categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5k, which categorically excludes from further environmental review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

Paragraph 6009(a) Green Federal Airways.

* * * * *

G–16 [Removed]

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Paragraph 6009(c) Amber Federal Airways.

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A–3 [Removed]

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A–17 [Removed]

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Issued in Washington, DC, on October 3, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–23201 Filed 10–9–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9994]

RIN 1545–BP55

Section 367(d) Rules for Certain Repatriations of Intangible Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations that terminate the continued application of certain tax provisions arising from a previous transfer of intangible property to a foreign corporation when the intangible property is repatriated to certain United States persons. The final regulations affect certain United States persons that previously transferred intangible property to a foreign corporation.

DATES:

Effective date: These regulations are effective on October 10, 2024.

Applicability date: For dates of applicability, *see* §§ 1.367(d)–1(j)(2), 1.904–(q)(3), 1.951A–7(e), and 1.6038B–1(g)(8).

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations other than § 1.904–4, Brittany N. Dobi (202) 317–6937; concerning § 1.904–4, Jeffrey L. Parry, (202) 317–6936 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Authority

This document contains final additions and amendments to 26 CFR part 1 (final regulations) under section 367(d) of the Internal Revenue Code (Code) regarding the termination of the continued application of certain tax provisions arising from a previous transfer of intangible property to a foreign corporation when the intangible property is repatriated to certain United States persons. The primary provisions of the final regulations are issued pursuant to the express delegations of authority to the Secretary of the Treasury (or her delegate) provided under sections 367(d) and 6038B. The provisions of the final regulations related to foreign branch income are issued pursuant to the express delegations of authority provided under sections 904(d)(2)(J) and (d)(7). The final regulations are also issued under the express delegation of authority under section 7805(a).

Background

On May 3, 2023, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–124064–19) in the **Federal Register** (88 FR 27819) under section 367 (the proposed regulations). The proposed regulations were intended to address simple, common fact patterns involving repatriations of intangible property by terminating the continued application of section 367(d) when a transferee foreign corporation repatriates intangible property subject to section 367(d) to a qualified domestic person when certain reporting requirements are satisfied. The proposed regulations also included a rule coordinating the application of section 367(d) and the provisions in § 1.904–4(f)(2)(vi)(D) that apply the principles of section 367(d) to determine the appropriate amount of gross income attributable to a foreign branch. A ''repatriation'' denotes a subsequent transfer of intangible property to the U.S. transferor or a United States person (U.S. person) related to the U.S. transferor.

Summary of Comments and Explanation of Revisions

I. In General

Five comments were submitted on the proposed regulations, which are available at *https://www.regulations.gov* or upon request. No public hearing on the proposed regulations was requested or held.

This Summary of Comments and Explanation of Revisions describes those comments and the revisions made in response to those comments. The comments also made various requests for future guidance, which the Treasury Department and the IRS will consider as part of a potential future rulemaking addressing, among other things, general issues under section 367(d).

II. Definition of Qualified Domestic Person

A. In General

To terminate the continued application of section 367(d) upon a

repatriation of intangible property, the proposed regulations required the recipient of the intangible property to be a qualified domestic person. The proposed regulations defined a qualified domestic person by reference to an ''initial U.S. transferor,'' a ''qualified successor,'' or a U.S. person that is either an individual or ''qualified corporation'' related to either the initial U.S. transferor or qualified successor. *See* proposed § 1.367(d)–1(f)(4)(iii).

As the preamble to the proposed regulations explained in part I.C of the Explanation of Provisions, the definition of qualified domestic person was based on the principle that it is generally appropriate to terminate the continued application of section 367(d) only when all the income produced by the intangible property during its useful life, and all gain recognized on a disposition of the intangible property, will be subject to current tax in the United States as to the qualified domestic person while that person holds the property. *See* 88 FR 27819, 27824. The proposed regulations further described how, in the case of a repatriation to an initial U.S. transferor, the repatriation restored the circumstances that existed at the time of the original section 367(d) transfer. *See Id.*

B. Partnerships

The proposed regulations neither treated a domestic partnership as a qualified domestic person, nor adopted an approach that would treat a partnership as an aggregate of its partners (aggregate approach) for purposes of determining qualified domestic person status. One comment suggested that the Treasury Department and the IRS modify the definition of qualified domestic person to include partnerships in which all of the partners in the partnership would themselves be qualified domestic persons, or partnerships that made the original outbound transfer of the intangible property subject to section 367(d) when there is substantial continuity of ownership of that partnership during the period beginning on the date of the initial section 367(d) transfer and ending on the date of the repatriation of the intangible property. As part of the modification, the comment also described various approaches for addressing the concerns identified in the proposed regulations regarding, for example, the potential for post-repatriation changes to partnership allocations or liquidation rights to frustrate the purposes of the proposed regulations if a partnership, or a partner in the partnership, were permitted as a qualified domestic person in certain cases. *See* 88 FR 27819, 27824 for a discussion of those concerns. Specifically, the comment suggested that the final regulations, in adopting the modification, could limit its application by requiring a specific period after the repatriation during which the ownership or interests in the partnership could not change. Additionally, the comment suggested that, to provide flexibility while protecting against the concerns outlined in the proposed regulations, the final regulations could allow the Commissioner to exercise discretion at a taxpayer's request to determine that a post-distribution change in the ownership of the partnership, or in the economic rights of the partners with respect to the intangible property, would not taint the partnership's status as a qualified domestic person. Finally, the comment also described more general, long-standing issues under section 367(d) related to the treatment of partnerships within the section 367(d) regime, and ultimately suggested that resolution of those issues should not impede finalizing the proposed regulations.

The final regulations do not adopt this comment and therefore adopt the definition of qualified domestic person from the proposed regulations without change. The issues identified by the comment, along with potential solutions to those issues, were acknowledged in the preamble to the proposed regulations, and the Treasury Department and the IRS have determined that the approach outlined in the proposed regulations continues to strike the appropriate balance between implementing the general purpose and scope of the proposed regulations (ensuring that only appropriate repatriations terminate the continued application of section 367(d)) and concerns regarding administrability and compliance. The solutions described in the comment, like the alternatives described in the proposed regulations, would not achieve this balance because the solutions would either expand the scope of the proposed regulations in an inappropriate manner (that is, by expanding the basic principle upon which the proposed regulations rests), or the solutions would, given the relatively narrow scope of the proposed regulations, impose an undue burden on taxpayers and the IRS. *See* 88 FR 27819, 27824 (describing, with respect to the latter, an approach modeled off of the rules in §§ 1.367(a)–3 and 1.367(a)–8 regarding gain recognition agreements and noting that approach would be ''unworkable due to the compliance and administrative burden.'').

Another comment described general, long-standing issues under section 367(d) related to the treatment of partnerships. These issues were generally identified in the proposed regulations. *See id.* For example, the comment pointed to §§ 1.367(a)–1T(c)(3)(i) and 1.367(d)–1T(a), which apply an aggregate approach upon an initial outbound transfer. The comment did not include any explicit suggestion for change regarding the proposed regulations, but the Treasury Department and the IRS may consider these issues as part of future rulemaking.

C. S Corporations

As described in part I.A of this Summary of Comments and Explanation of Revisions, the proposed regulations limited qualified domestic person status to ''qualified corporations'' in the case of a qualified successor or in the case of a U.S. person related to either the initial U.S. transferor or qualified successor. *See* proposed § 1.367(d)–1(f)(4)(iii). A qualified corporation, in relevant part, did not include an S corporation (as defined in section 1361(a)). *See Id.*

One comment suggested that the final regulations allow S corporations as qualified corporations. The comment noted that the shareholders of an S corporation must generally be U.S. individuals subject to U.S. taxation, which ensures that income attributable to intangible property held by an S corporation would be subject to U.S. taxation (though the comment noted that the limitation is not absolute, as certain plans described in section 401(a) may be shareholders of an S corporation).

