2473, 2476) (Technical Corrections). Furthermore, the IRS and Treasury Department have issued proposed § 1.355–3 (72 FR 26012 (May 8, 2007), 2007–23 IRB 1357), which would provide guidance regarding satisfaction of the active trade or business (ATB) requirement of section 355(b).

Section 355(a) provides that, under certain circumstances, a corporation may distribute stock and securities in a corporation it controls to its shareholders and security holders without causing either the distributing corporation (distributing) or its shareholders and security holders to recognize income, gain, or loss. For this purpose, control is defined under section 368(c).

Sections 355(a)(1)(C) and 355(b)(1) generally require that distributing and the controlled corporation (controlled) each be engaged, immediately after the distribution, in the active conduct of a trade or business. Section 355(b)(2)(A) provides that a corporation shall be treated as engaged in the active conduct of a trade or business if and only if it is engaged in the active conduct of a trade or business.

Section 355(b)(2)(B) requires that the trade or business have been actively conducted throughout the five-year period ending on the date of the distribution (pre-distribution period). Section 355(b)(2)(C) provides that the trade or business must not have been acquired in a transaction in which gain or loss was recognized, in whole or in part (taxable transaction or taxable acquisition), within the pre-distribution period. Section 355(b)(2)(D) provides that control of a corporation that (at the time of acquisition of control) was conducting the trade or business must not have been directly or indirectly acquired by any distributee corporation or by distributing during the pre-distribution period in a taxable

transaction. For purposes of section 355(b)(2)(D), all distributee corporations that are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as one distributee corporation.

Section 355(b)(3)(A) provides that for purposes of determining whether a corporation meets the requirements of section 355(b)(2)(A), all members of such corporation's separate affiliated group (SAG) shall be treated as one corporation. Section 355(b)(3)(B) provides that for purposes of section 355(b)(3), the term *SAG* means, with respect to any corporation, the affiliated group that would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply. Section 355(b)(3)(C) provides that if a corporation became a SAG member as a result of one or more taxable transactions, any trade or business conducted by such corporation (at the time that such corporation became such a member) shall be treated for purposes of section 355(b)(2) as acquired in a taxable transaction. Section 355(b)(3)(A) through (C) are collectively referred to in this preamble as the SAG regime. In addition, for purposes of this preamble, the term *DSAG* means the SAG of which distributing is the common parent, *CSAG* means the SAG of which controlled is the common parent, and generally the ''SAG'' of a corporation means the SAG of which such corporation is the common parent. In addition, throughout this preamble, references to DSAG and CSAG include a reference to distributing and controlled, respectively, where such respective corporation is not the common parent of a SAG (for example, such corporation has no subsidiaries).

Section 355(a)(3)(B) provides that for purposes of section 355 (other than section 355(a)(1)(D)) and so much of section 356 as relates to section 355, stock of controlled acquired by distributing by reason of any transaction (i) which occurs within five years of the distribution of such stock, and (ii) which is a taxable transaction, shall not be treated as stock of controlled, but as other property (hot stock rule). Stock treated as other property under section 355(a)(3)(B) is referred to in this preamble as hot stock.

Section 1.355–2(g) (as applied prior to the applicability of these temporary regulations) (former § 1.355–2(g)) provides that for purposes of section 355(a)(1)(A), stock of controlled acquired in a taxable transaction (other than a transaction described in § 1.355–3(b)(4)(iii)) within the pre-distribution period shall not be treated as stock of controlled but shall be treated as ''other property.'' However, for purposes of section 355(a)(1)(D), the stock so acquired is stock of controlled.

Section 355(b)(3)(D) provides that the Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of section 355(b)(3), including regulations that provide for the proper application of section 355(b)(2)(B), (C), and (D), and modify the application of section 355(a)(3)(B), in connection with the application of section 355(b)(3). Pursuant to this grant of authority, these temporary regulations modify the application of section 355(a)(3)(B) in order to harmonize the hot stock rule and section 355(b).

