

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8882]

RIN 1545-AV86

Reorganizations; Nonqualified Preferred Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to nonqualified preferred stock and rights to acquire nonqualified preferred stock. The regulations are necessary to reflect changes to the law concerning these instruments that were made by the Taxpayer Relief Act of 1997. The regulations affect shareholders who receive nonqualified preferred stock, or rights to acquire such stock, in certain corporate reorganizations and divisions.

EFFECTIVE DATE: These regulations are effective May 16, 2000.

FOR FURTHER INFORMATION CONTACT: Michael J. Danbury, (202) 622-7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

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

On January 6, 1998, a temporary regulation (TD 8753) was published in the **Federal Register** (63 FR 411). A notice of proposed rulemaking (REG-121755-97)

cross-referencing the temporary regulation was published in the **Federal Register** (63 FR 453) on the same day.

The temporary regulation provided that, notwithstanding contemporaneously issued final regulations treating certain rights to acquire stock as securities that can be received tax-free in corporate reorganizations and divisions, nonqualified preferred stock (as defined in section 351(g)(2) of the Internal Revenue Code) (NQPS), or a right to acquire NQPS, will in some circumstances not be treated as stock or securities for purposes of sections 354, 355, and 356. The temporary regulation added §1.356-6T, and applied to NQPS received in connection with a transaction occurring on or after March 9, 1998 (other than certain recapitalizations of family-owned corporations and transactions described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788, 921). No written comments responding to the notice of proposed rulemaking were received, and no public hearing was requested or held.

The regulation proposed by REG-121755-97 is adopted by this Treasury decision, and the corresponding temporary regulation is removed. Cross-references to the temporary regulation in §§1.354-1(e), 1.355-1(c), and 1.356-3(b) have been removed and replaced with cross-references to the final regulation at §1.356-6.

### **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 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. 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, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Drafting Information**

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

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

Income taxes, Reporting and recordkeeping requirements.

### **Adoption of 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 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.356-6 also issued under 26 U.S.C. 351(g)(4). \* \* \*

#### **§1.354-1 [Amended]**

Par. 2. In §1.354-1, paragraph (e), first sentence, the language “§1.356-6T” is

removed and "§1.356-6" is added in its place.

**§1.355-1 [Amended]**

Par. 3. In §1.355-1, paragraph (c), first sentence, the language "§1.356-6T" is removed and "§1.356-6" is added in its place.

**§1.356-3 [Amended]**

Par. 4. In §1.356-3, paragraph (b), first sentence, the language "§1.356-6T" is removed and "§1.356-6" is added in its place.

Par. 5. Section 1.356-6T is redesignated as §1.356-6 and the section heading is revised to read as follows:

§1.356-6 Rules for treatment of nonqualified preferred stock as other property.

\* \* \* \* \*

Deputy Commissioner of Internal Revenue

Robert E. Wenzel

Approved: 5/5/00

Deputy Assistant Secretary of the Treasury

Jonathan Talisman