

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments relate to agency management and organization, they are not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters, such as this proposed closing of three Customs Drawback Centers, are not subject to Executive Order 12866.

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry.

Amendments to the Regulations

For the reasons set forth in the preamble, amend part 101 of the Customs Regulations (19 CFR 101) as follows:

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

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§ 101.3 [Amended]

2. In § 101.3, the table in paragraph (b)(1) is amended by removing the plus sign in the “Ports of entry” column before the column listings for “Miami” under the state of Florida, “New Orleans” under the state of Louisiana, and “Boston” under the state of Massachusetts.

Robert C. Bonner,

Commissioner of Customs.

Approved: January 22, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9038]

RIN 1545–BB46

Statutory Mergers and Consolidations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that define the term *statutory merger or consolidation* as that term is used in section 368(a)(1)(A). These regulations affect corporations engaging in statutory mergers and consolidations, and their shareholders. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Richard M. Heinecke or Reginald Mombrun at (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A. Section 368(a) Generally

The Internal Revenue Code of 1986 (Code) provides general nonrecognition treatment for reorganizations specifically described in section 368(a). Section 368(a)(1)(A) provides that the term *reorganization* includes “a statutory merger or consolidation.” Section 1.368–2(b)(1) currently provides that a statutory merger or consolidation must be “effected pursuant to the corporation laws of the United States or a State or Territory or the District of Columbia.”

B. Disregarded Entities Generally

A business entity (as defined in § 301.7701–2(a)) that has only one owner may be disregarded as an entity separate from its owner for Federal tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for Federal tax purposes, a corporation (as defined in § 301.7701–2(b)) that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)) (hereinafter referred to as “QRS”), and a corporation that is a qualified

subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)) (hereinafter sometimes referred to as “QSub”).

Because a QRS and QSub are corporations under state law, state merger laws generally permit them to merge with other corporations. In addition, many state merger laws permit a limited liability company (LLC) to merge with another LLC or with a corporation.

C. Previous Proposals of Regulations

On May 16, 2000, the IRS and Treasury issued a notice of proposed rulemaking (REG–106186–98; 65 FR 31115) (hereinafter referred to as the 2000 proposed regulations) providing that neither the merger of a disregarded entity into a corporation nor the merger of a corporation into a disregarded entity would qualify as a reorganization under section 368(a)(1)(A). While commentators generally agreed that the merger of a disregarded entity into a corporation should not qualify as a reorganization under section 368(a)(1)(A), commentators asserted that the merger of a corporation into a disregarded entity with a corporate owner should be able to qualify as a reorganization under section 368(a)(1)(A).

On November 15, 2001, after consideration of the comments received regarding the 2000 proposed regulations, the IRS and Treasury withdrew the 2000 proposed regulations (REG–106186–98; 66 FR 57400) and issued another notice of proposed rulemaking (REG–126485–01; 66 FR 57400) (hereinafter referred to as the 2001 proposed regulations).

The 2001 proposed regulations provide that, for purposes of section 368(a)(1)(A), a statutory merger or consolidation must be effected pursuant to the laws of the United States or a State or the District of Columbia. Pursuant to such laws, the following events must occur simultaneously at the effective time of the transaction: (1) All of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in the transaction) of each member of one or more combining units (each a transferor unit) become the assets and liabilities of one or more members of one other combining unit (the transferee unit); and (2) the combining entity of each transferor unit ceases its separate legal existence for all purposes. For this purpose, a combining entity is a business entity that is a corporation (as defined in § 301.7701–2(b)) that is not a disregarded entity)