Notice of Proposed Rulemaking and Notice of Public Hearing

Treatment of a Stapled Foreign Corporation Under Sections 269B and 367(b)

REG–101282–04

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains a notice of proposed rulemaking concerning the definition and tax treatment of a stapled foreign corporation, which generally is treated for tax purposes as a domestic corporation under section 269B of the Internal Revenue Code.

DATES: Written or electronic comments must be received by December 6, 2004. Outlines of topics to be discussed at the public hearing scheduled for December 15, 2004, at 10 a.m. must be received by December 6, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–101282–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–101282–04), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS-REG–101282–04). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Richard L. Osborne, (202) 622–3977, or Bethany Ingwalson, (202) 622–3850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Under section 269B(a)(1), if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation will be treated as a domestic corporation for U.S. Federal tax purposes, unless otherwise provided in regulations. A domestic and a foreign corporation are stapled entities if more than 50 percent in value of the beneficial ownership in each corporation consists of stapled interests. Section 269B(c)(2). Interests are stapled if, by reason of form of ownership, restrictions on transfer, or other terms and conditions, in connection with the transfer of one of such interests, the other such interests are also transferred or required to be transferred. Section 269B(c)(3).

Section 269B(e) provides that a stapled foreign corporation will not be treated as a domestic corporation pursuant to section 269B(a)(1) if it is established to the satisfaction of the Secretary that the stapled corporations are foreign owned. A corporation is treated as foreign owned if U.S. persons own directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) less than 50 percent of the total combined voting power of all classes of stock entitled to vote and less than 50 percent of the total value of the stock of such corporation.

On August 28, 1989, the IRS and the Treasury Department issued Notice 89–94, 1989–2 C.B. 416, announcing the intention to adopt regulations under section

269B. The notice stated that regulations would provide that a stapled foreign corporation treated as a domestic corporation under section 269B(a)(1) was nevertheless to be treated as a foreign corporation for purposes of the definition of an includible corporation under section 1504(b). Notice 89–94 explained that, under these regulations, the stapled foreign corporation's losses would not offset the income of any member of the affiliated group unless a valid section 1504(d) election was in effect for the stapled foreign corporation.

Subsequent to the issuance of Notice 89–94, the IRS and Treasury Department became aware of instances in which taxpayers attempted to use section 269B and Notice 89–94 to manipulate the computation of their foreign tax credit limitation. These transactions typically involved stapling the interests of a domestic and foreign corporation, all or substantially all of the interests of which were held by the same person or related persons. On July 22, 2003, the IRS and Treasury Department issued Notice 2003–50, 2003–32 I.R.B. 295, to address these situations. Notice 2003–50 announced that regulations would be issued under section 269B providing that a stapled foreign corporation will be treated as a domestic corporation in determining whether it is an includible corporation for purposes of §§1.904(i)–1 and 1.861–11T(d)(6).

Explanation of Provisions

Includible Corporation

Consistent with Notice 89–94, this proposed regulation provides that a stapled foreign corporation, which is generally treated as a domestic corporation under section 269B, nevertheless will be treated as a foreign corporation for purposes of the definition of an includible corporation under section 1504(b). Thus, in the absence of a valid election under section 1504(d), an affiliated group cannot include the stapled foreign corporation in its consolidated tax return and therefore the affiliated group cannot use the stapled foreign corporation's losses to offset income of another member of the group. As announced in Notice 2003–50, however, the proposed regulation also treats a stapled foreign corporation as a domestic corporation in determining whether it is an includible corporation for purposes of §§1.904(i)–1 and 1.861–11T(d)(6).

Determination of Stapled Corporation Status in the Case of Multiple Classes of Stock

Section 269B(c)(2) provides that two or more entities are stapled entities if more than 50 percent in value of the beneficial ownership in each entity consists of stapled interests. This proposed regulation clarifies that this determination is made on an aggregate basis if there are multiple classes of stock. For example, if a class of stock in each corporation (representing more than 50 percent in value of such corporation) is stapled to a class of stock in the other corporation (representing less than 50 percent in value of such other corporation), the two corporations are considered stapled because, in the aggregate, more than 50 percent of the value of each corporation is stapled to the other corporation's stock.

