

## V. Statutory Basis and Text of Final Rule Amendments

The Commission is adopting amendments pursuant to sections 6(b) and 19 of the Securities Act, sections 13(e), 14(g), 23, and 31 of the Exchange Act, and sections 24(f) and 38 of the Investment Company Act.

### List of Subjects in 17 CFR Part 202

Administrative practice and procedure, Securities.

In accordance with the foregoing, 17 CFR, Chapter II of the Code of Federal Regulations is amended as follows:

### PART 202—INFORMAL AND OTHER PROCEDURES

■ 1. The authority citation for Part 202 continues to read in part as follows:

**Authority:** 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, 80b–11, and 7201 *et seq.*, unless otherwise noted.

\* \* \* \* \*

■ 2. Section 202.3a, paragraph (e) is amended by removing the phrase “180 calendar days”, and adding in its place the phrase “three years”.

By the Commission.

Dated: May 13, 2011.

**Cathy H. Ahn,**

*Deputy Secretary.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9526]

RIN 1545–BG96

### Treatment of Property Used To Acquire Parent Stock or Securities in Certain Triangular Reorganizations Involving Foreign Corporations

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

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations under section 367 of the Internal Revenue Code (Code) relating to the treatment of property used to acquire parent stock or securities in certain triangular reorganizations involving foreign corporations. The regulations finalize proposed regulations and withdraw temporary regulations published on May 27, 2008 (TD 9400). The regulations affect

corporations that engage in certain triangular reorganizations involving one or more foreign corporations.

**DATES:** *Effective Date:* These regulations are effective May 19, 2011.

*Applicability Dates:* For dates of applicability, see §§ 1.367(a)–3(g)(1)(viii) and 1.367(b)–10(e).

**FOR FURTHER INFORMATION CONTACT:** Robert B. Williams, Jr., (202) 622–3860 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

On May 27, 2008, the IRS and Treasury Department published temporary and proposed regulations under section 367(b) that apply to certain triangular reorganizations in which a subsidiary (S) purchases, in connection with the reorganization, stock of its parent corporation (P) in exchange for property, and exchanges the P stock for the stock or property of a target corporation (T), but only if P or S (or both) is a foreign corporation (the temporary regulations or proposed regulations, as applicable, and collectively, the 2008 regulations). 73 FR 30301 (TD 9400, 2008–24 IRB 1139). Because no requests to speak were received, no public hearing was held; however, comments were received. After consideration of the comments received, the IRS and Treasury Department adopt the proposed regulations as final regulations with the modifications described herein. Although the 2008 regulations were numbered under § 1.367(b)–14, the final regulations are renumbered under § 1.367(b)–10. The temporary regulations are withdrawn.

#### Summary of Comments and Explanation of Revisions

##### A. Scope of Regulations and Priority Rule

Section 367(a)(1) provides that if, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain is recognized on such transfer, be considered to be a corporation. As a result, the general rule is the United States person recognizes gain (if any) on the transfer of such property, unless an exception to section 367(a)(1) applies to the transfer. Furthermore, section 367(b)(1) provides that in the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in section 367(a)(1), a foreign

corporation shall be considered to be a corporation except to the extent provided in regulations. Thus, section 367(b)(1) will not apply to an exchange if gain is recognized on that exchange under section 367(a)(1).

Section 367(a)(1) (and the regulations under that section) and the 2008 regulations could each potentially apply to certain triangular reorganizations. For example, section 367(a)(1) and the 2008 regulations could each potentially apply to a triangular reorganization described in section 368(a)(1)(B) if S acquires P stock for property, each of P, S, and T are foreign corporations, the T stock is held by a U.S. person, and the U.S. person realizes gain on the exchange of the T stock. See § 1.367(a)–3(d)(1)(iii)(A) (providing that there is an indirect transfer by the U.S. person of the T stock to S).