Section 512(e)(3) excludes a non-individual shareholder that is an employee stock ownership plan (ESOP) (as defined in section 4975(e)(7) from the scope of section 512(e)(1), which provides that, in the case of certain non-individual shareholders of the S corporation, any item of income, gain, loss, or deduction, and any gain or loss on the disposition of stock in the S corporation, is taken into account by such non-individual shareholders as unrelated business taxable income (UBTI). As a result, the pro rata share of an S corporation's items of income taken into account by an ESOP shareholder is not subject to current taxation as UBTI. As noted in part I.A of this Summary of Comments and Explanation of Revisions, a principle for the definition of qualified domestic person is that termination of the continued application of section 367(d)

should occur only when all the income produced by the intangible property, as well as gain recognized on a disposition of the intangible property, is subject to current tax in the United States. In the case of an S corporation, that result is not guaranteed.

The final regulations, therefore, do not adopt this comment and retain the definition of qualified domestic person from the proposed regulations without change. The Treasury Department and the IRS considered alternative approaches to address this comment—such as an aggregate approach, with prohibitions applicable to S corporation shareholders that are ESOPs—but determined that such approaches were effectively unworkable due to the compliance and administrative burden discussed in part II.B of this Summary of Comment and Explanation of Revisions in connection with the comment on partnerships.

III. Qualified Domestic Person's Adjusted Basis in Repatriated Intangible Property

Proposed § 1.367(d)–1(f)(4)(iv) provided rules regarding a qualified domestic person's adjusted basis in the intangible property it receives in a repatriation. The proposed regulations described how these rules were intended to achieve an appropriate result regarding a qualified domestic person's adjusted basis in intangible property upon a repatriation, but that general rules regarding adjusted basis under section 367(d) (and not in the context of a repatriation of intangible property to a qualified domestic person) would be addressed in future rulemaking. *See* 88 FR 27819, 27824, and 27825.

One comment described how existing uncertainty regarding the treatment of adjusted basis of intangible property subject to section 367(d) may be implicated when that intangible property is repatriated. The comment noted that any solution would necessarily represent a broad solution to existing section 367(d) issues, instead of one limited to the proposed regulations, so the comment recommended the Treasury Department and the IRS address this issue in future rulemaking. Another comment suggested that, when a transferee foreign corporation incurs expenditures with respect to repatriated intangible property after the initial outbound transfer, proposed § 1.367(d)–1(f)(4)(iv) should be modified to allow a qualified domestic person's adjusted basis in repatriated intangible property to reflect those expenditures, reduced by any attributable amortization allowed or allowable to the transferee foreign corporation.

As noted in the proposed regulations, proposed § 1.367(d)–1(f)(4)(iv) operated ''in a manner intended to reach an appropriate result regarding a qualified domestic person's basis in repatriated intangible property'' until future rulemaking is issued that can address general basis rules under section 367(d). *See id.* The Treasury Department and the IRS, in agreement with the first comment, continue to believe that any resolution of these issues necessarily implicates broader issues under section 367(d) and, as such, is beyond the scope of this rulemaking. Proposed § 1.367(d)–1(f)(4)(iv) is therefore finalized without change, though the Treasury Department and the IRS may revisit these issues as part of future rulemaking.

IV. Required Adjustments Related to an Annual Section 367(d) Inclusion

The proposed regulations provided that the deemed annual payment under section 367(d) by the transferee foreign corporation is treated as an allowable deduction that must be allocated and apportioned to the transferee foreign corporation's classes of gross income in accordance with §§ 1.882–4(b)(1), 1.954–1(c), and 1.960–1(c) and (d) (as applicable). *See* proposed § 1.367(d)–1(c)(2)(ii) and (e)(2)(ii). These provisions, described as ''minor clarifications'' in the preamble to the proposed regulations, clarified ''that the allowable deduction is allocated and apportioned under the provisions cited in the previous sentence potentially to any class (or classes) of gross income (as appropriate) rather than solely to gross income subject to subpart F in all circumstances.'' *See* 88 FR 27819, 27822, and 27825.

One comment suggested that the proposed regulations were unclear as to whether the allowable deduction described in proposed § 1.367(d)–1(c)(2)(ii) and (e)(2)(ii) was limited to the listed provisions (§§ 1.882–4(b)(1), 1.954–1(c), and 1.960–1(c) and (d)) or whether such deduction was more generally available (for example, as a deduction under section 162). The comment posited that the latter approach was more appropriate and requested that the final regulations clarify that the allowable deduction may be allowed as a deduction under section 162. In support, the comment described how, in the case of certain transfers of intangible property to a U.S. person that is not a qualified domestic person, ''excessive U.S. taxation'' could result if the allowable deduction were limited to the listed provisions, which are provisions relevant to determinations with respect to foreign corporations.

The final regulations do not adopt this comment. The proposed regulations terminated the continued application of section 367(d) upon certain, rather than all, subsequent transfers of intangible property to a U.S. person (that is, upon a repatriation to a qualified domestic person if certain reporting requirements are met). *See* 88 FR 27819, 27821, and 27822. The comment, if adopted, would effectively terminate the continued application of section 367(d) by, for example, providing a deduction under section 162 corresponding to each annual inclusion under section 367(d). Indeed, as the proposed regulations explained, the solution contained in the proposed regulations was premised, in relevant part, on the fact that ''the deemed (substituted) transferee foreign corporation is not allowed a deduction that could reduce taxable income, even though that deemed transferee foreign corporation is the U.S. transferor or a related U.S. person.'' *See id.* Thus, a fundamental premise underlying the proposed regulations, and the existing section 367(d) regulations, is that an allowable deduction, instead of being generally available, is limited to the provisions listed in the proposed regulations (§§ 1.882–4(b)(1), 1.954–1(c), and 1.960–1(c) and (d)). To adopt the comment's suggestion would therefore be inconsistent with the proposed regulations and section 367(d) generally.

The comment also suggested that, when a subsequent transfer of intangible property results in treating the same entity as U.S. transferor and transferee foreign corporation under the section 367(d) regulations, the continued application of section 367(d) should terminate by reason of that convergence. As support, the comment cited to a case and guidance involving circumstances in which a taxpayer acquired its own debt. The Treasury Department and the IRS do not agree with this suggestion for the reasons described in the preceding paragraph, and references to cases or guidance involving a taxpayer acquiring its own debt are not instructive for, nor consistent with, the statutory and regulatory framework of section 367(d). Section 367(d) relies upon a statutory fiction that imposes a notional regime with a prescribed payor and payee, and the regulations describe cases in which a successor succeeds to the notional payment on both sides of the construct. For example, § 1.367(d)–1T(e)(1) provides that a related person can succeed an initial U.S. transferor for purposes of including income under section 367(d), and § 1.367(d)–1T(f)(3) provides that a related person can

succeed to the payor side of the deemed payment fiction. Where intangible property is returned to the original U.S. transferor, that U.S. transferor is also the successor transferee under the statutory and regulatory framework of section 367(d), and, under the express language of § 1.367(d)–1T(f)(3), the annual inclusion under section 367(d) continues. This is precisely the issue the proposed regulations were intended to address, and new regulations providing a rule for terminating an annual inclusion stream would have been largely unnecessary if the deemed payment construct collapsed automatically in such cases. Instead, this Treasury Decision provides the exclusive means by which the continued application of section 367(d) may be terminated by reason of a subsequent transfer of intangible property to a U.S. person.