Related Party Ownership Rule

In cases where stapled interests constituting more than 50 percent of the beneficial ownership in each stapled entity are held by the same or related persons, the IRS and Treasury Department believe that the formal transfer restrictions have little or no substantive consequence and may be intended to facilitate the affirmative use of section 269B for tax avoidance purposes. Accordingly, for purposes of determining whether a foreign corporation and a domestic corporation are stapled entities under section 269B, this proposed regulation permits the Commissioner to treat interests that otherwise would be stapled interests as not being stapled if the same person or related persons (within the meaning of section 267(b) or 707(b)) hold stapled interests constituting more than 50 percent of the beneficial ownership of both corporations, and a principal purpose of the stapling of those interests is the avoidance of U.S. income tax. No inference is intended as to whether current structures involving majority interests held by the same person or related persons are stapled interests within the meaning of section 269B. In such cases, the IRS will continue to apply principles of existing law to determine whether interests are stapled for purposes of section 269B. For example, under a substance-over-form analysis, restrictions on the transferability of ownership interests may be disregarded for tax purposes if the majority interests are held by the same person or related persons.

Inbound and Outbound Conversions

A corporation's status as either foreign or domestic may change under section 269B. For example, if a foreign corporation and a domestic corporation become stapled entities and are not foreign owned under section 269B(e), the foreign corporation will be treated as converting to a domestic corporation for U.S. tax purposes (inbound conversion). Similarly, if the stapled foreign corporation's interests cease to be stapled at some point in the future, the stapled foreign corporation no longer will be treated as a domestic corporation for U.S. tax purposes and, therefore, will be treated as converting to a foreign corporation (outbound conversion).

Section 1.367(b)–2(g) provides that an inbound conversion is treated as a reorganization described in section 368(a)(1)(F) (F reorganization). This proposed regulation includes this rule and revises §1.367(b)–2(g) to include a cross-reference to the relocated provision. Additionally, this proposed regulation provides that an outbound conversion also is treated as an F reorganization. Treatment of an inbound or outbound conversion as an F reorganization also applies in cases where the conversion results from a change in ownership of a stapled foreign corporation that changes its status as foreign owned under section 269B(e). In all such cases, this proposed regulation treats the conversion as an F reorganization, even though all of the technical requirements of an F reorganization may not be satisfied. See Staff of Joint Committee on Taxation, General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, H.R. Doc. 4170, 98th Cong., 456–57 (1984).

This proposed regulation references the section 367 regulations for purposes of determining the tax consequences under section 367 that result from an inbound or outbound conversion. Section 1.367(b)–2(f)(2) provides that an inbound F reorganization includes a transfer of assets by a foreign corporation to a domestic corporation. Section 1.367(a)–1T(f) provides similar treatment in the case of an outbound conversion. Further, in both cases, the taxable year of the corporation ends as a result of the deemed conversion. See §§1.367(a)–1T(e) and 1.367(b)–2(f)(4).

U.S. Treaties

Section 269B(d) provides that a stapled foreign corporation treated as a domestic corporation under section 269B will not be exempt from U.S. tax liability by reason of any treaty obligation of the United States. In enacting section 269B(d), Congress was concerned that a stapled foreign corporation that is resident in a treaty country might claim an exclusion from U.S. taxation, for example, on the basis that its income is not attributable to a permanent establishment in the United States. See H.R. Rep. No. 98–432, 98th Cong., 1st Sess., 244–45. This would be contrary to the purpose of section 269B, which is to tax a stapled foreign corporation on its worldwide income as if it were a domestic corporation. Accordingly, this proposed regulation provides that a stapled foreign corporation treated as a domestic corporation under section 269B may not claim an exemption or reduction in tax rates provided under a treaty entered into by the United States.

Collection

Under section 269B(b), the Secretary may prescribe regulations providing that any U.S. income tax imposed on a stapled foreign corporation may, if not paid by such corporation, be collected from the domestic corporation whose ownership interests are stapled to the foreign corporation's ownership interests (stapled domestic corporation) or from the shareholders of the stapled foreign corporation. This proposed regulation provides that the Commissioner may collect the stapled foreign corporation's U.S. income tax liability from the stapled domestic corporation and, subject to certain limitations, from certain shareholders of such foreign corporation.

