

[4830-01-p]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8964]

RIN 1545-AY55

Liabilities Assumed in Certain Corporate Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the assumption of liabilities in certain corporate transactions under section 301 of the Internal Revenue Code. These final regulations affect corporations and their shareholders. Changes to the applicable law were made by the Miscellaneous Trade and Technical Corrections Act of 1999.

DATES: Effective Date: These regulations are effective September 27, 2001.

Applicability Date: For dates of applicability, see the Effective Date portion of the preamble under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Douglas Bates (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

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

Changes to the applicable law were made by the Miscellaneous Trade and Technical Corrections Act of 1999, Public Law 106-36 (113 Stat. 127). On January 4, 2001, temporary regulations (TD 8924) were published in the **Federal Register** (66 FR 723) under section 301 of the Internal Revenue Code, relating to liabilities assumed in connection with a distribution of property made by a corporation with respect to its stock. A notice of proposed rulemaking cross-referencing the temporary regulations

was published in the **Federal Register** for the same day (66 FR 748). No public hearing was requested or held.

No written comments responding to the notice were received. This document adopts, without substantive change, final regulations with respect to the notice of proposed rulemaking.

### **Effective Date**

The regulations apply generally to distributions occurring after January 4, 2001. The regulations also apply to distributions occurring on or prior to January 4, 2001, if the distribution is made as part of a transaction described in, or substantially similar to, the transaction in Notice 99-59 (1999-2 C.B. 761), including transactions designed to reduce gain. Under section 7805(b)(3), the Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse. These regulations are being applied retroactively to prevent the abuse described in Notice 99-59. No inference should be drawn regarding the tax treatment of distributions not covered by these 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 is hereby certified that these final regulations do not have a significant economic impact on a substantial number of small entities. These final regulations under section 301 address distributions by corporations in which liabilities are assumed by the shareholders or in which the distributed property is subject to liabilities. These final regulations provide that the amount of a distribution under section 301 will be reduced by the amount of any liability that is treated as assumed by the distributee within the meaning of section 357(d).

These regulations apply to persons receiving distributions of property in which the property is subject to a liability, or in which liabilities are assumed by the distributee. These regulations, however, will affect only those persons described in the preceding sentence that would have, but for the regulations, considered liabilities to have been assumed in circumstances other than those described in section 357(d). Therefore, most businesses will not be affected by the final regulations in any given year. Therefore, 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, the notice of proposed rulemaking accompanying these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

#### **Drafting Information**

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

#### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

#### **Amendments to the Regulations**

Accordingly, 26 CFR part 1 is 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 1.301-1 also issued under 26 U.S.C. 357(d)(3). \* \* \*

Par. 2. Section 1.301-1 is amended by revising paragraph (g) to read as follows:

§1.301-1 Rules applicable with respect to distributions of money and other property.

\* \* \* \* \*

(g) Reduction for liabilities - - (1) General rule. For the purpose of section 301, no reduction shall be made for the amount of any liability, unless the liability is assumed by the shareholder within the meaning of section 357(d).

(2) No reduction below zero. Any reduction pursuant to paragraph (g)(1) of this section shall not cause the amount of the distribution to be reduced below zero.

(3) Effective dates - - (i) In general. This paragraph (g) applies to distributions occurring after January 4, 2001.

(ii) Retroactive application. This paragraph (g) also applies to distributions made on or before January 4, 2001, if the distribution is made as part of a transaction described in, or substantially similar to, the transaction in Notice 99-59 (1999-2 C.B. 761), including transactions designed to reduce gain (see §601.601(d)(2) of this chapter). For rules for distributions on or before January 4, 2001 (other than distributions on or before that date to which this paragraph (g) applies), see rules in effect on January 4, 2001 (see §1.301-1(g) as contained in 26 CFR Part 1 revised April 1, 2001).

\* \* \* \* \*

**§1.301-1T [Removed]**

Par. 3. Section 1.301-1T is removed.

Robert E. Wenzel

Deputy Commissioner of Internal Revenue.

Approved: September 17, 2001

Mark Weinberger

Assistant Secretary of the Treasury for Tax Policy.