Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–90; NRC–2008–0279]

Natural Resources Defense Council; Receipt of Petition for Rulemaking; Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; reopening of public comment period.

SUMMARY: On May 27, 2008 (73 FR 30321), the Nuclear Regulatory Commission (NRC) published for public comment a notice of receipt of a petition for rulemaking, dated March 24, 2008, which was filed with the Commission by Thomas B. Cochran and Matthew G. McKinzie on behalf of the Natural Resources Defense Council. The petition was docketed by the NRC on April 3, 2008, and has been assigned Docket No. PRM–50–90. On August 4 and August 6, 2008, several external stakeholder groups requested a 45 day extension of the public comment period owing to the details provided in the initial petition, short initial comment period, importance of the rulemaking, and the need for directly impacted stakeholders to provide substantive comments to the rulemaking process. The NRC is reopening the comment period on the petition for an additional 45 days from the original August 11, 2008 deadline. The comment period closes on September 25, 2008.

DATES: The comment period has been reopened and now expires on September 25, 2008. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments on this petition by any one of the following methods. Please include *PRM–50–90* in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2008–0279]. Address questions about NRC dockets to Carol Gallagher, 301–415–5905; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: rulemaking.comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays, telephone number 301–415–1677.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101. Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the Federal eRulemaking Portal *http://www.regulations.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

A paper copy of the petition may be obtained by contacting Betty Golden, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–6863, toll-free 1–800–368–5642, or by e-mail to *Betty.Golden@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7163 or toll-free 1–800–368–5642.

For the U.S. Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 19th day of August 2008.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–19609 Filed 8–22–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143544–04]

RIN 1545–BD84

Regulations Enabling Elections for Certain Transactions Under Section 336(e)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 336(e) of the Internal Revenue Code. These proposed regulations, when finalized, would permit taxpayers to make an election to treat certain sales, exchanges, and distributions of another corporation's stock as taxable sales of that corporation's assets. These proposed regulations will affect corporations and their shareholders.

DATES: Written or electronic comments and requests for a public hearing must be received by November 24, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–143544–04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–143544–

04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–143544–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Mark J. Weiss, (202) 622–7750; concerning submissions of comments and the hearing, Richard Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. Comments on the collection of information should be received by October 24, 2008.

The collection of information in this proposed regulation is in proposed §§ 1.336–2(h) and 1.336–4(c)(4)). This information is required by the IRS to allow certain parties to make a section 336(e) election and for certain shareholders to make a gain recognition election. The likely recordkeepers are business or other for-profit institutions.

The estimated burden is as follows:

Estimated total annual reporting and/or recordkeeping burden: 500 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 250.

Estimated annual frequency of responses: Once.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Any such comments should be submitted not later than October 24, 2008.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Section 336(e) of the Internal Revenue Code (Code) authorizes the issuance of regulations under which a corporation (seller) that owns stock in another corporation (target) meeting the requirements of section 1504(a)(2) and sells, exchanges, or distributes all of such stock may make an election to treat the sale, exchange, or distribution of the target stock as a sale of all of target's underlying assets. Section 336(e) was enacted as part of the legislation repealing the General Utilities rule and, like an election under section 338(h)(10), is meant to provide taxpayers relief from a potential multiple taxation at the corporate level of the same economic gain which can result when a transfer of appreciated corporate stock is taxed to a corporation without providing a corresponding step-up in the basis of the assets of the corporation. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, 198, 204 (1986), 1986–3 C.B., Vol. 4, 198–207.

A. Scope of the Proposed Regulations

Pursuant to section 336(e), regulations may authorize a section 336(e) election in a broad set of circumstances. The IRS and Treasury Department have limited the scope of these proposed regulations, however, in order to provide guidance to a large number of taxpayers in the most efficient manner possible. These proposed regulations, when finalized, will provide the requirements and mechanics for, and consequences of, treating a stock sale, exchange, or distribution that would not otherwise be eligible for a section 338 election as a deemed asset sale.

The IRS and Treasury Department do not presently intend to authorize the making of section 336(e) elections under all the circumstances described within the statutory grant of authority. However, the IRS and Treasury Department are interested in comments regarding transactions beyond the scope of these proposed regulations for which such elections should be allowed and under what terms and conditions. For example, these proposed regulations do not apply to transactions between related persons. For this purpose, persons are related if stock in a corporation owned by one of the persons would be attributed to the other person under section 318(a), other than section 318(a)(4). See proposed § 1.336–1(b)(11). The IRS and Treasury Department continue to study the possibility of making a section 336(e) election available for such transactions. Accordingly, comments are requested regarding dispositions to related persons, including special rules needed to prevent the use of net operating losses to offset liquidation gains, manipulation of earnings and profits, and changes of accounting methods. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II at 204 (1986).

Additionally, these proposed regulations do not apply to transactions in which either the seller or the target is a foreign corporation. The IRS and Treasury Department request comments regarding how the rules of the proposed regulations should be modified to take into account the policies of international tax provisions if the proposed regulations were extended to apply to foreign sellers and/or foreign targets. For example, comments are requested regarding: (1) How the principles of section 338(h)(16) should apply; (2) how the foreign tax allocation rule of § 1.338–9(d) should apply; (3) the characterization of the gain recognized on the deemed asset disposition for purposes of section 954(c)(1)(B); (4) whether special earnings and profits rules are necessary (see, for example, the rules described in Prop. Treas. Reg. § 1.367(b)–8); and (5) how the withholding tax provisions of section 1445 should apply to the deemed asset disposition (if relevant).

The IRS and Treasury Department continue to study issues related to elections made under section 338(g) in the international area. Comments are requested on issues in this area, including the interaction of section 338(h)(16) with sections 902 and 960.

Absent the issuance of further guidance, it is intended that these regulations would provide the exclusive means of making elections under section 336(e). See proposed § 1.336–2(a).

B. General Principles

1. General Adoption of Section 338(h)(10) Principles

The legislative history to section 336(e) provides that principles similar to those of section 338(h)(10) should apply in the case of a section 336(e) election. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, at 204

(1986). These proposed regulations implement such principles. Accordingly, except to the extent inconsistent with the purposes of section 336(e) or as otherwise described, the results of a section 336(e) election coincide with those of a section 338(h)(10) election. Whenever possible, these proposed regulations rely upon and use the structure and principles established under section 338(h)(10) and the underlying regulations. For example, these regulations refer to principles under the section 338 regulations regarding the allocation of consideration, application of the asset and stock consistency rules, treatment of minority shareholders, and the availability of the section 453 installment method. In other instances, definitions and concepts from section 338 and the underlying regulations have been modified to reflect principles applicable to section 336(e). For example, these proposed regulations generally use the term ''disposition'' rather than ''acquisition or purchase'' and the term ''sale, exchange, or distribution'' instead of ''sale.'' Thus, a qualified stock disposition is defined as any transaction or series of transactions in which stock meeting the requirements of section 1504(a)(2) of a domestic corporation is either sold, exchanged, or distributed, or any combination thereof, by another domestic corporation in a disposition, within the meaning of proposed § 1.336–1(b)(4), during the 12-month disposition period. See proposed § 1.336–1(b)(5).

These proposed regulations also provide that a transaction that satisfies the definition of both a qualified stock disposition and a qualified stock purchase (as defined in section 338(d)(3)) generally will be treated only as a qualified stock purchase and thus does not qualify for an election under these regulations. See proposed § 1.336–1(b)(5)(ii)).

2. Requirements for a Section 336(e) Election

Section 336(e) requires that a seller own stock in another corporation meeting the requirements of section 1504(a)(2) and sell, exchange, or distribute all of such stock to qualify for a section 336(e) election. For purposes of these proposed regulations, a seller is a domestic corporation that makes a qualified stock disposition and includes a transferor and a distributor of target stock. See proposed § 1.336–1(b)(1). Generally, all members of a seller's consolidated group are treated as a single seller. See proposed § 1.336–2(g)(2). Thus, similar to a section 338(h)(10) election, a section 336(e) election is available to a seller that directly owns stock of target meeting the requirements of section 1504(a)(2) and to sellers which are members of a consolidated group for the taxable year that includes the disposition date that in the aggregate own stock of target meeting the requirements of section 1504(a)(2). Because section 336(e) requires a corporate seller, the election is not available with respect to the stock of an S corporation. See proposed § 1.336–1(b)(5). Cf. § 1.338(h)(10)–1(c)(1).

These proposed regulations interpret section 336(e) as requiring only that an amount of stock meeting the requirements of section 1504(a)(2) be disposed of and not that every share of stock owned by the seller be disposed of. Accordingly, the seller, or a member of seller's consolidated group, may retain a portion of its target stock. See proposed §§ 1.336–2(b)(1)(v) and 1.336–2(b)(2)(iv). Furthermore, these proposed regulations permit amounts of target stock sold, exchanged, and distributed to be aggregated for purposes of determining whether there has been a qualified stock disposition. For example, a domestic corporation's sale of 50 percent of target's stock to an unrelated person and a distribution to its unrelated shareholders of the remaining 50 percent within a 12-month period would constitute a qualified stock disposition. See proposed § 1.336–1(b)(5).

In contrast to section 338, which requires a corporate purchaser, these proposed regulations define a purchaser as any person or persons who receive stock of target in a qualified stock disposition. Accordingly, a section 336(e) election is available for sales, exchanges, or distributions (or a combination thereof) of target stock to both corporate and non-corporate purchasers, provided that the target stock is not sold, exchanged, or distributed to a related person. See proposed §§ 1.336–1(b)(2) and 1.336–1(b)(4)(i)(C).

Any stock sold, exchanged, or distributed to a related party is not considered to be disposed of for purposes of determining whether there has been a qualified stock disposition. See proposed §§ 1.336–1(b)(4)(i)(C) and 1.336–1(b)(5)(i). Relatedness generally is determined immediately after the sale, exchange, or distribution of target stock occurs (see proposed §§ 1.336–1(b)(4)(iii), 1.336–1(b)(11), and 1.338–3(b)(3)).

C. Sales or Exchanges of Target Stock

In general, if a seller sells or exchanges target stock in a qualified stock disposition, the treatment of old target, seller, and purchaser are similar to the treatment of old target (old T), S, and P under section 338(h)(10). See § 1.338(h)(10)–1. If an election is made under section 336(e), the seller disregards the actual sale or exchange of target stock. Instead, target (old target) is treated as selling all of its assets to an unrelated corporation in a single transaction at the close of the disposition date (the deemed asset disposition). Old target recognizes the deemed disposition tax consequences from the deemed asset disposition before the close of the disposition date while it is a subsidiary of seller. After the deemed asset disposition, old target is then treated as liquidating into seller which in most cases will be treated as a distribution in complete liquidation to which section 332 and section 336 or 337 applies. Additionally, consistent with a section 338 election, the deemed purchase of the assets of old target by new target constitutes a deemed purchase of any subsidiary stock owned by target. Accordingly, a section 336(e) election is available for the deemed purchase of the stock of a target subsidiary if it constitutes a qualified stock disposition. A section 336(e) election generally does not change the tax consequences of the acquisition to a purchaser of target stock.

D. Distributions of Target Stock Not Described in Section 355(d)(2) or (e)(2)

A section 336(e) election can be made for a distribution of target stock, and the legislative history to section 336(e) provides that ''[t]he conferees do not intend this election to affect the manner in which a corporation's distribution to its shareholders will be characterized for purposes of determining the shareholder level income tax consequences.'' H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, at 204 (1986). Accordingly, additional rules are required to address distributions and to ensure that the income tax consequences to a distributee are generally the same as if a section 336(e) election was not made.