Any U.S. income tax assessed as a tax liability of the stapled foreign corporation will be deemed to be properly assessed as a tax liability of the stapled domestic corporation and the 10-percent shareholders of the stapled foreign corporation. For these purposes, a 10-percent shareholder of a stapled foreign corporation is defined as any person owning directly 10 percent or more of the total value or total combined voting power of all classes of stock in the stapled foreign corporation for any day of the foreign corporation's taxable year with respect to which the liability relates. The IRS and Treasury Department are concerned about 10-percent shareholders interposing entities in order to avoid collection under these rules. These proposed regulations contain a reserved section for rules regarding indirect ownership and request comments on how to address situations involving indirect ownership of the stapled foreign corporation.

The Commissioner may collect from the stapled domestic corporation any U.S. income tax properly assessed but not timely paid by the stapled foreign corporation, and, if the domestic corporation fails to timely pay such tax or any portion thereof, from one or more 10-percent shareholders of the stapled foreign corporation. The collection action may proceed against the domestic corporation only after the Commissioner has issued a notice and demand for payment of unpaid U.S. income tax to the stapled foreign corporation, and the stapled foreign corporation has failed to pay the tax due by the date specified in the notice. A collection action then may proceed against the 10-percent shareholders of the stapled foreign corporation if the Commissioner has issued a notice and demand for payment of the unpaid tax to the stapled domestic corporation, and the stapled domestic corporation has failed to pay such tax by the date specified.

This proposed regulation limits the amount of any U.S. income tax liability of the stapled foreign corporation that may be collected from any 10-percent shareholder of a stapled foreign corporation. The shareholder's share of the liability will be determined by assigning an equal portion of the total U.S. income tax liability of the stapled foreign corporation to each day in such corporation's taxable year, and then dividing that portion ratably among the shares outstanding for that day based on the relative values of such shares. The shareholder's share of the liability is the sum of the U.S. income tax liability allocated to the shares held by such shareholder for each day in the taxable year.

Proposed Effective Dates

Except as otherwise provided, the proposed regulations are applicable for taxable years that begin after the date on which final regulations are published in the **Federal Register**. Section 1.269B–1(d)(1) and (f) (except in the case of the collection of tax from a 10-percent shareholder that is a foreign person) applies beginning on July 18, 1984, for any foreign corporation that became stapled to a domestic corporation after June 30, 1983, and beginning on January 1, 1987, for any foreign corporation that was stapled to a domestic corporation as of June 30, 1983. Section 1.269B–1(d)(2) applies for taxable years beginning after July 22, 2003, except that in the case of a foreign corporation that becomes stapled to a domestic corporation on or after July 22, 2003, then paragraph (d)(2) applies to taxable years ending on or after July 22, 2003. Section 1.269B–1(e) applies beginning on July 18, 1984, except that §1.269B–1(e) does not apply, and the foreign corporation continues for all U.S. tax purposes to be a foreign entity, if the foreign corporation was stapled to a domestic corporation as of June 30, 1983, was entitled to benefits under an income tax treaty in existence as of that date, and has remained eligible to claim such treaty benefits. At such time as the stapled foreign corporation is no longer eligible to claim treaty benefits, the foreign corporation is deemed to convert to a domestic corporation for U.S. tax purposes.

Special Analyses

The IRS and the Treasury Department have determined that this notice of proposed rulemaking 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, and that because this 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, this regulation 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 (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 15, 2004, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 6, 2004. A period of 10 minutes will be allotted 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 authors of these regulations are Richard L. Osborne and Bethany Ingwalson, of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are 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 * * *

Section 1.269B(b)–1 also issued under 26 U.S.C. 269B(b).

Par. 2. Section 1.269B–1 is added to read as follows:

§1.269B–1 Stapled foreign corporations.

(a) *Treatment as a domestic corporation*—(1) *General rule*. Except as otherwise provided, if a foreign corporation is a stapled foreign corporation within the meaning of paragraph (b)(1) of this section, such foreign corporation will be treated as a domestic corporation for U.S. Federal income tax purposes. Accordingly, for example, the worldwide income of such corporation will be subject to the tax imposed by section 11. For application of the branch profits tax under section 884, and application of sections 871(a), 881, 1441, and 1442 to dividends and interest paid by a stapled foreign corporation, see §§1.884–1(h) and 1.884–4(d).

