

(v) *Liabilities in excess of basis.* The facts are the same as in paragraph (i) of this *Example 1*, except that T's assets have a fair market value of \$170 (and \$60 basis) and are subject to \$70 of liabilities. Under paragraph (c) of this section, T's net asset basis is negative \$10 (\$60 minus \$70). See sections 351 and 358, and §§ 1.1502-19 and 1.1502-80(d). Thus, P has a \$10 excess loss account in S's stock. Under section 362, S has a \$60 basis in its assets (which are subject to \$70 of liabilities). (Under paragraph (a)(2) of this section, because the liabilities are taken into account in determining net asset basis under paragraph (c) of this section, the liabilities are not also taken into account as consideration not provided by P under paragraph (d)(1) of this section.)

(vi) *Consideration provided by S.* The facts are the same as in paragraph (i) of this *Example 1*, except that P forms S with a \$100 contribution at the beginning of Year 1, and during Year 6, pursuant to a plan, S purchases \$100 of P stock and T merges into S with the T shareholders receiving P stock in exchange for their T stock. Under paragraph (b)(1) of this section, P's \$100 basis in S's stock is increased by \$60 to reflect T's net asset basis. Under paragraph (d)(1) of this section, P's basis in S's stock is decreased by \$100 (the fair market value of the P stock) because the P stock purchased by S and used in the transaction is consideration not provided by P.

(vii) *Appreciated asset provided by S.* The facts are the same as in paragraph (i) of this *Example 1*, except that P has owned the stock of S for several years, and the shareholders of T receive \$60 of P stock and an asset of S with a \$30 adjusted basis and \$40 fair market value. S recognizes a \$10 gain from the asset under section 1001. Under paragraph (b)(1) of this section, P's basis in S's stock is increased by \$60 to reflect T's net asset basis. Under paragraph (d)(1) of this section, P's basis in S's stock is decreased by \$40 (the fair market value of the asset provided by S). In addition, P's basis in S's stock is increased under § 1.1502-32(b) by S's \$10 gain.

(viii) *Depreciated asset provided by S.* The facts are the same as in paragraph (i) of this *Example 1*, except that P has owned the stock of S for several years, and the shareholders of T receive \$60 of P stock and an asset of S with a \$50 adjusted basis and \$40 fair market value. S recognizes a \$10 loss from the asset under section 1001. Under paragraph (b)(1) of this section, P's basis in S's stock is increased by \$60 to reflect T's net asset basis. Under paragraph (d)(1) of this section, P's basis in S's stock is decreased by \$40 (the fair market value of the asset provided by S). In addition, S's \$10 loss is taken into account under § 1.1502-32(b) in determining P's basis adjustments under that section.

Example 2. Stock acquisition. (i) *Facts.* P is the common parent of one group and T is the common parent of another. T has assets with an aggregate basis of \$60 and fair market value of \$100 and no liabilities. T's shareholders have an aggregate basis of \$50 in T's stock. Pursuant to a plan, P forms S and S acquires all of T's stock in exchange for P stock in a transaction described in

section 368(a)(1)(B). The transaction is also a reverse acquisition under § 1.1502-75(d)(3). Thus, the transaction is a group structure change under § 1.1502-33(f)(1), and the earnings and profits of P and S are adjusted to reflect T's earnings and profits immediately before T ceases to be the common parent of the T group.

(ii) *Analysis.* Under paragraph (d)(4) of this section, although S is not the new common parent of the T group, adjustments must be made to S's basis in T's stock in accordance with the principles of this section. Although S's basis in T's stock would ordinarily be determined under section 362 by reference to the basis of T's shareholders in T's stock immediately before the group structure change, under the principles of paragraph (b)(2) of this section, S's basis in T's stock is determined by reference to T's net asset basis. Thus, S's basis in T's stock is \$60.

(iii) *Higher-tier adjustments.* Under paragraph (d)(4) of this section, P's basis in S's stock is increased by \$60 (to be consistent with the adjustment to S's basis in T's stock).

(iv) *Cross ownership.* The facts are the same as in paragraph (i) of this *Example 2*, except that several years ago S purchased 10% of T's stock from an unrelated person for cash and, pursuant to the plan, S acquires the remaining 90% of T's stock in exchange for P stock. S's basis in the initial 10% of T's stock is not redetermined under this section. However, S's basis in the additional 90% of T's stock is redetermined under this section. S's basis in that stock is adjusted to \$54 (90% of T's net asset basis).

(v) *Allocable share.* The facts are the same as in paragraph (i) of this *Example 2*, except that P owns only 90% of S's stock immediately after the group structure change. S's basis in T's stock is the same as in paragraph (ii) of this *Example 2*. Under paragraph (d)(2) of this section, P's basis in its S stock is increased by \$54 (90% of S's \$60 adjustment).

Example 3. Taxable stock acquisition. (i) *Facts.* P is the common parent of one group and T is the common parent of another. T has assets with an aggregate basis of \$60 and fair market value of \$100 and no liabilities. T's shareholders have an aggregate basis of \$50 in T's stock. Pursuant to a plan, P acquires all of T's stock in exchange for \$70 of P's stock and \$30 in a transaction that is a group structure change under § 1.1502-33(f)(1). P's basis in its acquired T stock is not determined in whole or in part by reference to the basis of the property exchanged for such stock. (Because of P's use of cash, the acquisition is not a transaction described in section 368(a)(1)(B).)

(ii) *Analysis.* The rules of this section do not apply to determine P's basis in T's stock. Therefore, P's basis in T's stock is \$100.

(h) *Effective dates—(1) General rule.* This section applies to group structure changes that occur after the date these regulations are published as temporary or final regulations in the **Federal Register**. However, after the date these regulations are published as temporary or final regulations in the **Federal Register**, a group may apply this section to group structure changes that occur on

or before the date these regulations are published as temporary or final regulations in the **Federal Register** and in consolidated return years beginning on or after January 1, 1995.

(2) *Prior law.* For group structure changes that occur on or before the date these regulations are published as temporary or final regulations in the **Federal Register** and in consolidated return years beginning on or after January 1, 1995, with respect to which the group does not elect to apply the provisions of this section, see § 1.1502-31 as contained in the 26 CFR part 1 edition revised as of April 1, 2003. For group structure changes that occur in consolidated return years beginning before January 1, 1995, see § 1.1502-31T as contained in the 26 CFR part 1 edition revised as of April 1, 1994.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-112039-03]

RIN 1545-BC35

Elimination of Forms of Distribution in Defined Contribution Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would modify the circumstances under which certain forms of distribution previously available are permitted to be eliminated from qualified defined contribution plans. These proposed regulations affect qualified retirement plan sponsors, administrators, and participants. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by October 6, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG-112039-03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG-112039-03), Courier's Desk, Internal Revenue