

change in ownership or control. Other commentators suggested replacing the overlapping shareholder rule of the 2002 proposed regulations with a new rule based on section 355 or 382. Finally, another commentator requested clarification of the application of the overlapping shareholder rule of the 2002 proposed regulations under the 1989 proposed regulations.

These regulations retain the overlapping shareholder rule of the 2002 proposed regulations. The group concepts in section 355 or 382 do not fit well with the overall purpose of section 280G. Finally, these regulations are effective with respect to changes in ownership or control that occur after January 1, 2004, and to payments that are contingent on such changes. These regulations do not provide any transitional rules for the application of the overlapping shareholder rules for prior periods both because these regulations are not effective for prior periods and because the positions set forth in 2002 proposed regulations are merely clarifications of the positions taken by the IRS under section 280G (illustrated by the 1989 proposed regulations).

#### *International Issues*

Commentators recommended that the final regulations provide that a disqualified individual who, during the disqualified individual determination period, was a nonresident alien and was not subject to income tax in the United States on wages earned from the affiliated group, not be subject to the excise tax. Treasury and the IRS do not believe that they have the authority to preclude application of the excise tax to a nonresident alien under these circumstances. Accordingly, the final regulations do not include any special rules for excess parachute payments received by nonresident aliens.

Commentators also requested clarification that, even though parachute payments made by a foreign subsidiary of a U.S. corporation may not be deductible, such payments reduce the foreign subsidiary's earnings and profits. Because this issue has implications beyond section 280G and foreign subsidiaries, it is not addressed in these regulations.

#### *Effective Date and Reliance*

These regulations apply to any payments that are contingent on a change in ownership or control if the change of ownership or control occurs on or after January 1, 2004.

Under the 2002 proposed regulations, taxpayers are permitted to rely on the 2002 proposed regulations until the

effective date of the final regulations. Taxpayers are permitted to rely on the 1989 proposed regulations with respect to payments contingent on a change in ownership or control if that change occurs before January 1, 2004. A clarification in the 2002 proposed regulations does not support reliance on the 1989 proposed regulations for a position contrary to the provisions of the 1989 proposed regulations.

Taxpayers are permitted to rely on the 2002 proposed regulations, including for purposes of amended returns with respect to the following: (1) That a shareholder who owns stock with a fair market value of \$1 million is not a disqualified individual and (2) that the base amount includes the amount of compensation included in gross income under section 83(b).

#### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Section 1.280G-1 of these proposed regulations provides for the collection of information. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, as indicated in the Paperwork Reduction Act section earlier in the preamble, only 800 small entities are expected to be affected by the regulations annually, and it is unlikely that any small entity would be affected by these regulations more than once or twice in its existence. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

#### **Drafting Information**

The principal author of these regulations is Erinn Madden, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

#### **List of Subjects**

##### *26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

##### *26 CFR Part 602*

Reporting and recordkeeping requirements.

#### **Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986**

■ **Paragraph 1.** The authority citation for part 1 is amended by adding the following entry in numerical order to read in part as follows:

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

Section 1.280G-1 also issued under 26 U.S.C. 280G(b) and (e). \* \* \*

■ **Par. 2.** Section § 1.280G-1 is added to read as follows:

##### **§ 1.280G-1 Golden parachute payments.**

The following questions and answers relate to the treatment of golden parachute payments under section 280G of the Internal Revenue Code of 1986, as added by section 67 of the Tax Reform Act of 1984 (Pub. L. No. 98-369; 98 Stat. 585) and amended by section 1804(j) of the Tax Reform Act of 1986 (Pub. L. No. 99-514; 100 Stat. 2807), section 1018(d)(6)-(8) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647; 102 Stat. 3581), and section 1421 of the Small Business Job Protection Act of 1996 (Pub. L. No. 104-188; 110 Stat. 1755). The following is a table of subjects covered in this section:

##### *Overview*

Effect of section 280G—Q/A-1

Meaning of "parachute payment"—Q/A-2

Meaning of "excess parachute payment"—Q/A-3

Effective date of section 280G—Q/A-4

##### *Exempt Payments*

Exempt payments generally—Q/A-5

Exempt payments with respect to certain corporations—Q/A-6

Shareholder approval requirements—Q/A-7

Exempt payments under a qualified plan—Q/A-8

Exempt payments of reasonable compensation—Q/A-9

Payor of Parachute Payments—Q/A-10

##### *Payments in the Nature of Compensation*

The nature of compensation—Q/A-11

Property transfers—Q/A-12

Stock options—Q/A-13

Reduction of amount of payment by consideration paid—Q/A-14

##### *Disqualified Individuals*

Meaning of "disqualified individual"—Q/A-15

Personal service corporation treated as individual—Q/A-16

Meaning of "shareholder"—Q/A-17

Meaning of "officer"—Q/A-18

Meaning of "highly-compensated individual"—Q/A-19