

Because \$200,000 of the contribution was returned within the time period during which qualifying expenditures could be made, this amount is not includible in M's income. However, the remaining \$100,000 is includible in M's income for its 2000 taxable year (the taxable year in which the amount was received) because the amount was neither spent nor repaid during the prescribed time period. To the extent M repays the remaining \$100,000 after year 2002, M would be entitled to a deduction in the year such repayment is paid or incurred.

(d) *Adjusted basis*—(1) *Exclusion from basis*. Except for a repayment described in paragraph (d)(2) of this section, to the extent that a water or sewerage disposal facility is acquired or constructed with an amount received as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the facility is reduced by the amount of the contribution. To the extent the water or sewerage disposal facility is acquired as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the contributed facility is zero.

(2) *Repayment of contribution*. If a contribution to the capital of the taxpayer under paragraph (a) of this section is repaid to the contributor, either in whole or in part, then the repayment amount is a capital expenditure in the taxable year in which it is paid or incurred, resulting in an increase in the property's adjusted basis in such year. Capital expenditures allocated to depreciable property under paragraph (d)(3) of this section may be depreciated over the remaining recovery period for that property.

(3) *Allocation of contributions*. An amount treated as a capital expenditure under this paragraph (d) is to be allocated proportionately to the adjusted basis of each property acquired or constructed with the contribution based on the relative cost of such property.

(4) *Example*. The application of this paragraph (d) is illustrated by the following example:

*Example.* A, a calendar year regulated public utility that provides water services, received a \$1,000,000 contribution in aid of construction in 2000 as an advance from B, a developer, for the purpose of constructing a water facility. To the extent that the \$1,000,000 exceeds the actual cost of the facility, the contribution is subject to being returned. Under the terms of the advance, A agrees to pay to B a percentage of the receipts from the facility over a fixed period, but limited to the cost of the facility. In 2001, A builds the facility at a cost of \$700,000 and returns \$300,000 to B. In 2002, A pays \$20,000 to B out of the receipts from the facility. Assuming accurate records are kept, the \$700,000 advance is a contribution to the capital of A under paragraph (a) of this

section and is excludable from A's income. The basis of the \$700,000 facility constructed with this contribution to capital is zero. The \$300,000 excess amount is not a contribution to the capital of A under paragraph (a) of this section because it does not meet the expenditure rule described in paragraph (c)(1) of this section. However, this excess amount is not includible in A's income pursuant to paragraph (c)(2)(ii) of this section since the amount is repaid to B within the required time period. The repayment of the \$300,000 excess amount to B in 2001 is not treated as a capital expenditure by A. The \$20,000 payment to B in 2002 is treated as a capital expenditure by A in 2002 resulting in an increase in the adjusted basis of the water facility from zero to \$20,000.

(e) *Statute of limitations*—(1)

*Extension of statute of limitations.*

Under section 118(d)(1), the statutory period for assessment of any deficiency attributable to a contribution to capital under paragraph (a) of this section does not expire before the expiration of 3 years after the date the taxpayer notifies the Secretary in the time and manner prescribed in paragraph (e)(2) of this section.

(2) *Time and manner of notification.*

Notification is made by attaching a statement to the taxpayer's federal income tax return for the taxable year in which any of the reportable items in paragraphs (e)(2)(i) through (iii) of this section occur. The statement must contain the taxpayer's name, address, employer identification number, taxable year, and the following information with respect to contributions of property other than water or sewerage disposal facilities that are subject to the expenditure rule described in paragraph (c) of this section—

(i) The amount of contributions in aid of construction expended during the taxable year for property described in section 118(c)(2)(A) (qualified property) as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received;

(ii) The amount of contributions in aid of construction that the taxpayer does not intend to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received; and

(iii) The amount of contributions in aid of construction that the taxpayer failed to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(f) *Effective date*. This section is applicable for any money or other property received by a regulated public utility that provides water or sewerage

disposal services on or after January 11, 2001.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 3.** The authority citation for part 602 continues to read as follows:

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

**Par. 4.** In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

### § 602.101 OMB Control numbers.

\* \* \* \* \*

(b) \* \* \*

CFR part or section identified and described	Current OMB control No.
* * * * *	* * * * *
1.118-2 .....	1545-1639
* * * * *	* * * * *

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: December 20, 2000.

**Jonathan Talisman,**

*Acting Assistant Secretary of the Treasury.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 7

[TD 8937]

**RIN 1545-AY53**

### Stock Transfer Rules: Transition Rules

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations addressing distributions with respect to, or a disposition of, certain stock that was subject to prior temporary regulations under section 367(b). Section 367(b) addresses the application of nonrecognition exchange provisions in Subchapter C of the Internal Revenue Code to transactions that involve one or more foreign corporations.

