

**§ 558.342 [Amended]**

■ 2. In § 558.342, in the table in paragraph (e)(1), remove and reserve paragraph (e)(1)(vii); and in paragraph (e)(1)(xi), in the "Sponsor" column, add "021641".

Dated: October 14, 2011.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 2011-27139 Filed 10-19-11; 8:45 am]

**BILLING CODE 4160-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9548]

RIN 1545-BH49

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

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

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

**SUMMARY:** This document contains final regulations 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 final regulations will affect corporations and their shareholders.

**DATES:** *Effective Date:* These final regulations are effective on October 20, 2011.

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

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

**SUPPLEMENTARY INFORMATION:****Background**

This document contains amendments to 26 CFR part 1 regarding section 355(a)(3)(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.

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) 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.

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(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.

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 section 355(b)(3)(D) and section 7805, temporary regulations (TD 9435) under section 355(a)(3)(B) were published in the **Federal Register** (73 FR 75946) on December 15, 2008. A notice of proposed rulemaking (REG-150670-07) cross-referencing the temporary regulation was published in the **Federal Register** on the same day (73 FR 75979). The temporary regulations were intended to harmonize the application of section 355(a)(3)(B) with section 355(b). Generally, the temporary regulations: (1) Disregarded transfers of controlled stock between members of the distributing corporation's SAG (DSAG), (2) did not treat controlled stock as other property if controlled became a DSAG member, and (3) retained the exception of prior regulation § 1.355-2(g) as contained in 26 CFR part 1, revised as of April 1, 2008, for acquisitions from affiliates described in § 1.355-3(b)(4)(iii).

The preamble to the temporary regulations requested comments regarding a variety of issues under section 355(a)(3)(B). One written comment responding to the request was received. No public hearing was requested or held.

**Summary of Comment and Guidance**

The comment generally agreed with the text of the temporary regulations. In addition, the comment addressed, among other things, the treatment of cash paid to acquire controlled stock in lieu of fractional shares, indirect acquisitions and acquisitions of controlled stock by a predecessor to a member of the DSAG, issuances of controlled stock, and redemptions of controlled stock. After considering the comment, the IRS and Treasury Department have decided not to expand the scope of the final regulation to cover additional situations at this time. These final regulations adopt the substantive rules of the temporary regulations without change.

The IRS and Treasury Department continue to study the interrelationship between section 355(a)(3)(B) and section 355(b). No inference regarding the content of future section 355(b) guidance should be drawn from these final regulations. In addition, further guidance may be issued under section 355(a)(3)(B) in connection with future section 355(b) guidance if it is necessary to harmonize the two provisions.

**Special Analyses**

It has been determined that this Treasury Decision is not a significant regulatory action as defined in

Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that section 355(a)(3)(B) generally applies to parent-subsidiary groups of corporations, which tend to be larger businesses, and that these regulations primarily grant relief from the application of section 355(a)(3)(B) in certain situations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations were 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 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.

#### 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 adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805. \* \* \*  
Section 1.355-2(g) and (i) also issued under 26 U.S.C. 355(b)(3)(D). \* \* \*

■ **Par. 2.** Section 1.355-0 is amended by revising the entries under § 1.355-2(g) and (i) to read as follows:

§ 1.355-0 Outline of sections.  
\* \* \* \* \*

§ 1.355-2 Limitations.  
\* \* \* \* \*

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

- (1) Other property.
- (2) Exceptions.
- (3) DSAG.
- (4) Taxable transaction.
- (5) Examples.

\* \* \* \* \*

(i) Effective/applicability date.

■ **Par. 3.** 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) and (i), 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 §§ 1.355-2(g), 1.355-5, 1.355-6, and 1.355-7, see §§ 1.355-2(i), 1.355-5(e), 1.355-6(g), and 1.355-7(k), respectively.

\* \* \* \* \*

■ **Par. 4.** Section 1.355-2 is amended by revising paragraphs (g) and (i) to read as follows:

#### § 1.355-2 Limitations.

\* \* \* \* \*

(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.

\* \* \* \* \*

(i) *Effective/applicability date.* Paragraphs (g)(1) through (g)(5) of this section apply to distributions occurring after October 20, 2011. For rules regarding distributions occurring on or before October 20, 2011, see § 1.355–2T(i), as contained in 26 CFR part 1, revised as of April 1, 2011.

**§ 1.355–0T [Removed]**

■ **Par. 5.** Section 1.355–0T is removed.

**§ 1.355–2T [Removed]**

■ **Par. 6.** Section 1.355–2T is removed.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: October 14, 2011.

**Emily S. McMahon,**

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

[FR Doc. 2011–27240 Filed 10–19–11; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF JUSTICE**

**28 CFR Part 104**

[Docket No. CIV 151]

RIN 1105–AB39

**James Zadroga 9/11 Health and Compensation Act of 2010**

**AGENCY:** Department of Justice.

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Justice is correcting a final rule that appeared in the *Federal Register* of August 31, 2011 (76 FR 54112). That document issued regulations implementing the amendments made by the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act) with respect to the September 11th Victim Compensation Fund of 2001.

**DATES:** Effective October 3, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue, NW., Washington, DC 20530, telephone 855–885–1555 (TTY 855–885–1558).

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2011–22160 appearing on page 54112 in the *Federal Register* on Wednesday, August 31, 2011, the following correction is made:

1. On page 54119, in the third column, the paragraph following the heading “Small Business Regulatory Enforcement Fairness Act of 1996” is revised to read as follows:

“The Office of Management and Budget has determined that this rule is a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 804. This rule will not result in a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. However, the compensation benefits awarded to eligible claimants will have an annual beneficial impact on the economy of \$100,000,000 or more in certain years until the amounts authorized and appropriated for the Victims Compensation Fund are fully distributed.

“Title II of the Zadroga Act reactivates the September 11th Victim Compensation Fund of 2001 and requires a Special Master, appointed by

the Attorney General, to provide compensation to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal efforts that took place in the immediate aftermath of those crashes. In view of the need to begin processing compensation claims as soon as possible, it is impracticable for the Department to comply with the requirements of section 801 of the Congressional Review Act, 5 U.S.C. 801, pertaining to delayed effective dates of major rules without unduly delaying the processing of claims. Section 808(2) of the Congressional Review Act, 5 U.S.C. 808(2), provides: “Notwithstanding section 801—\* \* (2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.” Were the Department not to invoke the exception provided in section 808(2) of the Congressional Review Act, eligible claimants would have to wait substantially longer to begin filing their claims, thereby impairing Congress’s goal of providing compensation in as expeditious a manner as possible (as evidenced by the short statutory deadline for implementation). Such a delay in implementing the compensation process would be clearly contrary to the public interest. For the foregoing reasons, the Special Master finds pursuant to section 808(2) of the Congressional Review Act, 5 U.S.C. 808, that good cause exists to make this final rule effective October 3, 2011.”

Dated: October 12, 2011.

**Sheila L. Birnbaum,**

*Special Master.*

[FR Doc. 2011–27121 Filed 10–19–11; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 211**

[Docket ID: DOD–2011–OS–0054; RIN 0790–AI69]

**Mission Compatibility Evaluation Process**

**AGENCY:** Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.