The 2008 regulations include a priority rule that applies to certain transactions described in section 367(a)(1) and the 2008 regulations. The priority rule generally provides that if the amount of gain in the T stock that would otherwise be recognized under section 367(a)(1) (absent an exception) is less than the adjustment treated as a dividend under the 2008 regulations, then the 2008 regulations, and not section 367(a)(1), apply to the triangular reorganization.

One commentator noted that the priority rule applies simply based on comparing the amount of gain that would be recognized under section 367(a)(1) with the amount of the dividend that would result under the 2008 regulations, without regard to the amount of resulting U.S. tax. The commentator stated that in some cases it may be more appropriate for the priority rule to take into account the amount of resulting U.S. tax. The commentator cited, as an example, a case where P is foreign, S and T are domestic, T is owned by a U.S. person, and any dividend received by P from S under the 2008 regulations would not be subject to U.S. tax as a result of an applicable treaty. The commentator noted that if the dividend in such a case exceeds the amount of gain that would otherwise be recognized under section 367(a)(1), it may not be appropriate for the 2008 regulations to apply in lieu of section 367(a)(1) and § 1.367(a)–3(c).

The IRS and Treasury Department recognize that in some cases it may be appropriate for the priority rule to take into account the amount of resulting U.S. tax. However, the IRS and Treasury Department do not believe it would be administrable to take into account the resulting U.S. tax in all cases, because this could require consideration of

numerous tax attributes of various parties, including P, S, and the shareholders of T. To address this concern, the scope of the final regulations is modified such that the final regulations do not apply in two additional cases. First, the final regulations do not apply if P and S are foreign corporations and neither P nor S is a controlled foreign corporation (within the meaning of § 1.367(b)-2(a)) immediately before or immediately after the triangular reorganization. Second, the final regulations do not apply if: (1) P is a foreign corporation; (2) S is a domestic corporation; (3) P's receipt of a dividend from S would not be subject to U.S. tax under either section 881 (for example, by reason of an applicable treaty) or section 882; and (4) P's stock in S is not a United States real property interest (within the meaning of section 897(c)).

In addition, the final regulations modify the scope of the 2008 regulations to include the acquisition by S, in exchange for property, of P securities that are used to acquire the stock, securities, or property of T in the triangular reorganization, but only to the extent the P securities are treated by T shareholders or securityholders as "other property" under section 356(d). The scope was expanded to include P securities because the acquisition of P securities by S for property presents the same repatriation concerns as the acquisition of P stock by S for property. Furthermore, the scope of the 2008 regulations is modified to provide that the final regulations apply to the acquisition by S, in exchange for property, of P stock to the extent such P stock is received by T shareholders or securityholders in an exchange to which section 354 or 356 applies.

Finally, the final regulations modify the priority rule contained in the 2008 regulations in three ways. First, the priority rule is modified to include exchanges of T securities as well as T stock. Second, the priority rule is modified to compare the amount of gain that would be recognized under section 367(a)(1) with not only the amount of the deemed dividend but also the amount of any gain (applying section 301(c)(1) and (3), respectively). Third, the priority rule is modified to clarify its application by providing separate priority rules in § 1.367(a)-3(a) and § 1.367(b)-10.

Thus, under the § 1.367(a)-3(a) priority rule, as modified, if the amount of gain in the T stock or securities that would otherwise be recognized by the T shareholders or securityholders under section 367(a)(1) (without regard to any exceptions to section 367(a)(1)) is less

than the sum of the amount of deemed dividend and the amount of gain (applying section 301(c)(1) and (3), respectively) under the final regulations, section 367(a)(1) does not apply to the section 354 or 356 exchange by the T shareholders or securityholders of the T stock or securities for P stock or securities. Under the § 1.367(b)-10 priority rule, if the amount of gain recognized by the T shareholders or securityholders under section 367(a)(1) (taking into account any exception to section 367(a)(1) that is applied) on the section 354 or 356 exchange of T stock or securities exceeds the sum of the amount of deemed dividend and the amount of gain (applying section 301(c)(1) and (3), respectively) if the final regulations otherwise applied to the triangular reorganization, then the final regulations do not apply.

