

Part III - Administrative, Procedural, and Miscellaneous

Effective Date of Proposed Regulations under § 1.368-2(d)(4)

Notice 2000-1

This document contains information regarding a Notice of Proposed Rulemaking relating to the solely for voting stock requirement in reorganizations under § 368(a)(1)(C) of the Internal Revenue Code, which was published in the Federal Register on June 14, 1999 (64 Fed. Reg. 31770 (1999)) (the “proposed regulations”). See 1999-26 I.R.B. 6. The proposed regulations, under § 1.368-2(d)(4), provide that preexisting ownership of a portion of a target corporation’s stock by an acquiring corporation will not, in and of itself, prevent the solely for voting stock requirement in a “C” reorganization from being satisfied. The regulations propose to reverse the Internal Revenue Service’s previous position that the acquisition of assets of a partially controlled subsidiary does not qualify as a tax-free “C” reorganization. See Rev. Rul. 54-396, 1954-2 C.B. 147. This position subsequently was sustained in litigation in Bausch & Lomb Optical Co. v. Commissioner, 267 F.2d 75 (2d Cir.), cert. denied, 361 U.S. 835 (1959). The regulations are proposed to apply to transactions occurring after the date that a Treasury decision adopting the regulations is published in the Federal Register, except that they do not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date that

the regulations are published as final regulations in the Federal Register, and at all times thereafter.

Comments were received requesting that taxpayers be allowed to apply the proposed regulations to transactions occurring before the proposed regulations are published as final regulations. The Internal Revenue Service and Treasury Department have determined that the increased flexibility that results from the proposed regulations should be available to taxpayers in structuring transactions before the publication as final regulations. Accordingly, the proposed regulations, when finalized, will be modified to provide that the regulations apply to transactions occurring after December 31, 1999, unless the transaction occurs pursuant to a written agreement that is (subject to customary conditions) binding on that date and at all times thereafter. Taxpayers may rely on this Notice until final regulations are issued.

In addition, taxpayers may request a private letter ruling permitting them to apply the final regulations to transactions occurring on or after June 11, 1999 (the date the proposed regulations were filed with the Federal Register) to which the final regulations would not otherwise apply, and for which there was not a written agreement (subject to customary conditions) binding on June 11, 1999 and at all times thereafter. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the Service that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes, with respect to the applicability of the final regulations to the transaction.

The principal author of this notice is Marnie Rapaport of the Office of the Assistant Chief Counsel (Corporate) For further information regarding this notice, contact Ms. Rapaport on (202) 622- 7550 (not toll-free call).