Notice of Proposed Rulemaking and Notice of Public Hearing

Continuity of Interest and Business Enterprise

REG–252233–96

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes rules providing that for certain reorganizations, transfers by the acquiring corporation of target assets or stock to certain controlled corporations, and under prescribed conditions, transfers of target assets to partnerships, will not disqualify the transaction from satisfying the continuity of interest and continuity of business enterprise requirements. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by April 3, 1997. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Wednesday, May 7, 1997 must be received by Wednesday, April 16, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–252233–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–252233–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Marlene Peake Oppenheim, (202) 622–7750; concerning submissions and the hearing, Christina Vasquez, (202) 622–6808 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 368. The proposed regulations establish rules providing that for certain reorganizations transfers by the acquiring corporation of target corporation assets or stock to certain controlled corporations and under prescribed conditions transfers of target assets to partnerships, will not disqualify the transaction from satisfying the continuity of interest and continuity of business enterprise requirements.

Explanation of Proposed Regulations

A. Remote Continuity of interest

1. Overview

The Internal Revenue Code of 1986 (Code) provides general nonrecognition treatment for reorganizations specifically described in section 368 of the Code. Literal compliance with the statutory requirements is not sufficient, however, for nonrecognition treatment.

The Supreme Court, in *Groman v. Commissioner*, 302 U.S. 82 (1937), and *Helvering v. Bashford*, 302 U.S. 454 (1938), established the basis of what has become known as the ''remote continuity of interest doctrine.'' Under this doctrine, stock consideration received by the target corporation's (T) shareholders does not provide continuity unless the target assets or stock are ultimately held by the corporation that issued the stock. Thus, if T transfers its assets to an acquiring corporation (P), in exchange for stock of the corporation controlling P (see *Groman*), or if P acquires the T assets but pursuant to the plan of reorganization transfers them to a controlled subsidiary (S) (see *Bashford*), the continuity of interest requirement is not satisfied.

Congress has substantially limited the remote continuity of interest doctrine. In 1954, Congress enacted section 368(a)(2)(C) which provides that P's transfer of T assets acquired in a reorganization under section 368(a)(1)(A) (merger or consolidation) or section 368(a)(1)(C) (asset acquisition) to S does not disqualify the reorganization. Section 368(a)(1)(C) was also amended to provide that P can acquire T assets directly in exchange for voting stock of a corporation in control of P (a triangular C reorganization).

In the 1960's, the Treasury Department and IRS issued several revenue rulings attempting to clarify to what extent the remote continuity doctrine had remaining vitality. Where the guidance held that the remote continuity doctrine applied to disqualify the transaction from reorganization treatment, Congress at times responded by amending the relevant Code section and overturning the result. For example, Rev. Rul. 63–234 (1963–2 C.B. 148) held that remote continuity remained an issue for section 368(a)(1)(B) reorganizations. The following year Congress responded by amending section 368(a)(1)(B), permitting P to acquire T's stock in exchange for stock of the corporation controlling P (a triangular B reorganization). Congress also amended section 368(a)(2)(C) to provide that P can transfer T stock acquired in a reorganization under section 368(a)(1)(B) to S without disqualifying the reorganization.

Similarly, when Rev. Rul. 67–326 (1967–2 C.B. 143) held that a merger of T into S in exchange for stock of the corporation controlling S (a forward triangular merger) violated the continuity of interest doctrine, Congress responded in the following year by enacting section 368(a)(2)(D), which provides that a forward triangular merger qualifies as a section 368(a)(1)(A) reorganization.

In contrast, Rev. Rul. 64–73 (1964–1 C.B. 142) held that a transaction qualified as a section 368(a)(1)(C) reorganization where P and P's second tier subsidiary acquired all the T assets in exchange for P stock. The transaction was viewed as an acquisition of substantially all the T assets by P.

2. Transfers of T assets or stock to controlled corporations

The proposed regulations curtail the remote continuity of interest doctrine by providing that assets can be transferred among members of a ''qualified group.'' A qualified group consists of one or more chains of corporations connected through stock ownership with the ''issuing corporation,'' but only if the issuing corporation owns directly stock meeting the requirements of section 368(c) in at least one other corporation, and stock meeting the requirements of section 368(c) in each of the corporations (except the issuing corporation) is owned directly by one of the other corporations. The issuing corporation is the acquiring corporation (as that term is used in section 368(a)), except in transactions where use of stock of a corporation in control of the acquiring corporation is permitted. Where stock of the controlling corporation is used, the controlling corporation is the issuing corporation.

