

Notice of Proposed Rulemaking and Notice of Public Hearing

Intangibles Under Sections 1060 and 338

REG-252665-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In *** T.D. 8711, page 35, the IRS amends the temporary regulations under sections 1060 and 338(b) of the Internal Revenue Code (Code) relating to purchase price allocations in taxable asset acquisitions and deemed asset purchases. The amendments revise the treatment of intangible assets in such acquisitions to take into account the enactment of section 197 by the Omnibus Budget Reconciliation Act of 1993. The regulations provide guidance to parties to taxable asset acquisitions and to deemed asset purchases resulting from elections under section 338. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by April 16, 1997. Outlines of topics to be discussed at the public hearing scheduled for Thursday, May 22, 1997, at 10 a.m. must be received by May 1, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG 252665-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG 252665-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Taxpayers may also submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Brendan O'Hara at (202) 622-7530; concerning submissions and the hearing, Michael Slaughter, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

T.D. 8711 amends the current temporary regulations under sections 1060 (§ 1.1060-1T) and 338(b) (§§ 1.338(b)-2T and 1.338(b)-3T), and related examples in the final regulations under section 338 (§ 1.338-3), concerning the treatment of acquired intangible assets.

The text of T.D. 8711 also serves as the text of these proposed regulations. The preamble to the temporary and final regulations explains the reasons for the amendments.

The amendments only address the effect of the enactment of section 197. The IRS and Treasury also intend to study other aspects of the current regulations under sections 1060 and 338(b). The current regulations have been the subject of public comments. The IRS and Treasury welcome further comments on all issues raised by the current regulations concerning purchase price allocation under sections 338(b) and 1060.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All

comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, May 22, 1997, at 10 a.m. in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by April 16, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic by May 1, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Brendan P. O'Hara, Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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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 continues to read in part as follows:

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

Par. 2. Section 1.338(b)-2 is added to read as follows:

§ 1.338(b)-2 *Allocation of adjusted grossed-up basis among target assets.*

[The text of this section is the same as the text of the amendments to § 1.338(b)-2T published in T.D. 8711.]

Par. 3. Section 1.338(b)-3 is added to read as follows:

§ 1.338(b)-3 Subsequent adjustments to adjusted grossed-up basis.

[The text of this section is the same as the text of the amendments to § 1.338(b)-3T published in T.D. 8711.]

Par. 4. Section 1.1060-1 is added to read as follows:

§ 1.1060-1 Special allocation rules for certain asset acquisitions.

[The text of this section is the same as the text of the amendments to § 1.1060-1T published in T.D. 8711.]

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 9, 1997, 2:53 p.m. and published in the issue of the Federal Register for January 16, 1997, 62 F.R. 2335)