V. Multiple Transfers Before Repatriation

One comment suggested changes to the proposed regulations to accommodate repatriations preceded by certain transfers of intangible property subject to section 367(d) between related foreign corporations. To illustrate this suggestion, the comment posited an example pursuant to which a repatriation was first preceded by a distribution under section 311 of the intangible property (first section 311 distribution) from one CFC (original transferee foreign corporation, or TFC) to another CFC (successor TFC). The successor TFC then distributes the intangible property under section 311 to a qualified domestic person (second 311 distribution) in a transaction with respect to which the successor TFC did not recognize gain or loss (under the theory that successor TFC's adjusted basis in the intangible property equaled the intangible property's fair market value).

On those modified facts, the comment described how the original TFC could recognize gain subject to U.S. taxation by reason of the first section 311 distribution (not under section 367(d), but rather under, for example, section 951A(a) as to a United States shareholder), and the qualified domestic person could recognize that same amount of gain upon the repatriation after the second 311 distribution under the proposed regulations (by reason of the application of the gain recognition rule in proposed § 1.367(d)–1(f)(4)(ii)(B), under which gain is determined by reference to the U.S. transferor's former adjusted basis in the property). And, because the successor TFC is the TFC at the time of the repatriation (that is, at the time of the second section 311 distribution), the required adjustments described in proposed § 1.367(d)–1(f)(2) would apply by reference to the successor TFC, which did not recognize gain or loss on the repatriation under the theory described above, rather than to the original TFC, which recognized gain on the first section 311 distribution. To address this concern, the comment suggested modifying the proposed regulations in a manner that would effectively negate a prior transfer that was subject to tax under a separate regime (for example, section 951A).

The example provided in the comment highlights significant potential interactions between the operation of section 367(d) and other generally operative provisions in the Code and regulations. For example, § 1.367(d)–1T(f)(3) explicitly provides that the ongoing annual royalty construct is unaffected by the taxable distribution of intangible property from the original TFC to the successor TFC in the first section 311 distribution, and § 1.367(d)–1T(d)(1) and (f)(1) are clear that the amount of income recognized by the U.S. transferor upon a later indirect or direct disposition of intangible property to an unrelated person is determined using the transferor's original basis in the property. However, the distribution of the intangible property from the original TFC to the successor TFC described in the comment's example might result in taxable gain to the original TFC that would be treated as tested income under section 951A, notwithstanding the lack of an acceleration of income under section 367(d). Similarly, the successor TFC might take the intangible property with a fair market value basis under section 301(d), even though that increased basis would not be available to reduce gain under section 367(d). Essentially, the example posited in the comment highlights that it may be possible to recognize income under both sections 951A and 367(d) with respect to the same property in some fact patterns where separate transactions occur in separate foreign corporations, notwithstanding that that result would not occur in cases where the property is not transferred among multiple foreign corporations. Coordinating potential disparities between income recognition under section 367(d) as compared to other generally applicable provisions of the Code, and potential disparities in tax basis for purposes of section 367(d) as compared to adjusted basis for other purposes, is beyond the scope of this rulemaking. The request for additional guidance addressing multiple related transfers, therefore, is not adopted.

VI. Reporting

As a condition for terminating the application of section 367(d) with respect to repatriated intangible property, proposed § 1.367(d)–1(f)(4)(i)(B) would have required a U.S. transferor to provide the information described in proposed § 1.6038B–1(d)(2)(iv). If a U.S. transferor failed to provide that information, the repatriation was subject to proposed § 1.367(d)–1(f)(3) such that the section 367(d) regulations, including the requirement to take an annual inclusion into account over the useful life of the intangible property, continued to apply. However, a U.S. transferor was eligible for relief under the proposed regulations if proposed § 1.367(d)–1(f)(4)(i)(B)(*2*) would have applied to the subsequent transfer of intangible property but for the fact that the required information was not provided and the U.S. transferor, upon becoming aware of the failure, promptly provided the required information, explained its failure to comply, and met certain other requirements (if applicable).

One comment requested clarifications of the reporting and relief provisions. First, the comment requested that the final regulations clarify whether relief for a failure to comply is, in relevant part, also conditioned on the U.S. transferor timely filing one or more amended returns for the taxable year in which the subsequent transfer occurred and succeeding years, and, if the U.S. transferor is under examination when an amended return is filed, providing a copy of the amended return(s) to the IRS personnel conducting the examination. The Treasury Department and the IRS adopt this comment by revising of § 1.367(d)–1(f)(5) to clarify that the relief for a failure to comply is conditioned upon the requirements listed in the previous sentence (if applicable).

The comment also requested that the Treasury Department and the IRS consider prescribing in the future a particular form for filing the required information under proposed § 1.367(d)–1(f)(5). The Treasury Department and the IRS will consider prescribing a particular form as part of future improvements to reporting with respect to section 367(d) generally. However, to provide taxpayers with additional guidance on the manner for providing a U.S. transferor's explanation for its failure to comply to the IRS, the final regulations provide an eFax number for such purpose (and, if a taxable year of the U.S. transferor is under examination, that information should

instead be provided to the IRS personnel conducting the examination).

Finally, the comment suggested clarifications or modifications to the requirements in proposed § 1.367(d)–1(f)(5) that a U.S. transferor ''promptly'' address its failure to file and to the way the U.S. transferor provides the remedial information (that is, to the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International, or any successor to that role). The comment suggested that ''promptly'' does not provide sufficient guidance to taxpayers (the comment requested a prescribed period) and the comment asserted that it is unusual for regulations to require a taxpayer to provide information directly to a specified official within the IRS. The final regulations do not adopt these suggestions. The Treasury Department and the IRS believe that ''promptly'' requiring the U.S. transferor to address its failure to comply, rather than providing a specific period, allows flexibility so that the relief may apply as appropriate to a taxpayer's particular facts and circumstances. Additionally, proposed § 1.367(d)–1(f)(5) is modeled on similar relief provisions in other contexts (for example, §§ 1.367(a)–8(p) and 1.721(c)–6(f)).

The Treasury Department and the IRS clarify proposed § 1.367(d)–1(f)(5) by striking the last clause that appeared in the second sentence. That sentence described the consequences of a failure to comply, namely the continued application of the annual inclusion stream pursuant to proposed § 1.367(d)–1(f)(3) and application of the gain recognition rule of proposed § 1.367(d)–1(f)(4)(i)(A). If the failure to comply is remedied, the rules of the proposed regulations are treated as satisfied as of the date of the repatriation (so, the repatriation terminates the continued application of section 367(d) and the U.S. transferor, if applicable, would take a partial annual inclusion into account pursuant to proposed § 1.367(d)–1(f)(4)(i)(B)(*1*)).

VII. Clarification to Example 3

Proposed § 1.367(d)–1(f)(6)(ii)(C) (*Example 3*) illustrated the determination of a qualified domestic person's adjusted basis in intangible property under the proposed regulations. In that example, TFC transferred the intangible property to USS (a qualified domestic person as defined in proposed § 1.367(d)–1(f)(4)(iii)) in an exchange described in section 351(b) pursuant to which TFC recognized $50x of gain and USP recognized $50x of gain under proposed § 1.367(d)–1(f)(4)(i)(A). The analysis under proposed § 1.367(d)–1(f)(6)(ii)(C)(*2*) was, and remains in this Treasury decision, limited to the determination of USS's adjusted basis in the intangible property.