The proposed regulations generally permit transfers or successive transfers of assets or stock to members of the qualified group. Thus, continuity of interest is not violated where there are transfers or successive transfers of T stock (or transfers of the T assets after a T stock acquisition) or T assets (or transfers of the acquiring corporation's stock after a T asset acquisition) among members of the qualified group. The Treasury Department and IRS solicit comments on whether the qualified group should be defined other than by reference to section 368(c).

The proposed regulations are limited to asset or stock transfers following transactions that otherwise qualify as section 368(a)(1)(A), (B), (C), or (G) (meeting the requirements of sections 354(b)(1)(A) and (B)) reorganizations (covered reorganizations). Section 368(a)(2)(C) by its terms does not apply to acquisitive section 368(a)(1)(D) or section 368(a)(1)(F) reorganizations. The Treasury Department and IRS solicit comments as to whether the rules in the proposed regulations should be extended to these other reorganization provisions or to section 355 divisive transactions.

3. Transfer of T assets to a partnership

Whether the transfer of assets to a partnership (PRS) by the corporate transferor partner (PTR) disqualifies an otherwise qualifying covered reorganization depends in part on whether PRS is viewed as an aggregate of its partners or as an entity separate from the partners. The treatment of PRS as an aggregate or entity must be determined on the basis of the characterization most appropriate for the situation. H.R. Conf. Rep. No. 2543, 83d Cong., 2d Sess. 59 (1954). Cf. § 1.701–2(e)(1) of the Income Tax Regulations.

The Treasury Department and IRS believe it is appropriate to treat PRS as an aggregate of its partners in analyzing a transaction with respect to continuity of interest. Thus, the proposed regulations provide that PTR's transfer of T assets to PRS does not violate the continuity of interest requirement.

The proposed regulations do not permit the transfer of stock to PRS where the Code imposes a control requirement in section 368. See sections 368(a)(1)(B) and (C), sections 368(a)(2)(D) and (E), and section 368(a)(2)(C). In addition, the transfer of T assets to PRS may violate the continuity of business enterprise (COBE) requirement.

B. Continuity of business enterprise

1. Overview

Section 1.368–1(b) requires that reorganizations afford a continuity of business enterprise under modified corporate form. COBE requires that P either (i) continue T's historic business (business continuity) or (ii) use a significant portion of T's historic business assets in a business (asset continuity). § 1.368–1(d)(2). The proposed regulations provide a framework for applying the existing COBE regulations to situations where the T assets or stock are transferred to certain controlled corporations or assets are transferred to partnerships.

2. Transfer of T assets or stock to a controlled corporation

The proposed regulations provide that, under prescribed conditions, COBE is not violated by reason of the fact that part or all of the T assets or stock are transferred among members of a qualified group. Thus, the COBE requirement is not violated where there are transfers or successive transfers of T stock (or transfers of the T assets after a T stock acquisition) or T assets (or transfers of the acquiring corporation's stock after a T asset acquisition) among members of the qualified group.

3. Transfer of T assets to a partnership

The proposed regulations provide that, under prescribed conditions, COBE is not violated by reason of the fact that part or all of the T assets are transferred to PRS by PTR. The proposed regulations adopt an aggregate approach in determining whether COBE has been satisfied when T assets are transferred to PRS following a T asset or T stock acquisition. Thus, the proposed regulations provide that for purposes of the business continuity test, PTR will be treated as conducting a business of PRS if PTR has active and substantial management functions as a partner with regard to the business (cf. Rev. Rul. 92–17 (1992–1 C.B. 142)) or if PTR's partnership interest in PRS represents a significant interest in the PRS business. Furthermore, in determining whether PTR satisfies the asset continuity test (i) PTR will be treated as owning the assets of PRS in accordance with PTR's interest in PRS, and (ii) PTR will be treated as conducting a business of PRS under the rules applicable to business continuity.

COBE requires a facts and circumstances analysis. Thus, the proposed regulations also state that the fact that PTR meets the business continuity requirements of § 1.368–1(d)(2)(i) and 1(d)(3) through active and substantial management of a PRS business tends to establish COBE, but the fact that PTR conducts a PRS business is not alone sufficient.

