

numerical order to read in part as follows:

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

Section 1.338(h)(10)–1T also issued under 26 U.S.C. 337(d), 338 and 1502. \* \* \*

■ 2. Section 1.338–3 is amended by adding a sentence at the end of paragraph (c)(1)(i) to read as follows:

**§ 1.338–3 Qualification for the section 338 election.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \* See § 1.338(h)(10)–1T(c)(2) for special rules concerning section 338(h)(10) elections in certain multi-step transactions.

■ 3. Section 1.338(h)(10)–1 is amended as follows:

■ 1. Paragraphs (c)(2), (c)(3) and (c)(4) are redesignated as paragraphs (c)(3), (c)(4) and (c)(5) respectively.

■ 2. A newly designated paragraph (c)(2) is added.

The revisions and addition read as follows:

**§ 1.338(h)(10)–1 Deemed asset sale and liquidation.**

\* \* \* \* \*

(c) \* \* \*

(2) [Reserved] For further guidance see § 1.338(h)(10)–1T(c)(2).

\* \* \* \* \*

■ 4. Section 1.338(h)(10)–1T is added to read as follows:

**§ 1.338(h)(10)–1T Deemed asset sale and liquidation (temporary).**

(a) through (c)(1) [Reserved]. For further guidance, see § 1.338(h)(10)–1(a) through (c)(1).

(c)(2) *Availability of section 338(h)(10) election in certain multi-step transactions.* Notwithstanding anything to the contrary in § 1.338–3(c)(1)(i), a section 338(h)(10) election may be made for T where P's acquisition of T stock, viewed independently, constitutes a qualified stock purchase and, after the stock acquisition, T merges or liquidates into P (or another member of the affiliated group that includes P), whether or not, under relevant provisions of law, including the step transaction doctrine, the acquisition of the T stock and the merger or liquidation of T qualify as a reorganization described in section 368(a). If a section 338(h)(10) election is made in a case where the acquisition of T stock followed by a merger or liquidation of T into P qualifies as a reorganization described in section 368(a), for all Federal tax purposes, P's acquisition of T stock is treated as a qualified stock purchase and is not

treated as part of a reorganization described in section 368(a).

(c)(3) through (e) (*Example 10*) [Reserved]. For further guidance, see § 1.338(h)(10)–1(c)(3) through (e) (*Example 10*).

(e) *Example 11. Stock acquisition followed by upstream merger—without section 338(h)(10) election.* (i) P owns all the stock of Y, a newly formed subsidiary. S owns all the stock of T. Each of P, S, T and Y is a domestic corporation. P acquires all of the T stock in a statutory merger of Y into T, with T surviving. In the merger, S receives consideration consisting of 50% P voting stock and 50% cash. Viewed independently of any other step, P's acquisition of T stock constitutes a qualified stock purchase. As part of the plan that includes P's acquisition of the T stock, T subsequently merges into P. Viewed independently of any other step, T's merger into P qualifies as a liquidation described in section 332. Absent the application of paragraph (c)(2) of this section, the step transaction doctrine would apply to treat P's acquisition of the T stock and T's merger into P as an acquisition by P of T's assets in a reorganization described in section 368(a). P and S do not make a section 338(h)(10) election with respect to P's purchase of the T stock.

(ii) Because P and S do not make an election under section 338(h)(10) for T, P's acquisition of the T stock and T's merger into P is treated as part of a reorganization described in section 368(a).

*Example 12. Stock acquisition followed by upstream merger—with section 338(h)(10) election.* (i) The facts are the same as in *Example 11* except that P and S make a joint election under section 338(h)(10) for T.

(ii) Pursuant to paragraph (c)(2) of this section, as a result of the election under section 338(h)(10), for all Federal tax purposes, P's acquisition of the T stock is treated as a qualified stock purchase and P's acquisition of the T stock is not treated as part of a reorganization described in section 368(a).

*Example 13. Stock acquisition followed by brother-sister merger—with section 338(h)(10) election.* (i) The facts are the same as in *Example 12*, except that, following P's acquisition of the T stock, T merges into X, a domestic corporation that is a wholly owned subsidiary of P. Viewed independently of any other step, T's merger into X qualifies as a reorganization described in section 368(a). Absent the application of paragraph (c)(2) of this section, the step transaction doctrine would apply to treat P's acquisition of the T stock and T's merger into X as an acquisition by X of T's assets in a reorganization described in section 368(a).

(ii) Pursuant to paragraph (c)(2) of this section, as a result of the election under section 338(h)(10), for all Federal tax purposes, P's acquisition of T stock is treated as a qualified stock purchase and P's acquisition of T stock is not treated as part of a reorganization described in section 368(a).

*Example 14. Stock acquisition that does not qualify as a qualified stock purchase followed by upstream merger.* (i) The facts are

the same as in *Example 11*, except that, in the statutory merger of Y into T, S receives only P voting stock.

(ii) Pursuant to section 1.338–3(c)(1)(i) and paragraph (c)(2) of this section, no election under section 338(h)(10) can be made with respect to P's acquisition of the T stock because, pursuant to relevant provisions of law, including the step transaction doctrine, that acquisition followed by T's merger into P is treated as a reorganization under section 368(a)(1)(A), and that acquisition, viewed independently of T's merger into P, does not constitute a qualified stock purchase under section 338(d)(3). Accordingly, P's acquisition of the T stock and T's merger into P is treated as a reorganization under section 368(a).

(f) through (g) [Reserved]. For further guidance, see § 1.338(h)(10)–1(f) through (g).

(h) *Effective date.* This section is applicable to stock acquisitions occurring on or after July 9, 2003.

\* \* \* \* \*

**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 27, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03–17225 Filed 7–8–03; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[TD 9070]

RIN 1545–BB22

#### Authority To Charge Fees for Furnishing Copies of Exempt Organizations' Material Open to Public Inspection

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

**ACTION:** Temporary regulations.

**SUMMARY:** These temporary regulations amend the existing regulations regarding fees for copies of exempt organizations' material the IRS must make available to the public under section 6104 of the Internal Revenue Code (Code), to provide that copying fees shall be no more than under the fee schedule promulgated pursuant to the Freedom of Information Act (FOIA) by the Commissioner of Internal Revenue (Commissioner) (the "IRS" FOIA fee schedule"). The existing regulations authorize the IRS to charge fees for such copies, but do not stipulate the amount of the fees. These temporary regulations also make a conforming amendment to