Explanation of Provisions

1. Hot Stock Rule Inapplicable Where Controlled Is a DSAG Member

Congress enacted section 355(b)(3) because it was concerned that, prior to a distribution under section 355, corporate groups conducting business in separate corporate entities often had to undergo elaborate restructurings to place active businesses in the proper entities to satisfy the ATB requirement. *See,* for example, H.R. Rep. No. 109–304, at 53, 54 (2005). The effect of section 355(b)(3) is to treat a corporation's SAG as a single corporation for purposes of the ATB requirement. Consistent with this treatment, Congress enacted the Technical Corrections to clarify:

> that if a corporation became a member of a separate affiliated group as a result of one or more transactions in which gain or loss was recognized in whole or in part, any trade or business conducted by such corporation (at the time that such corporation became such a member) is treated for purposes of section 355(b)(2) as acquired in a transaction in which gain or loss was recognized in whole or in part. Accordingly, such an acquisition is subject to the provisions of section 355(b)(2)(C), and may qualify as an expansion of an existing active trade or business conducted by the distributing corporation or the controlled corporation, as the case may be.
>
> The provision clarifies that the Treasury Department shall prescribe regulations that provide for the proper application of sections 355(b)(2)(B), (C), and (D) in the case of any corporation that is tested for active business under the separate affiliated group rule, and that modify the application of section 355(a)(3)(B) in the case of such a corporation in a manner consistent with the purposes of the provision.

153 Cong. Rec. S16057 (daily ed. Dec. 19, 2007) (Joint Committee on Taxation's explanation of H.R. 4839, which explanation was printed in the Congressional Record at the request of Senator Baucus, who stated that the explanation expressed the Senate Finance Committee's understanding of the bill).

Accordingly, the SAG regime affords a group a certain amount of flexibility regarding the satisfaction of the ATB requirement. For example, Congress indicated that, for purposes of section 355(b), in certain circumstances a stock acquisition will be treated in a manner comparable to an asset acquisition and, as such, may constitute an expansion of an existing trade or business. The IRS and Treasury Department have further interpreted the SAG regime to disregard acquisitions of additional stock of a current subsidiary SAG member for purposes of satisfying the ATB requirement. See proposed § 1.355–3(b)(1)(ii).

Although the SAG regime is not applicable for purposes of section 355(a)(3)(B), the Technical Corrections provide a specific grant of regulatory authority indicating that the application of the hot stock rule may be modified to apply in a manner consistent with the SAG regime of section 355(b)(3). Toward that end, these temporary regulations reflect the fundamental conclusion that the hot stock rule should not apply to any acquisition of stock of controlled where controlled is a DSAG member at any time after the acquisition (but prior to the distribution of controlled).

Such a conclusion resolves conflicts that would otherwise arise under section 355(a)(3)(B) and section 355(b). For example, suppose distributing acquired all of controlled's stock in a taxable transaction that qualified as an expansion of distributing's existing trade or business under the SAG regime, and later distributed all such stock within five years of the acquisition in an unrelated transaction. The distribution would satisfy the ATB requirement but, absent the rule reflected in these temporary regulations, could otherwise be fully taxable under the hot stock rule. Such a result seems inconsistent with Congressional intent. Similarly, to achieve consistency with the SAG regime, if controlled is a DSAG member and distributing acquires additional controlled stock, such acquisition should be disregarded for purposes of section 355(a)(3)(B).

Therefore, these temporary regulations generally provide that controlled stock acquired by the DSAG within the pre-distribution period in a taxable transaction constitutes hot stock, except if controlled is a DSAG member at any time after the acquisition (but prior to the distribution of controlled).

Accordingly, each of Rev. Rul. 76–54 (1976–1 CB 96) and Rev. Rul. 65–286 (1965–2 CB 92) is obsolete.

2. Transfers Among DSAG Members

Consistent with the SAG regime, which treats the DSAG as a single corporation, transfers of controlled stock owned by DSAG members immediately before and immediately after the transfer are disregarded and are not treated as acquisitions for purposes of the hot stock rule. Compare proposed § 1.355–3(b)(1)(ii) (applying a similar rule for purposes of the ATB requirement).