(2) *Foreign owned exception*. Paragraph (a)(1) of this section will not apply if a foreign corporation and a domestic corporation are stapled entities (as provided in paragraph (b) of this section) and such foreign and domestic corporations are foreign owned within the meaning of this paragraph (a)(2). A corporation will be treated as foreign owned if it is established to the satisfaction of the Commissioner that United States persons hold directly (or indirectly applying section 958(a)(2) and (3) and section 318(a)(4)) less than 50 percent of the total combined voting power of all classes of stock entitled to vote and less than 50 percent of the total value of the stock of such corporation. For the consequences of a stapled foreign corporation becoming or ceasing to be foreign owned, therefore converting its status as either a foreign or domestic corporation within the meaning of this paragraph (a)(2), see paragraph (c) of this section.

(b) *Definition of a stapled foreign corporation*—(1) *General rule*. A foreign corporation is a stapled foreign corporation if such foreign corporation and a domestic corporation are stapled entities. A foreign corporation and a domestic corporation are stapled entities if more than 50 percent of the aggregate value of each corporation's beneficial ownership consists of interests that are stapled. In the case of corporations with more than one class of stock, it is not necessary for a class of stock representing more than 50 percent of the beneficial ownership of the foreign corporation to be stapled to a class of stock representing more than 50 percent of the beneficial ownership of the domestic corporation, provided that more than 50 percent of the aggregate value of each corporation's beneficial ownership (taking into account all classes of stock) are in fact stapled. Interests are stapled if a transferor of one or more interests in one entity is required, by form of ownership, restrictions on transfer, or other terms or conditions, to transfer interests in the other entity. The determination of whether interests are stapled for this purpose is based on the relevant facts and circumstances, including, but not limited to, the corporations' by-laws, articles of incorporation or association, and stock certificates, shareholder agreements, agreements between the corporations, and voting trusts with respect to the corporations. For the consequences of a foreign corporation's change in status as a stapled foreign corporation (that is not foreign owned) under this paragraph (b)(1), see paragraph (c) of this section.

(2) *Related party ownership rule*. For purposes of determining whether a foreign corporation is a stapled foreign corporation, the Commissioner may, at his discretion, treat interests that otherwise would be stapled interests as not being stapled if the same person or related persons (within the meaning of section 267(b) or 707(b)) hold stapled interests constituting more than 50 percent of the beneficial ownership of both corporations, and a principal purpose of the stapling of those interests is the avoidance of U.S. income tax. A stapling of interests may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together.

(3) *Example*. The principles of paragraph (b)(1) of this section are illustrated by the following example:

Example. USCo, a domestic corporation, and FCo, a foreign corporation, are publicly traded companies, each having two classes of stock outstanding. USCo's class A shares, which constitute 75% of the value of all beneficial ownership in USCo, are stapled to FCo's class B shares, which constitute 25% of the value of all beneficial ownership in F Co. USCo's class B shares, which constitute 25% of the value of all beneficial ownership in USCo, are stapled to FCo class A shares, which constitute 75% of the value of all beneficial ownership in FCo. Because more than 50% of the aggregate value of the stock of each corporation is stapled to the stock of the other corporation, USCo and FCo are stapled entities within the meaning of section 269B(c)(2).

(c) *Changes in domestic or foreign status*. The deemed conversion of a foreign corporation to a domestic corporation under section 269B is treated as a reorganization under section 368(a)(1)(F). Similarly, the deemed conversion of a corporation that is treated as a domestic corporation under section 269B to a foreign corporation is treated as a reorganization under section 368(a)(1)(F). For the consequences of a deemed conversion, including the closing of a corporation's taxable year, see §§1.367(a)–1T(e), (f) and 1.367(b)–2(f).

(d) *Includible corporation*—(1) Except as provided in paragraph (d)(2) of this section, a stapled foreign corporation treated as a domestic corporation under section 269B nonetheless will be treated as a foreign corporation in determining whether it is an includible corporation within the meaning of section 1504(b). Thus, for example, a stapled foreign corporation shall not be eligible to join in the filing of a consolidated return under section 1501, and a dividend paid by such corporation shall not constitute a qualifying dividend under section 243(b), unless a valid section 1504(d) election is made with respect to such corporation.

