

Par. 2. Section 1.338-0 is amended by adding contents entries for § 1.338-2(c)(3) in numerical order to read as follows:

§ 1.338-0 Outline of topics.

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§ 1.338-2 Miscellaneous issues under section 338.

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(c) * * *
(3) Consequences of post-acquisition elimination of target.

- (i) Scope.
- (ii) Continuity of interest.
- (iii) Control requirement.
- (iv) Example.
- (v) Effective date.

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Par. 3. Section 1.338-2 is amended by adding paragraph (c)(3) to read as follows:

§ 1.338-2 Miscellaneous issues under section 338.

* * * * *

(c) * * *
(3) *Consequences of post-acquisition elimination of target—(i) Scope.* The rules of this paragraph (c)(3) apply to the transfer of target assets to the purchasing corporation (or another member of the same affiliated group as the purchasing corporation) (the transferee) following a qualified stock purchase of target stock, if the purchasing corporation does not make a section 338 election for target. Notwithstanding the rules of this paragraph (c)(3), section 354(a) (and so much of section 356 as relates to section 354) cannot apply to any person other than the purchasing corporation or another member of the same affiliated group as the purchasing corporation unless the transfer of target assets is pursuant to a reorganization as determined without regard to this paragraph (c)(3).

(ii) *Continuity of interest.* By virtue of section 338, in determining whether the continuity of interest requirement of § 1.368-1(b) is satisfied on the transfer of assets from target to the transferee, the purchasing corporation's target stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization.

(iii) *Control requirement.* By virtue of section 338, the acquisition of target stock in the qualified stock purchase will not prevent the purchasing corporation from qualifying as a shareholder of the target transferor for the purpose of determining whether, immediately after the transfer of target

assets, a shareholder of the transferor is in control of the corporation to which the assets are transferred within the meaning of section 368(a)(1)(D).

(iv) *Example.* This paragraph (c)(3) is illustrated by the following example:

Example. (A) Facts. P, T, and X are domestic corporations. T and X each operate a trade or business. A and K, individuals unrelated to P, own 85 and 15 percent, respectively, of the stock of T. P owns all of the stock of X. The total adjusted basis of T's property exceeds the sum of T's liabilities plus the amount of liabilities to which T's property is subject. P purchases all of A's T stock for cash in a qualified stock purchase. P does not make an election under section 338(g) with respect to its acquisition of T stock. Shortly after the acquisition date, and as part of the same plan, T merges under applicable state law into X in a transaction that, but for the question of continuity of interest, satisfies all the requirements of section 368(a)(1)(A). In the merger, all of T's assets are transferred to X. P and K receive X stock in exchange for their T stock. P intends to retain the stock of X indefinitely.

(B) *Status of transfer as a reorganization.* By virtue of section 338, for the purpose of determining whether the continuity of interest requirement of § 1.368-1(b) is satisfied, P's T stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of T's business enterprise prior to the transfer that can be continued in a reorganization through P's continuing ownership of X. Thus, the continuity of interest requirement is satisfied and the merger of T into X is a reorganization within the meaning of section 368(a)(1)(A). Moreover, by virtue of section 338, the requirement of section 368(a)(1)(D) that a target shareholder control the transferee immediately after the transfer is satisfied because P controls X immediately after the transfer. In addition, all of T's assets are transferred to X in the merger and P and K receive the X stock exchanged therefor in pursuance of the plan of reorganization. Thus, the merger of T into X is also a reorganization within the meaning of section 368(a)(1)(D).

(C) *Treatment of T and X.* Under section 361(a), T recognizes no gain or loss in the merger. Under section 362(b), X's basis in the assets received in the merger is the same as the basis of the assets in T's hands. X succeeds to and takes into account the items of T as provided in section 381.