3. Hot Stock Rule Inapplicable to Acquisitions From Certain Affiliates

Former § 1.355–2(g) provided that the hot stock rule did not apply to acquisitions of controlled stock in a transaction described in § 1.355–3(b)(4)(iii) (affiliate exception). In other words, former § 1.355–2(g) generally exempted from the hot stock rule an acquisition of controlled stock by distributing from a member of the affiliated group (as defined in § 1.355–3(b)(4)(iv)) of which distributing was a member. Compare Notice 2007–60, 2007–2 CB 466 (IRS will not challenge applicability of § 1.355–3(b)(4)(iii) to distributions effected on or before date temporary or final regulations modifying § 1.355–3(b)(4)(iii) are published). These temporary regulations retain the affiliate exception of former § 1.355–2(g) (including its treatment of stock described in section 1504(a)(4)). The IRS and Treasury Department, however, continue to study what impact transfers between affiliates should have on the satisfaction of the ATB requirement and the application of the hot stock rule and believe that, when finalized, the rules regarding the ATB requirement and the hot stock rule should generally be applied consistently with respect to transactions between affiliates.

4. Future Guidance Under Section 355(a)(3)(B)

The IRS and Treasury Department are considering issuing additional guidance under section 355(a)(3)(B), as described in this section 4 of the preamble. Such guidance would be in addition to, rather than in replacement of, these temporary regulations. In the Proposed Rules section in this issue of the **Federal Register** (REG–150670–07), comments are requested regarding these temporary regulations and the issues described in this preamble.

A. Dunn Trust and Predecessor Issues

Section 355(a)(3)(B) applies to controlled stock acquired by reason of any transaction during the pre-distribution period in which gain or loss is recognized in whole or in part. The primary types of transactions for which the IRS and Treasury Department are considering issuing additional guidance generally involve the effect of indirect acquisitions and the extent to which predecessor rules should apply for purposes of the hot stock rule. Although the IRS and Treasury Department are considering addressing in future guidance the issues arising in transactions described in this section 4.A. of the preamble, no inference should be drawn regarding the present application of section 355(a)(3)(B), including these temporary regulations, to such transactions.

For example, future guidance may address whether, in a situation where a corporation that owns controlled stock joins the DSAG in a taxable transaction, the DSAG is treated as acquiring the controlled stock in a taxable transaction. Compare section 355(b)(3)(B); proposed § 1.355–3(b)(1)(ii) and (b)(4)(i). Similarly, guidance may address the treatment of taxable acquisitions of controlled stock during the pre-distribution period by a corporation that subsequently joins the DSAG in a nontaxable transaction.

The IRS and Treasury Department are also considering issuing additional guidance that treats the DSAG as making any acquisition made by a predecessor of a DSAG member. Compare H.R. Rep. No. 83–2543, at 38 (1954) (Conf. Rep.) (''by reason of'' language of section 355(a)(3)(B) encompasses purchase of controlled stock by a corporation that is in control of distributing prior to ''downstairs merger'' by such purchaser into distributing). For this purpose, a predecessor of a corporation would be a corporation that transfers its assets to such corporation in a transaction to which section 381(a) applies. Such guidance would address the circumstances in which a predecessor of distributing (or predecessor of a DSAG member) effects an acquisition of controlled stock described in section 355(a)(3)(B).

Additionally, if a DSAG acquires stock of a corporation (target) during the pre-distribution period in a taxable transaction and such target is subsequently acquired by controlled in a section 381(a) transaction, the earlier taxable acquisition of target stock may implicate section 355(a)(3)(B). A conceptually similar issue was addressed in *Dunn Trust* v. *Commissioner,* 86 T.C. 745 (1986), *acq.* (1998–1 CB 5 n. 4 (acquiescing in result only)), except that in *Dunn Trust* the target that was acquired by distributing was not subsequently acquired by controlled in a section 381(a) transaction. Instead, in *Dunn Trust,* distributing acquired stock of target in a taxable transaction and subsequently contributed such target stock (which stock could not have been distributed without violating section 355(a)(3)(B)) to controlled in exchange for controlled stock in a nontaxable transaction. The Tax Court ruled that the controlled stock was not hot stock under section 355(a)(3)(B). Where distributing acquires target stock in a taxable transaction, and the target is subsequently either combined with controlled in a nontaxable section 381(a) transaction or (as in *Dunn Trust*) acquired by controlled in a nontaxable stock acquisition, the IRS and Treasury Department believe that such acquisitions raise an issue as to whether target or controlled is the ''real controlled'' for purposes of section 355(a)(3)(B).

