

Appendix 1—List of Relevant Documents

(Note: This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Petition HP 91-1 from Barbara Mauk.
2. Letter to Barbara Mauk from Sadye E. Dunn, CPSC, January 28, 1993.
3. Hampson, N.B. et al., *JAMA* (January 5, 1994).
4. Cost information from industry.
 - a. The Clorox Company (Kingsford), P.O. Box 493, Pleasanton, CA 94566.
 - b. King and Spalding, representing Royal Oak Enterprises, Inc., 1730 Pennsylvania Ave. N.W., Washington, D.C. 20006.
 - c. Hickory Specialties, Inc., P.O. Box 1669, Brentwood, TN 37024.
5. Barbecue Industry Association survey. Barbecue Industry Association, 710 East Ogden, Suite 113, Naperville, IL 60563.
6. Briefing package dated July 6, 1995, with Tabs A-H.

TAB A—Background Information on Charcoal Labeling in Briefing Package memo dated May 18, 1994 accompanied by FDA's Notices of Proposed and Final Rulemaking dated September 2, 1970, and August 11, 1971, and Petition for Amending Labeling Requirements for Charcoal Intended for Household Use, dated October 12, 1990.

TAB B—Memorandum from Lauren E. Burton of Directorate for Health Sciences to Sharon R. White, entitled "Carbon Monoxide Toxicity Review for the Charcoal Labeling Project," dated March 8, 1994.

TAB C Memorandum from Leonard Schachter Directorate for Epidemiology, Division of Hazard Analysis to Sharon R. White, entitled "Charcoal Labeling Project," dated December 12, 1994.

TAB D—Memorandum from Charles M. Jacobson of Office of Compliance and Enforcement to Susan E. Womble, entitled "Compliance Experience with Current FHSA Labeling Requirements for Charcoal Briquets," dated April 30, 1992.

TAB E—1. Memorandum from Sharon R. White of Directorate for Engineering Sciences, Division of Human Factors to The File entitled, "Proposed Revisions to Labeling Requirements for Packages of Charcoal" dated June 15, 1995.

2. Memorandum from George Sweet of Directorate for Engineering Sciences, Division of Human Factors to Sharon R. White entitled, "Pictogram Testing for Warning Labels on Charcoal Bags," dated June 12, 1995.

TAB F—Logs of Industry Meetings on (1) April 22, 1994, and (2) April 13, 1995.

TAB G—Memorandum from Mary F. Donaldson of Directorate of Economic Analysis to Sharon R. White, entitled "Economic Analysis of a Revision to Charcoal Labeling," dated June 22, 1995.

TAB H—Draft **Federal Register** Notice—Notice of Proposed Rulemaking.

7. Letter from James C. Stephen, President, Weber-Stephen Products Co., to Sharon R. White, CPSC, May 11, 1995.

8. Letter from Harleigh Ewell, CPSC, to James C. Stephen, President, Weber-Stephen Products Co., June 29, 1994.

9. Woodson, W.; Tillman, B.; and Tillman, P., 1992.

10. ANSI Z535.3-1991, American National Standard for Criteria for Safety Symbols.

11. Perry, E., and Neily, M. (1985). *Burning Charcoal Briquettes in a Fireplace*. U.S. Consumer Product Safety Commission, Washington, DC.

12. Letter from Leonard S. Gryn, Executive Vice President, Weber-Stephen Products Co., to Harleigh Ewell, CPSC, July 5, 1995.

[FR Doc. 95-19357 Filed 8-9-95; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[CO-26-95]

RIN 1545-AT55

Treatment of Underwriters in Section 351 and Section 721 Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document proposes rules for transfers of cash to a corporation or a partnership. The proposed regulations will affect taxpayers in transactions intended to qualify under section 351 and section 721 when there is an offering of stock or partnership interests through an underwriter. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by November 8, 1995. Requests to speak at the public hearing scheduled for Wednesday, January 17, 1996, at 10 a.m., with outlines of oral comments, must be received by Wednesday, December 27, 1995.

ADDRESSES: Send submissions: CC:DOM:CORP:T:R (CO-26-95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (CO-26-95), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation under section 351(a), Susan T. Edlavitch, (202) 622-7750; concerning the proposed regulation under section 721(a), Brian J. O'Connor, (202) 622-3060; concerning submissions and the hearing, Mike Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

Section 351(a) provides that no gain or loss is recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in the corporation and immediately after the exchange the person or persons are in control (as defined in section 368(c)) of the corporation.

Section 721(a) provides that no gain or loss is recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Rev. Rul. 78-294, 1978-2 C.B. 141, involves the incorporation of an existing sole proprietorship by an individual to raise capital through a public offering. The individual sought the assistance of an underwriter. In accordance with the plan, the individual organized a new corporation, which had capital stock of 1,000 authorized but unissued shares.