Specifically, these proposed regulations provide that if seller (the distributor) distributes old target stock in the qualified stock disposition, seller is deemed to purchase from new target on the disposition date, immediately after the deemed liquidation of old target, the amount of stock distributed in the qualified stock disposition and to have distributed such new target stock

to its shareholders. Seller recognizes no gain or loss on the distribution. See proposed § 1.336–2(b)(1)(iv). The distributee's tax consequences generally shall be the same as if it received the target stock pursuant to the underlying distribution. However, the Federal income tax consequences of the deemed asset disposition and liquidation of target may affect the distributee's income tax consequences. For example, if seller distributes the stock of target to its shareholders in a qualified stock disposition for which a section 336(e) election is made, any increase in seller's earnings and profits as a result of old target's deemed asset disposition and liquidation into seller may alter the amount of the distribution to the shareholders constituting a dividend under section 301(c)(1) from the amount that would have resulted if seller recognized gain on the stock distribution. See proposed § 1.336–2(c).

If a seller actually distributed stock of a subsidiary or assets under section 301, it generally would be prevented from recognizing any loss. See section 311(a). The IRS and Treasury Department believe that it would be inconsistent with the general treatment of distributions to allow losses to be recognized on the section 336(e) deemed asset disposition to the extent the qualified stock disposition was the result of a stock distribution. Therefore, under these proposed regulations, only a portion of the losses realized on the deemed asset disposition may be recognized. The portion of any realized loss that may be recognized is based on a fraction equal to the value of the target stock sold or exchanged in the qualified stock disposition on or before the disposition date over the total value of target stock disposed of in the qualified stock disposition on or before the disposition date. In the case of a section 336(e) election for a subsidiary of target, for purposes of determining the amount of loss that may be recognized by the subsidiary on the deemed asset disposition, only the percentage of the stock of the target subsidiary deemed sold by target equal to the percentage of the stock of target sold or exchanged is considered to have been sold or exchanged. See proposed §§ 1.336–2(b)(1)(i)(B)(*2*) and (*3*). Thus, losses realized in the deemed asset disposition are not recognized to the extent the qualified stock disposition is attributable to the distribution of target stock.

E. Section 355 Distributions

1. Availability of Section 336(e) Election for Certain Section 355 Distributions

The legislative history to section 336(e) indicates that the election is intended to be available for taxable transactions. Specifically, the Conference Report provides that, ''principles similar to those of section 338(h)(10) may be applied to taxable sales or distributions of controlled corporation stock.'' H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, at 204 (1986). The legislative history to section 355(e) provides that although there is no adjustment to the basis of stock or assets as a result of the recognition of gain under section 355(e), ''[t]here is no intention to limit the otherwise applicable Treasury regulatory authority under section 336(e) of the Code.'' H.R. Conf. Rep. 220, 105th Cong., 1st Sess., 531–532, footnote 13 (1997), 1997–4 C.B. Vol. 4, 531, 532. Accordingly, these proposed regulations would allow a corporation that would otherwise recognize the full amount of the gain realized with respect to a qualified stock disposition resulting, in whole or in part, from a disposition described in section 355(d)(2) or (e)(2) to make a section 336(e) election. Without a section 336(e) election, such provisions may create a triple layer of taxation, one at the controlled corporation level, one at the distributing corporation level and, ultimately, one at the shareholder level. Allowing a section 336(e) election in these circumstances limits taxation to two layers, one at the controlled corporation level and one at the shareholder level when the controlled corporation stock is disposed of, and thus is consistent with *General Utilities* repeal.

2. Special Rules for Distributions Described in Section 355(d)(2) or 355(e)(2)

Generally, a section 336(e) election, like a section 338(h)(10) election, results in a deemed sale of old target's assets followed by a liquidation of old target into seller, which if made in a transaction to which section 381 applied, results in old target's attributes being transferred to the seller. Accordingly, consistent with a taxable asset acquisition, after the transaction new target generally has no tax attributes or earnings and profits, and holds its assets with a cost basis. In contrast, a section 355 distribution is generally tax-free to the distributing corporation's shareholders, even if the transaction is described in section 355(d)(2) or 355(e)(2). Further, following a section 355 distribution, the controlled corporation generally retains tax attributes and earnings and profits. The IRS and Treasury Department believe that, except as necessary to carry out the purposes of section 336(e), the section 355 consequences generally should continue to apply in such a transaction. For example, if the controlled corporation were treated as a new corporation, with no earnings and profits, the controlled corporation may be able to distribute its assets to its shareholders without recognizing any dividend consequences under section 301(c)(1). Therefore, to preserve the consequences of section 355 distributions, the proposed regulations provide special rules.

If a section 336(e) election is made for a distribution of the controlled corporation stock in a transaction described in section 355(d)(2) or 355(e)(2), the controlled corporation is treated as if it sold its assets to an unrelated person in the deemed asset disposition and then it reacquired those assets (sale-to-self treatment). Following the deemed asset disposition, the controlled corporation (old target) is not deemed to liquidate into the distributing corporation (seller). See proposed § 1.336–2(b)(2)(i)(A). Instead, the controlled corporation (old target) is treated as acquiring all of its assets from an unrelated person in a single, separate transaction at the close of the disposition date, and then the distributing corporation is treated as distributing the stock of the controlled corporation (old target) to its shareholders. See proposed § 1.336–2(b)(2)(ii) and (iii). Because no liquidation of old target into seller is deemed to occur, the controlled corporation (old target) will generally retain the tax attributes it would have had if the section 336(e) election had not been made. The proposed regulations further provide that the controlled corporation (old target) will take the effects of the deemed asset disposition into account and increase or decrease its earnings and profits immediately before allocating earnings and profits pursuant to § 1.312–10. See proposed § 1.336–2(b)(2)(vi). Finally, the deemed sale and reacquisition of target's assets (and, in the case of a parent-subsidiary chain of corporations making section 336(e) elections, a target subsidiary's assets) pursuant to the deemed asset disposition will not cause the transaction to fail to satisfy the requirements of section 355. See proposed § 1.336–2(b)(2)(v).

Similar to a qualified stock disposition resulting from a distribution not involving a transaction described in section 355(d)(2) or (e)(2), old target's

losses in the deemed asset disposition will be recognized, but only in relation to the amount of stock sold or exchanged in the qualified stock disposition on or before the disposition date. See §§ 1.336–2(b)(2)(i)(B)(*2*) and (*3*).

Notwithstanding the fact that the sale-to-self treatment applies to a distribution of stock described in section 355(d)(2) or (e)(2), if old target has any subsidiaries for which a section 336(e) election is made, the general deemed asset disposition methodology shall apply. Accordingly, old target subsidiary is treated as though it sold all its assets to an unrelated person, new target subsidiary is deemed to purchase all its assets from an unrelated person, and old target subsidiary is deemed to liquidate into old target. If the sale-to-self treatment was applied, target subsidiary's attributes would remain with target subsidiary. The IRS and Treasury Department do not believe that taxpayers should have the option of whether the attributes become those of target, by doing an actual sale of target subsidiary's assets followed by a liquidation of target subsidiary, or remain with target subsidiary, by making a section 336(e) election for target subsidiary. Accordingly, the regulations apply the general deemed asset disposition methodology for section 336(e) elections for target subsidiaries in a distribution of target stock described in section 355(d)(2) or (e)(2).

3. Intragroup Sales, Exchanges, or Distributions Prior to External Sales, Exchanges, or Distributions

Generally, if the stock of a target is transferred within an affiliated group and then is further transferred outside the affiliated group, a section 336(e) election is not available for the intragroup transfer because a qualified stock disposition may not be made between related sellers and purchasers. Thus, stock level gain may be recognized on the intragroup transfer. While a section 336(e) election may be available for the external transfer, this election would result in the affiliated group recognizing gain both on target's assets and the target stock, contrary to the intent of these proposed regulations. Comments are requested on how to address this concern. Further, because section 355(f) provides that section 355 does not apply to an intragroup distribution prior to an external distribution described in section 355(e)(2), these comments should address the concerns that section 355(f) is intended to address for distributions described therein.

F. Aggregate Deemed Asset Disposition Price (ADADP) and Adjusted Grossed Up Basis (AGUB)

These proposed regulations create a new term, aggregate deemed asset disposition price (ADADP). These proposed regulations retain the term adjusted grossed up basis (AGUB) as used in section 338. See § 1.338–5. In general, these proposed regulations treat ADADP and AGUB similarly to the way aggregate deemed sale price (ADSP) and AGUB are treated under the section 338 regulations. See proposed §§ 1.336–3 and 1.336–4. Old target recognizes all of the gain realized on the deemed transfer of its assets in exchange for the ADADP and allocates the ADADP among the assets held as of the disposition date (in the same manner as ADSP is allocated under §§ 1.338–6 and 1.338–7). See proposed §§ 1.336–2(b)(1)(i) and 1.336–2(b)(2)(i). ADADP is calculated by adding the grossed-up amount realized on the sale, exchange, or distribution of recently disposed target stock and the liabilities of old target. See proposed § 1.336–3(b)(1). These proposed regulations account for the fact that there is no actual amount realized in a distribution of stock by treating the grossed-up amount realized on the sale, exchange, or distribution as including in the amount realized the fair market value of recently disposed target stock distributed in the qualified stock disposition. See proposed § 1.336–3(c)(1)(i)(B).

These proposed regulations also create a new term, nonrecently disposed stock. The term nonrecently disposed stock has a similar meaning to the term nonrecently purchased stock in section 338(b)(6)(B). In a transaction for which a section 338 election is made, there is only one purchasing corporation (or an affiliated group treated as a purchasing corporation). Accordingly, in most cases, it should be relatively easy to determine the purchaser's basis in nonrecently purchased stock in order to determine AGUB. However, in a section 336(e) election, there can be multiple purchasers or multiple distributees, many of whom may have acquired small amounts of target stock prior to the 12-month disposition period. While a more precise determination of AGUB would require the determination of the basis of all such stockholdings, the IRS and Treasury Department recognize that it would often be impractical to require a seller to determine and track all the purchasers (and distributees) possessing small amounts of nonrecently purchased stock. Generally, purchasers holding at least 10 percent of the total voting power or value of the stock of target should be readily identifiable through mandatory SEC filings and other sources. Thus, in order to balance a desire for precision with a practical application, nonrecently disposed stock is defined as stock in a target corporation which is held on the disposition date by a purchaser or a person related to a purchaser who owns, on the disposition date, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of the stock of target, and which is not recently disposed stock. See proposed § 1.336–1(b)(17).

In general, proposed § 1.336–4 uses the same principles as paragraphs (b) through (g) of § 1.338–5 to determine the amount of AGUB for target and the consequences of a gain recognition election. Proposed § 1.336–4(b) contains modifications to the principles of § 1.338–5 to reflect the principles of section 336(e).

New target is treated as acquiring all of its assets from an unrelated person in a single transaction at the close of the disposition date, but before the deemed liquidation (or, in the case of a transaction described in section 355(d)(2) or (e)(2), before the distribution) in exchange for an amount equal to the AGUB as determined under proposed § 1.336–4. New target allocates the consideration deemed paid in the same manner as new target would as described in §§ 1.338–6 and 1.338–7 in order to determine the basis in each of the transferred assets. See proposed §§ 1.336–2(b)(1)(ii) and 1.336–2(b)(2)(ii). In the case of a disposition described in section 355(d)(2) or (e)(2), any reference to new target is treated as referring to old target in its capacity as the purchaser of assets pursuant to the section 336(e) election. See proposed § 1.336–4(b)(4).