Identifying the ''real controlled'' might be illustrated by the following example. Assume that distributing owns an amount of stock in controlled that constitutes control within the meaning of section 368(c) but which does not meet the requirements of section 1504(a)(2). Controlled, in turn, owns stock of a target subsidiary that satisfies the requirements of section 1504(a)(2). Distributing acquires additional target stock in a taxable transaction, which stock is then contributed to controlled in exchange for additional controlled stock in a transaction to which section 351(a) applies. Assume that neither controlled nor target joins the DSAG after either step. The question under section 355(a)(3)(B) is whether a target whose stock is acquired by the DSAG in a taxable transaction should be treated as the ''real controlled'', where such additional target stock is subsequently acquired by the actual controlled (or, in some cases, a CSAG member) in a nontaxable transaction. The IRS and Treasury Department are considering issuing guidance that would provide that a target whose stock is acquired by distributing in a taxable transaction may be treated as the ''real controlled'' for purposes of section 355(a)(3)(B) if, at the time of the distribution, the CSAG cannot satisfy the requirements of section 355(b) without taking into account an ATB conducted by the target at the time the DSAG acquired the stock of the target in the taxable transaction.

In other words, section 355(a)(3)(B) could be implicated as a result of an acquisition of target stock if the target is engaged in an ATB at the time the DSAG acquires the target stock in a taxable transaction, the target stock is then acquired by controlled (or, in some cases, a CSAG member) prior to the distribution, and at the time of the distribution of the controlled stock the CSAG is not able to satisfy the requirements of section 355(b) without taking into account an ATB that was being conducted by the target at the time the DSAG acquired the target stock in the taxable transaction.

B. Issuances of Controlled Stock Outside the Dunn Trust or Predecessor Context

The IRS and Treasury Department are considering additional guidance that would generally provide that issuances of controlled stock by controlled to distributing in a taxable transaction do not give rise to hot stock. For example, such an acquisition may occur where section 357(c) applies (see Rev. Rul. 78–442, (1978–2 CB 143) (distributing transfers a business to wholly-owned controlled, which assumes distributing's liabilities)). As noted in Rev. Rul. 78–442, the IRS and Treasury Department believe that section 355(b)(2)(C) was not intended to apply to such an acquisition of a trade or business by controlled from distributing under the facts of that ruling even if it is a taxable transaction because the acquisition was not from an ''outside party''. ''[F]or the same reasons, section 355(a)(3)[(B)] * * * is not applicable to the distribution'' of controlled stock acquired in such a transaction.

The IRS and Treasury Department request comments regarding the extent to which issuances by controlled of controlled stock to distributing in taxable transactions should not give rise to hot stock, whether distributing must own some minimum percentage in controlled at the time of such issuance in order for such an acquisition to be excepted from section 355(a)(3)(B), and the extent to which such transactions are adequately addressed under section 355(a)(1)(B) (relating to device) and section 355(g) (relating to distributions involving disqualified investment corporations).

C. Redemptions of Controlled Stock

Finally, the IRS and Treasury Department request comments regarding the effect of redemptions of controlled stock under section 355(a)(3)(B). Generally, if the controlled shares distributed by distributing were not acquired by distributing during the pre-distribution period, such shares cannot be hot stock. Therefore, a redemption by controlled of its stock from unrelated parties generally should not cause any portion of distributing's controlled stock to become hot stock. Such a rule may be distinguishable from the rule under section 355(b)(2)(D). *See McLaulin* v. *Commissioner,* 276 F.3d 1269 (11th Cir. 2001) (applying section 355(b)(2)(D) when distributing acquired control of a subsidiary through a redemption of subsidiary stock), and Rev. Rul. 57–144 (1957–1 CB 123) (same).