C. Effect on other authorities

The proposed regulations apply only for the purpose of determining the effect that transfers of assets or stock following a reorganization have on the continuity of interest and COBE requirements. They do not address any other issues concerning the qualification of a transaction as a reorganization.

Thus, the proposed regulations do not expand the scope of triangular reorganizations. Under current law, a T asset or stock acquisition in exchange for stock of a grandparent (or higher tier) corporation does not qualify as a reorganization. See Rev. Rul. 74–564 (1974–2 C.B. 124) and Rev. Rul. 74–565 (1974–2 C.B. 125). The proposed regulations do not change this result.

The proposed regulations do not provide guidance on whether the ''solely for voting stock'' requirement is satisfied in a section 368(a)(1)(C) reorganization when a corporation other than the acquiring corporation assumes target liabilities. See generally Rev. Rul. 70–107 (1970–1 C.B. 78).

Furthermore, the proposed regulations do not modify the section 381 regulations which provide rules concerning which entity inherits the tax attributes of T in an asset acquisition.

The Treasury Department and IRS solicit comments on these issues.

Proposed Effective Date

The revisions and additions in the proposed regulations apply to transactions occurring after these regulations are published as final regulations in the **Federal Register**, except that they shall not apply to transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the **Federal Register**.

Effect on Other Documents

The Treasury Department and IRS solicit comments on what IRS publications should be modified or obsoleted when the proposed regulations are published as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue 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 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 Internal Revenue Service. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, May 7, 1997, beginning at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must request to speak, and submit an outline of topics to be discussed and the time to be devoted to each topic by Wednesday, April 16, 1997.

A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the proposed regulations is Marlene Peake Oppenheim of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the Treasury and IRS participated in their development.

* * * * *

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 1.368–1 as proposed to be amended at 61 FR 67514 is amended by:

1. Adding two sentences after the sixth sentence of paragraph (b).

2. Redesignating paragraph (d)(5) as paragraph (d)(6).

3. Adding a new paragraph (d)(5).

4. Adding three sentences to the end of newly designated paragraph (d)(6) introductory text.

5. Adding *Example 6* through *Example 10* to newly designated paragraph (d)(6).

6. Adding paragraph (f).

The additions read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(b) * * * Rules concerning continuity of interest as applied to section 368(a)(1)(A), (B), (C), or (G) (meeting the requirements of sections 354(b)(1)(A) and (B)) are in paragraph (f) of this section. The preceding sentence applies to transactions occurring after these regulations are published as final regulations in the **Federal Register** except that it shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the **Federal Register**. * * *

* * * * *

(d) * * *

(5) *Transfers of assets or stock to controlled corporations and partnerships*—(i) *Scope*. The following rules of paragraphs (d)(5)(ii) through (vi) of this section apply in determining whether the continuity of business enterprise requirement of paragraph (d)(1) of this section is satisfied with respect to transactions otherwise qualifying as reorganizations under section 368(a)(1)(A), (B), (C), or (G) (meeting the requirements of sections 354(b)(1)(A) and (B)).

(ii) *Transfers to members of a qualified group*. Continuity of business enterprise continues to be satisfied where there are transfers or successive transfers of target (T) stock (or transfers of T assets after a stock acquisition) or T assets (or transfers of the acquiring corporation's stock after a T asset acquisition) among members of a qualified group as defined in paragraph (d)(5)(iii) of this section.

(iii) *Qualified group*. A qualified group is one or more chains of corporations connected through stock ownership with the issuing corporation as defined in paragraph (d)(5)(iv) of this section, but only if the issuing corporation owns directly stock meeting the requirements of section 368(c) in at least one other corporation, and stock meeting the requirements of section 368(c) in each of the corporations (except the issuing corporation) is owned directly by one of the other corporations.

(iv) *Issuing corporation*. The issuing corporation is the acquiring corporation (as that term is used in section 368(a)), except in transactions where the use of stock of a corporation in control of the acquiring corporation is permitted. Where stock of the controlling corporation is used, the controlling corporation is the issuing corporation.

(v) *Partnerships*—(A) For purposes of the business continuity test of paragraph (d)(3) of this section, the corporate transferor partner (PTR) will be treated as conducting a business of a partnership (PRS) where—

(*1*) PTR has active and substantial management functions as a partner with respect to the PRS business; or

(*2*) PTR's interest in PRS represents a significant interest in the PRS business.