One comment requested, in relevant part, that the final regulations clarify that TFC's earnings and profits and gross income arising by reason of the repatriation are reduced by the amount of gain recognized by USP under proposed § 1.367(d)–1(f)(4)(i)(A) ($50x). The Treasury and the IRS adopt the comment by clarifying in the facts of the example that, under § 1.367(d)–1(f)(2)(i), TFC will reduce its earnings and profits and gross income by $50x, the amount arising by reason of the repatriation and the amount of gain recognized by USP under § 1.367(d)–1(f)(4)(i)(A).

VIII. Section 904(d) Foreign Branch Income Rules

Proposed § 1.904–4(f)(2)(vi)(D)(*4*) described the application of the principles of section 367(d) to subsequent transfers of intangible property in determining adjustments to the amount of gross income attributable to a foreign branch under § 1.904–4(f)(2)(vi)(D). Specifically, the proposed regulations would have provided that each transfer to which § 1.904–4(f)(2)(vi)(D) applies is considered independently from any other preceding or subsequent transfer of the intangible property, with the result that the subsequent transfer rules in the regulations under section 367(d), including the rules for repatriations provided in the proposed regulations, do not apply in determining gross income attributable to a foreign branch under § 1.904–4(f)(2)(vi)(D). *See* 88 FR 27819, 27825, and 27826.

One comment requested that the Treasury Department and the IRS finalize the provisions of the proposed regulations without finalizing proposed § 1.904–4(f)(2)(vi)(D)(*4*). The comment suggested that such an approach could allow for further consideration of ways to simplify the application of section 367(d) principles in § 1.904–4(f)(2)(vi)(D). The comment suggested that instead of finalizing proposed § 1.904–4(f)(2)(vi)(D)(*4*), that provision could be adopted as a temporary regulation, or alternatively, this preamble could state that, until the implementation of final regulations addressing this issue, the Treasury Department and the IRS intend that rules related to section 367(d) and subsequent transfer will not apply for purposes of section 904(d).

A broader reconsideration of the application of section 367(d) principles in § 1.904–4(f)(2)(vi)(D) is beyond the scope of these final regulations. The Treasury Department and the IRS believe it is necessary to finalize proposed § 1.904–4(f)(2)(vi)(D)(*4*) to ensure the proper application of the foreign branch income rules under § 1.904–4(f)(2)(vi)(D) as those rules currently stand. This is because, as explained in the preamble to the proposed regulations, while § 1.904–4(f)(2)(vi)(D) relies on the principles of section 367(d) to determine the appropriate amount of gross income that is attributable to a foreign branch, the purposes of section 367(d) and § 1.904–4(f)(2)(vi)(D) are different. *See* 88 FR 27819, 27825 (providing that, with respect to § 1.904–4(f)(2)(vi)(D), ''[i]f there are multiple transfers of an item of intangible property over time, each transfer must be separately evaluated and could result in differing amounts of deemed annual payments depending on any interim changes in the value of the intangible property between successive transfers . . . these proposed regulations provide that each successive transfer to which § 1.904–4(f)(2)(vi)(D) applies is considered independently from any other preceding or subsequent transfers.''). Accordingly, the final regulations do not adopt this comment and proposed § 1.904–4(f)(2)(vi)(D) is finalized without change.

IX. Applicability Dates

The proposed regulations were generally proposed to apply to subsequent dispositions of intangible property occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. *See* proposed §§ 1.367(d)–1(j)(2), 1.904–4(q)(3), and 1.6038B–1(g). Comments recommended that the proposed regulations apply retroactively.

The Treasury Department and the IRS generally consider several factors when evaluating whether a rule should apply retroactively on an elective basis. For example, and as relevant to the proposed regulations, retroactive application may be more compelling where the regulations are issued with respect to new legislation, or where retroactive application is necessary to achieve certain policy objectives. The Treasury Department and the IRS also evaluate the additional administrative burden likely to result from retroactive application. Finally, where the regulations represent a change in existing regulations, consideration is given to whether retroactive application could advantage certain taxpayers over similarly situated taxpayers, based on whether the relevant taxable year remains open for the taxpayer to amend

their return to take advantage of the change. The Treasury Department and the IRS have determined that, on balance, these factors, though not representing an exhaustive list of factors, weigh against permitting the retroactive application of the final regulations and therefore do not adopt these comments.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–0026. The collection of information in these final regulations is in § 1.6038B–1(d)(2)(iv). This information is necessary to ensure that proposed § 1.367(d)–1(f)(4) is appropriately applied to the subsequent transfer. The collection of information is required to comply with section 367(d). The likely respondents are domestic corporations. Burdens associated with these requirements will be reflected in the burden for Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation.*

Estimated total annual reporting burden is 1,601 hours.

Estimated average annual burden per respondent is 2.4 hours.

Estimated number of respondents is 667.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities.

The Treasury Department and the IRS do not have data readily available to assess the number of small entities potentially affected by the final regulations. However, entities potentially affected by these proposed regulations are generally not small entities, because of the resources and investment necessary to develop intangible property and, once so developed, transfer the intangible property to a foreign corporation. Therefore, the Treasury Department and the IRS have determined that there will not be a substantial number of domestic small entities affected by the final regulations. Consequently, the Treasury Department and the IRS certify that the final regulations will not have a significant economic impact on a substantial number of small entities.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, the proposed regulations (REG–113839–22) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Drafting Information

The principal author of these regulations is Brittany N. Dobi, of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS 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, the Treasury Department and the IRS amend 26 CFR part 1 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 1.367(d)–1 also issued under 26 U.S.C. 367(d).

* * * * *

§ 1.367(a)–1 [Amended]

■ **Par. 2.** Section 1.367(a)–1 is amended by removing the language ''section 936(h)(3)(B)'' in paragraphs (d)(5) and (6) and adding the language ''section 367(d)(4)'' in its place.

■ **Par. 3.** Section 1.367(d)–1 is amended by:

■ a. Removing reserved paragraphs (c)(1) through (2).

■ b. Adding paragraph (c) heading and paragraphs (c)(1) and (2).

■ c. Removing reserved paragraphs (c)(4) through (g)(2) (introductory text).

■ d. Adding paragraphs (c)(4) and (d) through (f).

■ e. Removing paragraph (g)(2)(i), reserved paragraphs (g)(2)(ii) through (iii)(D), paragraph (g)(2)(iii)(E), and reserved paragraph (g)(2)(iii) undesignated concluding paragraph.

■ f. Adding paragraph (g) heading and paragraphs (g)(1) and (2).

■ g. Removing reserved paragraphs (g)(4) through (i).

■ h. Adding paragraphs (g)(4) through (6), (h), and (i).

■ i. Revising paragraph (j).

The additions and revision read as follows:

§ 1.367(d)–1 Transfers of intangible property to foreign corporations.

* * * * *

(c) *Deemed payments upon transfer of intangible property to foreign*

corporation—(1) *In general.* For further guidance, *see* § 1.367(d)–1T(c)(1).

(2) *Required adjustments.* For further guidance, *see* § 1.367(d)–1T(c)(2) introductory text and (c)(2)(i).

(i) [Reserved]

(ii) The deemed payment is treated as an allowable deduction (whether or not that amount is paid) of the transferee foreign corporation properly allocated and apportioned to the appropriate classes of gross income in accordance with §§ 1.882–4(b)(1), 1.951A–2(c)(3), 1.954–1(c), and 1.960–1(c) and(d), as applicable.

* * * * *

(4) *Blocked income.* For further guidance, *see* § 1.367(d)–1T(c)(4).

(d) *Subsequent transfer of stock of transferee corporation to unrelated person.* For further guidance, *see* § 1.367(d)–1T(d).