Consistent with the principles of a section 338(h)(10) election, any stock retained by a seller or a member of seller's consolidated group after the 12-month disposition period is treated as acquired by the seller on the day after the disposition date at its fair market value. For this purpose, the fair market value of all the target stock equals the grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock. See proposed §§ 1.336–2(b)(1)(v) and 1.336–2(b)(2)(iv). A minority shareholder (that is, a shareholder that is neither the seller that disposes of 80 percent of the voting power and value of target stock nor a member of seller's consolidated group) is generally not affected by a section 336(e) election. Accordingly, such a minority shareholder that disposes of its

target stock will recognize gain or loss on the stock without regard to the section 336(e) election, and a minority shareholder that retains its target stock retains its basis and holding period in its target stock. See proposed § 1.336–2(d).

Under proposed § 1.336–4(c), a holder of nonrecently disposed stock may make a gain recognition election, similar to the gain recognition election under section 338, which treats the nonrecently disposed stock as being sold as of the disposition date. The gain recognition election is mandatory if a purchaser owns (after the application of the rules of section 318(a), other than section 318(a)(4)) 80 percent or more of the voting power or value of target stock. See proposed §§ 1.336–1(b)(15) and 1.336–4(c)(2). Cf. §§ 1.338(h)(10)–1(d)(1) and 1.338–5(d). Once made, a gain recognition election is irrevocable. See proposed § 1.336–4(c)(1). The IRS and Treasury Department request comments on whether the rules regarding gain recognition elections in these proposed regulations are appropriate, and whether the gain recognition election rules in regulations promulgated under section 338 should continue to apply. Also, see the ''Correction to section 1.338–5'' section of this preamble addressing a correction to the definition of the term *basis amount,* the amount used in determining the purchasing corporation's gain on the deemed sale of stock pursuant to the gain recognition election and in determining AGUB.

G. Making the Section 336(e) Election

These proposed regulations provide that a section 336(e) election is made by seller attaching a statement to its timely filed Federal income tax return for the taxable year that includes the disposition date. See proposed § 1.336–2(h). If the seller is a member of a consolidated group, the statement is filed with the group's consolidated return.

The IRS and Treasury Department believe that it is appropriate to allow the seller (or the common parent of the seller's consolidated group) to unilaterally make the section 336(e) election. The IRS and Treasury Department believe that in a distribution of target stock, it would be impractical to require each distributee, who generally will hold relatively small percentages of the target stock, to join in the election. Further, the distributees' interests should generally be protected because of the distributing corporation's fiduciary responsibilities to its shareholders. In the case of a sale or exchange, the purchasers should be able to protect their interests in any purchase contract. Comments are requested regarding whether it is appropriate to allow such unilateral section 336(e) elections in all cases.

The information required on a section 336(e) election statement is similar to that required on Form 8023, Elections Under Section 338 for Corporations Making Qualified Stock Purchases. In the case of a gain recognition election, the section 336(e) election statement must include information pertaining to the gain recognition election.

When finalized, these proposed regulations will permit taxpayers to make a protective section 336(e) election if they are unsure of whether a transaction constitutes a qualified stock disposition. If such an election is made, it will not have any effect if the transaction does not constitute a qualified stock disposition but will otherwise be binding and irrevocable. See proposed § 1.336–2(j).

H. Correction to § 1.338–5

Section 338(b)(3)(A) authorizes regulations under which the purchasing corporation may elect to step up its basis in nonrecently purchased stock (gain recognition election) to a ''basis amount.'' Under section 338(b)(3)(B), the basis amount is equal to the grossed-up basis of the purchasing corporation's recently purchased stock multiplied by a fraction, the numerator of which is the percentage of target stock attributable to the purchasing corporation's nonrecently purchased stock and the denominator of which is 100 percent minus the numerator amount.

Section 1.338–5(d) provides for the above described gain recognition election. Section 1.338–5(d)(3)(ii) provides that the basis amount is equal to the amount in § 1.338–5(c)(1) (the purchasing corporation's basis in recently purchased target stock determined without regard to acquisition costs) multiplied by a fraction, the numerator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount. Section 1.338–5(d)(3)(ii) goes on to state, ''[t]hus, if target has a single class of outstanding stock, the purchasing corporation's basis in each share of nonrecently purchased target stock after the gain recognition election is equal to the average price per share of the purchasing corporation's recently purchased target stock.''

However, unless the purchasing corporation purchases all of the outstanding stock of target (other than the purchasing corporation's nonrecently purchased stock) within the 12-month acquisition period on or before the acquisition date, the formula in the regulations will not result in the purchasing corporation's basis in each share of nonrecently purchased stock equaling the average price of the recently purchased stock. Only if the basis in the recently purchased stock is grossed-up (as provided by the Code) will such result be achieved. In fact, § 1.338–5(g), *Example 1,* paragraph (v), in demonstrating the effect of a gain recognition election, uses the grossed-up basis in the recently purchased stock, not the non-grossed-up basis, consistent with both the Code and the intent of the regulation. Accordingly, § 1.338–5(d)(3)(ii) is corrected to use the grossed-up basis of recently purchased stock in determining the basis amount, rather than the non-grossed-up basis.

I. Proposed Effective/Applicability Date

These proposed regulations are proposed to apply to any qualified stock disposition for which the disposition date is on or after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations do not have a substantial economic impact because they merely provide for an election in the context of certain sales, exchanges, and distributions of stock of corporations. Moreover, they are expected to apply predominantly to transactions involving larger businesses because the election is only applicable for certain dispositions of stock of an affiliated subsidiary. Accordingly, 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, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations,

consideration will be given to any written comments (a signed original and eight copies) or electronic comments that are submitted timely to the IRS. In addition to the specific requests for comments made elsewhere in this preamble, the IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Mark J. Weiss of the Office of Associate Chief Counsel (Corporate). 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.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.336–1 is also issued under 26 U.S.C. 336. * * *

Section 1.336–2 is also issued under 26 U.S.C. 336. * * *

Section 1.336–3 is also issued under 26 U.S.C. 336. * * *

Section 1.336–4 is also issued under 26 U.S.C. 336. * * *

Section 1.336–5 is also issued under 26 U.S.C. 336. * * *

Par. 2. Sections 1.336–0 through 1.336–5 are added to read as follows:

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This section lists captions contained in §§ 1.336–1, 1.336–2, 1.336–3, 1.336–4, and 1.336–5.

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§ 1.336–1 General principles, nomenclature, and definitions for a section 336(e) election.

(a) *Overview.* Section 336(e) authorizes the promulgation of regulations under which, in certain circumstances, a sale, exchange, or distribution of the stock of a subsidiary may be treated as an asset sale. This section and §§ 1.336–2 through 1.336–5 provide the rules for and consequences of making such election. This section provides the definitions and nomenclature. Generally, except to the extent inconsistent with section 336(e), the results of a section 336(e) election should coincide with those of a section 338(h)(10) election. Accordingly, to the extent not otherwise addressed in these regulations nor inconsistent with section 336(e), the principles of section 338 and the regulations under section 338 apply for purposes of these regulations. For example, § 1.338–8 (concerning asset and stock consistency)

and § 1.338(h)(10)–1(d)(8) (concerning the availability of the section 453 installment method) may apply with respect to a section 336(e) election.

(b) *Definitions.* For purposes of §§ 1.336–1 through 1.336–5 (except as otherwise provided):

(1) *Seller.* The term *seller* means any domestic corporation that makes a qualified stock disposition of stock of another corporation. A seller includes both a transferor and a distributor of target stock. Generally, all members of a consolidated group that dispose of target stock are treated as a single seller. See § 1.336–2(g)(2).

(2) *Purchaser.* The term *purchaser* means one or more persons that receive the stock of another corporation in a qualified stock disposition. A purchaser includes both a transferee and a distributee of target stock.

(3) *Target; target corporation; old target; new target.* The term *target* or *target corporation* means any domestic corporation the stock of which is sold, exchanged, or distributed by another domestic corporation in a qualified stock disposition. In the case of a transaction not described in section 355(d)(2) or (e)(2), ''old target'' refers to target for periods ending on or before the close of target's disposition date and ''new target'' refers to target for subsequent periods. In the case of a transaction described in section 355(d)(2) or (e)(2), ''old target'' refers to target for periods ending on or before the disposition date as well as for subsequent periods.

(4) *Disposed of; disposition*—(i) *In general.* The term *disposed of* refers to a transfer of stock in a disposition. The term *disposition* means any sale, exchange, or distribution of stock, but only if—

(A) The basis of the stock in the hands of the purchaser is not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired or under section 1014(a) (relating to property acquired from a decedent),

(B) Except as provided in paragraph (b)(4)(ii) of this section, the stock is not sold, exchanged, or distributed in a transaction to which section 351, 354, 355, or 356 applies and is not sold, exchanged, or distributed in any transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized in the transaction, and

(C) The stock is not sold, exchanged, or distributed to a related person.

(ii) *Exception for disposition of stock in certain section 355 transactions.* Notwithstanding paragraph (b)(4)(i)(B) of this section, a distribution of stock to a person who is not a related person in a transaction in which the full amount of stock gain would be recognized pursuant to section 355(d)(2) or (e)(2) shall be considered a disposition.

(iii) *Transactions with related persons.* In determining whether stock is sold, exchanged, or distributed to a related person, the principles of section 338(h)(3)(C) and § 1.338–3(b)(3) shall apply.

(iv) *No consideration paid.* Stock in a target may be considered disposed of if, under general principles of tax law, the seller is considered to sell, exchange, or distribute stock of the target notwithstanding that no amount may be paid for (or allocated to) the stock.

(v) *Disposed of stock reacquired by certain persons.* Stock disposed of to another person under this section which is reacquired by the seller or a member of the seller's consolidated group within the 12-month disposition period shall not be considered as disposed of.

(5) *Qualified stock disposition*—(i) *In general.* The term *qualified stock disposition* means any transaction or series of transactions in which stock meeting the requirements of section 1504(a)(2) of a domestic corporation is either sold, exchanged, or distributed, or any combination thereof, by another domestic corporation in a disposition, within the meaning of paragraph (b)(4) of this section, during the 12-month disposition period.

(ii) *Overlap with qualified stock purchase*—(A) *In general.* Except as provided in paragraph (b)(5)(ii)(B) of this section, a transaction satisfying the definition of a qualified stock disposition under paragraph (b)(5)(i) of this section which also qualifies as a qualified stock purchase (as defined in section 338(d)(3)) will not be treated as a qualified stock disposition.

(B) *Exception.* If, as a result of the deemed sale of old target's assets pursuant to a section 336(e) election, there would be, but for paragraph (b)(5)(ii)(A) of this section, a qualified stock disposition of the stock of a subsidiary of target, then paragraph (b)(5)(ii)(A) shall not apply.

(6) *12-month disposition period.* The term *12-month disposition period* means the 12-month period beginning with the date of the first sale, exchange, or distribution of stock included in a qualified stock disposition.

(7) *Disposition date.* The term *disposition date* means, with respect to any corporation, the first day on which there is a qualified stock disposition with respect to the stock of such corporation.

(8) *Disposition date assets. Disposition date assets* are the assets of the target held at the beginning of the day after the disposition date (but see § 1.338–1(d) (regarding certain transactions on the disposition date)).

