

situations through the selection of a particular location. This includes ROW acquisitions within a potential highway corridor under consideration where necessary to preserve the corridor for future highway purposes. Authorization of work under this paragraph shall be in accord with the provisions of 23 CFR part 712.

(5) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

(d) The authorization to proceed with a project under 23 CFR 630.106(c)(3) through (c)(5) shall contain the following statement: "Authorization to proceed shall not constitute any commitment of Federal funds, nor shall it be construed as creating in any manner any obligation on the part of the Federal Government to provide Federal funds for that portion of the undertaking not fully funded herein."

(e) When a project has received an authorization under 23 CFR 630.106(c)(3) and (c)(4), subsequent authorizations beyond the location stage shall not be given until appropriate available funds have been obligated to cover eligible costs of the work covered by the previous authorization.

(f)(1) The Federal-aid share of eligible project costs shall be established at the time of project authorization in one of the following manners:

(i) Pro rata, with the authorization stating the Federal share as a specified percentage, or

(ii) Lump sum, with the authorization stating that Federal funds are limited to a specified dollar amount not to exceed the legal pro rata.

(2) The pro-rata or lump sum share may be adjusted to reflect any substantive change in the bids received as compared to the SHA's estimated cost of the project at the time of FHWA authorization, provided that Federal funds are available.

(g) Federal participation is limited to the agreed Federal share of eligible costs actually incurred by the State, not to exceed the maximum permitted by enabling legislation. Any private cash contributions to the project must be credited to, and thereby such contributions reduce, the total project cost and are not considered to be costs incurred by the State. Private cash contributions may be applied to participating or nonparticipating work. Cash contributions provided by a local government are considered the same as State funds.

(h) The sum of cash contributions from all sources plus the Federal funds may not exceed the total cost of the project.

(i) The State may contribute more than the normal non-Federal share of title 23, U.S.C., projects. However, proposals resulting in token Federal financing of a Federal-aid project shall not be approved.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-62-94]

RIN 1545-AT15

Continuity of Interest in Transfer of Target Assets After Qualified Stock Purchase of Target

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the income tax treatment of the transfer of target assets to the purchasing corporation or another member of the same affiliated group as the purchasing corporation (the transferee) after a qualified stock purchase (QSP) of target stock, if a section 338 election is not made. These regulations provide guidance to parties to such transfers and their shareholders. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for June 7, 1995, must be received by May 19, 1995.

ADDRESSES: Send submissions to: CC:CORP:T:R (CO-62-94), 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:CORP:T:R (CO-62-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William Alexander, (202) 622-7780; concerning the submissions and requests for a hearing, Christina Vasquez, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes guidance as to the treatment of transfers of target assets to another corporation after a qualified stock purchase of target stock, if a section 338 election is not made for the target. It addresses the effect of section 338 on the result in *Yoc Heating v. Commissioner* and similar cases.

Under § 1.368-1(b), for a transfer of assets to be pursuant to a reorganization within the meaning of section 368, there must be a continuity of interest in the target's business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the reorganization.

In *Yoc Heating v. Commissioner*, 61 T.C. 168 (1973), a corporation bought 85 percent of a target corporation's stock for cash and notes. As part of the same plan, the target subsequently transferred its assets to a newly formed subsidiary of the purchaser and dissolved. The purchaser received additional stock of its subsidiary in exchange for the purchaser's target stock and the minority shareholders received cash in exchange for their target stock.

The Tax Court, viewing the stock purchase and asset acquisition as an integrated transaction in which the purchaser acquired all of the target's assets for cash and notes, held there was insufficient continuity of interest to qualify the asset transfer as a reorganization under section 368 because the shareholders of the target before the stock purchase received no stock in the acquiring entity. As a result, the subsidiary received a cost basis in the target's assets.

In addition to *Yoc Heating*, there are other cases in which courts have denied reorganization treatment and have given the transferee a stepped-up basis in the target's assets following the purchase of the target's stock and the merger of the target into the purchaser or a related corporation. See, e.g., *Russell v. Commissioner*, 832 F.2d 349 (6th Cir. 1987), *aff'g Cannonsburg Skiing Corp. v. Commissioner*, T.C. Memo 1986-150 (corporation purchased target stock and then target merged into purchaser); *Security Industrial Insurance Co. v. United States*, 702 F.2d 1234 (5th Cir. 1983) (corporation purchased stock of targets and then targets merged into purchaser, which then transferred the target assets to a subsidiary of the purchaser); *South Bay Corporation v. Commissioner*, 345 F.2d 698 (2d Cir. 1965) (individual purchased stock in two targets and then targets merged into a third corporation owned by the individual); *Superior Coach of Florida*