(e) *Subsequent transfer of stock of transferee foreign corporation to related person*—(1) *Transfer to related U.S. person treated as disposition of intangible property.* For further guidance, *see* § 1.367(d)–1T(e)(1).

(2) *Required adjustments.* For further guidance, *see* § 1.367(d)–1T(e)(2) introductory text and (e)(2)(i).

(i) [Reserved]

(ii) The deemed payment is treated as an allowable deduction (whether or not that amount is paid) of the transferee foreign corporation properly allocated and apportioned to the appropriate classes of gross income in accordance with §§ 1.882–4(b)(1), 1.951A–2(c)(3), 1.954–1(c), and 1.960–1(c) and(d), as applicable.

(iii) For further guidance, *see* § 1.367(d)–1T(e)(2)(iii) through (e)(4).

(iv) [Reserved]

(3) through (4) [Reserved]

(f) *Subsequent disposition of transferred intangible property by transferee foreign corporation*—(1) *In general.* For further guidance, *see* § 1.367(d)–1T(f)(1).

(2) *Required adjustments.* If a U.S. transferor is required to recognize gain under paragraph (f)(4)(i)(A) of this section or § 1.367(d)–1T(f)(1), then, in addition to the adjustments described in paragraph (c)(2)(ii) of this section and § 1.367(d)–1T(c)(2) with respect to the deemed payment described in § 1.367(d)–1T(f)(1)(ii)—

(i) For purposes of chapter 1 of the Code, the transferee foreign corporation reduces (but not below zero) the portion of its earnings and profits and gross income arising by reason of the subsequent disposition of the intangible property by the amount of gain recognized by the U.S. transferor under paragraph (f)(4)(i)(A) of this section or § 1.367(d)–1T(f)(1); and

(ii) The U.S. transferor may establish an account receivable from the transferee foreign corporation equal to the amount of gain recognized under paragraph (f)(4)(i)(A) of this section or § 1.367(d)–1T(f)(1) in accordance with § 1.367(d)–1T(g)(1).

(3) *Subsequent transfer of intangible property to related person.* Except as provided in paragraph (f)(4)(i)(B) of this section, a U.S. person's requirement to recognize income under § 1.367(d)–1T(c) or (e) is not affected by the transferee foreign corporation's subsequent disposition of the transferred intangible property to a related person. For purposes of any required adjustments, and of any accounts receivable created under § 1.367(d)–1T(g)(1), the related person that receives the intangible property is treated as the transferee foreign corporation.

(4) *Subsequent transfer of intangible property to qualified domestic person*—(i) *In general.* Except as provided in paragraph (f)(4)(v) of this section, if a U.S. person transfers intangible property subject to section 367(d) and the rules of this section and § 1.367(d)–1T to a foreign corporation in an exchange described in section 351 or 361 and, within the useful life of the intangible property, that transferee foreign corporation subsequently disposes of the intangible property to a qualified domestic person, then—

(A) The U.S. transferor of the intangible property (or any person treated as such pursuant to § 1.367(d)–1T(e)(1)) is required to recognize gain, as applicable, equal to the amount described in paragraph (f)(4)(ii) of this section; and

(B) If the U.S. transferor provides the information described in § 1.6038B–1(d)(2)(iv), then—

(*1*) The U.S. transferor is required to recognize a deemed payment as provided in § 1.367(d)–1T(f)(1)(ii); and

(*2*) The intangible property is no longer subject to section 367(d), this section, or § 1.367(d)–1T after applying paragraphs (f)(4)(i)(A) and (f)(4)(i)(B)(*1*) of this section.

(ii) *Gain recognition for U.S. transferor.* The amount of gain a U.S. transferor must recognize under paragraph (f)(4)(i)(A) of this section is determined as follows—

(A) If the intangible property is transferred basis property (as defined in section 7701(a)(43)) by reason of the subsequent disposition (determined without regard to section 367(d), this section, and § 1.367(d)–1T), the amount of gain, if any, the transferee foreign corporation would recognize if its adjusted basis in the intangible property were equal to the U.S. transferor's former adjusted basis in the property; or

(B) If the intangible property is not transferred basis property by reason of the subsequent disposition (determined without regard to section 367(d), this section, and § 1.367(d)–1T), the excess, if any, of the fair market value of the intangible property on the date of the subsequent disposition over the U.S. transferor's former adjusted basis in that property.

(iii) *Qualified domestic person.* For purposes of this paragraph (f)(4), a *qualified domestic person* means—

(A) The U.S. transferor that initially transferred intangible property subject to section 367(d);

(B) A U.S. person treated as a U.S. transferor under § 1.367(d)–1T(e)(1), provided such person is an individual or a corporation other than a corporation exempt from tax under section 501(a), a regulated investment company (as defined in section 851(a)), a real estate investment trust (as defined in section 856(a)), a DISC (as defined in section 992(a)(1)), or an S corporation (as defined in section 1361(a));

(C) A U.S. person that is an individual related, within the meaning of paragraph (h)(2)(ii) of this section and § 1.367(d)–1T(h), to the person described in paragraph (f)(4)(iii)(A) or (B) of this section; or

(D) A U.S. person that is a corporation related, within the meaning of paragraph (h)(2)(ii) of this section and § 1.367(d)–1T(h), to the person described in paragraph (f)(4)(iii)(A) or (B) of this section, other than a corporation exempt from tax under section 501(a), a regulated investment company (as defined in section 851(a)), a real estate investment trust (as defined in section 856(a)), a DISC (as defined in section 992(a)(1)), or an S corporation (as defined in section 1361(a)).

(iv) *Qualified domestic person's basis in the intangible property.* The qualified domestic person's adjusted basis in the intangible property is—

(A) In the case of a subsequent disposition of intangible property described in paragraph (f)(4)(ii)(A) of this section, and subject to any applicable limitations that may apply under the Code, the lesser of the U.S. transferor's former adjusted basis in the intangible property or the transferee foreign corporation's adjusted basis in the intangible property (as determined immediately before the subsequent disposition), in each case increased by the greater of the amount of gain (if any) described in paragraph (f)(4)(ii)(A) of this section and recognized by the U.S. transferor or the amount of gain (if any) recognized by the transferee foreign

corporation as to the intangible property by reason of the subsequent disposition; or

(B) In the case of a subsequent disposition of intangible property described in paragraph (f)(4)(ii)(B) of this section, the fair market value of the intangible property (as determined on the date of the subsequent disposition).

(v) *Special rule for related transactions.* If the transferee foreign corporation subsequently disposes of the transferred intangible property to a person that would, absent this paragraph (f)(4)(v), be a qualified domestic person (initial transferee) and, as part of a series of related transactions, the intangible property is subsequently disposed of to any other person, including by reason of multiple dispositions, then the initial transferee is treated as a qualified domestic person only if the ultimate recipient of the intangible property is a qualified domestic person. *See* paragraphs (f)(6)(ii)(D) and (E) of this section (*Examples 4* and *5*) for illustrations of the application of this paragraph (f)(4)(v).