(2) A stapled foreign corporation will be treated as a domestic corporation in determining whether it is an includible corporation under section 1504(b) for purposes of applying §§1.904(i)–1 and 1.861–11T(d)(6).

(e) *U.S. treaties*—(1) A stapled foreign corporation that is treated as a domestic corporation under section 269B may not claim an exemption from U.S. income tax or a reduction in U.S. tax rates by reason of any treaty entered into by the United States.

(2) The principles of this paragraph (e) are illustrated by the following example:

Example. FCo, a Country X corporation, is a stapled foreign corporation that is treated as a domestic corporation under section 269B. FCo qualifies as a resident of Country X pursuant to the income tax treaty between the United States and Country X. Under such treaty, the United States is permitted to tax business profits of a Country X resident only to the extent that the business profits are attributable to a permanent establishment of the Country X resident in the United States. While FCo earns income from sources within and without the United States, it does not have a permanent establishment in the United States within the meaning of the relevant treaty. Under paragraph (e)(1) of this section, however, FCo is subject to U.S. Federal income tax on its income as a domestic corporation without regard to the provisions of the U.S.- Country X treaty and therefore without regard to the fact that FCo has no permanent establishment in the United States.

(f) *Tax assessment and collection procedures*—(1) *In general*. (i) Any income tax imposed on a stapled foreign corporation by reason of its treatment as a domestic corporation under section 269B (whether such income tax is shown on the stapled foreign corporation's U.S. Federal income tax return or determined as a deficiency in income tax) shall be assessed as the income tax liability of such stapled foreign corporation.

(ii) Any income tax assessed as a liability of a stapled foreign corporation under paragraph (f)(1)(i) of this section shall be considered as having been properly assessed as an income tax liability of the stapled domestic corporation (as defined in paragraph (f)(4)(i) of this section) and all 10-percent shareholders of the stapled foreign corporation (as defined in paragraph (f)(4)(ii) of this section). The date of such deemed assessment shall be the date the income tax liability of the stapled foreign corporation was properly assessed. The Commissioner may collect such income tax from the stapled domestic corporation under the circumstances set forth in paragraph (f)(2) of this section and may collect such income tax from any 10-percent shareholders of the stapled foreign corporation under the circumstances set forth in paragraph (f)(3) of this section.

(2) *Collection from domestic stapled corporation*. If the stapled foreign corporation does not pay its income tax liability that was properly assessed, the unpaid balance of such income tax or any portion thereof may be collected from the stapled domestic corporation, provided that the following conditions are satisfied:

(i) The Commissioner has issued a notice and demand for payment of such income tax to the stapled foreign corporation in accordance with §301.6303–1;

(ii) The stapled foreign corporation has failed to pay the income tax by the date specified in such notice and demand;

(iii) The Commissioner has issued a notice and demand for payment of the unpaid portion of such income tax to the stapled domestic corporation in accordance with §301.6303–1.

(3) *Collection from 10-percent shareholders of the stapled foreign corporation*. The unpaid balance of the stapled foreign corporation's income tax liability may be collected from a 10-percent shareholder of the stapled foreign corporation, limited to each such shareholder's income tax liability as determined under paragraph (f)(4)(iv) of this section, provided the following conditions are satisfied:

(i) The Commissioner has issued a notice and demand to the stapled domestic corporation for the unpaid portion of the stapled foreign corporation's income tax liability, as provided in paragraph (f)(2)(iii) of this section;

(ii) The stapled domestic corporation has failed to pay the income tax by the date specified in such notice and demand;

(iii) The Commissioner has issued a notice and demand for payment of the unpaid portion of such income tax to such 10-percent shareholder of the stapled foreign corporation in accordance with §301.6303–1.

(4) *Special rules and definitions*. For purposes of this paragraph (f), the following rules and definitions apply:

(i) *Stapled domestic corporation*. A domestic corporation is a *stapled domestic corporation* with respect to a stapled foreign corporation if such domestic corporation and the stapled foreign corporation are stapled entities as described in paragraph (b)(1) of this section.