(B) For purposes of the asset continuity test of paragraph (d)(4) of this section—

(*1*) PTR will be treated as owning the assets of PRS in accordance with PTR's interest in PRS; and

(*2*) PTR will be treated as conducting a PRS business if PTR meets the requirement of paragraph (d)(5)(v)(A)(*1*) or (*2*) of this section.

(C) The fact that PTR is treated as conducting a business of PRS under

paragraph (d)(5)(v)(A) of this section tends to establish the requisite continuity, but is not alone sufficient.

(vi) This paragraph (d)(5) applies to transactions occurring after these regulations are published as final regulations in the **Federal Register** except that it shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the **Federal Register**.

(6) * * * All corporations have only one class of common stock outstanding. *Example 6* through *Example 10* of this paragraph (d)(6) apply to transactions occurring after these regulations are published as final regulations in the **Federal Register** except that they shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the **Federal Register**. The examples are as follows:

* * * * *

Example 6. Qualified group and business continuity. (a) Facts. T operates a bakery which makes and supplies delectable pastries and cookies to a few select locations. The acquiring corporate group consists of numerous corporations which produce a variety of baked goods for distribution around the world. Holding Company (HC) owns 80 percent of the stock of P. Pursuant to a plan, T transfers all of its assets to P solely in exchange for HC voting stock, which T distributes to its shareholders. P owns 80 percent of the stock of S1; S1 owns 80 percent of the stock of S2, which also makes and supplies pastries and cookies. To amalgamate the T business into HC's affiliated group, P would like to operate T's business in S2. Pursuant to the plan, P transfers the T assets to S1; S1 then transfers the T assets to S2.

(b) *Continuity of business enterprise*. HC, P, S1, and S2 are members of a qualified group as defined in paragraph (d)(5)(iii) of this section. Under paragraph (d)(5)(ii) of this section, continuity of business enterprise continues to be satisfied where T's historic business is transferred to a member of the qualified group. The same results would occur if T had been acquired by P for HC voting stock in a reorganization described in section 368(a)(1)(B) and the T stock had been transferred from P to S1 and from S1 to S2.

Example 7. Transfers of assets to multiple controlled corporations. (a) *Facts*. T operates an auto parts distributorship. Pursuant to a plan, T merges into P and the T shareholders receive solely P stock. P owns 80 percent of the stock of S1. S1 owns 80 percent of the stock of ten subsidiaries, S2 through S11. S2 through S11 each separately operate a full service gas station. As part of the plan, P transfers T's auto parts to S1, which in turn transfers some of the parts to each of its ten subsidiaries. No one subsidiary receives a significant portion of T's historic business assets. Each of S1's subsidiaries will use the T assets received in the operation of its full service gas station. No S1 subsidiary will be an auto parts distributor.

(b) *Continuity of business enterprise*. P, S1, and the respective subsidiaries are members of a qualified group as defined in paragraph (d)(5)(iii) of this section. Under paragraph (d)(5)(ii) of this section, continuity of business enterprise continues to be satisfied where all of T's historic business assets are transferred among members of the qualified group. Even though no one corporation is using a significant portion of T's historic business assets in a business, the continuity of business enterprise requirement is satisfied because the qualified group is using a significant portion of T's historic business assets in a business.

Example 8. Transfer of a historic T business to PRS — active and substantial management. (a) *Facts*. T manufactures custom ski boots. T transfers all of its assets to P solely in exchange for P voting stock, which T then distributes to its shareholders. P plans to continue manufacturing ski boots and to expand this operation. As part of the expansion, P and R (an unrelated party) form a new partnership (PRS). As part of the plan of reorganization, P (PTR) transfers T's ski boot business to PRS in exchange for a 20 percent interest in PRS. R transfers cash in exchange for its interest in PRS. PTR performs active and substantial management functions for PRS including the decision-making regarding significant business decisions of PRS and regular participation in the overall supervision, direction and control of the employees of PRS in operating the ski boot business.

(b) *Continuity of business enterprise*. Under paragraph (d)(5)(v)(A)(*1*) of this section, PTR is treated as conducting T's historic business because the officers of PTR perform active and substantial management functions for the ski boot business in PRS. Thus, the continuity of business enterprise requirement is satisfied because PTR is treated as continuing to conduct T's historic business.

(c) *Continuity of interest*. Under paragraph (f)(1)(ii) of this section, the continuity of interest requirement is satisfied even though the assets are transferred to PRS in exchange for an interest in PRS.

