

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Additional Rules for Exchanges of Personal Property Under Section 1031(a) Regulations

REG-116265-04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing final and temporary regulations (T.D. 9151) replacing the use of the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS) for determining what properties are of a like class for purposes of section 1031 of the Internal Revenue Code (Code). The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 12, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-116265-04), room 5203, Internal Revenue Service, PO 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-116265-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal

at <http://www.regulations.gov> (IRS and REG-116265-04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, J. Peter Baumgarten, 202-622-4920; concerning submissions of comments and/or requests for a public hearing, Guy Traynor, 202-622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend 26 CFR Part 1 relating to section 1031(a)(1). The temporary regulations substitute NAICS classification codes for the SIC classification codes in the regulatory text and permit the use of NAICS codes for determining product classes, and therefore property of like kind, of depreciable tangible personal property exchanged under section 1031. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

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. 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 Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies)

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or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of these proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is J. Peter Baumgarten, Office of Associate Chief Counsel (Income Tax and Accounting). 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 for part 1 continues to read, in part, as follows:

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

Par. 2. In §1.1031(a)–2, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) are revised to read as follows:

§1.1031(a)–2 Additional rules for exchanges of personal property.

[The text of proposed §1.1031(a)–2, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) is the same as the text of §1.1031(a)–2T, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) published elsewhere in this issue of the Bulletin.] §1.1031(j)–1 [**Amended**]

Par. 3. Section 1.1031(j)–1 is amended by removing the language “(SIC Code 3531)” in *Example 3(ii)(C)* and *Example 5(i)* of paragraph (d) and adding the language “(NAICS code 333120)” in its place.