

Notice of Proposed Rulemaking Amendment, Check the Box Regulations

REG-110659-00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance relating to elective changes in entity classification. The proposed regulations apply to subsidiary corporations that elect to change their classification for Federal tax purposes from a corporation to either a partnership or disregarded entity.

DATES: Written or electronic comments, or requests for a public hearing must be received by February 2, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-110659-00), room 5226, 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 5 p.m. to: CC:M&SP:RU (REG-110659-00), 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/tax_regs/reglist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David J. Sotos, (202) 622-3050; concerning submissions of comments, or to request a hearing, Sonya Cruse, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On November 29, 1999, Treasury and the IRS published final regulations (T.D. 8844, 1999-2 C.B. 661) describing the transactions that are deemed to occur when an entity elects to change its classification for Federal tax purposes. Those regulations did not address certain re-

quirements of section 332 as applied to the deemed liquidation incident to an association's election to be classified as a partnership or to be disregarded as an entity separate from its owner. This amendment to the final regulations addresses those requirements.

On January 20, 2000, Treasury and the IRS issued final regulations relating to qualified subchapter S subsidiaries. In order to permit the deemed transaction resulting from a QSub election to comply with the requirement of section 332 that a plan of liquidation have been adopted at the time of a liquidating distribution, the final regulations provide that a plan of liquidation is deemed adopted immediately before the deemed liquidation incident to the QSub election, unless a formal plan of liquidation that contemplates the filing of a QSub election is adopted on an earlier date. The preamble to the QSub regulations provided that Treasury and the IRS intend to amend the section 7701 regulations regarding elective changes in entity classification to provide a similar rule concerning the timing of the plan of liquidation.

Explanation of Provisions

A. In General

Section 301.7701-3(g)(1) describes how elective changes in the classification of an entity will be treated for tax purposes. Section 301.7701-3(g)(1)(ii) provides that an elective conversion of an association to a partnership is deemed to have the following form: the association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership. Section 301.7701-3(g)(1)(iii) provides that an elective conversion of an association to an entity that is disregarded as an entity separate from its owner is deemed to have the following form: the association distributes all of its assets and liabilities to its single owner in liquidation of the association.

Section 332 may be relevant to the deemed liquidation of an association if it has a corporate owner. Under section 332, no gain or loss is recognized on the receipt by a corporation of property dis-

tributed in complete liquidation of another corporation if the requirements of section 332(b) are satisfied. Those requirements include the adoption of a plan of liquidation at a time when the corporation receiving the distribution owns stock of the liquidating corporation meeting the requirements of section 1504(a)(2) (i.e., 80 percent of vote and value). The elective changes from association to a partnership and to a disregarded entity result in a constructive liquidation of the association for Federal tax purposes. Formally adopting a plan of liquidation for the entity, however, is potentially incompatible with an elective change under §301.7701-3, which allows the local law entity to remain in existence while liquidating only for Federal tax purposes. Accordingly, to provide tax treatment of an association's deemed liquidation that is compatible with the requirements of section 332, the proposed regulations state that, for purposes of satisfying the requirement of adoption of a plan of liquidation under section 332(b), a plan of liquidation is deemed adopted immediately before the deemed liquidation incident to an elective change in entity classification, unless a formal plan of liquidation that contemplates the filing of the elective change in entity classification is adopted on an earlier date.

B. Proposed Effective Dates

These regulations are proposed to apply to elections occurring on or after the date final regulations are published in the **Federal Register**; however, it is also proposed that taxpayers may elect to apply the amendments retroactively.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these 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 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 (8) copies) that are submitted timely to the IRS. 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/tax_regs/comments.html. All comments will be available for public inspection and copying. The Treasury Department and IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are David J. Sotos, and Jeanne M. Sullivan of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and IRS participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7701-3 is amended as follows:

1. Redesignating the text of paragraph (g)(2) as paragraph (g)(2)(i) and adding a heading for paragraph (g)(2)(i).

2. Adding a new paragraph (g)(2)(ii).

3. Revising the first sentence of paragraph (g)(4).

The addition and revision read as follows:

§301.7701–3 Classification of certain business entities.

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(g) * * *

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(2) *Effect of elective changes—(i) In general.* * * *

(ii) *Adoption of plan of liquidation.*

For purposes of satisfying the requirement of adoption of a plan of liquidation under section 332, unless a formal plan of liquidation that contemplates the election to be classified as a partnership or to be disregarded as an entity separate from its owner is adopted on an earlier date, the making, by an association, of an election under paragraph (c)(1)(i) of this section to be classified as a partnership or to be disregarded as an entity separate from its owner is considered to be the adoption of a plan of liquidation immediately before the deemed liquidation described in paragraph (g)(1)(ii) or (iii) of this section. This paragraph (g)(2)(ii) applies to elections effective on or after the date these regulations are published as final regulations in the **Federal Register**. Taxpayers may apply this paragraph (g)(2)(ii) retroactively to elections filed before these regulations are published as final regulations in the **Federal Register** if the corporate owner claiming treatment under section 332 and its subsidiary making the election take consistent positions with respect to the Federal tax consequences of the election.

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(4) *Effective date.* Except as otherwise provided in paragraph (g)(2)(ii) of this section, this paragraph (g) applies to elections that are filed on or after November 29, 1999.***

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Robert E. Wenzel,
*Deputy Commissioner
of Internal Revenue.*