#### *B. Application If T Is Unrelated to P or S*

The 2008 regulations apply regardless of whether T is related to P or S. Some commentators asserted that the 2008 regulations should not apply if T is unrelated to P or S because there is no reduction in S's net worth (that is, S replaces its cash with an equal amount of P stock). The commentators further stated that, unlike transactions in which T is related to P or S, the consideration paid for an unrelated T is delivered outside of the P group. The commentators also noted that if T is unrelated to P and S, the transaction is distinguishable from a transaction subject to section 304, the application of which may result in a distribution even if the value of the distributing corporation is not diminished as a result of the transaction.

The IRS and Treasury Department believe that transactions in which T is unrelated to P and S present the same concerns, because S's purchase of P stock (or P securities under the final regulations) in the context of a reorganization allows for a transfer of property from S to P that has the effect of a distribution regardless of whether T is related to P or S prior to the transaction. Accordingly, the comment was not adopted.

#### *C. Adjustments Having the Effect of a Distribution or Contribution*

If the 2008 regulations apply to a triangular reorganization, adjustments are made under section 367(b) having the effect of a distribution of property from S to P under section 301 (deemed distribution). In certain cases, the 2008 regulations similarly provide that adjustments are made under section 367(b) that have the effect of a

contribution of property by P to S (deemed contribution). The 2008 regulations also provide for collateral adjustments to be made to take into account the deemed distribution and deemed contribution.

Some commentators questioned the extent to which these adjustments should be made. In response to these comments, the final regulations make clear that the adjustments are made based on a distribution or contribution of a notional amount, and therefore without the recognition of any built-in gain or loss on the distribution of such notional amount. The notional amount is equal to the amount of money transferred and liabilities assumed plus the fair market value of other property transferred, in connection with the triangular reorganization, by S in exchange for the P stock or securities used to acquire the stock, securities or property of T. In addition, the final regulations clarify that the adjustments that have the effect of a deemed distribution or deemed contribution do not affect the characterization of the actual transaction as provided under applicable tax provisions. Thus, for example, if S uses property with a built-in gain to acquire P stock from P, S's exchange of the property for P stock is not affected by the regulations. Instead, the regulations require adjustments based on a deemed distribution and deemed contribution of the notional amount that occur apart from, and in addition to, S exchanging the built-in gain property for the P stock. Accordingly, S would not recognize gain under section 311(b) with respect to the notional amount. Furthermore, S's exchange of the property would continue to be treated as an exchange subject to section 1001 in which S recognizes the built-in gain.

#### *D. Timing Rules for Deemed Distributions*

The 2008 regulations provide rules that address the timing of the deemed distribution resulting from the application of the general rule. The 2008 regulations contain separate timing rules for transactions involving acquisitions of P stock from P and for acquisitions of P stock from persons other than P. The IRS and Treasury Department do not believe separate timing rules are necessary. Thus, the final regulations combine the two timing rules set forth in the 2008 regulations into a single rule that applies regardless of the person from whom the P stock or securities are acquired.

The 2008 regulations also contain a special timing rule if P does not control

S at the time S purchases the P stock. The final regulations retain the special timing rule contained in the 2008 regulations that applies if P does not control S at the time S purchases the P stock or securities.

#### E. Other Modifications

##### 1. Definition of Property

The definition of property in the 2008 regulations is modified in the final regulations to include rights (for example, options) to acquire S stock to the extent such rights are used by S to acquire P stock or securities from a person other than P.

##### 2. Deemed Contribution When S Acquires P Stock From P

The 2008 regulations contain a deemed contribution rule only where S acquires P stock from persons other than P. The final regulations provide a similar rule in cases where S acquires the P stock or securities from P.

##### 3. Section 1.367(a)–3(a)

In addition to including a priority rule in § 1.367(a)–3(a), the final regulations modify the format and organization of § 1.367(a)–3(a). The final regulations also clarify § 1.367(a)–3(a) to provide that exchanges that are subject to section 367(a)(1) (absent an applicable exception) result in the recognition of gain, as opposed to being “treated as a taxable exchange” (as is provided in the current regulations).

