

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Treatment of Certain Nuclear Decommissioning Funds for Purposes of Allocating Purchase Price in Certain Deemed and Actual Asset Acquisitions

REG-169135-03

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations

(T.D. 9158) relating to the treatment of certain nuclear decommissioning funds in the allocation of purchase price in deemed and actual asset acquisitions under sections 338 and 1060. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by December 15, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-169135-03), room 5203, Internal Revenue Service, POB 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-169135-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at www.irs.gov/regs, or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS — REG-169135-03).

FOR FURTHER INFORMATION CONTACT: Richard Starke at (202) 622-7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend 26 CFR 1 relating to sections 338 and 1060. The temporary regulations affect the treatment of certain nuclear decommissioning funds in the allocation of purchase price in deemed and actual asset acquisitions under sections 338 and 1060. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing

will be scheduled if requested in writing by any person timely submitting written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published 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. It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nevertheless, the IRS and Treasury Department request comments from small entities that believe they might be adversely affected by these regulations. This certification is based on the fact that the regulations provide relief to purchasers of nuclear power plants, which are generally not small businesses. Therefore, 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 the impact of these regulations.

Drafting Information

The principal author of these regulations is Richard Starke, Office of the Associate Chief Counsel (Corporate).

* * * * *

Proposed Amendments to the Regulations

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.338-6 is amended by adding paragraph (c)(5) to read as follows:

§1.338-6 Allocation of ADSP and AGUB among target assets.

[The text of this proposed section is the same as the text of §1.338-6T(c)(5) published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.1060-1 is amended by revising paragraph (c)(3) to read as follows:

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

[The text of this proposed section is the same as the text of §1.1060-1T(c)(3) and (e)(1)(ii)(C) published elsewhere in this issue of the Bulletin].

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on September 15, 2004, 8:45 a.m., and published in the issue of the Federal Register for September 16, 2004, 69 F.R. 55790)