(9) *Domestic corporation.* The term *domestic corporation* has the same meaning as in § 1.338–2(c)(9).

(10) *Section 336(e) election.* A section 336(e) election is an election to apply section 336(e) to target. A section 336(e) election is made by making an election for target under § 1.336–2(h).

(11) *Related persons.* Two persons are related if stock of a corporation owned by one of the persons would be attributed under section 318(a), other than section 318(a)(4), to the other.

(12) *Liquidation.* Any reference to a liquidation is treated as a reference to the transfer described in § 1.336–2(b)(1)(iii) notwithstanding its ultimate characterization for Federal income tax purposes.

(13) *Deemed asset disposition.* The deemed sale of old target's assets is, without regard to its characterization for Federal income tax purposes, referred to as the deemed asset disposition.

(14) *Deemed disposition tax consequences.* Deemed disposition tax consequences refers to, in the aggregate, the Federal income tax consequences (generally, the income, gain, deduction, and loss) of the deemed asset disposition. Deemed disposition tax consequences also refers to the Federal income tax consequences of the transfer of a particular asset in the deemed asset disposition.

(15) *80-percent purchaser.* An 80-percent purchaser is any purchaser that, after application of the attribution rules of section 318(a), other than section 318(a)(4), owns 80 percent or more of the voting power or value of the target corporation stock.

(16) *Recently disposed stock.* The term *recently disposed stock* means any stock in the target corporation which is not held by a seller or a member of the seller's consolidated group immediately after the close of the disposition date and which was sold, exchanged, or distributed by a seller during the 12-month disposition period. If, within the 12-month disposition period, stock is sold, exchanged, or distributed, then reacquired by a seller, and then sold, exchanged, or distributed again, only the last sale, exchange, or distribution of the reacquired stock in the 12-month disposition period may be recently disposed stock.

(17) *Nonrecently disposed stock.* The term *nonrecently disposed stock* means stock in the target corporation which is held on the disposition date by a

purchaser or a person related (as described in § 1.336–1(b)(11)) to the purchaser who owns, on the disposition date, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of the stock of target and which is not recently disposed stock.

(c) *Nomenclature.* For purposes of §§ 1.336–1 through 1.336–5, except as otherwise provided, Parent, Seller, Target, Target Subsidiary, and Sub are domestic corporations and A, B, C, and D are individuals, none of whom are related to Parent, Seller, Target, Target Subsidiary, Sub, or each other.

§ 1.336–2 Availability, mechanics, and consequences of section 336(e) election.

(a) *Availability of election.* A section 336(e) election is available if a seller makes a disposition of stock of another corporation (target) in a qualified stock disposition (as defined in § 1.336–1(b)(5)). A section 336(e) election is irrevocable. A section 336(e) election is not available for transactions described in section 336(e) that do not constitute qualified stock dispositions, as defined in § 1.336–1(b)(5).

(b) *Deemed transaction*—(1) *Dispositions not described in section 355(d)(2) or (e)(2)*—(i) *Old target-deemed asset disposition*—(A) *In general.* This paragraph (b)(1) provides the Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2). For the Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), see paragraph (b)(2) of this section. In general, if a section 336(e) election is made, the seller is treated as not having sold, exchanged, or distributed the stock disposed of in the qualified stock disposition. Instead, old target is treated as selling its assets to an unrelated person in a single transaction at the close of the disposition date (but before the deemed liquidation described in paragraph (b)(1)(iii) of this section) in exchange for the aggregate deemed asset disposition price (ADADP) as determined under § 1.336–3. ADADP is allocated among the disposition date assets in the same manner as ADSP is allocated under §§ 1.338–6 and 1.338–7 in order to determine the amount realized from each of the sold assets. Old target realizes the deemed disposition tax consequences from the deemed asset disposition before the close of the disposition date while old target is owned by seller.

(B) *Gains and losses*—(1) *Gains.* Except as provided in § 1.338(h)(10)–1(d)(8) (regarding the installment method), old target shall recognize all of the gain realized on the deemed asset disposition.

(*2*) *Losses.* Old target shall recognize loss, if any, on the deemed sale of each of its assets with respect to the amount of stock sold or exchanged in the qualified stock disposition on or before the disposition date. Old target shall not recognize loss on the deemed sale of each of its assets with respect to the amount of stock distributed in the qualified stock disposition on or before the disposition date. The amount of loss recognized by old target with respect to an asset is the amount of loss realized on the deemed sale of the asset multiplied by a fraction (loss recognition fraction). The numerator of the loss recognition fraction is the value of the target stock, determined on the disposition date, sold or exchanged in the qualified stock disposition on or before the disposition date. The denominator of the loss recognition fraction is the total value of the target stock, determined on the disposition date, disposed of in the qualified stock disposition on or before the disposition date. For purposes of determining the amount of loss recognized by a subsidiary of old target for which a section 336(e) election is made, only the fraction of the old target subsidiary stock deemed sold in the deemed asset disposition of old target's assets that is equal to the loss recognition fraction is considered to have been sold or exchanged. In addition, to the extent old target or a subsidiary of old target otherwise recognizes losses from the deemed asset disposition, such losses may be disallowed under other provisions of the Internal Revenue Code or general principles of tax law, in the same manner as if such assets were actually sold to an unrelated person.

(*3*) *Examples.* The following examples illustrate this paragraph (b)(1)(i)(B).

Example 1. (i) *Facts.* Seller owns 98 of the 100 outstanding shares of Target common stock, the only class of Target stock outstanding. On March 1 of Year 1, Seller sells 30 shares of Target stock to A for cash. On April 1 of Year 1, Seller sells 10 shares of Target stock to R, a related individual. On July 1 of Year 1, Seller distributes 50 shares of target stock to its unrelated shareholders. On December 1 of Year 1, Seller sells 5 shares of Target stock to B. Seller retains its remaining 3 shares of Target stock. The value of the Target stock on July 1 equals $100 per share. A section 336(e) election is made.

(ii) *Consequences.* Because at least 80 percent of the Target stock ((30 + 50 + 5)/100) was disposed of by Seller within the 12-month disposition period, a qualified stock disposition has occurred. July 1 of Year 1, the first date on which there was a qualified stock disposition with respect to the Target stock, is the disposition date. Old Target recognizes all of its gain on the deemed asset disposition. However, only 30 shares of Target stock were sold or exchanged in the qualified stock disposition on or before the disposition date. Therefore, only a portion of the loss, if any, on the deemed sale of each of Target's assets is recognized for Federal income tax purposes. The portion of the loss recognized is equal to a fraction, the numerator of which is $3,000, the value, determined on July 1, the disposition date, of the 30 shares sold by Seller in the qualified stock disposition on or before the disposition date, and the denominator of which is $8,000, the value of the Target stock on July 1, the disposition date, that was disposed of in the qualified stock disposition on or before the disposition date. Accordingly, only 37.5 percent ($3,000/$8,000) of Old Target's loss (if any) with respect to each asset sold in the deemed asset disposition is recognized.

Example 2. (i) *Facts.* The facts are the same as in Example 1 with the following additional facts: Target also owns 80 shares of Target Subsidiary common stock, the only class of Target Subsidiary common stock outstanding, and Seller owns the remaining 20 shares of Target Subsidiary stock. Seller, Target, and Target Subsidiary file a consolidated Federal income tax return. Also on July 1 of Year 1, Seller distributes 15 shares of Target Subsidiary stock to its unrelated shareholders and sells 5 shares of Target Subsidiary stock to C for cash. The Target Subsidiary stock is worth $10 a share on July 1. A section 336(e) election is also made with respect to the Target Subsidiary stock.

(ii) *Consequences.* The consequences with respect to the Target stock are the same as described in *Example 1* except that no gain or loss is recognized by Target on the deemed sale of its Target Subsidiary stock. With respect to Target Subsidiary, because at least 80 percent of the Target Subsidiary stock ((80 + 15 +5)/100) was disposed of (or deemed disposed of) by members of Seller's consolidated group within the 12-month disposition period, a qualified stock disposition of Target Subsidiary has occurred. Old Target Subsidiary recognizes all of its gain on the deemed asset disposition. Notwithstanding that all 80 of Target's shares in Target Subsidiary were deemed sold in the deemed asset disposition of Target, only 37.5 percent of such shares were deemed sold as a result of a sale or exchange of Target stock. Accordingly, in determining the amount of loss on each of Target Subsidiary's assets that is recognized in the deemed sale of its assets, only 37.5 percent of the 80 shares of Target Subsidiary deemed sold by Target, 30 shares, are considered to have been sold or exchanged by Target. Therefore, the amount of loss recognized by Target Subsidiary is equal to a fraction, the numerator of which is the sum of $300, the value, determined on July 1, the disposition date, of the 30 shares of Target Subsidiary deemed sold by Target in the

qualified stock disposition, and $50, the value, determined on July 1, the disposition date, of the 5 shares of Target Subsidiary stock sold by Seller on or before the disposition date, and the denominator of which is $1,000, the value of the Target Subsidiary stock on July 1, the disposition date, that was disposed of in the qualified stock disposition of Target Subsidiary on or before the disposition date. Accordingly, only 35 percent (($300 + $50)/($1,000)) of Old Target Subsidiary's loss (if any) with respect to each asset sold in the deemed asset disposition is recognized.

(C) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections, the deemed asset disposition of a higher-tier subsidiary is considered to precede the deemed asset disposition of a lower-tier subsidiary.

(ii) *New target—deemed purchase.* New target is treated as acquiring all of its assets from an unrelated person in a single transaction at the close of the disposition date (but before the deemed liquidation) in exchange for an amount equal to the adjusted grossed up basis (AGUB) as determined under § 1.336–4. New target shall allocate the consideration deemed paid in the transaction in the same manner as new target would under §§ 1.338–6 and 1.338–7 in order to determine the basis in each of the purchased assets. Notwithstanding paragraph (b)(1)(iii) of this section (deemed liquidation of old target), new target remains liable for the tax liabilities of old target (including the tax liability for the deemed disposition tax consequences). For example, new target remains liable for the tax liabilities of the members of any consolidated group that are attributable to taxable years in which those corporations and old target joined in the same consolidated return. See § 1.1502–6(a).

(iii) *Old target and seller—deemed liquidation*—(A) *In general.* Old target and seller are treated as if, before the close of the disposition date, after the deemed asset disposition described in paragraph (b)(1)(i)(A) of this section, and while owned by seller, old target transferred all of its assets to seller and ceased to exist. The transfer from old target to seller is characterized for Federal income tax purposes in the same manner as if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur. For example, the transfer may be treated as a distribution in pursuance of a plan of reorganization, a distribution in complete cancellation or redemption of all its stock, one of a series of distributions in complete cancellation or redemption of all its stock in accordance with a plan of liquidation, or part of a circular flow of cash. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 332 and section 336 or 337 applies.

(B) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections, the deemed liquidation of a lower-tier subsidiary corporation is considered to precede the deemed liquidation of a higher-tier subsidiary.

(iv) *Seller—distribution of target stock.* In the case of a distribution of target stock in the qualified stock disposition, seller (the distributor) is deemed to purchase from new target on the disposition date, immediately after the deemed liquidation of old target, the amount of stock distributed in the qualified stock disposition and to have distributed such new target stock to its shareholders. Seller recognizes no gain or loss on the distribution of stock.