The distinction can be made based on the different focus of the provisions. Section 355(a)(3)(B) provides that controlled stock ''acquired by the distributing corporation'' during the pre-distribution period in a taxable transaction is hot stock, and is directed at the property distributed to the distributing shareholders. In a redemption, generally no additional shares of stock are acquired by distributing, and generally no additional value is distributed to the distributing shareholders. In contrast, section 355(b)(2)(D) prohibits the acquisition of ''control of a corporation.'' Control is a requisite status in order for distributing to distribute the stock of controlled to its shareholders under section 355. A redemption can confer this status on distributing without distributing's acquiring any additional shares of stock.

However, for purposes of section 355(a)(3)(B), the IRS and Treasury Department believe that a redemption of controlled stock from a shareholder other than distributing is the equivalent of distributing's purchase of controlled stock from the redeemed shareholder to the extent distributing is the source of funds for the redemption. Further, the IRS and Treasury Department are studying whether there are other situations in which distributing's increased percentage ownership in controlled resulting from redemptions of controlled stock from a shareholder other than distributing should be treated as hot stock.

5. Request for Comments

In the Proposed Rules section in this issue of the **Federal Register** (REG–150670–07), the IRS and Treasury Department are requesting comments regarding these temporary regulations, including comments on whether section 355(a)(3)(B) should use the same definition of taxable transaction as section 355(b), whether the exception for acquisitions from certain affiliates should be the same for both provisions, and the other issues described in this preamble.

Effective/Applicability Date

These temporary regulations are generally applicable for distributions occurring after December 15, 2008. However, unless taxpayers elect otherwise, these temporary regulations do not apply to any distribution occurring after December 15, 2008 that is pursuant to a transaction which is (1) made pursuant to an agreement which was binding on December 15, 2008, and at all times thereafter; (2) described in a ruling request submitted to the IRS on or before such date; or (3) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission. Furthermore, taxpayers may elect to apply these temporary regulations retroactively to distributions to which section 4(b) of the Technical Corrections applies (generally to distributions occurring after May 17, 2006).

Effect on Other Documents

The following publications are obsolete as of the applicability of these temporary regulations:

Rev. Rul. 76–54 (1976–1 CB 96).

Rev. Rul. 65–286 (1965–2 CB 92).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary regulations provide taxpayers with relief from the application of section 355(a)(3)(B) in certain situations. For this reason, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for dispensing with the notice and public comment procedures and that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to dispense with a delayed effective date. For the applicability of the Regulatory Flexibility Act refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Russell P. Subin of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

Availability of IRS Documents

Documents published in the IRB cited in this preamble are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 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 1.355–2T(g) also issued under 26 U.S.C. 355(b)(3)(D). * * *

■ **Par. 2**. Section 1.355–0 is amended by amending the entry under § 1.355–2 to revise paragraph (g) and add paragraph (i) to read as follows:

§ 1.355–0 Outline of sections.

* * * * *

§ 1.355–2 Limitations.

* * * * *

(g) [Reserved].

* * * * *

(i) [Reserved].

■ **Par. 3**. Section 1.355–0T is added to read as follows:

§ 1.355–0T Outline of sections (temporary).

This section lists the major paragraphs under § 1.355–2T.

§ 1.355–2T Limitations (temporary).

(a) through (f)(2) [Reserved]. For further guidance, see the entries for § 1.355–2(a) through (f)(2) in § 1.355–0.

(g) Recently acquired controlled stock under section 355(a)(3)(B).

(1) Other property.

(2) Exceptions.

(3) DSAG.

(4) Taxable transaction.

(5) Examples.

(h) [Reserved]. For further guidance, see the entry for § 1.355–2(h) in § 1.355–0.

(i) Effective/applicability date.

(1) In general.

(2) Transition election.

(3) Retroactive election.

(4) Manner of election.

(5) Prior law.

(6) Expiration date.

■ **Par. 4**. Section 1.355–1 is amended by revising paragraph (a) to read as follows:

§ 1.355–1 Distribution of stock and securities of a controlled corporation.

