

while transporting 16 or more passengers, including the driver and/or transporting hazardous materials that require a placard

W52 The accumulation of three or more out-of-service order violations within ten years

W60 The accumulation of two RRGC violations within three years.

W61 The accumulation of three or more RRGC violations within three years.

W70 Imminent hazard

Part II—Convictions

A04 Driving under the influence of alcohol with BAC at or over .04

A08 Driving under the influence of alcohol with BAC at or over .08

A10 Driving under the influence of alcohol with BAC at or over .10

A11 Driving under the influence of alcohol with BAC at or over __ (detail field required)

A12 Refused to submit to test for alcohol—Implied Consent Law

A20 Driving under the influence of alcohol or drugs

A21 Driving under the influence of alcohol

A22 Driving under the influence of drugs

A23 Driving under the influence of alcohol and drugs

A24 Driving under the influence of medication not intended to intoxicate

A25 Driving while impaired

A26 Drinking alcohol while operating a vehicle

A31 Illegal possession of alcohol

A33 Illegal possession of drugs (controlled substances)

A35 Possession of open alcohol container

A41 Driver violation of ignition interlock or immobilization device

A50 Motor vehicle used in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance

A60 Underage Convicted of Drinking and Driving at .02 or higher BAC

A61 Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC

A90 Administrative Per Se for .10 BAC

A94 Administrative Per Se for .04 BAC

A98 Administrative Per Se for .08 BAC

B01 Hit and run—failure to stop and render aid after accident

B02 Hit and run—failure to stop and render aid after accident—Fatal accident

B03 Hit and run—failure to stop and render aid after accident—Personal injury accident

B04 Hit and run—failure to stop and render aid after accident—Property damage accident

B05 Leaving accident scene before police arrive

B06 Leaving accident scene before police arrive—Fatal accident

B07 Leaving accident scene before police arrive—Personal injury accident

B08 Leaving accident scene before police arrive—Property damage accident

B14 Failure to reveal identity after fatal or personal injury accident

B19 Driving while out of service order is in effect and transporting 16 or more passengers including the driver and/or transporting hazardous materials that require a placard

B20 Driving while license withdrawn

B21 Driving while license barred

B22 Driving while license canceled

B23 Driving while license denied

B24 Driving while license disqualified

B25 Driving while license revoked

B26 Driving while license suspended

B27 General, driving while an out of service order is in effect (for violations not covered by B19)

B41 Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID

B51 Expired or no driver license (includes DL, CDL, and Instruction Permit)

B56 Driving a CMV without obtaining a CDL

B91 Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit)

D02 Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit)

D06 Misrepresentation of identity or other facts to obtain alcohol

D07 Possess multiple driver licenses (includes DL, CDL, and Instruction Permit)

D16 Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit)

D27 Violate limited license conditions

D29 Violate restrictions of driver license (includes DL, CDL, and Instruction Permit)

D72 Inability to control vehicle

D78 Perjury about the operation of a motor vehicle

E03 Operating without HAZMAT safety equipment as required by law

M09 Failure to obey railroad crossing restrictions

M10 For all drivers, failure to obey a traffic control device or the directions of an enforcement official at a railroad-highway grade crossing

M20 For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train.

M21 For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear

M22 For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing

M23 For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping

M24 For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance

M80 Reckless, careless, or negligent driving

M81 Careless driving

M82 Inattentive driving

M83 Negligent driving

M84 Reckless driving

S95 Speed contest (racing) on road open to traffic

U07 Vehicular homicide

U08 Vehicular manslaughter

U09 Negligent homicide while operating a CMV

U10 Causing a fatality through the negligent operation of a CMV

U31 Violation resulting in fatal accident

Issued on: July 25, 2005.

Jeffrey W. Runge,

Administrator.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9216]

RIN 1545–BD06

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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations 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: *Effective Date:* These regulations are effective on July 29, 2005.

Applicability Dates: For dates of applicability, see § 1.269B–1(g).

FOR FURTHER INFORMATION CONTACT: Richard L. Osborne at (202) 435–5230 or Robert W. Lorence at (202) 622–3918 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2004, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking [REG–101282–04; 2004–42 I.R.B. 698; 69 FR 54067] under sections 269B and 367(b) of the Internal Revenue Code (Code). The proposed regulations provide guidance 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 Code. The proposed regulations are finalized here without modification.

Explanation of Provisions and Summary of Comments

Section 269B(a)(1) provides that, 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 income 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. 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 interests are also transferred or required to be transferred.

The IRS and Treasury Department received only one written comment with respect to the proposed regulations under section 269B. The comment requests guidance on the potential application of the regulations to so-called *dual listed corporations* (also referred to as *dual company structures* or *virtual mergers*). As described in the comment, dual listed corporations typically are two separately traded public corporations that enter into various equalization and voting agreements, with the result that the operations of each company generally are managed through a common governance structure. The comment provides that the structure does not involve an actual shareholder level exchange of shares, and that the companies remain separately traded, but that by reason of the equalization and voting agreements, the shares in each company generally reflect the combined economics of the two companies. The comment also indicates that these dual listed structures are generally motivated by non-tax business reasons (including avoiding the adverse market effect known as the *flowback of shares* that can occur in cross border acquisitions).

The commentators state that they are not aware of a dual listed structure involving a domestic corporation and a foreign corporation, but nonetheless believe that such a transaction is a possibility. Further, the commentators believe that section 269B and the regulations should not be interpreted to apply to such a dual listed structure. Accordingly, the commentators request that the final regulations (1) provide that the voting arrangements that are part of these transactions do not involve the stapling of *beneficial ownership* within the meaning of section 269B; and (2) provide a de minimis exception to the *aggregate* rule of § 1.269B-1(b)(1) of the proposed regulations.

After consideration of the comment discussed above, the IRS and the Treasury Department have decided at this time to adopt the proposed regulations as final regulations without modification. However, the IRS and the Treasury Department believe that further study of dual listed structures is warranted and request more detailed comments on the application of section

269B and the underlying regulations to these structures, including discussion of particular facts and circumstances that should and should not be considered, in regard to each corporation's beneficial ownership for purposes of determining whether the dual listed corporations are stapled entities. These comments should take into account the need to protect the government's interests in this area, particularly in light of the policies underlying section 269B and the recent enactment of section 7874, relating to rules applicable to expatriated entities and their foreign parent corporations. Consideration also should be given to appropriate limitations on any proposed exceptions. Pending the issuance of any further published guidance, the IRS will consider the application of section 269B and the underlying regulations to dual listed structures on a case by case basis.

Further, the IRS and Treasury Department remain concerned about 10-percent shareholders interposing entities in order to avoid collection under § 1.269B-1(f) of the final regulations. Accordingly, the final regulations retain the reserved section for rules regarding tax assessment and collection from 10-percent indirect owners of stapled foreign corporations. The IRS and Treasury Department will continue to consider such situations and request comments on how to address the issue in subsequent guidance.

Special Analyses

The IRS and the Treasury Department have determined that the adoption of these regulations 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 Code, the notice of proposed rulemaking 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 Richard L. Osborne, of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting, and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 301 are 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 becoming or ceasing to be a stapled foreign corporation (e.g., a corporation that is no longer 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 is 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 is not eligible to join in the filing of a consolidated return under section 1501, and a dividend paid by such corporation is not 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 is 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 of this Chapter;

(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 of this Chapter.

(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 of this Chapter.

(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 July 29, 2005.

(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 Internal Revenue 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).

* * * * *

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) of this Chapter, 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 of the United States Code, including additions to tax, additional amounts, penalties, and interest related to that tax liability.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 14, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

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