(v) *Seller—retention of target stock.* If a seller retains any target stock after the 12-month disposition period, the seller is treated as purchasing the stock so retained from new target (new target stock) on the day after the disposition date for its fair market value. The holding period for the retained stock starts on the day after the disposition date. For purposes of this paragraph (b)(1)(v), the fair market value of all of the target stock equals the grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target (see § 1.336–3(c)).

(2) *Dispositions described in section 355(d)(2) or (e)(2)*—(i) *Old target—deemed asset disposition*—(A) *In general.* This paragraph (b)(2) provides the Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition resulting, in whole or in part, from a disposition described in section 355(d)(2) or (e)(2). Old target is treated as selling its assets to an unrelated person in a single transaction at the close of the disposition date in exchange for the ADADP as determined under § 1.336–3. ADADP is allocated among the disposition date assets in the same manner as ADSP is allocated under §§ 1.338–6 and 1.338–7 in order to determine the amount realized from each of the sold assets. Old target realizes the deemed disposition tax consequences from the deemed asset disposition before the close of the disposition date while old target is owned by seller. Unlike a section 338(h)(10) election or a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2), old target is not deemed to liquidate.

(B) *Gains and losses*—(*1*) *Gains.* Except as provided in § 1.338(h)(10)–1(d)(8) (regarding the installment method), old target shall recognize all of the gain realized on the deemed asset disposition.

(*2*) *Losses.* Old target shall recognize loss, if any, on the deemed sale of each of its assets with respect to the amount of stock sold or exchanged in the qualified stock disposition on or before the disposition date. Old target shall not recognize loss on the deemed sale of each of its assets with respect to the amount of stock distributed in the qualified stock disposition on or before the disposition date. The amount of loss recognized by old target with respect to an asset is the amount of loss realized on the deemed sale of the asset multiplied by a fraction (loss recognition fraction). The numerator of the loss recognition fraction is the value of the target stock, determined on the disposition date, sold or exchanged in the qualified stock disposition on or before the disposition date. The denominator of the loss recognition fraction is the total value of the target stock, determined on the disposition date, disposed of in the qualified stock disposition on or before the disposition date. In addition, to the extent old target otherwise recognizes losses from the deemed asset disposition, such losses may be disallowed under other provisions of the Internal Revenue Code or general principles of tax law, in the same manner as if such assets were actually sold to an unrelated person.

(*3*) *Example.* The following example illustrates this paragraph (b)(2)(i)(B).

Example. (i) *Facts.* Seller owns 95 of the 100 outstanding shares of Target common stock, the only class of Target stock outstanding. On January 1 of Year 1, Seller sells 4 shares of Target stock to A for cash. On February 1 of Year 1, Seller sells 5 shares of Target stock to R, a related individual. On May 1 of Year 1, Seller distributes 6 shares of Target stock to its unrelated shareholders in a distribution not described in section 355(d)(2) or (e)(2). In an unrelated transaction, on July 1 of Year 1, Seller distributes its remaining 80 shares of Target stock to its unrelated shareholders in a distribution described in section 355(d)(2) or (e)(2). The value of the Target stock on July 1 equals $100 per share. A section 336(e) election is made.

(ii) *Consequences.* Because at least 80 percent of the Target stock ((4 + 6 + 80)/100) was disposed of by Seller within the 12-month disposition period, a qualified stock disposition has occurred. July 1 of Year 1, the first date on which there was a qualified stock disposition with respect to the Target stock, is the disposition date. Old Target

recognizes all of its gain on the deemed asset disposition. However, only 4 shares of Target stock were sold or exchanged in the qualified stock disposition on or before the disposition date. Therefore, only a portion of the loss, if any, on the deemed sale of each of Target's assets is recognized for Federal income tax purposes. The portion of the loss recognized is equal to a fraction, the numerator of which is $400, the value, determined on July 1, the disposition date, of the 4 shares sold by Seller in the qualified stock disposition on or before the disposition date, and the denominator of which is $9,000 ($400 + $600 + $8,000), the total value of the Target stock determined as of July 1, that was disposed of in the qualified stock disposition on or before the disposition date. Accordingly, only $400/$9,000 of Old Target's loss (if any) with respect to each asset sold in the deemed asset disposition is recognized.

(C) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections, the deemed asset disposition of a higher-tier subsidiary is considered to precede the deemed asset disposition of a lower-tier subsidiary.

(ii) *Old target—deemed purchase*—(A) *In general.* Immediately after the deemed asset disposition described in paragraph (b)(2)(i)(A) of this section, old target is treated as acquiring all of its assets from an unrelated person in a single, separate transaction at the close of the disposition date (but before the distribution described in paragraph (b)(2)(iii)(A) of this section) in exchange for an amount equal to the AGUB as determined under § 1.336–4. Old target shall allocate the consideration deemed paid in the transaction in the same manner as new target would under §§ 1.338–6 and 1.338–7 in order to determine the basis in each of the purchased assets.

(B) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections with respect to a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), old target's deemed purchase of all its assets is considered to precede the deemed asset disposition of a lower-tier subsidiary.

(iii) *Seller—distribution of target stock*—(A) *In general.* Immediately after old target's deemed purchase of its assets described in paragraph (b)(2)(ii) of this section, seller is treated as distributing the stock of old target actually distributed to its shareholders in the qualified stock disposition. No gain or loss is recognized by seller on the distribution. Additionally, if stock of target is sold or exchanged as part of a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), no gain or loss is recognized by seller on the sale or exchange.

(B) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections with respect to a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), the Federal income tax consequences of the section 336(e) election for a subsidiary of target shall be determined under paragraph (b)(1) of this section. The deemed liquidation of a lower-tier subsidiary corporation pursuant to paragraph (b)(1)(iii) of this section is considered to precede the deemed liquidation of a higher-tier subsidiary. The deemed liquidation of the highest tier subsidiary of target is considered to precede the distribution of old target stock described in paragraph (b)(2)(iii)(A) of this section.

(iv) *Seller—retention of target stock.* If a seller retains any target stock after the 12-month disposition period, the seller is treated as having disposed of the old target stock so retained, on the disposition date, in a transaction in which no gain or loss is recognized, and then, on the day after the disposition date, purchasing the stock so retained from old target for its fair market value. The holding period for the retained stock starts on the day after the disposition date. For purposes of this paragraph (b)(2)(iv), the fair market value of all of the target stock equals the grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target (see § 1.336–3(c)).

(v) *Qualification under section 355.* Old target's deemed sale of all its assets to an unrelated person and old target's deemed purchase of all its assets from an unrelated person will not cause the distribution of old target to fail to satisfy the requirements of section 355. Similarly, the deemed sale of all of the assets of a subsidiary of target to an unrelated person and the subsidiary's deemed purchase of all its assets from an unrelated person will not cause the distribution of old target to fail to satisfy the requirements of section 355. For purposes of applying section 355(a)(1)(D), seller is treated as having disposed of any stock disposed of in the qualified stock disposition on the date seller actually sold, exchanged, or distributed such stock. Further, seller's deemed disposition of retained old target stock under paragraph (b)(2)(iv) of this section is disregarded for purposes of applying section 355(a)(1)(D).

(vi) *Earnings and profits.* The earnings and profits of seller and target shall be determined pursuant to § 1.312–10 and, if applicable, § 1.1502–33(e). For this purpose, target will not be treated as a newly created controlled corporation and any increase or decrease in target's earnings and profits pursuant to the deemed asset disposition will increase or decrease, as the case may be, target's earnings and profits immediately before the allocation described in § 1.312–10.

(c) *Purchaser.* Generally, the making of a section 336(e) election will not affect the Federal income tax consequences to which the purchaser would have been subject with respect to the acquisition of the target stock if a section 336(e) election was not made. Thus, notwithstanding §§ 1.336–2(b)(1)(i)(A), 1.336–2(b)(1)(iv), and 1.336–2(b)(2)(iii)(A), the purchaser will still be treated as having purchased, received in an exchange, or received in a distribution, the stock of target so acquired on the date actually acquired. However, see section 1223(1)(B) with respect to the holding period for stock acquired pursuant to a distribution qualifying under section 355 (or so much of section 356 that relates to section 355). The Federal income tax consequences of the deemed asset disposition and liquidation of target may affect the purchaser's consequences. For example, if seller distributes the stock of target to its shareholders in a qualified stock disposition for which a section 336(e) election is made, any increase in seller's earnings and profits as a result of old target's deemed asset disposition and liquidation into seller may increase the amount of the distribution to the shareholders constituting a dividend under section 301(c)(1).

(d) *Minority shareholders*—(1) *In general.* This paragraph (d) describes the treatment of shareholders of old target other than the seller (or a member of seller's consolidated group), whether or not they sell, exchange, or distribute their stock of target. A shareholder to which this paragraph (d) applies is referred to as a minority shareholder.

(2) *Sale, exchange, or distribution of target stock by a minority shareholder.* A minority shareholder recognizes gain or loss (as permitted under the general principles of tax law) on its sale, exchange, or distribution of target stock.

(3) *Retention of target stock by a minority shareholder.* A minority shareholder who retains its target stock does not recognize gain or loss under this section with respect to its shares of target stock. The minority shareholder's basis and holding period for that target stock are not affected by the section 336(e) election. Notwithstanding the treatment to the minority shareholder, if a section 336(e) election is made, target will still be treated as disposing of all of its assets in the deemed asset disposition.

(e) *Treatment consistent with an actual asset disposition.* Except as otherwise provided, no provision in this section shall produce a Federal income tax result under subtitle A of the Internal Revenue Code that would not occur if the parties had actually engaged in the transactions deemed to occur because of this section, taking into account other transactions that actually occurred or are deemed to occur. See § 1.338–1(a)(2) regarding the application of other rules of law.

(f) *Treatment of target under other provisions of the Internal Revenue Code.* The provisions § 1.338–1(b) apply with respect to the treatment of new target after a section 336(e) election, treating any reference to section 338 or 338(h)(10) as a reference to section 336(e).

(g) *Special rules*—(1) *Target as two corporations.* Although the target is a single corporation under corporate law, if a section 336(e) election is made, then, except with respect to a distribution described in section 355(d)(2) or (e)(2) and as provided in § 1.338–1(b)(2), two separate corporations, old target and new target, generally are considered to exist for purposes of subtitle A of the Internal Revenue Code.

(2) *Treatment of members of a consolidated group.* For purposes of §§ 1.336–1 through 1.336–5, all members of the seller's consolidated group are treated as a single seller, regardless of whether the member actually disposes of any stock. Accordingly, any dispositions of stock made by members of the same consolidated group shall be treated as made by one corporation, and any stock owned by members of the same consolidated group and not disposed of will be treated as stock retained by the seller.

(3) *Miscellaneous international provisions*—(i) *Source and foreign tax credit.* The principles of section 338(h)(16) apply to section 336(e) elections for target corporations with foreign operations to ensure that the source and foreign tax credit limitation are properly determined.

(ii) *Allocation of foreign taxes.* If a section 336(e) election is made for target and target's taxable year under foreign law (if any) does not close at the end of the disposition date, foreign income taxes attributable to the foreign taxable income earned by the target during such foreign taxable year are allocated to old target and new target under the principles of § 1.1502–76(b).