(5) *Relief for certain failures to comply.* This paragraph (f)(5) provides relief if paragraph (f)(4)(i)(B)(*2*) of this section would apply but for the U.S. transferor's failure to provide the information required by paragraph (f)(4)(i)(B) of this section (a ''failure to comply''). When a failure to comply occurs, the subsequent disposition of the transferred intangible property is generally subject to paragraphs (f)(3) and (f)(4)(i)(A) of this section. Nevertheless, a failure to comply is deemed not to have occurred (regardless of whether the U.S. transferor continued to include amounts in gross income under § 1.367(d)–1T(c) or (e) after the subsequent disposition), and the requirements of paragraph (f)(4)(i)(B) of this section are treated as satisfied as of the date of the subsequent disposition if—

(i) Promptly after the U.S. transferor becomes aware of the failure, the U.S. transferor provides such information and provides a reasonable explanation for its failure to comply to the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate), by eFax at (855) 582–4842 (or as otherwise directed on *irs.gov*), or, if any taxable year of the U.S. transferor is under examination when the discovery is made, to the Internal Revenue Service personnel conducting the examination;

(ii) The U.S. transferor timely files an amended return for the taxable year in which the subsequent disposition occurred (and, if applicable, for each taxable year starting with the taxable year immediately after the taxable year in which the subsequent disposition occurred and ending with the taxable year in which the U.S. transferor seeks relief under this paragraph (f)(5)) that includes the information required by paragraph (f)(4)(i)(B) of this section; and

(iii) If any taxable year of the U.S. transferor is under examination when an amended return is filed, the U.S. transferor provides a copy of the amended return (or, if applicable, amended returns) to the Internal Revenue Service personnel conducting the examination.

(6) *Examples*—(i) *Assumed facts.* For purposes of the examples in paragraph (f)(6)(ii) of this section, and except where otherwise indicated, the following facts are assumed.

(A) USP and USS are domestic corporations that each use a calendar taxable year.

(B) TFC is a foreign corporation whose functional currency is the U.S. dollar.

(C) In year 1, USP transfers intangible property, as defined in section 367(d)(4), with a $0 adjusted basis, to TFC in a section 351 exchange (the transferred IP), and such transfer is subject to section 367(d).

(D) Each annual inclusion (including any amount described in § 1.367(d)–1T(f)(1)(ii)) is taken into account under section 367(d)(2)(A)(ii)(I) and § 1.367(d)–1T(c)(1).

(E) Any subsequent transfer or disposition of stock of TFC or the transferred IP occurs within the useful life of the transferred IP.

(F) All transactions are respected under general principles of tax law.

(ii) *Examples.* The following examples illustrate the application of paragraph (f)(4) of this section and other paragraphs of this section that relate to paragraph (f)(4).

(A) *Example 1: Complete liquidation of transferee foreign corporation into a qualified domestic person*—(*1*) *Facts.* In year 2, USP transfers all the stock of TFC to USS, a related person within the meaning of § 1.367(d)–1T(h) and paragraph (h)(2)(ii) of this section, in a section 351 exchange to which § 1.367(d)–1T(e)(1) applies (the year 2 transfer). In year 3, TFC distributes all its property (including the transferred IP) to USS pursuant to a complete liquidation to which sections 332 and 337 apply (the year 3 liquidation). The all earnings and profits amount determined under § 1.367(b)–2(d) with respect to the stock of TFC held by USS is $0. The information described in § 1.6038B–1(d)(2) is provided by USS for the taxable year in which the year 3 liquidation occurs.

(*2*) *Analysis*—(*i*) *The year 2 transfer.* Because the year 2 transfer involves a transfer of all the stock of TFC by USP (the initial U.S. transferor) to a related U.S. person (USS), under § 1.367(d)–1T(e)(1)(i) USS (a successor U.S. transferor) is treated as receiving the right to receive a proportionate share of the contingent annual payments that USP would have otherwise taken into account under § 1.367(d)–1T(c). As determined under § 1.367(d)–1T(e)(4), USS's proportionate share of such payments is 100 percent. Accordingly, USS will annually include in its gross income the full amount of each of the annual payments that USP would otherwise have taken into account under § 1.367(d)–1T(c) over the useful life of the transferred IP, and USP will not recognize any gain upon the year 2 transfer. *See* § 1.367(d)–1T(e)(1)(ii) and (iii).

(*ii*) *The year 3 liquidation.* The year 3 liquidation results in a subsequent disposition of the transferred IP to USS. USS, a U.S. person treated as the U.S. transferor pursuant to § 1.367(d)–1T(e)(1), is a qualified domestic person within the meaning of paragraph (f)(4)(iii) of this section. Pursuant to paragraph (f)(4)(i)(A) of this section, USS must recognize the amount of gain described in paragraph (f)(4)(ii) of this section. Because the year 3 liquidation is a complete liquidation to which sections 332 and 337 apply, the intangible property is transferred basis property (as defined in section 7701(a)(43) and determined without regard to section 367(d), this section, and § 1.367(d)–1T), and therefore paragraph (f)(4)(ii)(A) of this section applies to determine the amount of any gain USS must recognize. Because TFC does not recognize gain with respect to the transferred IP (regardless of the adjusted basis in the intangible property) by reason of the year 3 liquidation, the amount of gain described in paragraph (f)(4)(ii)(A) of this section is $0. Accordingly, USS does not recognize gain pursuant to paragraph (f)(4)(i)(A) of this section by reason of the year 3 liquidation. Additionally, because USS provides the information described in § 1.6038B–1(d)(2), paragraph (f)(4)(i)(B) of this section applies to the year 3 liquidation. USS therefore recognizes a deemed payment representing the part of USS's taxable year during which TFC held the transferred IP pursuant to paragraph (f)(4)(i)(B)(*1*) of this section, and the

required adjustments described in paragraph (c)(2)(ii) of this section and § 1.367(d)–1T(c)(2)(i) apply as to the deemed payment. Also, because USS does not recognize gain pursuant to paragraph (f)(4)(i)(A) of this section, the required adjustments described in paragraph (f)(2) of this section do not apply. Pursuant to paragraph (f)(4)(i)(B)(*2*) of this section, after taking the deemed payment into account, the transferred IP is no longer subject to section 367(d), this section, and § 1.367(d)–1T. Finally, pursuant to paragraph (f)(4)(iv)(A) of this section, USS's adjusted basis in the transferred IP is $0, which is equal to USP's former adjusted basis in the transferred IP ($0), increased by the greater of the amount of gain recognized by USS under paragraph (f)(4)(i)(A) of this section ($0) or the amount of gain recognized by TFC upon the year 3 liquidation ($0).

(B) *Example 2: Taxable distribution of the transferred intangible property to a qualified domestic person*—(*1*) *Facts.* The facts are the same as in paragraph (f)(6)(ii)(A) of this section (*Example 1*), except that, instead of in year 3 TFC distributing all its property to USS pursuant to a complete liquidation, in year 3 TFC distributes the transferred IP to USS in a distribution described in section 311(b) when the fair market value of the transferred IP is $100x (the year 3 distribution). TFC's adjusted basis in the transferred IP immediately before the distribution is $0.