(D) *Treatment of P.* By virtue of section 338, the transfer of T assets to X is a reorganization. Pursuant to that reorganization, P exchanges its T stock solely for stock of X, a party to the reorganization. Because P is the purchasing corporation, section 354 applies to P's exchange of T stock for X stock in the merger of T into X. Thus, P recognizes no gain or loss on the exchange. Under section 358, P's basis in the X stock received in the exchange is the same as the basis of P's T stock exchanged therefor.

(E) *Treatment of K.* Because K is not the purchasing corporation (or an affiliate thereof), section 354 cannot apply to K's exchange of T stock for X stock in the merger

of T into X unless the transfer of T's assets is pursuant to a reorganization as determined without regard to § 1.338-2(c)(3). Under general income tax principles applicable to reorganizations, the continuity of interest requirement is not satisfied because P's stock purchase and the merger of T into X are pursuant to an integrated transaction in which A, the owner of 85 percent of the stock of T, received solely cash in exchange for A's T stock. See, e.g., *Yoc Heating v. Commissioner*, 61 T.C. 168 (1973); *Kass v. Commissioner*, 60 T.C. 218 (1973), *aff'd*, 491 F.2d 749 (3d Cir. 1974). Thus, the requisite continuity of interest under § 1.368-1(b) is lacking and section 354 does not apply to K's exchange of T stock for X stock. K recognizes gain or loss, if any, pursuant to section 1001(c) with respect to its T stock.

(v) *Effective date.* The provisions of this paragraph (c)(3) are effective for transfers of target assets on or after October 26, 1995.

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Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: October 3, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95-26739 Filed 10-26-95; 8:45 am]

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26 CFR Part 301

[TD 8625]

RIN 1545-AS61

Seals of Office

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the authority contained within section 7514 of the Internal Revenue Code to prescribe or modify seals of office. These regulations provide an additional or alternative uniform seal for use by internal revenue offices throughout the country. In addition this regulation publishes what will be the newly reorganized regional and district offices, computing centers, submission processing centers, and customer service centers of the IRS.

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Walker, (202) 622-3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

These final regulations amend the Procedure and Administration Regulations (26 CFR part 301) under section 7514 of the Internal Revenue Code (Code) and are issued under the

authority contained in section 7805 (68A Stat. 917; 26 U.S.C. 7805). Section 7514 was enacted by section 91 of the Technical Amendments Act of 1958 (Public Law 85-866, 72 Stat. 1667) and amended by section 1906(b)(13)(A), (M) of the Tax Reform Act of 1976 (Public Law 94-455, 90 Stat. 1834, 1835). The IRS published a notice of proposed rulemaking in the Federal Register on January 3, 1995, (60 FR 83) providing proposed rules under section 7514 of the Code. No public comments were received. Subsequent to publication of the notice of proposed rulemaking, the IRS announced that it was reorganizing its offices as a streamlining measure, and, beginning October 1, 1995, would be eliminating some offices and adding others. These final regulations list the IRS offices that will result from the full implementation of the reorganization, and indicates that the Commissioner can designate other offices that are authorized to use the uniform seal.

Explanation of Provisions

Section 301.7514-1 currently provides for several different seals of office for various offices of internal revenue throughout the country. These final regulations permit internal revenue offices to keep the official seal currently in use, but provide for a uniform Internal Revenue Service seal for use when replacement of the current seal becomes necessary, or for other reasons such as the establishment of a new office or the relocation of an office to a new geographic area. The uniform seal can be used by all internal revenue offices throughout the country that are currently authorized by the Commissioner to use a seal, the new

internal revenue offices created as the result of the impending reorganization of the IRS that is to be implemented starting October 1, 1995, and any other internal revenue office authorized by the Commissioner to use a seal.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) 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, 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 Robert A. Walker of the General Litigation Division, Office of Chief Counsel, IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 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 part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7514-1 is amended as follows:

a. Paragraphs (a)(2) through (a)(7) are redesignated as paragraphs (a)(3) through (a)(8).

b. New paragraph (a)(2) is added.