(h) *Making the section 336(e) election.* A section 336(e) election is made by the seller attaching a section 336(e) election statement to its timely filed (including extensions) Federal income tax return for the taxable year which includes the disposition date entitled ''THIS IS AN ELECTION UNDER SECTION 336(e) TO TREAT THE DISPOSITION OF THE STOCK OF [insert name and employer identification number of target] AS A DEEMED SALE OF SUCH CORPORATION'S ASSETS.'' If the seller is a member of a consolidated group, the statement is filed with the Federal income tax return of the consolidated group. The seller must provide a copy of the statement to the target. The relevant information for each consolidated group member that disposes of target stock and each member that retains target stock must be set forth individually, not in the aggregate. In the case of a section 336(e) election for lower-tier targets, an additional statement must be filed for each lower-tier target. However, in preparing the statement, the seller of the directly disposed of target shall be treated as the seller of the lower-tier target. The section 336(e) election statement must include:

(1) The name, address, employer identification number (EIN), tax year, and state of incorporation of the target corporation;

(2) The name, address, EIN, tax year, and state of incorporation of the seller(s);

(3) The name, address, EIN (or Social Security number), tax year, and state of incorporation (if any) of any 80-percent purchaser;

(4) The disposition date;

(5) The percentage of target stock that was disposed of by each seller in the qualified stock disposition;

(6) The percentage of target stock that was disposed of on the disposition date by each seller in the qualified stock disposition;

(7) The percentage of target stock that was sold or exchanged by each seller in the qualified stock disposition on or before the disposition date;

(8) The percentage of target stock that was distributed by each seller in the qualified stock disposition on or before the disposition date;

(9) The percentage of target stock that was retained by each seller immediately after the 12-month disposition period; and

(10) Whether any purchaser made a gain recognition election pursuant to § 1.336–4(c). A copy of the gain recognition election statement must be attached to the section 336(e) election statement.

(i) [Reserved]

(j) *Protective section 336(e) election.* Taxpayers may make a protective election under section 336(e) in connection with a transaction. Such an election will have no effect if the transaction does not constitute a qualified stock disposition, as defined in § 1.336–1(b)(5), but will otherwise be binding and irrevocable.

(k) *Examples.* The following examples illustrate the provisions of this section.

Example 1. Sale of 100 percent of target stock. (i) *Facts.* Parent owns all 100 shares of Target's only class of stock. The stock has a basis of $80 per share. Target's only assets are two parcels of land. Parcel 1 has a basis of $5,000 and Parcel 2 has a basis of $4,000. Target has no liabilities. On July 1 of Year 1, Parent sells all 100 shares of Target stock to A for $100 per share. Parent incurs no selling costs and A incurs no acquisition costs. On July 1, the value of Parcel 1 is $7,000 and the value of Parcel 2 is $3,000. Parent makes a section 336(e) election.

(ii) *Consequences.* The sale of Target stock constitutes a qualified stock disposition. July 1 of Year 1 is the disposition date. Accordingly, pursuant to the section 336(e) election, for Federal income tax purposes, rather than treating Parent as selling the stock of Target to A, the following events are deemed to occur. Target is treated as if, on July 1, it sold all of its assets to an unrelated person in exchange for the ADADP, $10,000, which is allocated $7,000 to Parcel 1 and $3,000 to Parcel 2 (see § 1.336–3 for the determination and allocation of ADADP). Target recognizes gain of $2,000 on Parcel 1 and loss of $1,000 on Parcel 2. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction in exchange for the AGUB, $10,000 (see § 1.336–4 for the determination of AGUB). Old Target is treated as liquidating into Parent immediately thereafter, distributing the $10,000 deemed received in exchange for its assets in a transaction qualifying under section 332. Parent recognizes no gain or loss on the liquidation. A's basis in New Target stock equals $100 per share, the amount paid for the stock.

Example 2. Sale of 80 percent of target stock. (i) *Facts.* The facts are the same as in *Example 1* except that Parent only sells 80 shares of its Target stock to A and retains the other 20 shares.

(ii) *Consequences.* The results are the same as in *Example 1* except that Parent also is treated as purchasing from New Target on July 2, the day after the disposition date, the 20 shares of Target stock (New Target stock) not actually sold to A, for their fair market value as determined under § 1.336–2(b)(1)(v), $2,000 ($100 per share).

Example 3. Distribution of 100 percent of target stock. (i) *Facts.* The facts are the same as in *Example 1* except that instead of Parent selling 100 shares of Target stock to A, Parent distributes 100 shares to its shareholders, all of whom are unrelated to Parent, in a transaction that does not qualify under section 355.

(ii) *Consequences.* The results are the same as in *Example 1* except that Target does not recognize the $1,000 of loss realized with respect to Parcel 2 (see § 1.336–

2(b)(1)(i)(B)(*2*)) and on July 1, immediately after the deemed liquidation of Target, Parent is deemed to purchase from New Target 100 shares of New Target stock and distribute those New Target shares to its shareholders. Parent recognizes no gain or loss on the deemed distribution of the shares under § 1.336–2(b)(1)(iv). The shareholders receive the New Target stock as a distribution pursuant to section 301 and their basis in the New Target stock received is its fair market value pursuant to section 301(d).

Example 4. Distribution of 80 percent of target stock. (i) *Facts.* The facts are the same as in *Example 3* except that Parent distributes only 80 shares of Target stock to its shareholders and retains the other 20 shares.

(ii) *Consequences.* The results are the same as in *Example 3* except that Parent is treated as purchasing on July 1 only 80 shares of New Target stock and as distributing only 80 shares of New Target stock to its shareholders and then as purchasing (and retaining), on July 2, the day after the disposition date, 20 shares of New Target stock at their fair market value as determined under § 1.336–2(b)(1)(v), $2,000 ($100 per share).

Example 5. Part sale, part distribution. (i) *Facts.* Parent owns all 100 shares of Target's only class of stock. The stock has a basis of $80 per share. Target has two assets, both of which are buildings used in its business. Building 1 has a basis of $6,000 and Building 2 has a basis of $5,100. Target has no liabilities. On January 1 of Year 1, Parent sells 50 shares of Target to A for $88 per share. Parent incurred no selling costs with respect to the sale of Target stock and A incurred no acquisition costs with respect to the purchase. On July 1 of Year 1, when the value of the Target stock is $120 per share, Parent distributes 30 shares of Target to its unrelated shareholders. Parent retains the remaining 20 shares. On July 1, the value of Building 1 is $7,800 and the value of Building 2 is $4,200. A section 336(e) election is made.

(ii) *Consequences.* Because the sale of the 50 shares and the distribution of the 30 shares occurred within a 12-month disposition period, the 80 shares of Target stock sold and distributed were disposed of in a qualified stock disposition. July 1 of Year 1 is the disposition date. On July 1, Target is treated as if it sold its assets to an unrelated person in exchange for the ADADP, $10,000, which is allocated $6,500 to Building 1 and $3,500 to Building 2 (see § 1.336–3 for the determination and allocation of ADADP). Target realizes and recognizes gain of $500 on the deemed sale of Building 1 ($6,500–$6,000). Target realizes loss of $1,600 on the deemed sale of Building 2 ($3,500–$5,100). However, pursuant to § 1.336–2(b)(1)(i)(B)(*2*), because only a portion of the stock disposed of in the qualified stock disposition was sold or exchanged, only a portion of the loss on Building 2 is recognized. The amount of loss recognized on Building 2 is the $1,600 loss realized multiplied by a fraction, the numerator of which is $6,000, the value on July 1, of the 50 shares that were sold in the qualified stock disposition on or before the disposition date and the denominator of which is $9,600, the value on July 1, of all of the Target shares disposed of in the qualified stock disposition on or before the disposition date. Thus, only $1,000 ($1,600 × ($6,000/$9,600)) of the loss on the deemed sale of Building 2 is recognized by Old Target. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction in exchange for the AGUB, $10,000 (see § 1.336–4 for the determination of AGUB). Old Target is treated as liquidating into Parent immediately after the deemed asset disposition, distributing the $10,000 deemed received in exchange for its assets in a transaction qualifying under section 332. Parent recognizes no gain or loss on the liquidation. Parent is then deemed to purchase 30 shares of New Target stock from New Target on July 1, and distribute those 30 New Target shares to its shareholders. Parent recognizes no gain or loss on the deemed distribution of the 30 shares under § 1.336–2(b)(1)(iv). Parent is then deemed to purchase (and retain), on July 2, the day after the disposition date, 20 shares of New Target stock at their fair market value as determined under § 1.336–2(b)(1)(v), $2,000 ($100 per share). A is treated as having purchased the 50 shares of New Target stock on January 1 of Year 1 at a cost of $88 per share, the same as if no section 336(e) election had been made. Parent's shareholders are treated as receiving the New Target stock on July 1 of Year 1 as a distribution pursuant to section 301 and their basis in the New Target stock received is its fair market value pursuant to section 301(d), the same as if no section 336(e) election had been made.

Example 6. Sale of Target stock by consolidated group members. (i) *Facts.* Parent owns all the stock of Sub and 50 of the 100 outstanding shares of Target stock. Sub owns the remaining 50 shares of Target stock. Parent and Sub each hold their Target stock with a basis of $80 per share. Target's assets have an aggregate basis of $9,000. Target has no liabilities. Parent, Sub, and Target file a consolidated Federal income tax return. On February 1 of Year 1, Parent sells 30 shares of its Target stock to A for $2,400. On March 1 of Year 1, Sub sells all 50 shares of its Target stock to B for $5,600. Neither Parent nor Sub incurred any selling costs. Neither A nor B incurred any acquisition costs. A section 336(e) election is made. Assume that if the sale of the Target stock constitutes a qualified stock disposition, the value allocated to each of Target's assets under § 1.336–3 will exceed the asset's basis.

(ii) *Consequences.* Because Parent and Sub are members of the same consolidated group, their sale of Target stock is treated as made by one seller (see paragraph (g)(2) of this section), and the sales of Target stock constitute a qualified stock disposition. March 1 of Year 1 is the disposition date. For Federal income tax purposes, Parent and Sub are not treated as selling the stock of Target to A and B, respectively. Instead, the following events are deemed to occur. Target is treated as if, on March 1, it sold all its assets to unrelated person in exchange for the ADADP, $10,000 (see § 1.336–3 for determination of ADADP), recognizing gain of $1,000. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction in exchange for the AGUB, $10,000 (see § 1.336–4 for the determination of AGUB). Old Target is treated as liquidating into Parent and Sub immediately thereafter, distributing the $10,000 deemed received in exchange for its assets in a transaction qualifying under section 332 (see § 1.1502–34). Neither Parent nor Sub recognize gain or loss on the liquidation. Parent is then treated as purchasing from New Target on March 2, the day after the disposition date, the 20 shares of Target stock (New Target stock) not actually sold, for its fair market value as determined under § 1.336–2(b)(1)(v), $2,000 ($100 per share). A is treated as having purchased 30 shares of New Target stock on February 1 of Year 1 at a cost of $2,400 ($80 per share), the same as if no section 336(e) election had been made. B is treated as having purchased 50 shares of New Target stock on March 1 of Year 1 at a cost of $5,600 ($112 per share), the same as if no section 336(e) election had been made.

Example 7. Sale of target stock by non-consolidated group members. (i) *Facts.* The facts are the same as in *Example 6* except that Parent, Sub, and Target do not join in the filing of a consolidated Federal income tax return. A section 336(e) election is made.

(ii) *Consequences.* Because Parent and Sub do not join in a consolidated Federal income tax return and no single seller sells, exchanges, or distributes Target stock meeting the requirements of section 1504(a)(2), the transaction does not constitute a qualified stock disposition. The section 336(e) election made with respect to the disposition of Target stock has no effect.

