

and electric power contracts in question that should be reflected in the proposed guidance? If so, why and how?

7. Does the proposed guidance provide sufficient clarity that it does not supersede or modify the CFTC OGC FAQ referenced in footnote 34? Is there any potential overlap between the proposed guidance and the CFTC OGC FAQ that should be further clarified? If so, what elements of the proposed guidance should be clarified to indicate that the proposed guidance does not supersede or modify the CFTC OGC FAQ?

8. With respect to natural gas peaking contracts, are there natural gas providers other than LDCs, such as Intrastate and Interstate Natural Gas Pipelines (as those terms are defined by the Energy Information Administration),⁴⁰ which are subject to regulatory obligations to prioritize and serve residential demand for natural gas, such that the providers are obligated to curtail service to electric utilities under certain circumstances? If so, please explain.

By the Securities and Exchange Commission.

Dated: April 4, 2016.

Brent J. Fields,
Secretary.

Issued in Washington, DC, on April 4, 2016, by the Commodity Futures Trading Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

Commodity Futures Trading Commission (CFTC) Appendices to Certain Natural Gas and Electric Power Contracts—Commission Voting Summary and Chairman's Statement
Appendix 1—Commodity Futures Trading Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of CFTC Chairman Timothy G. Massad

Today, the CFTC and the Securities and Exchange Commission (SEC), have jointly proposed guidance relating to the appropriate treatment of certain peaking supply and capacity contracts. We are issuing this guidance after considering the useful input we have received from market participants expressing concern about this issue. I support this proposal, as it will properly clarify the treatment of contracts used by many businesses with respect to the supply and delivery of electric power and natural gas.

We have proposed that certain electric power and natural gas contracts should not be considered "swaps" under the Commodity Exchange Act. We have done so because we believe they are examples of customary commercial arrangements as described in the final rule defining the term "swap."

For example, these contracts are entered into to assure availability of a commodity, not to hedge against risks arising from a future change in price of that commodity or for speculative, or investment purposes. They are typically entered into in response to regulatory requirements, the need to maintain reliable energy supplies, and practical considerations of storage or transport. All of these factors are consistent with what has been set forth in previous commission guidance.

Today's proposed guidance is an important complement to our final rule regarding Trade Options, which will reduce burdens on end-users and allow them to better address commercial risk. I thank my fellow Commissioners Bowen and Giancarlo for joining me in unanimously approving this proposal as well as that final rule.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-135734-14]

RIN 1545-BL00; RIN 1545-BN30

Partial Withdrawal of Proposed Application of Section 367 to a Section 351 Exchange Resulting From a Transaction Described in Section 304(a)(1); Partial Withdrawal of Proposed Guidance for Determining Stock Ownership

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws portions of a notice of proposed rulemaking published in the **Federal Register** on February 11, 2009. The withdrawn portions relate to the application of section 367(b) to transactions described in section 304(a)(1). This document also withdraws portions of a notice of proposed rulemaking published in the **Federal Register** on January 17, 2014. The withdrawn portions relate to the identification of certain stock of a foreign corporation that is disregarded in calculating ownership of the foreign corporation for purposes of determining whether it is a surrogate foreign corporation for purposes of section 7874.

DATES: As of April 8, 2016, portions of proposed rules (REG-147636-08 and REG-121534-12) published in the **Federal Register** on February 11, 2009 (74 FR 6840) and January 17, 2014 (79 FR 3145) are withdrawn.

FOR FURTHER INFORMATION CONTACT: Shane M. McCarrick or David A. Levine, (202) 317-6937.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 2009, the Department of Treasury (Treasury Department) and the IRS published in the **Federal Register** proposed regulations (REG-147636-08, 74 FR 6840), including § 1.367(b)-4(e), (f), and (g), which provide guidance on the application of section 367(b) to transactions described in section 304(a)(1). The regulations were proposed by cross-reference to temporary regulations in § 1.367(b)-4T in the same issue of the **Federal Register** (T.D. 9444, 74 FR 6824). This document withdraws these proposed regulations because the rules in the proposed regulations do not reflect current law. See Notice 2012-15, 2012-9 I.R.B. 424 (revising the approach under the proposed regulations regarding the interaction of sections 367 and 304 and providing that section 367(a) and (b) apply fully to certain transactions described in section 304(a)(1)). In the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and the IRS are issuing additional temporary regulations in § 1.367(b)-4T(e), (f), and (g), as well as (h), that, in the case of certain exchanges, generally require an inclusion of amounts in income as a deemed dividend or recognition of realized gain that is not otherwise recognized, or both. Accordingly, the Treasury Department and the IRS are issuing a notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register** that proposes new rules in § 1.367(b)-4T by cross-reference to the temporary regulations.