Example 9. Transfer of a historic T business to PRS — significant interest. (a) *Facts*. The facts are the same as in Example 8 except that PTR's officers do not operate the ski boot business, and PTR owns a 33 1/3 percent interest in PRS.

(b) *Continuity of business enterprise*. Under paragraph (d)(5)(v)(A)(2) of this section, PTR is treated as conducting T's historic ski boot business because PTR's 33 1/3 percent interest in PRS represents a significant interest in the PRS ski boot business.

(c) *Continuity of interest*. Under paragraph (f)(1)(ii) of this section, the continuity of interest requirement is satisfied even though the assets are transferred to PRS in exchange for an interest in PRS.

Example 10. Transfer of T's historic assets to PRS. (a) *Facts*. T manufactures silk. T transfers all of its assets to P solely in exchange for P voting stock, which T then distributes to its shareholders. P manufactures clothing and has been buying silk from T. P (PTR) and R (an unrelated party) own interests in a partnership (PRS) which owns and maintains warehouse facilities. As part of the plan of reorganization, PTR transfers the T assets to PRS, increasing PTR's percentage interest in PRS from 20 to 33 1/3 percent. PTR decides to buy its silk from a different manufacturer and converts T's plant facilities into warehouses.

(b) *Continuity of business enterprise*. Under paragraph (d)(5)(v)(A)(2), PTR is treated as being in the business of owning and maintaining warehouse space because of PTR's significant interest in PRS. Furthermore, under paragraph (d)(5)(v)(B) of this section, PTR is treated as owning the assets of PRS in accordance with its interest in the partnership. Thus, the continuity of business enterprise requirement is satisfied because PTR continues to use a significant portion of T's historic assets in a business.

(c) *Continuity of interest*. Under paragraph (f)(1)(ii) of this section, the continuity of interest requirement continues to be satisfied even though the assets are transferred to PRS in exchange for an interest in PRS.

* * * * *

(f) *Continuity of interest and asset or stock transfers*. (1) *Scope*. The following rules apply to transactions otherwise qualifying as a reorganization under section 368(a)(1)(A), (B), (C), or (G) (meeting the requirements of sections 354(b)(1)(A) and (B)):

(i) *Transfers to members of a qualified group.* Continuity of interest is satisfied where there are transfers or successive transfers of target (T) stock (or transfers of T assets after a stock acquisition) or T assets (or transfers of the acquiring corporation's stock after a T asset acquisition) among members of a qualified group as defined in paragraph (d)(5)(iii) of this section.

(ii) *Partnerships*. Continuity of interest is satisfied even where T assets (or transfers of T assets following a T stock acquisition) are transferred to a partnership in exchange for a partnership interest.

(2) *Example*. The rules of this paragraph (f) are illustrated by the following example. P represents the acquiring corporation and T represents the target corporation. Also see *Example 8* through *Example 10* in paragraph (d)(6) of this section. The example is as follows:

Example. Transfers to corporations in the qualified group. (a) *Facts*. T manufactures playground equipment, including launch ramps and half pipes for skateboarding, in-line skating, and bicycling. The P affiliated group is engaged in architectural design and construction. A holding company (HC) owns 80 percent of the stock of each of P and S1. S1 in turn, owns 80 percent of the stock of S2, and S2 owns 80 percent of the stock of S3. T transfers all of its assets to P in exchange for HC voting stock, which T distributes to its shareholders. HC transfers all of the P stock to S1. S1 in turn transfers all of the P stock to S2, and S2 transfers the P stock to S3.

(b) *Continuity of interest*. HC, P, S1, S2 and S3 are members of a qualified group as defined in paragraph (d)(5)(iii) of this section. Under paragraph (f)(1)(i) of this section, the successive transfers of the P stock to other members of the qualified group do not violate the continuity of interest requirement.

Par. 3. In § 1.368–2, paragraph (f) is amended by removing the second sen-

tence and adding two new sentences in its place to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(f) * * * A corporation remains a party to the reorganization even though assets are transferred among members of a qualified group as defined in § 1.368–1(d)(5)(iii). The preceding sentence applies to transactions occurring after these regulations are published as final regulations in the **Federal Register** except that it shall not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on or before these regulations are published as final regulations in the Federal Register.
* * *

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 2, 1997, 8:45 a.m., and published in the issue of the Federal Register for January 3, 1997, 62 F.R. 361)