#### Effective/Applicability Dates

These final regulations apply to transactions occurring on or after May 17, 2011. For transactions that occur prior to May 17, 2011, see § 1.367(b)–14T as contained in 26 CFR part 1 revised as of April 1, 2011.

#### 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.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. This certification is based on the fact that the regulations will primarily affect large multi-national corporations that engage in triangular reorganizations subject to the regulations. The regulations apply to triangular reorganizations, involving one or more foreign corporations, to the extent that, in connection with the reorganization, the acquiring

corporation purchases, in exchange for property, all or a portion of the stock or securities used to acquire the stock, securities or property of the target corporation. Therefore, the IRS and Treasury Department expect only a de minimis number of small business entities to be subject to the regulations. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these regulations is Robert B. Williams, Jr. of the Office of Associate Chief Counsel (International). 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

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for §§ 1.367(a)–3T(b)(2)(i)(C) and 1.367(b)–14T, revising the entry for § 1.367(a)–3, and adding an entry for § 1.367(b)–10 in numerical order to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*.

Section 1.367(a)–3 also issued under 26 U.S.C. 367(a). Section 1.367(b)–10 also issued under 26 U.S.C. 367(b). \* \* \*

■ **Par. 2.** Section 1.367(a)–3 is amended by revising paragraph (a), removing paragraph (g)(1)(vii), redesignating paragraph (g)(1)(viii) as paragraph (g)(1)(vii) and adding new paragraph (g)(1)(viii) to read as follows:

#### § 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) *In general*—(1) *Overview.* This section provides rules concerning the transfer of stock or securities by a U.S. person to a foreign corporation in an exchange described in section 367(a)(1). In general, a transfer of stock or securities (including an indirect stock transfer described in paragraph (d) of this section) by a U.S. person to a foreign corporation that is described in section 351, 354 (including a section 354 exchange pursuant to a reorganization described in section 368(a)(1)(B)), 356, or section 361(a) or

(b) is subject to section 367(a)(1). Therefore, gain is recognized on such a transfer unless one of the exceptions set forth in paragraph (a)(2) of this section (regarding general exceptions for certain exchanges of stock or securities), paragraph (b) of this section (regarding transfers of foreign stock or securities), paragraph (c) of this section (regarding transfers of domestic stock or securities), or paragraph (e) of this section (regarding transfers of stock or securities in a section 361 exchange) applies to the transfer. For rules applicable when, pursuant to section 304(a)(1), a U.S. person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, see § 1.367(a)–9T.

(2) *Exceptions for certain exchanges of stock or securities.* Unless otherwise provided, the following exchanges are not subject to section 367(a)(1) and therefore gain is not recognized under section 367(a)(1).

(i) *Section 368(a)(1)(E) reorganizations.* In an exchange under section 354 or 356, a U.S. person exchanges stock or securities of a foreign corporation in a reorganization described in section 368(a)(1)(E).

(ii) *Certain section 368(a)(1) asset reorganizations.* In an exchange under section 354 or 356, a U.S. person exchanges stock or securities of a domestic or foreign corporation pursuant to an asset reorganization that is not treated as an indirect stock transfer under paragraph (d) of this section. See paragraph (d)(3) *Example 16* of this section. For purposes of this section, an *asset reorganization* is defined as a reorganization described in section 368(a)(1) involving a transfer of property under section 361.

(iii) *Certain reorganizations described in sections 368(a)(1)(A) and (a)(2)(E).* If, in an exchange described in section 361, a domestic merging corporation transfers stock of a controlling corporation to a foreign surviving corporation in a reorganization described in section 368(a)(1)(A) and (a)(2)(E), the stock of the controlling corporation transferred in such section 361 exchange is not subject to section 367(a)(1) if the stock of the controlling corporation is provided to the merging corporation by the controlling corporation pursuant to the plan of reorganization. However, a section 361 exchange of other property, including stock of the controlling corporation not provided by the controlling corporation pursuant to the plan of reorganization, by the domestic merging corporation to

the foreign surviving corporation pursuant to such a reorganization is described in section 367(a)(1) and therefore subject to section 367(a)(1) unless an exception to section 367(a)(1) applies.