(*2*) *Analysis.* The consequence of the year 2 transfer is the same as described in paragraph (f)(6)(ii)(A)(*2*)(*i*) of this section (*Example 1*). Like the consequences described in paragraph (f)(6)(ii)(A)(*2*) of this section (*Example 1*), the year 3 distribution is a subsequent disposition of the transferred IP to USS, a qualified domestic person. Pursuant to paragraph (f)(4)(i)(A) of this section, USS must recognize the amount of gain described in paragraph (f)(4)(ii) of this section. Because the year 3 distribution is described in section 311(b) the intangible property is not transferred basis property (as defined in section 7701(a)(43) and determined without regard to section 367(d), this section, and § 1.367(d)–1T), and therefore USS must recognize $100x gain under paragraph (f)(4)(ii)(B) of this section. The $100x gain amount equals the excess of the fair market value of the transferred IP on the date of the year 3 distribution ($100x) over USP's former adjusted basis in the property ($0). TFC, because of USS's gain recognition under paragraph (f)(4)(i)(A) of this section, reduces (but not below zero) the portion of its earnings and profits and gross income arising by reason of the year 3 distribution by the amount of such gain under paragraph (f)(2)(i) of this section. Specifically, because the year 3 distribution requires USS to recognize $100x of gain, TFC reduces the portion of its earnings and profits and gross income that arise by reason of the year 3 distribution, which is $100x (the excess of the fair market value of the transferred IP ($100x) over TFC's adjusted basis in the transferred IP ($0)), by $100x (the amount of gain USS recognizes pursuant to paragraph (f)(4)(i)(A) of this section). As a result, after taking into account the reduction, TFC has no earnings and profits or gross income that arise by reason of the year 3 distribution. Furthermore, USS may establish an account receivable from TFC equal to $100x under paragraph (f)(2)(ii) of this section. Additionally, and as described in paragraph (f)(6)(ii)(A)(*2*) of this section (*Example 1*), pursuant to paragraph (f)(4)(i)(B)(*1*) of this section, USS recognizes a deemed payment for the portion of USS's taxable year during which TFC held the transferred IP, and the required adjustments described in paragraph (c)(2)(ii) of this section and § 1.367(d)–1T(c)(2) apply to this deemed payment. After taking these consequences into account, pursuant to paragraph (f)(4)(i)(B)(*2*) of this section, the transferred IP is no longer subject to section 367(d), this section, and § 1.367(d)–1T. Finally, pursuant to paragraph (f)(4)(iv)(B) of this section, USS's adjusted basis in the transferred IP is $100x, which is the fair market value of the transferred IP on the date of the year 3 distribution.

(C) *Example 3: Qualified domestic person's basis in intangible property when intangible property is repatriated in an exchange described in section 351*(*b*)—(*1*) *Facts.* The facts are the same as in paragraph (f)(6)(ii)(A) of this section (*Example 1*), except that the transfer of stock of TFC to USS in year 2 does not occur and instead of the year 3 liquidation, in year 3 TFC transfers the intangible property to USS (a qualified domestic person as defined in paragraph (f)(4)(iii) of this section) in an exchange described in section 351(b) pursuant to which TFC recognizes $50x of gain and USP recognizes $50x of gain under paragraph (f)(4)(i)(A) of this section (the year 3 exchange), which amount will reduce TFC's earnings and profits and gross income by $50x under paragraph (f)(2)(i) of this section.

(*2*) *Analysis.* Pursuant to paragraph (f)(4)(iv)(A) of this section, USS's adjusted basis in the intangible property is $50x, which is the amount equal to the lesser of USP's former adjusted basis in the property ($0) or TFC's adjusted basis in the property ($0), increased by the greater of the amount of gain recognized by USP under paragraph (f)(4)(i)(A) of this section ($50x) or the amount of gain recognized by TFC upon the year 3 exchange ($50x).

(D) *Example 4: Repatriation as part of a series of related transactions culminating in transfer to a foreign corporation*—(*1*) *Facts.* The facts are the same as in paragraph (f)(6)(ii)(A)(*1*) of this section (*Example 1*), except that the year 3 liquidation occurs as part of a series of related transactions pursuant to which USS transfers the transferred IP that it receives from TFC to a related foreign corporation (FC1) in exchange for stock in FC1.

(*2*) *Analysis.* Because the year 3 liquidation occurs as part of a series of related transactions pursuant to which the transferred IP is ultimately contributed to a FC1, a foreign corporation, and because a foreign corporation is not a qualified domestic person pursuant to paragraph (f)(4)(iii) of this section, then, under paragraph (f)(4)(v) of this section, the year 3 liquidation is not treated as a subsequent disposition described in paragraph (f)(4)(i) of this section, but is instead treated as a subsequent disposition described in paragraph (f)(3) of this section.

(E) *Example 5: Repatriation as part of a series of related transactions culminating in transfer to a qualified domestic person*—(*1*) *Facts.* The facts are the same as in paragraph (f)(6)(ii)(B)(*1*) of this section (*Example 2*), except that the year 3 distribution occurs as part of a series of related transactions pursuant to which USS disposes of the transferred IP that it receives from TFC to USP.

(*2*) *Analysis.* Because the year 3 distribution occurs as part of a series of related transactions pursuant to which the transferred IP is distributed to USP, and because USP is a qualified domestic person pursuant to paragraph (f)(4)(iii) of this section, paragraph (f)(4)(v) of this section does not prevent paragraph (f)(4)(i) of this section from applying to the year 3 distribution. Accordingly, the consequences under section 367(d) of the year 3 distribution are the same as those described in paragraph (f)(6)(ii)(B)(*2*) of this section (*Example 2*), and the consequences of the subsequent disposition of the transferred IP by USS to USP are determined after applying paragraph (f)(4) of this section to the transfer of the transferred IP by TFC to USS.

(g) *Special rules*—(1) *Establishment of accounts receivable.* For further guidance, *see* § 1.367(d)–1T(g)(1).

(2) *Election to treat transfer as sale.* For further guidance, *see* § 1.367(d)–1T(g)(2) introductory text.

(i) The intangible property transferred constitutes an operating intangible, as defined in § 1.367(a)–1(d)(6).

(ii) For further guidance, *see* § 1.367–1T(g)(2)(ii) through (g)(2)(iii)(D).

(iii)(A) through (D) [Reserved]

(E) The transferred intangible property will be used in the active conduct of a trade or business outside of the United States within the meaning of § 1.367(a)–2 and will not be used in connection with the manufacture or sale of products in or for use or consumption in the United States.

(F) For further guidance, see § 1.367(d)–1T(g)(2)(iii)(F).

* * * * *

(4) *Coordination with section 482.* For further guidance, *see* § 1.367(d)–1T(g)(4)

(5) *Determination of fair market value.* For further guidance, *see* § 1.367(d)–1T(g)(5).

(6) *Anti-abuse rule.* For further guidance, *see* § 1.367(d)–1T(g)(6).

(h) *Related person.* For further guidance, *see* § 1.367(d)–1T(h) introductory text through (h)(1).

(1) [Reserved]

(2) For further guidance, *see* § 1.367(d)–1T(h)(2) introductory text and (h)(2)(i).

(i) [Reserved]

(ii) Section 1563 applies (for purposes of section 267(f)) without regard to section 1563(b)(2).

(i) *Effective date.* For further guidance, *see* § 1.367(d)–1T(i).

(j) *Applicability dates*—(1) *In general.* This section applies to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 of this chapter that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, *see* § 1.367(d)–1T as contained in 26 CFR part 1 revised as of April 1, 2016.

(2) *Certain subsequent dispositions of intangible property.* Paragraphs (c)(2)(ii), (e)(2)(ii), (f)(2) through (5), and (h)(2)(ii) of this section apply to subsequent dispositions of intangible property occurring on or after October 10, 2024. For subsequent dispositions of intangible property occurring before October 10, 2024, *see* § 1.367(d)–1T as contained in 26 CFR part 1 revised as of April 1, 2022.

■ **Par. 4.** Section 1.367(d)–1T is amended by:

■ a. Revising paragraph (c)(2)(ii).

■ b. Removing the undesignated paragraph following paragraph (c)(2)(ii).

■ d. Revising paragraphs (e)(2)(ii) and (f)(2).

■ e. Removing and reserving paragraph (f)(3) and adding reserved paragraphs (f)(4) through (6).

■ f. Designating the undesignated paragraph following paragraph (g)(2)(iii)(E) as paragraph (g)(2)(iii)(F).

■ g. Revising paragraph (h)(2)(ii).