(a) *Effective/applicability date of certain sections*. Except as otherwise provided, this section and §§ 1.355–2 through 1.355–4 apply to transactions occurring after February 6, 1989. For transactions occurring on or before that date, *see* 26 CFR 1.355–1 through 1.355–4 (revised as of April 1, 1987). This section and §§ 1.355–2 through 1.355–4, other than § 1.355–2(g), do not reflect the amendments to section 355 made by the Revenue Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Tax Technical Corrections Act of 2007. For the applicability date of §§ 1.355–2T(g), 1.355–5, 1.355–6 and 1.355–7, see §§ 1.355–2T(i), 1.355–5(e), 1.355–6(g), and 1.355–7(k), respectively.

* * * * *

■ **Par. 5**. Section 1.355–2 is amended by revising paragraph (g) and adding paragraph (i) to read as follows:

§ 1.355–2 Limitations.

* * * * *

(g) [Reserved]. For further guidance, see § 1.355–2T(g).

* * * * *

(i) [Reserved]. For further guidance, see § 1.355–2T(i).

■ **Par. 6**. Section 1.355–2T is added to read as follows:

§ 1.355–2T Limitations (temporary).

(a) through (f)(2) [Reserved]. For further guidance, see § 1.355–2(a) through (f)(2).

(g) *Recently acquired controlled stock under section 355(a)(3)(B)*—(1) *Other property*. Except as provided in paragraph (g)(2) of this section, for purposes of section 355(a)(1)(A), section 355(c), and so much of section 356 as relates to section 355, stock of a controlled corporation acquired by the DSAG in a taxable transaction (as defined in paragraph (g)(4) of this section) within the five-year period ending on the date of the distribution (pre-distribution period) shall not be treated as stock of the controlled corporation but shall be treated as ''other property.'' Transfers of controlled corporation stock that is owned by the DSAG immediately before and immediately after the transfer are disregarded and are not acquisitions for purposes of this paragraph (g)(1).

(2) *Exceptions*. Paragraph (g)(1) of this section does not apply to an acquisition of stock of the controlled corporation—

(i) If the controlled corporation is a DSAG member at any time after the acquisition (but prior to the distribution); or

(ii) Described in § 1.355–3(b)(4)(iii).

(3) *DSAG*. For purposes of this paragraph (g), a *DSAG* is the distributing corporation's separate affiliated group (the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply) that consists of the distributing corporation as the common parent and all corporations affiliated with the distributing corporation through stock ownership described in section 1504(a)(1)(B) (regardless of whether the corporations are includible corporations under section 1504(b)). For purposes of paragraph (g)(1) of this section, any reference to the DSAG is a reference to the distributing corporation if it is not the common parent of a separate affiliated group.

(4) *Taxable transaction*—(i) *Generally*. For purposes of this paragraph (g), a *taxable transaction* is a transaction in which gain or loss was recognized in whole or in part.

(ii) *Dunn Trust and predecessor issues*. [Reserved].

(5) *Examples*. The following examples illustrate this paragraph (g). Assume that C, D, P, and S are corporations, X is an unrelated individual, each of the transactions is unrelated to any other transaction and, but for the issue of whether C stock is treated as ''other property'' under section 355(a)(3)(B), the distributions satisfy all of the requirements of section 355. No inference should be drawn from any of these examples as to whether any requirements of section 355 other than section 355(a)(3)(B), as specified, are satisfied. Furthermore, the following definitions apply:

(i) *Purchase* is an acquisition that is a taxable transaction.

(ii) *Section 368(c) stock* is stock constituting control within the meaning of section 368(c).

(iii) *Section 1504(a)(2) stock* is stock meeting the requirements of section 1504(a)(2).

Example 1. Hot stock. For more than five years, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases additional C stock from X. However, D does not own section 1504(a)(2) stock of C after the year 6 purchase. If D distributes all of its C stock within five years after the year 6 purchase, for purposes of section 355(a)(1)(A), section 355(c), and so much of section 356 as relates to section 355, the C stock purchased in year 6 would be treated as ''other property.'' See paragraph (g)(1) of this section.

Example 2. C becomes a DSAG member. For more than five years, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases additional C stock from X such that D's total ownership of C is section 1504(a)(2) stock. If

D distributes all of its C stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as ''other property'' because C becomes a DSAG member. See paragraph (g)(2)(i) of this section. The result would be the same if D did not own any C stock prior to year 6 and D purchased all of the C stock in year 6. See paragraph (g)(2)(i) of this section. Similarly, if D did not own any C stock prior to year 6, D purchased 20 percent of the C stock in year 6, and then acquired all of the remaining C stock in year 7, the C stock purchased in year 6 and the C stock acquired in year 7 (even if purchased) would not be treated as ''other property'' because C becomes a DSAG member. See paragraph (g)(2)(i) of this section.