Example 8. Distribution of 80 percent of Target stock in complete redemption of a greater-than-50-percent shareholder. (i) *Facts.* A and B own 51 and 49 shares, respectively, of Seller's only class of stock. Seller owns all 100 shares of Target's only class of stock. Seller distributes 80 shares of Target stock to A in complete redemption of A's 51 shares of Seller in a transaction that does not qualify under section 355. A section 336(e) election is made.

(ii) *Consequences.* Prior to the redemption, Seller and A would be related persons because, under section 318(a)(2)(C), any stock of a corporation that is owned by Seller would be attributed to A because A owns 50 percent or more of the value of the stock of Seller. However, for purposes of §§ 1.336–1 through 1.336–5, the determination of whether Seller and A are related is made immediately after the redemption of A's stock. See §§ 1.336–1(b)(4)(iii) and 1.338–3(b)(3)(ii)(A). After the redemption, A no longer owns any stock of Seller. Accordingly, A and Seller are not related persons, as defined in § 1.336–1(b)(11), and the distribution of Target stock constitutes a qualified stock disposition. For Federal income tax purposes, rather than Seller distributing the stock of Target to A, the following is deemed to occur. Target is treated as if it sold its assets to an unrelated person. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction. Immediately thereafter, Old Target is liquidated into Seller

in a transaction qualifying under section 332. Seller recognizes no gain or loss on the liquidation. Seller is then treated as purchasing 80 shares of New Target stock from New Target and then distributing the stock of New Target to A in exchange for A's 51 shares of Seller stock. Seller recognizes no gain or loss on the distribution of New Target stock pursuant to § 1.336–2(b)(1)(iv). Seller is then treated as purchasing from New Target, on the day after the disposition date, the 20 shares of Target stock (New Target stock) not actually distributed, for its fair market value as determined under § 1.336–2(b)(1)(v). The Federal income tax consequences to A are the same as if no section 336(e) election had been made.

Example 9. Pro-rata distribution of 80 percent of target stock. (i) *Facts.* A and B own 60 and 40 shares, respectively, of Seller's only class of stock. Seller owns all 100 shares of Target's only class of stock. Seller distributes 48 shares of Target stock to A and 32 shares of Target stock to B in a transaction that does not qualify under section 355. A section 336(e) election is made.

(ii) *Consequences.* Any stock of a corporation that is owned by Seller would be attributed to A under section 318(a)(2)(C) because, after the distribution, A owns 50 percent or more of the value of the stock of Seller. Therefore, after the distribution, A and Seller are related persons, as defined in § 1.336–1(b)(11), and the distribution of Target stock to A is not a disposition. Because only 32 percent of the Target stock was sold, exchanged, or distributed to nonrelated persons, there has not been a qualified stock disposition. Accordingly, the section 336(e) election made with respect to the distribution of the Target stock has no effect.

Example 10. Distribution of target stock described in section 355(e)(2). (i) *Facts.* Seller owns all 100 shares of Target's only class of stock. Target owns all 100 shares of Target Subsidiary's only class of stock. Seller distributes all 100 shares of Target stock to its shareholders, all of whom are unrelated to Seller, in a distribution that qualifies under section 355 (see paragraph (iv) of this *Example 10*). As part of the plan involving the distribution of the Target stock, the shareholders of Seller sell all of the stock of Seller, and section 355(e)(2) applies to the distribution. Section 336(e) elections are made with respect to Target and Target Subsidiary.

(ii) *Consequences—Old Target deemed asset sale.* Because the Target stock was distributed to persons who are unrelated to Seller, and the distribution is described in section 355(e)(2), the distribution constitutes a qualified stock disposition. See proposed §§ 1.336–1(b)(4) and 1.336–1(b)(5). Target's deemed disposition of the stock of Target Subsidiary as a result of the section 336(e) election also constitutes a qualified stock disposition. See § 1.336–1(b)(5)(ii). For Federal income tax purposes, rather than Seller distributing the stock of Target to unrelated shareholders, the following is deemed to occur. Old Target is treated as if it sold all of its assets to an unrelated person for the ADADP, determined under § 1.336–3. Old Target recognizes gain, but not loss, on the deemed sale of each of its assets, other than the stock of Target Subsidiary. See § 1.336–2(b)(2)(i)(B)(*2*). Old Target is then treated as acquiring all of its assets from an unrelated person in a single transaction in exchange for an amount equal to the AGUB, as determined under § 1.336–4.

(iii) *Consequences—Old Target Subsidiary deemed asset sale and liquidation.* After Old Target's deemed purchase of all of its assets, Old Target Subsidiary is then treated as if it sold all of its assets to an unrelated person for the ADADP, determined under § 1.336–3. Old Target Subsidiary recognizes gain, but not loss, on the deemed sale of each of its assets. See § 1.336–2(b)(1)(i)(B)(*2*). New Target Subsidiary is then treated as acquiring all of its assets from an unrelated person in a single transaction in exchange for an amount equal to the AGUB, as determined under § 1.336–4. Old Target Subsidiary is then deemed to liquidate into Old Target immediately thereafter, distributing the amount deemed received in exchange for its assets, in a transaction qualifying under section 332. Old Target recognizes no gain or loss on the liquidation of Old Target Subsidiary.

(iv) *Consequences—Seller distribution of Old Target.* After the deemed liquidation of Old Target Subsidiary, Seller is then treated as distributing the stock of Old Target to the unrelated shareholders. Pursuant to paragraph (b)(2)(v) of this section, neither Old Target's and Old Target Subsidiary's deemed sales of all their assets to unrelated persons nor Old Target's and New Target Subsidiary's deemed purchases of all their assets from unrelated persons will cause the distribution of Old Target to fail to satisfy the requirements of section 355. The distributee shareholders have the same Federal income tax consequences with respect to the receipt of the Target stock as if a section 336(e) election had not been made.

§ 1.336–3 Aggregate deemed asset disposition price; various aspects of taxation of the deemed asset disposition.

(a) *Scope.* This section provides rules under section 336(e) to determine the aggregate deemed asset disposition price (ADADP) for target. ADADP is the amount for which old target is deemed to have sold all of its assets in the deemed asset disposition. ADADP is allocated among target's assets in the same manner as ADSP is allocated under § 1.338–6 to determine the amount for which each asset is deemed to have been sold. When a subsequent increase or decrease is required under general principles of tax law with respect to an element of ADADP, the redetermined ADADP is allocated among target's assets in the same manner as redetermined ADSP is allocated under § 1.338–7.

(b) *Determination of ADADP*—(1) *General rule.* ADADP is the sum of—

(i) The grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target; and

(ii) The liabilities of old target.

(2) *Time and amount of ADADP*—(i) *Original determination.* ADADP is initially determined at the beginning of the day after the disposition date of target. General principles of tax law apply in determining the timing and amount of the elements of ADADP.

(ii) *Redetermination of ADADP.* ADADP is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, for the elements of ADADP. For example, ADADP is redetermined because of an increase or decrease in the amount realized on the sale or exchange of recently disposed stock of target or because liabilities not originally taken into account in determining ADADP are subsequently taken into account. Increases or decreases with respect to the elements of ADADP result in the reallocation of ADADP among target's assets in the same manner as ADSP under § 1.338–7.

(c) *Grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target*—(1) *Determination of amount.* The grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target is an amount equal to—

(i) The sum of (A) the amount realized on the sale or exchange of recently disposed stock of target, determined as if the seller(s) were required to use old target's accounting methods and characteristics and the installment method were not available and determined without regard to the selling costs taken into account under paragraph (c)(1)(iii) of this section and (B) the fair market value of recently disposed stock of target, determined on the date of each distribution, distributed in the qualified stock disposition;

(ii) Divided by the percentage of target stock (by value, determined on the disposition date) attributable to the recently disposed stock;

(iii) Less the selling costs incurred by the seller in connection with the sale or exchange of recently disposed stock that reduce its amount realized on the sale or exchange of the stock (for example, brokerage commissions and any similar costs to sell the stock).

(2) *Example.* The following example illustrates this paragraph (c):

Example. Target has two classes of stock outstanding, voting common stock and preferred stock described in section 1504(a)(4). Seller owns all 100 shares of each class of stock. On March 1 of Year 1, Seller sells 10 shares of Target voting common stock to A for $75. On April 1 of Year 2, Seller distributes 15 shares of voting common stock with a fair market value of $120 to B.

On May 1 of Year 2, Seller distributes 10 shares of voting common stock with a fair market value of $110 to C. On July 1 of Year 2, Seller sells 55 shares of Target voting common stock to D for $550. On July 1 of Year 2, the fair market value of all the Target voting common stock is $1,000 ($10 per share) and the fair market value of the preferred stock is $600. Seller incurs $20 of selling costs with respect to the sale to A and $60 of selling costs with respect to the sale to D. The grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of Target corporation is calculated as follows: The sum of the amount realized on the sale or exchange of recently disposed stock sold or exchanged (without regard to selling costs) and the fair market value of the recently disposed stock distributed is $780 ($120 + $110 + $550) (the 10 shares sold to A on March 1 of Year 1 is not recently disposed stock because it was not disposed of during the 12-month disposition period). The percentage of Target stock by value on the disposition date attributable to recently disposed stock equals 50% ($800/($1,000 + $600). The grossed-up amount realized equals $1,500 (($780/.50) − $60 selling costs).

(d) *Liabilities of old target*—(1) *In general.* In general, the liabilities of old target are measured as of the beginning of the day after the disposition date. However, if a target for which a section 336(e) election is made engages in a transaction outside the ordinary course of business on the disposition date after the event resulting in the qualified stock disposition of the target or a higher-tier corporation, the target and all persons related thereto (either before or after the qualified stock disposition) under section 267(b) or section 707 must treat the transaction for all Federal income tax purposes as occurring at the beginning of the day following the transaction and after the deemed disposition by old target. In order to be taken into account in ADADP, a liability must be a liability of target that is properly taken into account in an amount realized under general principles of tax law that would apply if old target had sold its assets to an unrelated person for consideration that included the discharge of its liabilities. See § 1.1001–2(a). Such liabilities may include liabilities for the tax consequences resulting from the deemed asset disposition.

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining ADADP and the amount of the liabilities taken into account is determined as if old target had sold its assets to an unrelated person for consideration that included the discharge of the liabilities by the unrelated person. For example, if no amount of a target liability is properly taken into account in an amount realized as of the beginning of the day after the disposition date, the liability is not initially taken into account in determining ADADP (although it may be taken into account at some later date).

(e) *Deemed disposition tax consequences.* Gain or loss on each asset in the deemed asset disposition is computed by reference to the ADADP allocated to that asset. ADADP is allocated in the same manner as is ADSP under § 1.338–6. Although deemed disposition tax consequences may increase or decrease ADADP by creating or reducing a tax liability, the amount of the tax liability itself may be a function of the size of the deemed disposition tax consequences. Thus, these determinations may require trial and error computations.

(f) *Other rules apply in determining ADADP.* ADADP may not be applied in such a way as to contravene other applicable rules. For example, a capital loss cannot be applied to reduce ordinary income in calculating the tax liability on the deemed asset disposition for purposes of determining ADADP.

§ 1.336–4 Adjusted grossed-up basis.

