

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-101258-08]

RIN 1545-BH66

Guidance Under Sections 642 and 643 (Income Ordering Rules); Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking providing guidance under Internal Revenue Code section 642(c) with regard to the Federal tax consequences of an ordering provision in a trust, a will, or a provision of local law that attempts to determine the tax character of the amounts paid to a charitable beneficiary of the trust or estate. The proposed regulations also make conforming amendments to the regulations under section 643(a)(5). The proposed regulations affect estates, charitable lead trusts (CLTs) and other trusts making payments or permanently setting aside amounts for a charitable purpose.

DATES: The public hearing, originally scheduled for October 8, 2008, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irs.counsel.treas.gov*.

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Wednesday, June 18, 2008 (73 FR 34670), announced that a public hearing was scheduled for October 8, 2008, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under sections 642 and 643 of the Internal Revenue Code.

The public comment period for these regulations expired on September 16, 2008. Outlines of topics to be discussed at the hearing were due on September 18, 2008. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Monday, September 22, 2008, no one has requested to speak. Therefore, the

public hearing scheduled for October 8, 2008, is cancelled.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8-22823 Filed 9-26-08; 8:45 am]

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-143544-04]

RIN 1545-BD84

Regulations Enabling Elections for Certain Transactions Under Section 336(e); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG-143544-04) that was published in the **Federal Register** on Monday, August 25, 2008 (73 FR 49965) under section 336(e) of the Internal Revenue Code. The proposed regulations, when finalized, would permit taxpayers to make an election to treat certain sales, exchanges, and distributions of another corporation's stock as taxable sales of that corporation's assets. These proposed regulations will affect corporations and their shareholders.

FOR FURTHER INFORMATION CONTACT: Mark J. Weiss, (202) 622-7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The correction notice that is the subject of this document is under sections 336 and 338 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-143544-04) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-143544-04), which was the subject of FR Doc. E8-19603, is corrected as follows:

1. On page 49967, column 2, in the preamble, under the paragraph heading "2. Requirements for a Section 336(e)

Election", line 2 from the bottom of the column, the language "1(b)(4)(iii), 1.336-1(b)(11), and 1.338-" is corrected to read "1(b)(4)(iii) and 1.336-1(b)(11), and § 1.338-".

§ 1.336-2 [Corrected]

2. On page 49973, column 3, § 1.336-2(b)(1)(i)(B)(3) *Example* 2.(i), line 5, the language "class of Target Subsidiary common stock" is corrected to read "class of Target Subsidiary stock".

3. On page 49975, column 2, § 1.336-2(b)(2)(v), line 10, the language "unrelated person and the subsidiary's" is corrected to read "unrelated person and the new subsidiary's".

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8-22822 Filed 9-26-08; 8:45 am]

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-209006-89]

RIN 1545-AM97

Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG-209006-89) that was published in the **Federal Register** on Wednesday, August 20, 2008 (73 FR 49278) under sections 367(a), 367(a)(5), 367(b), 1248(a), 1248(e), 1248(f), and 6038B of the Internal Revenue Code. The proposed regulations under sections 367(a)(5) and 367(b) apply when a domestic corporation transfers certain property to a foreign corporation in an exchange described in section 361(a) or (b). The proposed regulations under section 1248(e) suspend the application of section 1248(e) when capital gains are taxed at a rate equal to or greater than the rate at which ordinary income is taxed. The proposed regulations under section 1248(f) apply when a domestic corporation distributes stock of certain foreign corporations in a distribution to which section 337, 355, or 361 applies. The proposed

regulations under section 1248(f) include regulations described in Notice 87-64 (1987-2 CB 375). The proposed regulations under section 6038B establish reporting requirements for certain transfers of property by a domestic corporation to a foreign corporation in certain exchanges described in section 361(a) or (b). Finally, the proposed regulations under section 367(a) include the regulations described in Notice 2008-10 (2008-3 IRB 277).

The proposed regulations included in this document affect domestic corporations that transfer property to foreign corporations in certain transactions, or that distribute the stock of certain foreign corporations, and certain shareholders of such domestic corporations. The proposed regulations are necessary, in part, to provide guidance on changes to the law made by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3342).

FOR FURTHER INFORMATION CONTACT: Daniel McCall, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 367, 1248, and 6038 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-209006-89) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-209006-89), which was the subject of FR Doc. E8-18885, is corrected as follows:

1. On page 49282, column 1, in the preamble, under the paragraph heading "(iii) Adjustments To Basis of Stock Received by Control Group Members", second paragraph of the column, lines 17 through 28, the language "preamble)) exceeds the built-in gain in such stock (outside gain). The outside gain is the amount by which the fair market value of such stock exceeds the section 358 basis of the stock (as determined before any required adjustment to such basis under the proposed regulations). The proposed regulations provide special rules that apply if the control group member holds more than one block of stock received in the transaction." is corrected to read "preamble)) exceeds the built-in gain (or loss) in such stock, defined as outside gain (or loss) in the

proposed regulations. The outside gain (or loss) is the amount by which the fair market value of such stock is greater than (or less than) the section 358 basis of the stock (as determined before any required adjustment to such basis under the proposed regulations). The proposed regulations provide special rules that apply if the control group member holds more than one block of stock received in the transaction. Comments are requested concerning whether, and the extent to which, an outside loss should limit the reduction to a control group member's section 358 basis in the stock received that is attributable to section 367(a) property. Consistent with the legislative history, the IRS and Treasury Department believe the basis reduction must be sufficient to preserve the control group member's share of inside gain (to the extent not otherwise recognized by the U.S. transferor) in the stock received that is attributable to section 367(a) property. The IRS and Treasury Department believe this rule to be appropriate even if a control group member has an outside loss, in part because a basis reduction is required only if an election is made to apply the exception from the general rule of section 367(a)(5) provided by the proposed regulations."

§ 1.367(a)-7 [Corrected]

2. On page 49291, column 2, § 1.367(a)-7(c)(3)(i)(B), the language "The control group member's outside gain." is corrected to read "The control group member's outside gain (or loss).".

3. On page 49293, column 2, § 1.367(a)-7(f)(7), line 1, the language "Outside gain is the product of the" is corrected to read "Outside gain (or loss) is the product of the".

4. On page 49293, column 2, § 1.367(a)-7(f)(7)(i), last line, the language "356; exceeds" is corrected to read "356; is greater than (or less than).".

5. On page 49293, column 3, § 1.367(a)-7(g) *Example 1.*, line 5, the language "a \$80x basis and \$100x fair market value." is corrected to read "a \$120x basis and \$100x fair market value."

6. On page 49294, column 1, § 1.367(a)-7(g) *Example 1.* (ii)(E), the language "Under paragraph (c)(3) of this section, DP1's section 358 basis in the FA stock (\$80x) received in exchange for its DC stock must be reduced by \$25x, the amount by which DP1's share of inside gain (\$45x) exceeds DP1's \$20x outside gain. DP1's share of inside gain is determined based on its 50% ownership interest (by value) in DC at the time of the section 361 exchange. Because DC does not recognize gain on

the section 361 exchange with respect to DP1, DP1's share of inside gain is not reduced under paragraph (c)(3)(i)(A) of this section. DP1's \$20x outside gain equals the product of the section 367(a) percentage (100%) and the amount by which the fair market value (\$100x) of the FA stock received by DP1 in exchange for its DC stock exceeds the section 358 basis of such FA stock (\$80x). As adjusted, DP1's basis in its FA stock is \$55x. Similarly, under paragraph (c)(3) of this section, DP2's section 358 basis in the FA stock (\$50x) received in exchange for its DC stock must be reduced by \$17x, the amount by which DP2's share of inside gain (\$27x) exceeds DP1's \$10x outside gain. DP2's share of inside gain is determined based on its 30% ownership interest (by value) in DC at the time of the section 361 exchange. Because DC does not recognize gain on the section 361 exchange with respect to DP2, DP2's share of inside gain is not reduced under paragraph (c)(3)(i)(A) of this section. DP2's \$10x outside gain equals the product of the section 367(a) percentage (100%) and the amount by which the fair market value (\$60x) of the FA stock received by DP2 in exchange for its DC stock exceeds the section 358 basis of such stock (\$50x). As adjusted, DP2's basis in its FA stock is \$33x." is corrected to read "Under paragraph (c)(3) of this section, DP1's section 358 basis in the FA stock (\$120x) received in exchange for its DC stock must be reduced by \$65x, the amount by which DP1's share of inside gain (\$45x) exceeds DP1's \$20x outside loss. DP1's share of inside gain is determined based on its 50% ownership interest (by value) in DC at the time of the section 361 exchange. Because DC does not recognize gain on the section 361 exchange with respect to DP1, DP1's share of inside gain is not reduced under paragraph (c)(3)(i)(A) of this section. DP1's \$20x outside loss equals the product of the section 367(a) percentage (100%) and the amount by which the fair market value (\$100x) of the FA stock received by DP1 in exchange for its DC stock is less than the section 358 basis of such FA stock (\$120x). As adjusted, DP1's basis in its FA stock is \$55x. Similarly, under paragraph (c)(3) of this section, DP2's section 358 basis in the FA stock (\$50x) received in exchange for its DC stock must be reduced by \$17x, the amount by which DP2's share of inside gain (\$27x) exceeds DP1's \$10x outside gain. DP2's share of inside gain is determined based on its 30% ownership interest (by value) in DC at the time of the section 361 exchange. Because DC does not

recognize gain on the section 361 exchange with respect to DP2, DP2's share of inside gain is not reduced under paragraph (c)(3)(i)(A) of this section. DP2's \$10x outside gain equals the product of the section 367(a) percentage (100%) and the amount by which the fair market value (\$60x) of the FA stock received by DP2 in exchange for its DC stock is greater than the section 358 basis of such stock (\$50x). As adjusted, DP2's basis in its FA stock is \$33x."

7. On page 49294, column 2, § 1.367(a)-7(g) *Example 2.* (ii)(D), line 3 from the bottom of the paragraph, the language "FP stock received by DP1 (\$180x) exceeds the" is corrected to read "FP stock received by DP1(\$180x) is greater than the".

8. On page 49294, column 3, § 1.367(a)-7(g) *Example 3.* (ii)(D), line 2 from the bottom of the paragraph, the language "by DP1 (\$200x) exceeds the section 358 basis" is corrected to read "by DP1 (\$200x) is greater than the section 358 basis".

§ 1.1248(f)-2 [Corrected]

9. On page 49301, column 1, § 1.1248(f)-2(d) *Example 2.* (ii)(E), lines 11 through 28, the language "percentage (100%) and the excess of the fair market value of the FA stock received by DP1 (\$200x) over the section 358 basis of such stock (\$180x). As adjusted, DP1's basis in the FA stock is \$30x. Similarly, DP2's section 358 basis (\$100x) in the FA stock received in the section 361 distribution is reduced by \$82x, the amount by which DP2's 30% share of inside gain (\$102x) exceeds DP1's \$20x outside gain. DP2's share of inside gain is not reduced under § 1.367(a)-7(c)(2)(ii) because DC did not recognize gain with respect to DP2. DP2's \$20x outside gain equals the product of the section 367(a) percentage (100%) and the excess of the fair market value of the FA stock received by DP2 (\$120x) over the section 358 basis of such stock (\$100x). As adjusted, DP2's basis in the" is corrected to read "percentage (100%) and the amount by which the fair market value of the FA stock received by DP1 (\$200x) is greater than the section 358 basis of such stock (\$180x). As adjusted, DP1's basis in the FA stock is \$30x. Similarly, DP2's section 358 basis (\$100x) in the FA stock received in the section 361 distribution is reduced by \$82x, the amount by which DP2's 30% share of inside gain (\$102x) exceeds DP1's \$20x outside gain. DP2's share of inside gain is not reduced under § 1.367(a)-7(c)(2)(ii) because DC did not recognize gain with respect to DP2. DP2's \$20x outside gain equals the product of the section 367(a) percentage

(100%) and the amount by which the fair market value of the FA stock received by DP2 (\$120x) is greater than the section 358 basis of such stock (\$100x). As adjusted, DP2's basis in the".

10. On page 49301, column 2, § 1.1248(f)-2(d) *Example 2.* (ii)(H), first line of the column, the language "DP1, DP2 and FA in the section 361" is corrected to read "DP1, DP2 and FP in the section 361".

11. On page 49302, column 3, § 1.1248(f)-2(d) *Example 4.* (ii)(C), line 6 from the bottom of the paragraph, the language "of CFC1 stock exceeds DP1's section 358" is corrected to read "of CFC1 stock is greater than DP1's section 358".

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8-22820 Filed 9-26-08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2008-0744]

RIN 1625-AA08

Special Local Regulations for Marine Events; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the enforcement period for special local regulations during the "Tug-of-War", a marine event held annually on the waters of Spa Creek between Eastport and Annapolis, Maryland. Special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Spa Creek during the event. **DATES:** Comments and related material must reach the Coast Guard on or before October 29, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2008-0744 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: <http://www.regulations.gov>.

(2) Mail: Docket Management Facility (M-30), U.S. Department of

Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(3) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) Fax: 202-493-2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Ronald Houck, Marine Information Specialist, Coast Guard Sector Baltimore, telephone 410-576-2674. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0744), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.