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(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Special Flight Permit

(h) Under 14 CFR 39.23, we are limiting the special flight permits for this AD under the following condition: The air-conditioning "AIR-COND" switch is set to the "OFF" position.

#### Related Information

(i) Refer to MCAI European Aviation Safety Agency (EASA) Emergency AD No.: 2008-0067-E, dated April 3, 2008, and EADS SOCATA Service Bulletin (SB) No. 70-156, Amendment 1, dated March 2008, for related information.

#### Material Incorporated by Reference

(j) You must use EADS SOCATA Service Bulletin (SB) No. 70-156, original issue; or EADS SOCATA Service Bulletin (SB) No. 70-156, Amendment 1, both dated March 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact EADS SOCATA—Direction des Services, 65921 Tarbes Cedex 9, France; telephone: +33 (0)5 62 41 73 00; fax: +33 (0)5 62 41 7-54; or in the United States contact EADS SOCATA North America, Inc., North Perry Airport, 7501 South Airport Road., Pembroke Pines, Florida 33023; telephone: (954) 893-1400; fax: (954) 964-4141.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on April 30, 2008.

**Patrick R. Mullen,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9397]

RIN 1545-BH95

#### Assumption of Liabilities

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations relating to the assumption of liabilities under section 358(h) of the Internal Revenue Code (Code). Section 358(h) provides that, after application of section 358(d), the basis in stock received in a nonrecognition transaction shall be reduced to the fair market value of the stock by the amount of any liability assumed in the exchange. The Treasury Department and the IRS have determined that removing an exception to section 358(h) is necessary to prevent abuse. These regulations affect corporations and their shareholders.

**DATES:** *Effective Date:* These regulations are effective on May 9, 2008.

*Applicability Date:* For dates of applicability, see §§ 1.358-5(a) and (b).

**FOR FURTHER INFORMATION CONTACT:** Robert M. Rhyne (202) 622-7550 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

This document contains amendments to 26 CFR part 1 under section 358(h) of the Code. As part of the Consolidated Appropriations Act of 2001 (Pub. L. 106-554, 114 Stat. 2763), Congress enacted, on December 21, 2000, section 358(h), applicable to assumptions of liability after October 18, 1999, to address certain transactions in which property is transferred to a corporation in exchange for both stock and the corporation's assumption of certain obligations of the transferor. In these transactions, transferors took the position that the obligations were not liabilities within the meaning of section 357(c) or that they were described in section 357(c)(3), and, therefore, the obligations did not reduce the basis of

the stock received by transferor. These assumed obligations, however, did reduce the value of the stock. The transferors then sold the stock and claimed a loss. In this way, taxpayers attempted to duplicate a loss in corporate stock and to accelerate deductions that typically are allowed only on the economic performance of these types of obligations.

Section 358(h)(1) addresses these transactions by requiring that, after application of section 358(d), the basis in stock received in an exchange to which section 351, 354, 355, 356, or 361 applies be reduced (but not below the fair market value of the stock) by the amount of any liability assumed in the exchange. Section 358(h)(2) provides exceptions to section 358(h)(1) where: (A) The trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange; or (B) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange (the "Asset Exception"). The Secretary, however, has the authority to limit these exceptions. Section 358(h)(3) provides that the term "liability" for purposes of section 358(h) includes any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into account for purposes of the Code.

On May 26, 2005, temporary regulations (TD 9207) were published in the **Federal Register** (70 FR 30334) making unavailable the exception of section 358(h)(2)(B), the Asset Exception. A notice of proposed rulemaking (REG-106736-00) cross-referencing those temporary regulations was published in the **Federal Register** (71 FR 30380) on the same day.

The IRS and the Treasury Department received no comments responding to the proposed and temporary regulations. No public hearing was requested or held. The IRS and the Treasury Department have determined that making the exception of section 358(h)(2)(B) unavailable is necessary to prevent abuse; therefore, this document contains final regulations adopting the provisions of the proposed regulations with no change and the corresponding temporary regulations are removed.