Situation 1 describes a transaction that was considered to fall within the general definition of a "best efforts" underwriting. Pursuant to an agreement among the individual, the new corporation, and the underwriter, the individual transferred all the business property to the new corporation in exchange for 500 shares of stock. The underwriter agreed to use its best efforts as an agent of the corporation to sell the 500 unissued shares to the general public at \$200 per share. The underwriter succeeded in selling the stock within two weeks of the initial offering with no change in the terms of the offering.

Situation 2 describes a transaction that was considered to fall within the general definition of a "firm commitment" underwriting. Pursuant to an agreement among the individual, the new corporation, and the underwriter, the individual transferred all the business property to the new corporation in exchange for 500 shares of stock, and the underwriter transferred \$100,000 in cash to the new corporation in exchange for the remaining 500 shares. At the time of the underwriter's purchase, the underwriter had not entered into a binding contract to dispose of its stock in the new corporation. However, the underwriter intended to sell its 500 shares, but, if unsuccessful, was required to retain them. Following the exchanges, the underwriter sold its 500 shares of stock in the new corporation to the general public within two weeks of the initial offering. The individual retained the

500 shares of stock in the new corporation.

In Situation 1, the ruling holds that the individual who transferred the business property to the corporation and the investors in the public offering were co-transferors in a single transaction that qualified under section 351. In Situation 2, the ruling holds that the firm commitment underwriter was a transferor along with the individual and that their control was not defeated by the subsequent resale of 50 percent of the stock in the public offering.

The IRS and Treasury believe that Situation 2 of Rev. Rul. 78-294 does not reflect current underwriting practices. In addition, the IRS and Treasury believe that underwritings of partnership interests should be treated similarly to underwritings of stock. Further, the proposed regulations are necessary to prevent inappropriate imposition and inappropriate avoidance of tax.

The proposed regulations, under certain circumstances, disregard underwriters of stock and partnership interests for purposes of section 351 and section 721. The proposed treatment of underwriters is similar to their treatment under § 1.382-3(j)(7) and § 1.1273-2(e).

Explanation of Provisions

Proposed Amendment Adding § 1.351-1(a)(3)

This document proposes to add § 1.351-1(a)(3) to 26 CFR part 1. The proposed regulation provides that, for the purpose of section 351, if a person acquires stock from an underwriter in exchange for cash in a qualified underwriting transaction, the person who acquires the stock from the underwriter is treated as transferring cash directly to the corporation in exchange for the stock and the underwriter is disregarded. A qualified underwriting transaction is a transaction in which a corporation issues stock for cash in an underwriting in which either the underwriter is an agent of the corporation or the underwriter's ownership of stock is transitory. The proposed regulation would render Rev. Rul. 78-294 obsolete. No inference is intended as to transactions not within the scope of the proposed regulation.

Proposed Amendment Adding § 1.721-1(c)

This document proposes to add § 1.721-1(c) to 26 CFR part 1. The proposed regulation provides that, for the purpose of section 721, if a person acquires a partnership interest from an underwriter in exchange for cash in a

qualified underwriting transaction, the person who acquires the partnership interest from the underwriter is treated as transferring cash directly to the partnership in exchange for the partnership interest and the underwriter is disregarded. A qualified underwriting transaction is a transaction in which a partnership issues partnership interests for cash in an underwriting in which either the underwriter is an agent of the partnership or the underwriter's ownership of the partnership interests is transitory. No inference is intended as to transactions not within the scope of the proposed regulation.

Comments Solicited

The IRS and Treasury invite public comment on the proposed regulations. In particular, the IRS and Treasury solicit comments on (a) whether the proposed rules should apply for all tax purposes; (b) whether the proposed rules should be limited to underwriters; and (c) whether the proposed rules should be limited to cash transactions.

Proposed Effective Dates

New § 1.351-1(a)(3) and new § 1.721-1(c) are proposed to be effective for qualified underwriting transactions occurring on or after the date of publication as final regulations in the **Federal Register**.

Effect on Other Documents

The following publication would become obsolete as of the date of publication in the **Federal Register** of the final regulations: Rev. Rul. 78-294, 1978-2 C.B. 141.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking 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) that are submitted

timely to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, January 17, 1996, beginning at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

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 written comments, an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Wednesday, December 27, 1995.

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 proposed regulations are Susan T. Edlavitch of the Office of Assistant Chief Counsel (Corporate) and Brian J. O'Connor of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). 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.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.351-1 also issued under 26 U.S.C. 351. * * *

Section 1.721-1 also issued under 26 U.S.C. 721. * * *

Par. 2. In § 1.351-1, paragraph (a)(3) is added to read as follows:

§ 1.351-1 Transfer to corporation controlled by transferor.

(a) * * *

(3) *Underwritings of stock*—(i) *In general.* For the purpose of section 351,

if a person acquires stock of a corporation from an underwriter in exchange for cash in a qualified underwriting transaction, the person who acquires stock from the underwriter is treated as transferring cash directly to the corporation in exchange for stock of the corporation and the underwriter is disregarded. A qualified underwriting transaction is a transaction in which a corporation issues stock for cash in an underwriting in which either the underwriter is an agent of the corporation or the underwriter's ownership of the stock is transitory.