The addition reads as follows:

§ 301.7514-1 Seals of office.

(a) * * *

(2) *Establishment of uniform seal.* (i)

In addition to the seals of office prescribed for those offices set forth in paragraphs (a) (3) through (8) of this section, a uniform seal for use by any office of internal revenue is established. The uniform seal is described as follows, and is illustrated in this paragraph (a)(2)(i). A circle within which shall appear that part of the seal of the Treasury Department represented by the shield with a dark background. Exterior to this circle and within a circumscribed circle forming the exterior of the seal shall appear words describing the specific office of internal revenue authorized to use the seal under this section. This paragraph (a)(2) is effective on October 27, 1995. The uniform seal is as follows:

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(ii) The uniform seal may be used by any office of internal revenue set forth in paragraphs (a) (3) through (8) of this section, and any other office designated by the Commissioner to use a seal, including the following internal revenue offices resulting from a reorganization of the IRS that will be implemented beginning October 1, 1995:

- Office of Regional Commissioner for:
 - Midstates Region (Dallas)
 - Northeast Region (Manhattan)
 - Southeast Region (Atlanta)
 - Western Region (San Francisco)
- Office of District Director for:
 - Arkansas-Oklahoma District (Oklahoma City)
 - Brooklyn District
 - Central California District (San Jose)
 - Connecticut-Rhode Island District (Hartford)
 - Delaware-Maryland District (Baltimore)
 - Georgia District (Atlanta)
 - Gulf Coast District (New Orleans)
 - Houston District
 - Illinois District (Chicago)
 - Indiana District (Indianapolis)
 - Kansas-Missouri District (St. Louis)
 - Kentucky-Tennessee District (Nashville)
 - Los Angeles District
 - Manhattan District
 - Michigan District (Detroit)
 - Midwest District (Milwaukee)
 - New Jersey District (Newark)
 - New England District (Boston)
 - North Central District (St. Paul)
 - North Florida District (Jacksonville)
 - North-South Carolina District (Greensboro)
 - North Texas District (Dallas)
 - Northern California District (Oakland)
 - Ohio District (Cincinnati)
 - Pacific-Northwest District (Seattle)

- Pennsylvania District (Philadelphia)
- Rocky Mountain District (Denver)
- South Florida District (Fort Lauderdale)
- South Texas District (Austin)
- Southern California District (Laguna Niguel)
- Southwest District (Phoenix)
- Upstate New York District (Buffalo)
- Virginia-West Virginia District (Richmond)
- Office of Director of Computing Centers in:
 - Detroit
 - Memphis
 - Martinsburg
- Office of Director of Submission Processing Centers in:
 - Austin
 - Cincinnati
 - Memphis
 - Kansas City
 - Ogden
- Office of Director of Customer Service Centers in:
 - Andover
 - Atlanta
 - Austin
 - Baltimore
 - Brookhaven
 - Buffalo
 - Cincinnati
 - Cleveland
 - Dallas
 - Denver
 - Fresno
 - Indianapolis
 - Jacksonville
 - Kansas City
 - Memphis
 - Nashville
 - Ogden
 - Philadelphia
 - Pittsburgh
 - Portland, OR
 - Richmond
 - St. Louis

Seattle.
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 Margaret Milner Richardson,
Commissioner of Internal Revenue.
 Approved: October 10, 1995.
 Leslie Samuels,
Assistant Secretary of the Treasury.
 [FR Doc. 95-26630 Filed 10-26-95; 8:45 am]
BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH70-1-6780a; FRL-5302-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving the plan revision that Ohio submitted to address high lead concentrations measured near the Master Metals secondary lead smelter in central Cleveland. This revision subjects this smelter to strict emissions limits and operating restrictions and will ensure that lead concentrations in this area are reduced sufficiently to meet the health-based air quality standard.

DATES: This action is effective December 26, 1995 unless adverse or critical comments are received by November 27, 1995. If the effective date is delayed,