

Part III - Administrative, Procedural, and Miscellaneous

INTERIM GUIDANCE ON MEASUREMENT OF CONTINUITY OF INTEREST IN REORGANIZATIONS

Notice 2010-25

This notice pertains to the continuity of interest test generally applicable to reorganizations described in section 368 of the Internal Revenue Code.

I. PURPOSE

Under section 7805(e)(2) of the Internal Revenue Code, temporary regulations expire three years after issuance, if not earlier withdrawn. Section 1.368-1T(e)(2) of the Income Tax Regulations will accordingly expire on March 19, 2010. The purpose of this notice is to provide taxpayers with interim guidance applicable to the period between the expiration of the temporary regulations and the issuance of replacement guidance.

II. BACKGROUND AND INTERIM GUIDANCE

The Internal Revenue Code of 1986 (Code) generally provides nonrecognition treatment for reorganizations described in section 368 of the Code. Besides satisfying the statutory and other requirements, in order to qualify as a reorganization, a transaction generally must satisfy the continuity of interest (COI) requirement. COI requires that, in substance, a substantial part of the value of the proprietary interests in the target corporation be preserved in the reorganization.

On March 20, 2007, the Internal Revenue Service (Service) and the Treasury Department (Treasury) published temporary regulations § 1.368-1T(e)(2) (TD 9316, 2007-1 C.B. 962) and proposed regulations (REG-146247-06, 2007-1 C.B. 977) in the Federal Register (72 FR 12974 and 72 FR 13058, respectively). The text of the temporary regulations and the proposed regulations is the same. The Service and the Treasury intend to issue final regulations, but do not expect to issue such regulations prior to the expiration of the temporary regulations. The purpose of this notice is to provide taxpayers with interim guidance applicable to the period between the expiration of the temporary regulations and the issuance of new regulations.

After expiration of the temporary regulations and prior to the issuance of new regulations, taxpayers may apply the rules set forth in the proposed regulations notwithstanding that the temporary regulations have expired. However, the target corporation, the issuing corporation, the controlling corporation of the acquiring corporation if stock thereof is provided as consideration in the transaction, and any direct or indirect transferee of transferred basis property from any of the foregoing, may not apply the provisions of the proposed regulations unless all such taxpayers elect to apply the provisions of such regulations. This requirement will be satisfied if none of the specified parties adopts treatment inconsistent with this election.

DRAFTING INFORMATION

The principal author of this notice is Richard Starke of the Office of Associate Chief Counsel (Corporate). For further information regarding this notice, please contact Richard Starke at (202) 622-7790 (not a toll-free call).