(ii) *Effective date.* This paragraph (a)(3) is effective for qualified underwriting transactions occurring on or after the date of publication of the final regulation in the **Federal Register**.

* * * * *

Par. 3. In § 1.721-1, paragraph (c) is added to read as follows:

§ 1.721-1 Nonrecognition of gain or loss on contribution.

* * * * *

(c) *Underwritings of partnership interests—(1) In general.* For the purpose of section 721, if a person acquires a partnership interest from an underwriter in exchange for cash in a qualified underwriting transaction, the person who acquires the partnership interest is treated as transferring cash directly to the partnership in exchange for the partnership interest and the underwriter is disregarded. A qualified underwriting transaction is a transaction in which a partnership issues partnership interests for cash in an underwriting in which either the underwriter is an agent of the partnership or the underwriter's ownership of the partnership interests is transitory.

(2) *Effective date.* This paragraph (c) is effective for qualified underwriting transactions occurring on or after the date of publication of the final regulation in the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95-19447 Filed 8-9-95; 8:45 am]

BILLING CODE 4830-01-U

26 CFR Part 1

[CO-19-95]

RIN 1545-AT43

Transfers to Investment Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to regulations relating to transfers to investment companies. The amendments are necessary to clarify existing regulations relating to certain transfers to a controlled corporation. Generally, the regulations will be amended to provide when certain transfers will not cause a diversification of the transferors' interests.

DATES: Written comments and requests for a public hearing must be received by November 8, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (CO-19-95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (CO-19-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew M. Eisenberg, (202) 622-7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document proposes amendments to the Income Tax Regulations (26 CFR part 1) under section 351 of the Internal Revenue Code of 1986. Section 351(a) provides that no gain or loss will be recognized if one or more persons transfer property to a corporation solely in exchange for stock in the corporation and immediately after the exchange the transferors control the transferee corporation. Section 351(e)(1) provides that section 351(a) will not apply to a transfer of property to an investment company.

The rule of section 351(e)(1) was enacted as part of the Foreign Investors Tax Act of 1966, with the goal of preventing individuals from achieving tax-free diversification by the transfer of one or a few stocks or securities to a corporation (referred to as a swap fund). See generally H. Rep. No. 1049, 94th Cong., 2d Sess. (Apr. 27, 1976).

Section 1.351-1(c)(1) states that a transfer to an investment company will occur when (i) the transfer results in diversification of the transferors' interests and (ii) the transferee is a Regulated Investment Company (RIC), Real Estate Investment Trust (REIT), or a corporation more than 80 percent of the value of whose assets (excluding cash and non-convertible debt obligations) are readily marketable stocks or securities. Section 1.351-1(c)(5) provides that a transfer ordinarily results in the diversification of the transferors' interests if two or

more persons transfer nonidentical assets to a corporation in the exchange.

As part of the Tax Reform Act of 1976 (the 1976 Act), Congress enacted sections 683(a) and 721(b), which incorporate the section 351(e) rules for transfers to a trust and a partnership, respectively.

The 1976 Act also addressed reorganizations of investment companies by enacting section 368(a)(2)(F). This legislation was intended to prevent the tax-free merger of a closely held corporation holding an undiversified group of assets into a publicly held diversified investment company, resulting in a tax-free diversification of the interests of the target shareholders.

Section 368(a)(2)(F)(i) provides that a transaction between two "investment companies" otherwise qualifying as a reorganization will not qualify as a reorganization for any corporation in the transaction that is not a RIC, REIT, or corporation described in section 368(a)(2)(F)(ii). Section 368(a)(2)(F)(iii) defines an investment company as a RIC, REIT, or corporation with at least 50 percent of its assets comprised of stocks or securities and 80 percent of its assets held for investment. A corporation satisfies section 368(a)(2)(F)(ii) if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer and not more than 50 percent of the value of its total assets is invested in the stock and securities of five or fewer issuers. For purposes of the section 368(a)(2)(F)(ii) test, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer. Also, a person holding stock in a RIC, REIT, or other investment company (as defined in section 368(a)(2)(F)(iii)) that meets the requirements of section 368(a)(2)(F)(ii) shall be treated as holding its proportionate share of the assets held by the company. Section 368(a)(2)(F)(iv) provides that in determining total assets, certain assets shall be excluded, including cash and cash items (including receivables), Government securities, and assets acquired to meet section 368(a)(2)(F)(ii) or to cease to be an investment company. Section 368(a)(2)(F)(v) provides that section 368(a)(2)(F) shall not apply if the stock of each investment company is owned substantially by the same persons in the same proportions. Section 368(a)(2)(F)(vii) defines securities for purposes of clauses (ii) and (iii) of section 368(a)(2)(F).