(iv) *Certain triangular reorganizations described in § 1.367(b)-10.* If, in an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T (as defined in § 1.358-6(b)(1)(iii)) in connection with a transaction described in § 1.367(b)-10 (applying to certain acquisitions of parent stock or securities for property in triangular reorganizations), section 367(a)(1) shall not apply to such U.S. persons with respect to the exchange of the stock or securities of T if the condition specified in this paragraph (iv) is satisfied. The condition specified in this paragraph (iv) is that the amount of gain in the T stock or securities that would otherwise be recognized under section 367(a)(1) (without regard to any exceptions thereto) pursuant to the indirect stock transfer rules of paragraph (d) of this section is less than the sum of the amount of the deemed distribution under § 1.367(b)-10 treated as a dividend under section 301(c)(1) and the amount of such deemed distribution treated as gain from the sale or exchange of property under section 301(c)(3). See § 1.367(b)-10(a)(2)(iii) (providing a similar rule that excludes certain transactions from the application of § 1.367(b)-10).

(3) *Cross-references.* For rules regarding other indirect or constructive transfers of stock or securities subject to section 367(a)(1) (unless an exception applies) see § 1.367(a)-1T(c). For additional rules regarding a transfer of stock or securities in an exchange described in section 361(a) or (b), see section 367(a)(5) and any regulations under that section. For special basis and holding period rules involving foreign corporations that are parties to certain triangular reorganizations under section 368(a)(1), see § 1.367(b)-13. For additional rules relating to certain nonrecognition exchanges involving a foreign corporation, see section 367(b) and the regulations under that section. For rules regarding reporting requirements with respect to transfers described under section 367(a), see section 6038B and the regulations thereunder. For rules related to expatriated entities, see section 7874 and the regulations thereunder.

\* \* \* \* \*

(g) \* \* \*  
(1) \* \* \*

(viii) Paragraph (a)(2)(iv) of this section applies to exchanges occurring

on or after May 17, 2011. For exchanges that occur prior to May 17, 2011, see § 1.367(a)-3T(b)(2)(i)(C) as contained in 26 CFR part 1 revised as of April 1, 2011.

\* \* \* \* \*

#### § 1.367(a)-3T [Removed]

■ **Par. 3.** Section 1.367(a)-3T is removed.

■ **Par. 4.** Section 1.367(b)-0 is amended by:

- 1. Revising the introductory text.
- 2. Removing the entry for § 1.367(b)-2(d)(3)(ii), and redesignating the entries for § 1.367(b)-2(d)(3)(iii), (d)(3)(iii)(A), and (d)(3)(iii)(B) as § 1.367(b)-2(d)(3)(ii), (d)(3)(ii)(A), and (d)(3)(ii)(B) respectively.

■ 3. Revising the entry for § 1.367(b)-4(b)(1)(i), redesignating the entry for § 1.367(b)-4(b)(1)(ii) as the entry for § 1.367(b)-4(b)(1)(iii), and adding a new entry for § 1.367(b)-4(b)(1)(ii).

■ 4. Revising the entries for § 1.367(b)-4(d)(1) and (2), and removing the entry for § 1.367(b)-4(d)(3).

■ 5. Adding entries for § 1.367(b)-10.

■ 6. Adding entries for § 1.367(b)-13.

The revisions and additions read as follows:

#### § 1.367(b)-0 Table of contents.

This section lists the paragraphs contained in §§ 1.367(b)-1 through 1.367(b)-13.

\* \* \* \* \*

§ 1.367(b)-4 *Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.*

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) General rule.

(ii) Exception.

\* \* \* \* \*

(d) \* \* \*

(1) Rule.