(a) *Scope.* Except as provided in paragraphs (b) and (c) of this section or as the context otherwise requires, the principles of paragraphs (b) through (g) of § 1.338–5 apply in determining the adjusted gross-up basis (AGUB) for target and the consequences of a gain recognition election. AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under § 1.336–2(b)(1)(ii), or the amount for which old target is deemed to have purchased all of its assets in the deemed purchase under § 1.336–2(b)(2)(ii). AGUB is allocated among target's assets in accordance with § 1.338–6 to determine the price at which the assets are deemed to have been purchased. When a subsequent increase or decrease with respect to an element of AGUB is required under general principles of tax law, redetermined AGUB is allocated among target's assets in accordance with § 1.338–7.

(b) *Modifications to the principles in § 1.338–5.* Solely for purposes of applying §§ 1.336–1 through 1.336–4, the principles of § 1.338–5 are modified as follows—

(1) *Purchasing corporation; purchaser.* Any reference to the ''purchasing corporation'' shall be treated as a reference to a purchaser, as defined in § 1.336–1(b)(2).

(2) *Acquisition date; disposition date.* Any reference to the ''acquisition date'' shall be treated as a reference to the disposition date, as defined in § 1.336–1(b)(7).

(3) *Section 338 election; section 338(h)(10) election; section 336(e) election.* Any reference to a ''section 338 election'' or a ''section 338(h)(10) election'' shall be treated as a reference to a section 336(e) election, as defined in § 1.336–1(b)(10).

(4) *New target; old target.* In the case of a disposition described in section 355(d)(2) or (e)(2), any reference to ''new target'' shall be treated as a reference to ''old target'' in its capacity as the purchaser of assets pursuant to the section 336(e) election.

(5) *Recently purchased stock; recently disposed stock.* Any reference to *recently purchased stock* shall be treated as a reference to recently disposed stock, as defined in § 1.336–1(b)(16). In the case of a distribution of stock, for purposes of determining the purchaser's grossed-up basis of recently disposed stock, the purchaser's basis in recently disposed stock shall be deemed to be such stock's fair market value on the date it was acquired.

(6) *Nonrecently purchased stock; nonrecently disposed stock.* Any reference to *nonrecently purchased stock* shall be treated as a reference to nonrecently disposed stock, as defined in § 1.336–1(b)(17).

(c) *Gain recognition election*—(1) *In general.* Any holder of nonrecently disposed stock of target may make a gain recognition election. The gain recognition election is irrevocable. Each owner of nonrecently disposed stock determines its basis amount, and therefore, the gain recognized pursuant to the gain recognition election, by applying §§ 1.338–5(c) and 1.338–5(d)(3)(ii) by reference to its own recently disposed stock and nonrecently disposed stock, and not by reference to all recently disposed stock and nonrecently disposed stock.

(2) *80-percent purchaser.* If a section 336(e) election is made for target, any 80-percent purchaser and all persons related to the 80-percent purchaser are automatically deemed to have made a gain recognition election for its nonrecently disposed target stock.

(3) *Non-80-percent purchaser.* A gain recognition election is actually made by a non-80-percent purchaser by providing to the seller, and seller including with the section 336(e) election statement, a gain recognition election statement, as described in paragraph (c)(4) of this section. If a non-80-percent purchaser makes a gain recognition election, all related persons to the non-80-percent purchaser must also make a gain recognition election. Otherwise, the gain recognition election

for the non-80-percent purchaser will have no effect.

(4) *Gain recognition election statement.* A gain recognition election statement must include the following declarations (or substantially similar declarations):

(i) [Insert name, address, and taxpayer identifying number of person for whom gain recognition election is actually being made] has elected to recognize gain under § 1.336–4(c) with respect to [his, hers, or its] nonrecently disposed stock.

(ii) [Insert name of person for whom gain recognition election is actually being made] agrees to report any gain under the gain recognition election on [his, hers, or its] Federal income tax return (including an amended return, if necessary) for the taxable year that includes the disposition date of [insert name and EIN of target corporation].

(d) *Examples. The following examples illustrate the provisions of this section.*

Example 1. On January 1 of Year 1, Seller owns 85 shares of Target stock, A owns 8 shares, B owns 4 shares, and C owns the remaining 3 shares. Each of A's 8 shares, B's 4 shares, and C's 3 shares have a $5 basis. Assume that Target has no liabilities. On July 1 of Year 2, Seller sells 70 shares of Target stock to A for $10 per share. On September 1 of Year 2, Seller sells 5 shares of Target stock to B and 5 shares of Target stock to C for $14 per share. A incurs $25 of acquisition costs, and B and C each incur $10 of acquisition costs in connection with their respective Year 2 purchases. These costs are capitalized in the basis of the Target stock. September 1 of Year 2 is the disposition date. Because A owns at least 10 percent of the Target stock on September 1, the disposition date, and A's original 8 shares of Target stock owned on January 1 of Year 1 were not disposed of in the qualified stock disposition, A's original 8 shares of Target stock are nonrecently disposed stock. Although B's original 4 shares and C's original 3 shares were not disposed of in the qualified stock disposition, because neither B nor C owns, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of Target stock on the disposition date, their original shares are not nonrecently disposed stock. The grossed-up basis of recently disposed Target stock is $1011, determined as follows: The purchasers' (A, B, and C) aggregate basis in the recently disposed target stock, determined without regard to acquisition costs, is $840 ((70 × $10) + (5 × $14) + (5 × $14)). This amount is multiplied by a fraction, the numerator of which is 100 minus 8, the percentage of the Target stock which is nonrecently disposed stock, and the denominator of which is 80, the percentage of Target stock disposed of in the qualified stock disposition ($840 × 92/80 = $966). This amount is then increased by the $45 of acquisition costs incurred by A, B, and C to arrive at the $1011 grossed-up basis of recently disposed Target stock ($966 + $45 = $1011). New Target's AGUB is $1051, the sum of $1011, the grossed-up basis of recently disposed Target stock and $40 (8 × $5), A's basis in his nonrecently disposed Target stock.

Example 2. The facts are the same as in *Example 1* except that A makes a gain recognition election. Pursuant to the gain recognition election, A is treated as if it sold on September 1 of Year 2, the disposition date, its 8 shares of nonrecently disposed target stock for the basis amount, and A's basis in nonrecently disposed target stock immediately after the deemed sale is the basis amount. A's basis amount equals his basis in his recently disposed Target stock without regard to acquisition costs, $700 (70 × $10), multiplied by a fraction, the numerator of which is 100 minus 8, the percentage of the Target stock, by value, determined on the disposition date, which is A's nonrecently disposed Target stock, and the denominator of which is 70, the percentage of the Target stock, by value, determined on the disposition date, disposed of to A in the qualified stock disposition, which is then multiplied by a fraction, the numerator of which is 8, the percentage of target stock, by value, determined on the disposition date, attributable to A's nonrecently disposed Target stock and the denominator of which is 100 minus the numerator amount. Accordingly, A's basis amount is $80 ($700 × 92/70 × 8/92). A therefore recognizes gain of $40 under the gain recognition election ($80 basis amount minus A's $40 basis in his nonrecently disposed stock prior to the gain recognition election). New Target's AGUB is $1091, the sum of $1011, the grossed-up basis of all recently disposed Target stock and $80, A's basis in his nonrecently disposed Target stock pursuant to the gain recognition election.

§ 1.336–5 Effective/Applicability date.

The provisions of §§ 1.336–1 through 1.336–4 apply to any qualified stock disposition for which the disposition date is on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 3. Section 1.338–0 is amended by adding entries for §§ 1.338–1(e) and 1.338–5(h) to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338–1 General principles; status of old target and new target.

* * * * *

(e) *Effective/applicability date.*

* * * * *

§ 1.338–5 Adjusted grossed-up basis.

* * * * *

(h) *Effective/applicability date.*

Par. 4. Section 1.338–1 is amended by adding two new sentences after the parenthetical that follows the third sentence of paragraph (a)(1), by revising the first sentence in paragraph (c)(1), and adding a new paragraph (e) to read as follows:

§ 1.338–1 General principles; status of old target and new target.

(a) * * *

(1) * * * However, if, as a result of the deemed purchase of old target's assets pursuant to a section 336(e) election, there would be both a qualified stock purchase and a qualified stock disposition of the stock of a subsidiary of the target, neither a section 338(g) election nor a section 338(h)(10) election may be made with respect to the qualified stock purchase of the subsidiary. Instead, a section 336(e) election may be made with respect to such purchase. See § 1.336–1(b)(5)(ii). * * *

* * * * *

(c) * * *

(1) *In general.* The rules of this paragraph (c) apply for purposes of applying the regulations under sections 336(e), 338, and 1060. * * *

* * * * *

(e) *Effective/applicability date.* Paragraphs (a)(1) and (c)(1) of this section are applicable to any qualified stock disposition for which the disposition date is on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 1.338–5 is amended by revising the first sentence in paragraph (d)(3)(ii) and by adding a new paragraph (h) to read as follows:

§ 1.338–5 Adjusted grossed-up basis.

* * * * *

(d) * * *

(3) * * *

(ii) *Basis amount.* The basis amount is equal to the amount determined by applying paragraphs (c)(1) and (2) of this section (the purchasing corporation's grossed-up basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section) multiplied by a fraction the numerator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount. * * *

* * * * *

(h) *Effective/applicability date.* Paragraph (d)(3)(ii) of this section is applicable to any qualified stock disposition for which the disposition date is on or after the date of publication of the Treasury decision adopting these

rules as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–19603 Filed 8–22–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[REG–155087–05]

RIN 1545–BF17

Alcohol Fuel and Biodiesel; Renewable Diesel; Alternative Fuel; Diesel-Water Fuel Emulsion; Taxable Fuel Definitions; Excise Tax Returns; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–155087–05) that was published in the **Federal Register** on Tuesday, July 29, 2008 (73 FR 43890) relating to credits and payments for alcohol mixtures, biodiesel mixtures, renewable diesel mixtures, alternative fuel mixtures, and alternative fuel sold for use or used as a fuel, as well as proposed regulations relating to the definition of gasoline and diesel fuel.

These regulations reflect changes made by the American Jobs Creation Act of 2004, the Energy Policy Act of 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, and the Tax Technical Corrections Act of 2007. These regulations affect producers of alcohol, biodiesel, and renewable diesel; producers of alcohol, biodiesel, renewable diesel, and alternative fuel mixtures; sellers and users of alternative fuel; and certain persons liable for the tax on removals, entries, or sales of gasoline or diesel fuel.

FOR FURTHER INFORMATION CONTACT: Stephanie Bland, Taylor Cortright, or DeAnn Malone, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 4081 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–155087–05) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–155087–05), which was the subject of FR Doc. E8–17270, is corrected as follows:

§ 48.4081–1 [Corrected]

On page 43895, column 3, § 48.4081–1(b), line 5 of the column, the language ''pursuant to section 211 of the Clear Air'' is corrected to read ''pursuant to section 211 of the Clean Air''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–19598 Filed 8–22–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2008–0403; FRL–8707–6]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) and Operating Permits Program revision submitted by the state of Iowa for the purpose of modifying and clarifying requirements for certain types of grain elevators. Specifically, the new rule revises the SIP to add special requirements for grain elevators, and the associated chapters for definitions and emission standards will be revised accordingly. The Iowa Department of Natural Resources is requiring that owners or operators of grain elevators apply best management practices and comply with the fugitive dust standard, as well as emission controls specified in required construction permits. These strategies will protect the ambient air and minimize the impact of emissions from each of the facilities.

DATES: Comments on this proposed action must be received in writing by September 24, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0403, by mail to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision and Title V revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: August 15, 2008.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E8–19518 Filed 8–22–08; 8:45 am]

BILLING CODE 6560–50–P