



terms *stock* and *securities* will not include nonqualified preferred stock, or a right to acquire such stock, when received in exchange for stock or rights to acquire stock. The text of this temporary regulation also serves as the text of REG-121755-97, page 13 of this Bulletin.

DATES: This regulation is effective March 9, 1998.

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

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

A. In General

This document contains a temporary regulation under section 356(e) of the Internal Revenue Code as added by section 1014 of the Taxpayer Relief Act of 1997 (TRA of 1997), Public Law 105-34. Section 1014 of the TRA of 1997, enacted on August 5, 1997, amended sections 351, 354, 355, 356, and 1036 of the Code. As amended, sections 354, 355, and 356, in general, provide that nonqualified preferred stock (as defined in section 351(g)(2)) received in exchange for stock other than nonqualified preferred stock will not be treated as stock or securities but, instead, will be treated as “other property” or “boot.” As a result, unless the transition rule of section 1014(f)(2) of TRA of 1997 or another exception applies, the receipt of nonqualified preferred stock will result in gain recognition.

Section 351(g)(4) provides authority to issue regulations coordinating the rules for nonqualified preferred stock with other provisions of the Code. In connection with the issuance of final regulations treating certain rights to acquire stock as securities which can be received tax-free under sections 354, 355, and 356 (see §§1.354-1(e), 1.355-1(c), and 1.356-3(b) (T.D. 8752) also published on page 4 of this Bulletin, the IRS and Treasury became aware that additional rules were needed to address the treatment of rights to acquire nonqualified preferred stock to coordinate with new sections 354(a)(2)-(C), 355(a)(3)(D), and 356(e). Accordingly, this temporary regulation provides

that, notwithstanding §§1.354-1(e), 1.355-1(c), and 1.356-3(b), a right to acquire nonqualified preferred stock received in exchange for stock other than nonqualified preferred stock (or for a right to acquire stock other than nonqualified preferred stock) will not be treated as a security, and that nonqualified preferred stock received in exchange for stock other than nonqualified preferred stock (or for a right to acquire stock other than nonqualified preferred stock) will not be treated as stock or a security.

This regulation does not attempt to address all questions and issues that may arise regarding the exchange or receipt of nonqualified preferred stock. The IRS and Treasury recognize that further guidance is necessary on these matters and intend to provide it in the future. Accordingly, comments are requested not only on these temporary and proposed regulations, but also with regard to the types of guidance needed and other issues under section 351(g) and the related provisions.

B. Effective Date

Except as provided in section 1014(f)(2) of TRA of 1997, this temporary regulation applies to nonqualified preferred stock (or a right to acquire such stock) received in connection with a transaction occurring on or after March 9, 1998.

Special Analyses

It has been determined that this Treasury decision 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 this regulation. Because the regulation does 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 accompanying this regulation is being sent to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Michael J. Danbury of the Office of Assistant Chief Counsel (Corporate). How-

Section 356.—Receipt of Additional Consideration

26 CFR 1.356-6T: Rules for treatment of nonqualified preferred stock as “other property” (temporary).

T.D. 8753

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Reorganizations; Nonqualified Preferred Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains a temporary regulation providing guidance under section 356(e) of the Internal Revenue Code (Code) on when nonqualified preferred stock (as defined in section 351(g)(2)) will not be treated as stock or securities for purposes of sections 354, 355, and 356 of the Code. The guidance also addresses the treatment of the receipt of a right to acquire nonqualified preferred stock. The temporary regulation provides that in some circumstances the

ever, other personnel from the IRS and Treasury Department participated in its development.

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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 continues to read, in part, as follows:

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

Par. 2. Section 1.356-6T is added to read as follows:

§1.356-6T Rules for treatment of nonqualified preferred stock as “other property” (temporary).

(a) *In general.* For purposes of §§1.354-1(e), 1.355-1(c), and 1.356-3(b), the terms *stock* and *securities* do not include—

(1) Nonqualified preferred stock, as defined in section 351(g)(2), received in exchange for (or in a distribution with respect to) stock, or a right to acquire stock, other than nonqualified preferred stock; or

(2) A right to acquire such nonqualified preferred stock, received in exchange for (or in a distribution with respect to) stock, or a right to acquire stock, other than nonqualified preferred stock.

(b) *Exceptions.* The following exceptions apply:

(1) *Certain recapitalizations.* Paragraph (a) of this section does not apply in the case of a recapitalization under section 368(a)(1)(E) of a family-owned corporation as described in section 354(a)-(2)(C)(ii)(II).

(2) *Transition rule.* Paragraph (a) of this section does not apply to a transaction described in section 1014(f)(2) of the Taxpayer Relief Act of 1997 (111 Stat. 921).

(c) *Effective date.* This section applies to nonqualified preferred stock, or a right to acquire such stock, received in connection with a transaction occurring on or after March 9, 1998.

Michael P. Dolan,
*Deputy Commissioner of
Internal Revenue.*

Approved December 17, 1997.

Donald C. Lubick,
*Acting Assistant Secretary of
the Treasury.*

(Filed by the Office of the Federal Register on January 5, 1998, 8:45 a.m., and published in the issue of the Federal Register for January 6, 1998, 63 F.R. 411)