#### 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. Pursuant to 5 U.S.C. 553(d)(3) it has been determined that a delayed effective

date is unnecessary because this rule finalizes, without change, currently effective temporary rules regarding the assumption of liabilities. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the only impact of the regulations is to require taxpayers to calculate the basis of stock received in certain transactions more accurately. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the 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 Robert M. Rhyne of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department 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 as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
§ 1.358-5 also issued under 26 U.S.C. 358(h)(2). \* \* \*

■ **Par. 2.** Section 1.358-5 is added to read as follows:

#### § 1.358-5 Special rules for assumption of liabilities.

(a) *In general.* Section 358(h)(2)(B) does not apply to an exchange occurring on or after May 9, 2008.

(b) *Effective/Applicability date.* For exchanges occurring on or after June 24, 2003, and before May 9, 2008, see § 1.358-5T as contained in 26 CFR part 1 in effect on April 1, 2007.

#### § 1.358-5T [Removed]

■ **Par. 3.** Section 1.358-5T is removed.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: April 28, 2008.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9396]

RIN 1545-BH52

#### Corporate Reorganizations; Amendment to Transfers of Assets or Stock Following a Reorganization

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations that amend TD 9361, titled Transfers of Assets or Stock Following a Reorganization. These final regulations make certain clarifying amendments to the rules regarding the effect of certain transfers of assets or stock on the continuing qualification of transactions as reorganizations under section 368(a). These regulations affect corporations and their shareholders.

**DATES:** *Effective Date:* These regulations are effective on *May 9, 2008*.

*Applicability Date:* For dates of applicability, see § 1.368-2(k)(3).

**FOR FURTHER INFORMATION CONTACT:** Mary W. Lyons, at (202) 622-7930 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

As noted in the preamble to TD 9361 (72 FR 60556), § 1.368-1(a) provides that a transaction must be evaluated under all relevant provisions of law, including the step transaction doctrine, in determining whether it qualifies as a reorganization under section 368(a). Section 1.368-2 provides guidance regarding whether a transaction satisfies the explicit statutory requirements of a particular reorganization. Specifically, section 1.368-2(k) provides that a transaction otherwise qualifying as a reorganization will not be disqualified or recharacterized as a result of certain subsequent transfers of assets or stock described therein. The fact that a

subsequent transfer of assets or stock is not described in § 1.368-2(k) does not necessarily preclude reorganization qualification, but the overall transaction would then be subject to analysis under the step transaction doctrine.

Section 1.368-2(k), as in effect prior to these final regulations, generally permits one or more post-reorganization transfers (or successive transfers) of assets or stock, provided that the Continuity of Business Enterprise (COBE) requirement is satisfied and the transfer(s) qualify as “distributions” (as described in § 1.368-2(k)(1)(i)) or “other transfers” (as described in § 1.368-2(k)(1)(ii)). These final regulations amend those rules to clarify that a transfer to the former shareholders of the acquired corporation (other than a former shareholder that is also the acquiring corporation) or the surviving corporation, as the case may be, is not described in paragraph (k)(1) to the extent it constitutes the receipt by such shareholders of consideration for their proprietary interests in the acquired corporation or the surviving corporation, as the case may be. Any such transfer to the former shareholders following a transaction otherwise qualifying as a reorganization under section 368(a) calls into question whether the underlying transaction satisfies the continuity of interest requirement in Treas. Reg. § 1.368-1(e) as well as certain statutory limitations on permissible consideration (such as the “solely for voting stock” requirement in section 368(a)(1)(B) or (C)). Therefore, such transfers are outside the scope of the safe harbor protection afforded by these final regulations. Nevertheless, the safe harbor of Treas. Reg. § 1.368-2(k) continues to apply to transfers to the former shareholders that do not constitute consideration for their proprietary interests in the acquired corporation or the surviving corporation, as the case may be, such as certain pro-rata dividend distributions by the acquiring corporation following a reorganization. Moreover, the amendment provides that the limitation on the scope of Treas. Reg. 1.368-2(k) does not apply to transfers to a shareholder that also is the acquiring corporation in the reorganization. Thus, the regulations continue to provide safe harbor protection to certain “upstream” reorganizations followed by a transfer of acquired assets. See, for example, Rev. Rul. 69-617, 1969-2 CB 57.

In addition, these final regulations amend § 1.368-2(k) to clarify that the safe harbor shall not apply to a transfer by the former shareholders of the acquired corporation (other than a