(2) Example.

§ 1.367(b)-10 *Acquisition of parent stock or securities for property in triangular reorganizations.*

(a) In general.

(1) Scope.

(2) Exceptions.

(3) Definitions.

(b) General rules.

(1) Deemed distribution.

(2) Deemed contribution.

(3) Timing of deemed distribution and deemed contribution.

(4) Application of other provisions.

(5) Example.

(c) Collateral adjustments.

(1) Deemed distribution.

(2) Deemed contribution.

(d) Anti-abuse rule.

(e) Effective/applicability date.

§ 1.367(b)-13 *Special rules for determining basis and holding period.*

(a) Scope and definitions.

(1) Scope.

(2) Definitions.

(b) Determination of basis for exchanges of foreign stock or securities under section 354 or 356.

(c) Determination of basis and holding period for triangular reorganizations.

(1) Application.

(2) Basis and holding period rules.

(i) Portions attributable to S stock.

(ii) Portions attributable to T stock.

(d) Special rules applicable to divided shares of stock.

(1) In general.

(2) Pre-exchange earnings and profits.

(3) Post-exchange earnings and profits.

(e) Examples.

(f) Effective date.

■ **Par. 5.** Section 1.367(b)-10 is added to read as follows:

#### § 1.367(b)-10 Acquisition of parent stock or securities for property in triangular reorganizations.

(a) *In general*—(1) *Scope.* Except as provided in paragraphs (a)(2)(i) through (iii) of this section, this section applies to a triangular reorganization if P or S (or both) is a foreign corporation and, in connection with the reorganization, S acquires in exchange for property all or a portion of the P stock or P securities (P acquisition) that are used to acquire the stock, securities or property of T in the triangular reorganization. This section applies to a triangular reorganization regardless of whether P controls (within the meaning of section 368(c)) S at the time of the P acquisition.

(2) *Exceptions.* This section shall not apply if—

(i) P and S are foreign corporations and neither P nor S is a controlled foreign corporation (within the meaning of § 1.367(b)-2(a)) immediately before or immediately after the triangular reorganization;

(ii) S is a domestic corporation, P's stock in S is not a United States real property interest (within the meaning of section 897(c)), and P would not be subject to U.S. tax on a dividend (as determined under section 301(c)(1)) from S under either section 881 (for example, by reason of an applicable treaty) or section 882; or

(iii) In an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T and the amount of gain in the T stock or securities recognized by such U.S. persons under section 367(a)(1) is equal to or greater than the sum of the amount of the deemed distribution that would be treated by P as a dividend under section 301(c)(1) and the amount of such deemed distribution that would be treated by P as gain from the sale or exchange of property under section 301(c)(3) if this section would otherwise

apply to the triangular reorganization. See § 1.367(a)-3(a)(2)(iv) (providing a similar rule that excludes certain transactions from the application of section 367(a)(1)).

(3) *Definitions.* For purposes of this section, the following definitions apply:

(i) The terms *P*, *S*, and *T* have the meanings set forth in § 1.358-6(b)(1)(i), (ii), and (iii), respectively.

(ii) The term *property* has the meaning set forth in section 317(a), except that the term *property* also includes—

(A) A liability assumed by S to acquire the P stock or securities; and

(B) S stock (or any rights to acquire S stock) to the extent such S stock (or rights to acquire S stock) is used by S to acquire P stock or securities from a person other than P.

(iii) The term *security* means an instrument that constitutes a security for purposes of section 354 or 356.

(iv) The term *triangular reorganization* has the meaning set forth in § 1.358-6(b)(2).

(b) *General rules*—(1) *Deemed distribution.* If this section applies, adjustments shall be made that have the effect of a distribution of property (with no built-in gain or loss) from S to P under section 301 (deemed distribution). The amount of the deemed distribution shall equal the sum of the amount of money transferred by S, the amount of any liabilities that are assumed by S and constitute property, and the fair market value of other property transferred by S in the P acquisition in exchange for the P stock or P securities described in paragraph (i) or (ii), respectively, of this paragraph (b)(1)—

(i) P stock received by T shareholders or securityholders in an exchange to which section 354 or 356 applies.