The revisions read as follows:

§ 1.367(d)–1T Transfers of intangible property to foreign corporations (temporary).

* * * * *

(c) * * *

(2) * * *

(ii) For further guidance, *see* § 1.367(d)–1(c)(2)(ii).

* * * * *

(e) * * *

(2) * * *

(ii) For further guidance, *see* § 1.367(d)–1(e)(2)(ii);

* * * * *

(f) * * *

(2) *Required adjustments.* For further guidance, *see* § 1.367(d)–1(f)(2) through (6).

(3) through (6) [Reserved]

* * * * *

(h) * * *

(2) * * *

(ii) For further guidance, *see* § 1.367(d)–1(h)(2)(ii).

* * * * *

§ 1.367(e)–2 [Amended]

■ **Par. 5.** Section 1.367(e)–2 is amended by removing the language ''section 936(h)(3)(B)'' in the last sentence of paragraph (b)(2)(i)(B) and adding the language ''section 367(d)(4)'' in its place.

■ **Par. 6.** Section 1.904–4 is amended by adding paragraph (f)(2)(vi)(D)(*4*) and revising paragraph (q)(3) to read as follows:

§ 1.904–4 Separate application of section 904 with respect to certain categories of income.

* * * * *

(f) * * *

(2) * * *

(vi) * * *

(D) * * *

(*4*) *Multiple transfers of intangible property.* If the same intangible property is transferred in a series of transfers described in paragraph (f)(2)(vi)(D)(*1*) of this section, each successive transfer is separately subject to the provisions of paragraph (f)(2)(vi)(D)(*1*) and will not terminate or otherwise affect the application of paragraph (f)(2)(vi)(D)(*1*) to a prior transfer described in paragraph (f)(2)(vi)(D)(*1*).

* * * * *

(q) * * *

(3) Except as provided in the following sentence, paragraph (f) of this section applies to taxable years that begin after December 31, 2019, and end on or after November 2, 2020. Paragraph (f)(2)(vi)(D)(*4*) of this section applies to taxable years that begin on or after October 10, 2024.

■ **Par. 7.** Section 1.951A–2 is amended by revising paragraph (c)(2) to read as follows:

§ 1.951A–2 Tested income and tested loss.

* * * * *

(c) * * *

(2) *Determination of gross income and allowable deductions.* For purposes of determining tested income and tested loss, the gross income and allowable deductions of a controlled foreign corporation for a CFC inclusion year are determined under the rules of § 1.952–2 for determining the subpart F income (as defined in section 952) of the controlled foreign corporation, except, for a controlled foreign corporation which is engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged only in such business, would be taxable as an insurance company to which subchapter L of chapter 1 of the Code applies, the text ''the principles of §§ 1.953–4 and 1.953–5'' means ''the rules of sections 953 and 954(i)'' in § 1.952–2(b)(2).

* * * * *

■ **Par. 8.** Section 1.951A–7 is amended by adding a paragraph (e) to read as follows:

§ 1.951A–7 Applicability dates.

* * * * *

(e) *Determination of gross income and allowable deductions.* Section 1.951A–2(c)(2) applies to taxable years of foreign corporations ending on or after October 10, 2024, and to taxable years of United States shareholders in which or with which such taxable years end. For taxable years of foreign corporations ending before October 10, 2024, and to taxable years of United States shareholders in which or with which such taxable years end, *see* § 1.951A–2(c)(2)(i) and (ii) as contained in 26 CFR part 1, revised as of April 1, 2022.

■ **Par. 9.** Section 1.6038B–1 is amended by:

■ a. Removing reserved paragraphs (d)(1) through (1)(iii).

■ b. Adding paragraphs (d) heading and (d)(1) introductory text and reserved paragraphs (d)(1)(i) through (iii).

■ c. Removing reserved paragraphs (d)(1)(viii) through (d)(2).

■ d. Adding paragraphs (d)(1)(viii), (d)(2), and (g)(8).

The additions read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(d) *Transfers subject to section 367(d)*—(1) *Initial transfer.* For further guidance, see § 1.6038B–1T(d)(1) introductory text through (d)(1)(iii).

(i) through (iii) [Reserved]

* * * * *

(viii) *Other intangibles.* For further guidance, see § 1.6038B–1T(d)(1)(viii).

(2) *Subsequent transfers.* For additional, *see* § 1.6038B–1T(d)(2) introductory text through (d)(2)(ii).

(i) through (ii) [Reserved]

(iii) *Subsequent transfer.* Except for a subsequent transfer described in paragraph (d)(2)(iv) of this section, provide the following information concerning the subsequent transfer:

(A) For further guidance, *see* § 1.6038B–1T(d)(2)(iii)(A) through (C).

(B) through (C) [Reserved]

(iv) *Subsequent transfer of intangible property to a qualified domestic person.* Provide the following information concerning a subsequent transfer of intangible property described in § 1.367(d)–1(f)(4)(i):

(A) A statement providing that § 1.367(d)–1(f)(4)(i)(B) applies to the subsequent transfer;

(B) A general description of the subsequent transfer and any wider transaction of which it forms a part, including the U.S. transferor's former adjusted basis in the intangible property and the transferee foreign corporation's adjusted basis in the intangible property (as determined immediately before the subsequent transfer), the amount and computation of any gain recognized by the U.S. transferor under § 1.367(d)–1(f)(4)(i)(A), and a description of whether the intangible property was, or is expected to be, subsequently transferred to one or more other persons (as described in § 1.367(d)–1(f)(4)(v));

(C) A description of the intangible property;

(D) A copy of the Form 926 with respect to the original transfer of the intangible property and any attachments identifying the intangible property as within the scope of section 367(d);

(E) The name, address, and taxpayer identification number of the qualified domestic person that receives the intangible property, including a statement describing the relationship between the U.S. transferor and the qualified domestic person, and, if applicable, such information regarding any other persons described in § 1.367(d)–1(f)(4)(v); and

(F) Any other information as may be prescribed by the Commissioner in publications, forms, instructions, or other guidance.

* * * * *

(g) * * *

(8) Paragraphs (d)(2)(iii) introductory text and (d)(2)(iv) of this section apply to transfers occurring on or after October 10, 2024.

■ **Par. 10.** Section 1.6038B–1T is amended by revising paragraph (d)(2)(iii) introductory text to read as follows:

§ 1.6038B–1T Reporting of certain transactions to foreign corporations (temporary).

* * * * *

(d) * * *

(2) * * *

(iii) *Subsequent transfer.* For further guidance, see § 1.6038B–1T(d)(2)(iii) introductory text:

* * * * *

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: September 23, 2024.

Aviva Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–23132 Filed 10–9–24; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0908]

RIN 1625–AA87

Security Zone; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary, 500-yard radius, moving security zones within the navigable waters of the Corpus Christi Ship Channel and the La Quinta Channel. The security zone is needed to protect certain vessels carrying cargo which poses risks such that it requires an elevated level of security to protect the cargo itself and the surrounding waterway from terrorist acts, sabotage, or other subversive acts, accidents, or events of a similar nature. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port, Sector Corpus Christi or a designated representative.

DATES: This rule is effective from October 7, 2024 through October 17, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0908 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Tim Cardenas, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Tim.J.Cardenas@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Sector Corpus Christi
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard must establish this security zone by October 7, 2024, to ensure security of certain vessels and the surrounding area and lacks sufficient time to request public comments and respond to these comments before the safety zone must be established. As such, it is impracticable to publish an NPRM.

Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because prompt action is needed to provide for the security of these vessels while they are in transit and carrying potentially dangerous cargo in need of elevated security.