Example 3. Intra-SAG transaction. For more than five years, D has owned all of the stock of S. D and S, in the aggregate, have owned section 368(c) stock but not section 1504(a)(2) stock of C. Therefore, D and S are DSAG members, but C is not. In year 6, D purchases S's C stock. If D distributes all of its C stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as ''other property''. D's purchase of the C stock from S is disregarded for purposes of paragraph (g)(1) of this section because that C stock was owned by the DSAG immediately before and immediately after the purchase. See paragraph (g)(1) of this section.

Example 4. Affiliate exception. For more than five years, P has owned 90 percent of the sole outstanding class of the stock of D and a portion of the stock of C, and X has owned the remaining 10 percent of the D stock. Throughout this period, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases P's C stock. However, D does not own section 1504(a)(2) stock of C after the year 6 purchase. If D distributes all of its C stock to X in exchange for X's D stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as ''other property'' because the C stock was purchased from a member (P) of the affiliated group (as defined in § 1.355–3(b)(4)(iv)) of which D is a member, and P did not purchase that C stock within the pre-distribution period. See paragraph (g)(2)(ii) of this section.

(h) [Reserved]. For further guidance, see § 1.355–2(h).

(i) *Effective/applicability date*—(1) *In general.* Paragraphs (g)(1) through (g)(5) of this section apply to distributions occurring after December 15, 2008. However, except as provided in paragraph (i)(2) of this section, paragraphs (g)(1) through (g)(5) of this section do not apply to any distribution occurring after December 15, 2008 that is pursuant to a transaction which is—

(i) Made pursuant to an agreement which was binding on December 15, 2008, and at all times thereafter;

(ii) Described in a ruling request submitted to the Internal Revenue Service on or before such date; or

(iii) Described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(2) *Transition election.* In the case of any distribution described in the second sentence of paragraph (i)(1) of this section, taxpayers may elect to apply all of paragraphs (g)(1) through (g)(5) of this section. However, neither the distributing corporation nor any person related to the distributing corporation within the meaning of section 267(b) (determined immediately before or immediately after the distribution) may make such an election with respect to a distribution unless all such persons make such an election with respect to such distribution.

(3) *Retroactive election.* In the case of any distribution occurring on or before December 15, 2008, taxpayers may elect to apply all of paragraphs (g)(1) through (g)(5) of this section to distributions to which section 4(b) of the Tax Technical Corrections Act of 2007, Public Law 110–172 (121 Stat. 2473, 2476) applies (generally applicable to distributions made after May 17, 2006, as provided in section 4(d) of that act). However, neither the distributing corporation nor any person related to the distributing corporation within the meaning of section 267(b) (determined immediately before or immediately after the distribution) may make such an election with respect to a distribution unless all such persons make such an election with respect to such distribution.

(4) *Manner of election.* Taxpayers may make any election available under this paragraph (i) by applying the selected rule on its original or amended return.

(5) *Prior law.* For distributions to which paragraphs (g)(1) through (g)(5) of this section do not apply, *see* § 1.355–2(g), as contained in 26 CFR part 1, revised as of April 1, 2008.

(6) *Expiration date.* The applicability of paragraph (i) of this section will expire on December 15, 2011.

Steve T. Miller,

(Acting) Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–29544 Filed 12–12–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–0497]

RIN 1625–AA01

Special Anchorage Area ''A'', Boston Harbor, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby amends the Boston Inner Harbor Special Anchorage Area ''A'' at the entrance to Fort Point Channel in Boston Harbor, Boston, MA at the request of the Boston Harbormaster and the Boston Harbor Yacht Club. This action will provide additional anchorage space and provide a safe and secure anchorage for vessels of not more than 65 feet in length.

DATES: This rule is effective January 14, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0497 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–0497 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; and the Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355 or e-mail *John.J.Mauro@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: