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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-139683-04

RIN 1545-BD95

Section 1374 Effective Dates

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance concerning the applicability of section 1374 to S corporations that acquire assets in carryover basis transactions from C corporations on or after December 27, 1994, and to certain corporations that terminate S corporation status and later elect again to become S corporations. The text of these regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments, and a request for a public hearing, must be received by March 22, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-139683-04), room 5203, Internal Revenue Service, P.O. Box 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-139683-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent

electronically, via the IRS internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-139683-04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen R. Cleary, (202) 622-7750, concerning submissions of comments, Sonya Cruse, (202) 622-4693 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION

#### **Background and Explanation of Provisions**

Temporary Regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR Part 1 relating to section 1374. The temporary regulations provide that (a) section 1374(d)(8) applies to any transaction described in that section that occurs on or after December 27, 1994, regardless of the date of the S corporation's election under section 1362, and (b) for purposes of section 633(d)(8) of the Tax Reform Act of 1986, as amended by the Technical and Miscellaneous Revenue Act of 1988, a corporation's most recent S election, not an earlier election that has been revoked or terminated, determines whether or not it is subject to current section 1374. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

#### **Special Analysis**

It has been determined that this proposed regulation 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 §1.1374-8(a)(2) of these regulations. Because §1.1374-8(a)(2) does not impose a collection of information

on small entities, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6). It is hereby certified that §1.1374-10(c) of this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that §1.1374-10(c) of this regulation addresses an uncommon fact situation not likely to affect a significant number of small entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits 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 author of these regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury 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 continues to read, in part, as follows:

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

Par. 2. Section 1.1374-8 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§1.1374-8 Section 1374(d)(8) transactions.

(a) (1) \* \* \*

(2) [The text of the proposed amendment to §1.1374-8(a)(2) is the same as the text of §1.1374-8T(a)(2) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

Par. 3. In §1.1374-10, paragraph (c) is added to read as follows:

§1.1374-10 Effective date and additional rules.

\* \* \* \* \*

(c) [The text of proposed §1.1374-10(c) is the same as the text of §1.1374-10T(c) published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews

Deputy Commissioner for Services and Enforcement.