(ii) P securities received by T shareholders or securityholders to the extent such securities are “other property” (within the meaning of section 356(d)).

(2) *Deemed contribution.* If this section applies, adjustments shall be made that have the effect of a contribution of property (with no built-in gain or loss) by P to S in an amount equal to the amount of the deemed distribution from S to P under paragraph (b)(1) of this section (deemed contribution).

(3) *Timing of deemed distribution and deemed contribution.* If P controls (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraphs (b)(1) and (2) of this section shall be made as if the deemed distribution and deemed contribution, respectively, are

separate transactions occurring immediately before the P acquisition. If P does not control (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraphs (b)(1) and (2) of this section shall be made as if the deemed distribution and deemed contribution, respectively, are separate transactions occurring immediately after P acquires control of S, but prior to the triangular reorganization.

(4) *Application of other provisions.* Nothing in this section shall prevent the application of other provisions of the Internal Revenue Code from applying to the P acquisition. For example, section 304 may apply to the P acquisition. Furthermore, section 1001 or 267 may apply to S’s transfer of property to acquire P stock or securities from P or a person other than P. In addition, generally applicable provisions that apply to triangular reorganizations, such as § 1.358-6 and § 1.1032-2, shall apply to the triangular reorganization in a manner consistent with S acquiring the P stock or securities in exchange for property from P or a person other than P, as the case may be.

(5) *Example.* The rules of this paragraph (b) are illustrated by the following example:

(i) *Facts.* P, a publicly traded domestic corporation, owns all of the outstanding stock of FS, a foreign corporation, and all of the outstanding stock of US1, a domestic corporation that is a member of the P consolidated group. US1 owns all of the outstanding stock of FT, a foreign corporation, the fair market value of which is \$100x. US1’s basis in the FT stock is \$100x, such that there is a no built-in gain or loss in the FT stock. FS has earnings and profits in excess of \$100x. FS purchases \$100x of P stock from the public on the open market in exchange for \$100x of cash. Pursuant to foreign law, FT merges with and into FS in a triangular reorganization that qualifies under section 368(a)(1)(A) by reason of section 368(a)(2)(D). In an exchange to which section 354 applies, US1 exchanges all the outstanding stock of FT for the \$100x of P stock purchased by FS on the open market.

(ii) *Analysis.* The triangular reorganization is described in paragraph (a)(1) of this section. P is a domestic corporation and FS is a foreign corporation. In connection with FS purchasing the \$100x of P stock in exchange for property (cash), FS uses the P stock to acquire the FT property in a triangular reorganization, and US1 receives the P stock in an exchange to which section 354 applies. Furthermore, none of the exceptions of paragraphs (a)(2)(i) through (iii) of this section apply. Therefore, pursuant to paragraph (b)(1) of this section, adjustments are made that have the effect of a deemed distribution of property (with no built-in gain or loss) in the amount of \$100x from FS to P under section 301. Pursuant to paragraph (b)(2) of this section, adjustments are made

that have the effect of a deemed contribution of property (with no built-in gain or loss) in the amount of \$100x by P to FS. Pursuant to paragraph (b)(3) of this section, the adjustments described in paragraphs (b)(1) and (2) of this section are made as if the deemed distribution and deemed contribution, respectively, are separate transactions occurring immediately before FS’s purchase of the P stock on the open market. Generally applicable provisions apply to FS’s purchase of the P stock on the open market (see, for example, section 304) and in determining certain tax consequences to P and FS as a result of the triangular reorganization (see, for example, § 1.358-6(d) and § 1.1032-2(c)).

(c) *Collateral adjustments.* This paragraph (c) provides additional rules that apply by reason of the deemed distribution and deemed contribution described in paragraphs (b)(1) and (b)(2), respectively, of this section.

