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Published April 10, 2006

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-146384-05

RIN 1545-BF02

Application of Section 338 to Insurance Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance under section 197 that apply to the treatment of certain insurance contracts assumed in an assumption reinsurance transaction and section 338 that apply to a deemed sale or acquisition of an insurance company's assets pursuant to an election under section 338 of the Internal Revenue Code, to a sale or acquisition of an insurance trade or business subject to section 1060, and to the acquisition of insurance contracts through assumption reinsurance. The text of those regulations also serve as the text of these proposed regulation.

DATES: Written or electronic comments, and a request for a public hearing, must be received by July 10, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-146384-05), 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-146384-05), 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 or via the Federal eRulemaking Portal at www.regulations.gov (IRS and REG-146384-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Mark J. Weiss, (202) 622-7790, concerning submissions of comments, Richard Hurst, (202) 622-7180 (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 338. The temporary regulations add §§1.197-2T(g)(5)(ii), 1.338-11T(d), and 1.338-11T(e). The texts of those regulations also serve as the text of these proposed regulations. The preamble to the temporary regulations explain the amendments included in these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations do not have a substantial economic impact because they merely provide guidance about the operation of the tax law in the context of acquisitions of insurance companies and businesses.

Moreover, they are expected to apply predominantly to transactions involving larger businesses. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its 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 copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can 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 who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Mark J. Weiss 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 * * *
Section 1.197-2 also issued under 26 U.S.C. 197. * * *
Section 1.338-11 also issued under 26 U.S.C. 338. * * *

Par. 2. Section 1.197-2 is amended by revising paragraph (g)(5)(ii) to read as follows:

§1.197-2T Amortization of goodwill and certain other intangibles (temporary).

* * * * *

(g) * * *

(5)(ii) * * * [The text of the proposed §1.197-2(g)(5)(ii) is the same as the text for §1.197-2T(g)(5)(ii) published elsewhere in this issue of the **Federal Register**].

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Par. 3. Section 1.338-1 is amended by redesignating existing paragraph (b)(2)(vii) as paragraph (b)(2)(viii) and adding new paragraph (b)(2)(vii) to read as follows:

§1.338-1 General principles; status of old target and new target

* * * * *

(b) * * *

(2) * * *

(vii) [The text of the proposed §1.338-1(b)(2)(vii) is the same as the text for §1.338-1T(b)(2)(vii) published elsewhere in this issue of the **Federal Register**].

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Par. 4. Section 1.338-11 is amended by revising paragraphs (d) and (e) to read as follows:

§1.338-11 Effect of section 338 election on insurance company targets.

* * * * *

(d) Reserve increases by new target after the deemed asset sale.

[The text of the proposed §1.338-11(d) is the same as the text for §1.338-11T(d) published elsewhere in this issue of the **Federal Register**].

(e) Effect of section 338 election on section 846(e) election.

[The text of the proposed §1.338-11(e) is the same as the text for §1.338-11T(e) published elsewhere in this issue of the **Federal Register**].

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Par. 5. Section 1.846-2 as amended by adding new paragraph (d) to read as follows:

§ 1.846-2 Election by taxpayer to use its own historical loss payment pattern.

* * * * *

(d) Effect of section 338 election on section 846(e) election.

[The text of the proposed §1.846-2(d) is the same as the text for §1.846-2T(d) published elsewhere in this issue of the **Federal Register**].

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Par. 6. Section 1.846-4 as amended by:

1. The section heading is revised.

2. Redesignating the existing text as paragraph (a).
3. Adding new paragraph (b).

The revision and addition read as follows:

§ 1.846-4 Effective dates.

* * * * *

(b) Section 338 election.

[The text of the proposed §1.846-4(b) is the same as the text for §1.846-4T(b) published elsewhere in this issue of the **Federal Register**].

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Mark E. Matthews

Deputy Commissioner for Services and Enforcement.