On January 17, 2014, the Treasury Department and the IRS published in the **Federal Register** proposed regulations (REG-121534-12, 79 FR 3145), including in § 1.7874-4, that provide that certain stock of a foreign corporation is disregarded in calculating ownership of the foreign corporation for purposes of determining whether it is a surrogate foreign corporation for purposes of section 7874. The regulations were proposed by cross-reference to temporary regulations in § 1.7874-4T in the same issue of the **Federal Register** (T.D. 9654, 79 FR

⁴⁰ See *Distribution of Natural Gas: The Final Step in the Transmission Process*, Energy Information Administration, Office of Oil and Gas, June 2008, available at https://www.eia.gov/pub/oil_gas/natural_gas/feature_articles/2008/ldc2008/ldc2008.pdf.

3094). In the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and the IRS are amending certain of the temporary regulations in § 1.7874–4T. Accordingly, the Treasury Department and the IRS are issuing a notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register** that proposes rules in § 1.7874–4 by cross-reference to the amended temporary regulations. This document withdraws the previously proposed regulations that are replaced by the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.367(b)–4(e), (f), and (g) of the notice of proposed rulemaking (REG–147636–08) published in the **Federal Register** on February 11, 2009 (74 FR 6840) are withdrawn. Also, under the authority of 26 U.S.C. 7805, § 1.7874–4(c)(1)(i), (c)(1)(ii)(B), (c)(2), (d)(1)(i), (d)(1)(ii), (h), (i)(6), (i)(7)(iii)(C), (i)(7)(iv), (j)(7), (j)(8), and (k)(1), as well as paragraph (ii) of *Example 1*, paragraph (ii) of *Example 2*, and *Example 3* through *Example 8* of § 1.7874–4(j), of the notice of proposed rulemaking (REG–121534–12) published in the **Federal Register** on January 17, 2014 (79 FR 3145) are withdrawn.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–135734–14]

RIN 1545–BM45

Inversions and Related Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: The Department of Treasury (Treasury Department) and the IRS are issuing temporary regulations that address transactions that are structured

to avoid the purposes of sections 7874 and 367 of the Internal Revenue Code (the Code) and certain post-inversion tax avoidance transactions in the Rules and Regulations section of this issue of the **Federal Register**. The temporary regulations affect certain domestic corporations and domestic partnerships whose assets are directly or indirectly acquired by a foreign corporation and certain persons related to such domestic corporations and domestic partnerships. The text of the 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 July 7, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–135734–14), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. 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–135734–14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG–135734–14).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations under sections 304, 367, and 7874, Shane M. McCarrick or David A. Levine, (202) 317–6937; concerning the proposed regulations under sections 956 and 7701(l), Rose E. Jenkins, (202) 317–6934 (not toll-free numbers); concerning submissions of comments or requests for a public hearing, Regina Johnson, (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain regulations under sections 304, 367, 954, 956, 7701(l), and 7874 of the Internal Revenue Code (Code) that address transactions that are structured to avoid the purposes of sections 7874 and 367 of the Internal Revenue Code (the Code) and certain post-inversion tax avoidance transactions. The text of the temporary regulations also serves as the text of the proposed regulations herein. The preamble to the temporary regulations explains the temporary regulations and the corresponding proposed regulations.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements

of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also 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), this notice of proposed rulemaking has been submitted to the Chief Counsel of 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 comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. Treasury and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits electronic or 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 authors of these proposed regulations are Rose E. Jenkins, David A. Levine, and Shane M. McCarrick of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS 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 and revising entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.304–7 also issued under 26 U.S.C. 304(b)(5)(C).

Section 1.367(b)–4 also issued under 26 U.S.C. 367(a), 367(b), and 954(c)(6)(A).

Section 1.956–2 also issued under 26 U.S.C. 956(d) and 956(e).