(ii) *10-percent shareholder*. A *10-percent shareholder* of a stapled foreign corporation is any person that owned directly 10 percent or more of the total value or total combined voting power of all classes of stock in the stapled foreign corporation for any day of the stapled foreign corporation's taxable year with respect to which the income tax liability relates.

(iii) *10-percent shareholder in the case of indirect ownership of stapled foreign corporation stock*. [Reserved].

(iv) *Determination of a 10-percent shareholder's income tax liability*. The income tax liability of a 10-percent shareholder of a stapled foreign corporation, for the income tax of the stapled foreign corporation under section 269B and this section, is determined by assigning an equal portion of the total income tax liability of the stapled foreign corporation for the taxable year to each day in such corporation's taxable year, and then dividing that portion ratably among the shares outstanding for that day on the basis of the relative values of such shares. The liability of any 10-percent shareholder for this purpose is the sum of the income tax liability allocated to the shares held by such shareholder for each day in the taxable year.

(v) *Income tax*. The term *income tax* means any income tax liability imposed on a domestic corporation under title 26 of the United States Code, including additions to tax, additional amounts, penalties, and interest related to such income tax liability.

(g) *Effective dates*—(1) Except as provided in this paragraph (g), the provisions of this section are applicable for taxable years that begin after the date the final regulations are published in the **Federal Register**.

(2) Paragraphs (d)(1) and (f) of this section (except as applied to the collection of tax from any 10-percent shareholder of a stapled foreign corporation that is a foreign person) are applicable beginning on—

(i) July 18, 1984, for any foreign corporation that became stapled to a domestic corporation after June 30, 1983; and

(ii) January 1, 1987, for any foreign corporation that was stapled to a domestic corporation as of June 30, 1983.

(3) Paragraph (d)(2) of this section is applicable for taxable years beginning after July 22, 2003, except that in the case of a foreign corporation that becomes stapled to a domestic corporation on or after July 22, 2003, paragraph (d)(2) of this section applies for taxable years ending on or after July 22, 2003.

(4) Paragraph (e) of this section is applicable beginning on July 18, 1984, except as provided in paragraph (g)(5) of this section.

(5) In the case of a foreign corporation that was stapled to a domestic corporation as of June 30, 1983, which was entitled to claim benefits under an income tax treaty as of that date, and which remains eligible for such treaty benefits, paragraph (e) of this section will not apply to such foreign corporation and for all purposes of the Code such corporation will continue to be treated as a foreign entity. The prior sentence will continue to apply even if such treaty is subsequently modified by protocol, or superseded by a new treaty, so long as the stapled foreign corporation continues to be eligible to claim such treaty benefits. If the treaty benefits to which the stapled foreign corporation was entitled as of June 30, 1983, are terminated, then a deemed conversion of the foreign corporation to a domestic corporation shall occur pursuant to paragraph (c) of this section as of the date of such termination.

Par. 3. In §1.367(b)–2, paragraph (g) is revised to read as follows:

§1.367(b)–2 Definitions and special rules.

* * * * *

(g) *Stapled stock under section 269B*. For rules addressing the deemed conversion of a foreign corporation to a domestic corporation under section 269B, see §1.269B–1(c).

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PART 301—PROCEDURE AND ADMINISTRATION

Par 4. The authority citation for part 301 continues to read, in part, as follows:

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

Section 301.269B–1 also issued under 26 U.S.C. 269B(b).

Par. 5. Section 301.269B–1 is added to read as follows:

§301.269B–1 Stapled foreign corporations.

In accordance with section 269B(a)(1), a stapled foreign corporation is subject to the same taxes that apply to a domestic corporation under Title 26 of the Internal Revenue Code. For provisions concerning taxes other than income for which the stapled foreign corporation is liable, apply the same rules as set forth in §1.269B–1(a) through (f)(1)(i), and (g), except that references to *income tax* shall be replaced with the term *tax*. In addition, for purposes of collecting those taxes solely from the stapled foreign corporation, the term *tax* means any tax liability imposed on a domestic corporation under Title 26, including additions to tax, additional amounts, penalties, and interest related to that tax liability.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on September 3, 2004, 8:45 a.m., and published in the issue of the Federal Register for September 7, 2004, 69 F.R. 54067)