

in a manner that is consistent with the purpose of this section.

\* \* \* \* \*

(d) *Positions in Stock.* For purposes of this section, stock includes any position in stock to which section 1032 applies.

(e) *Effective date.* This section applies to gain or loss allocated with respect to sales or exchanges of stock occurring after December 6, 1999, except that paragraph (d) of this section is applicable with respect to sales or exchanges of stock occurring on or after March 29, 2002, and the fourth sentence of paragraph (a), paragraph (b)(2), and the third sentence of paragraph (c)(1) of this section are applicable with respect to sales or exchanges of stock occurring on or after March 18, 2003.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

Approved: March 6, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[TD 9047]

RIN 1545-BA36 and 1545-AW92

#### Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

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

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

**SUMMARY:** This document contains final regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or a Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. These regulations affect RICs, REITs, and C corporations and clarify the tax treatment of transfers of C corporation property to a RIC or REIT.

**DATES:** *Effective Date:* These regulations are effective March 18, 2003.

*Applicability Dates:* For dates of applicability, see §§ 1.337(d)-5(d), 1.337(d)-6(e) and 1.337(d)-7(f).

#### FOR FURTHER INFORMATION CONTACT:

Jennifer D. Sledge, (202) 622-7750 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### Paperwork Reduction Act

The collection of information contained in these final 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 1545-1672. This information is required to obtain a benefit, *i.e.*, to elect to recognize gain as if the C corporation had sold the property at fair market value or to elect section 1374 treatment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent is 30 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, ATTN: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document contains amendments to 26 CFR part 1. On February 7, 2000, temporary regulations [TD 8872] (the 2000 temporary regulations) relating to certain transactions or events that result in a RIC or REIT owning property that has a basis determined by reference to a C corporation's basis in the property were published in the **Federal Register** (65 FR 5775). A notice of proposed rulemaking (REG-209135-88) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (65 FR 5805). The 2000 temporary regulations were intended to carry out the purposes of the repeal of the *General Utilities* doctrine as enacted in the Tax Reform Act of 1986 (the 1986 Act) (Public Law 99-514, 100 Stat. 2085), as amended by the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647, 102 Stat. 3342).

The 1986 Act amended sections 336 and 337 to require corporations to

recognize gain or loss on the distribution of property in connection with complete liquidations other than certain subsidiary liquidations. Section 337(d) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of the *General Utilities* repeal, including rules to "ensure that such purposes may not be circumvented \* \* \* through the use of a regulated investment company, a real estate investment trust, or tax-exempt entity \* \* \*."

The 2000 temporary regulations also reflected the principles set forth in Notice 88-19 (1988-1 C.B. 486), in which the IRS announced its intention to promulgate regulations under the authority of section 337(d) with respect to transactions or events that result in a RIC or REIT owning property that has a basis determined by reference to a C corporation's basis (a carryover basis). Notice 88-19 provided that the regulations would apply with respect to the net built-in gain of C corporation assets that become assets of a RIC or REIT by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT (a conversion transaction). The Notice further provided that, where the regulations apply, the C corporation would be treated, for all purposes, as if it had sold all of its assets at their respective fair market values and immediately liquidated. The Notice provided, however, that the regulations would not allow the recognition of a net loss and that immediate gain recognition could be avoided if the C corporation that qualified as a RIC or REIT or the transferee RIC or REIT, as the case may have been, elected to be subject to tax under section 1374 with respect to the C corporation property. Notice 88-19 also indicated that the regulations would apply retroactively to June 10, 1987.

A public hearing on the cross-referenced notice of proposed rulemaking was held on May 10, 2000. Written or electronic comments responding to the notice of proposed rulemaking were received. After consideration of these comments, Treasury and the IRS decided to issue two new sets of temporary regulations. On January 2, 2002, temporary regulations [TD 8975] (the 2002 temporary regulations) were published in the **Federal Register** (67 FR 8). The regulations under § 1.337(d)-6T apply to conversion transactions occurring on or after June 10, 1987 and before January 2, 2002, and the regulations under § 1.337(d)-7T apply to conversion transactions occurring on or after January 2, 2002. A notice of proposed