(1) *Deemed distribution.* A deemed distribution described in paragraph (b)(1) of this section shall be treated as occurring for all purposes of the Internal Revenue Code. Thus, for example, the ordering rules of section 301(c) apply to characterize the deemed distribution to P as a dividend from the earnings and profits of S, return of stock basis, or gain from the sale or exchange of property, as the case may be. Furthermore, sections 902 or 959 may apply to the deemed distribution if S is a foreign corporation, and sections 881, 882, 897, 1442, or 1445 may apply to the deemed distribution if S is a domestic corporation. Appropriate corresponding adjustments shall be made to S’s earnings and profits consistent with the principles of section 312.

(2) *Deemed contribution.* A deemed contribution described in paragraph (b)(2) of this section shall be treated as occurring for all purposes of the Internal Revenue Code. Thus, for example, appropriate adjustments shall be made to P’s basis in the S stock.

(d) *Anti-abuse rule.* Appropriate adjustments shall be made pursuant to this section if, in connection with a triangular reorganization, a transaction is engaged in with a view to avoid the purpose of this section. For example, if S is created, organized, or funded to avoid the application of this section with respect to the earnings and profits of a corporation related (within the meaning of section 267(b)) to P or S, the earnings and profits of S will be deemed to include the earnings and profits of such related corporation for purposes of determining the consequences of the adjustments provided in this section, and appropriate corresponding adjustments will be made to account for the application of this section to the earnings and profits of such related corporation.

(e) *Effective/applicability date.* This section applies to triangular reorganizations occurring on or after May 17, 2011. For triangular reorganizations that occur prior to May 17, 2011, see § 1.367(b)-14T as contained in 26 CFR part 1 revised as of April 1, 2011.

**§ 1.367(b)-14T [Removed]**

■ **Par. 6.** Section 1.367(b)-14T is removed.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: May 11, 2011.

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2011-12279 Filed 5-17-11; 11:15 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2011-0253]

RIN 1625-AA00

**Safety Zone; Ohio River, Sewickley, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on specified waters of the Ohio River in Sewickley, Pennsylvania. The safety zone is needed to protect the public from the hazards associated with the Borough of Sewickley fireworks display. Entry into, movement within, and departure from this Coast Guard safety zone, while it is activated and enforced, is prohibited, unless authorized by the Captain of the Port Pittsburgh or a designated representative.

**DATES:** This rule is effective from 8:30 p.m. until 10:15 p.m. on May 27, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0253 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0253 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Ensign Robyn Hoskins, Marine Safety Unit Pittsburgh, Coast Guard; telephone 412-644-5808, e-mail [Robyn.G.Hoskins@uscg.mil](mailto:Robyn.G.Hoskins@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Publishing a NPRM would be impracticable because immediate action is needed to protect the public due to the Borough of Sewickley fireworks display that will occur in the city of Sewickley, PA.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be impracticable based on the short notice received for the event and the short period that the safety zone will be in place. Immediate action is needed to provide safety and protection during the Borough of Sewickley fireworks display that will occur in the city of Sewickley, Pennsylvania.

**Basis and Purpose**

The Coast Guard is establishing a temporary safety zone on the Ohio River from mile marker 11.7 to mile marker 12.0, extending the entire width of the river. The safety zone is needed to protect the public from the hazards associated with the Borough of Sewickley fireworks display.

**Discussion of Rule**

The Coast Guard is establishing a temporary safety zone on the Ohio River from mile marker 11.7 to mile marker 12.0, extending the entire width of the river. Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Pittsburgh or his authorized representative. Persons or vessels

requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh, or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465. This rule is effective from 8:30 p.m. until 10:15 p.m. on May 27, 2011. The Captain of the Port Pittsburgh will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

*Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule will be in effect for a short period of time and notifications to the marine community will be made through broadcast notices to mariners. The impacts on routine navigation are expected to be minimal.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit that portion of the waterways on the Ohio River from mile marker 11.7 to mile marker 12.0.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for a short period of time, on