**DATES:** *Effective Date.* These regulations are effective as of January 11, 2001.

*Applicability Dates.* These regulations apply to distributions or dispositions that occur on or after January 11, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Mark D. Harris, (202) 622-3860 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

On January 24, 2000, the IRS and Treasury issued final regulations under section 367(b) of the Internal Revenue Code (Code). At the same time, the IRS and Treasury also modified temporary regulation § 7.367(b)-12(a). The final regulations and modified temporary regulation were effective as of February 23, 2000.

As modified, § 7.367(b)-12(a) addresses distributions with respect to, or a disposition of, stock that was subject to certain provisions of the temporary section 367(b) regulations that were in effect before February 23, 2000. This document finalizes the rule stated in § 7.367(b)-12(a) in order to insure its continued application. See section 7805(e)(2) (stating a "sunset rule" applicable to temporary regulations).

**Special Analyses**

It has been determined that this Treasury decision 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 notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small business.

**Drafting Information**

The principal author of these regulations is Mark Harris of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects 26 CFR Parts 1 and 7**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 7 are amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.367(b)-12 also issued under 26 U.S.C. 367(a) and (b). \* \* \*

**Par. 2.** Section 1.367(b)-0 is amended by revising the introductory text and adding entries for § 1.367(b)-12 to read as follows:

**§ 1.367(b)-0 Table of contents.**

This section lists the paragraphs contained in §§ 1.367(b)-1 through 1.367(b)-6 and 1.367(b)-12.

\* \* \* \* \*

**§ 1.367(b)-12 Subsequent treatment of amounts attributed or included in income.**

- (a) In general.
- (b) Applicable rules.
- (c) Effective date.

**Par. 3.** Section 1.367(b)-12 is added to read as follows:

**§ 1.367(b)-12 Subsequent treatment of amounts attributed or included in income.**

(a) *In general.* This section applies to distributions with respect to, or a disposition of, stock—

(1) To which, in connection with an exchange occurring before February 23, 2000, an amount has been attributed pursuant to § 7.367(b)-9 or 7.367(b)-10 of this chapter (as in effect prior to February 23, 2000, see 26 CFR part 1 revised as of April 1, 1999); or

(2) In respect of which, before February 23, 2000, an amount has been included in income or added to earnings and profits pursuant to § 7.367(b)-7 or § 7.367(b)-10 of this chapter (as in effect prior to February 23, 2000, see 26 CFR part 1 revised as of April 1, 1999).

(b) *Applicable rules.* See § 7.367(b)-12(b) through (e) of this chapter (as in effect prior to January 11, 2001, see 26 CFR part 1 revised as of April 1, 2000) for purposes of applying paragraph (a) of this section.

(c) *Effective date.* This section applies to distributions or dispositions that occur on or after January 11, 2001.

**PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976**

**Par. 4.** The authority citation for part 7 is amended by removing the entry for § 7.367(b)-12 and continues to read in part as follows:

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

**§ 7.367(b)-12 [Removed]**

**Par. 5.** Section 7.367(b)-12 is removed.

Approved: December 28, 2000

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

**Jonathan Talisman,**

*Assistant Secretary of the Treasury.*

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 301**

[TD 8932]

**RIN 1545-AW81**

**Timely Mailing Treated as Timely Filing/Electronic Postmark**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations; and removal of temporary regulations.

**SUMMARY:** This document contains regulations relating to timely mailing treated as timely filing and paying under section 7502 of the Internal Revenue Code. The regulations generally reflect changes to the law made since 1960. In addition, the regulations provide that the date of an electronic postmark will be the filing date under certain circumstances. The regulations affect taxpayers who file documents or make payments or deposits.

**DATES:** *Effective Date:* These regulations are effective January 11, 2001.

*Applicability Date:* For dates of applicability, see §§ 301.7502-1(g) and 301.7502-2(e).

**FOR FURTHER INFORMATION CONTACT:** Charles A. Hall, (202) 622-4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 7502 relating to timely mailing treated as timely filing and paying. A notice of proposed rulemaking (REG-115433-98) was published in the **Federal Register** (64 FR 2606) on January 15, 1999. Temporary regulations (TD 8807) relating to electronic postmarks for electronically filed income tax returns were published in the **Federal Register** for the same day (64 FR 2568). No public hearing was requested or held. No comments were received from the public in response to the notice of proposed rulemaking. The proposed regulations under section