

349.6 Effect of revised decision.

349.7 Time and place to request a review and/or hearing on revised decision.

349.8 Discretion of the three-member Board to reopen or not to reopen a final decision.

Authority: 45 U.S.C. 355 and 362(l).

§ 349.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions with respect to benefits under the Railroad Unemployment Insurance Act. After the expiration of the time limits for review as set forth in part 320 of this chapter, decisions may be reopened and revised only under the conditions described in this subpart, by the bureau, office or entity that made the earlier decision or by a bureau, office, or other entity at a higher level which has the claim properly before it. Whether a final decision is reopened or not reopened is solely within the discretion of the Board.

(b) A *final decision*, as that term is used in this part, means any decision under § 320.5 of this chapter where the time limit for review, as set forth in part 320 of this chapter or in the Railroad Unemployment Insurance Act, has expired.

(c) *Reopening* a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence*, as that phrase is used in this part, means evidence which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

§ 349.2 Conditions for reopening.

A final decision may be reopened:

(a) Within 12 months of the date of the notice of such decision, for any reason;

(b) Within four years of the date of the notice of such decision:

(1) If there is new and material evidence; or

(2) If the decision was not reasonably consistent with the evidence of record at the time of adjudication.

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) The decision was that the claimant was not a qualified employee, and he or she is now qualified because compensation was credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To correct errors apparent on the face of the compensation record;

(ii) To enter items transferred by the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(iii) To correct errors made in the allocation of earnings to individuals or periods which would have made him or her a qualified employee at the time of the decision if the earnings had been credited to his or her earnings record at that time;

(3) The decision is wholly or partially unfavorable to a claimant, but only to correct a clerical error or an error that appears on the face of the evidence that was considered when the decision was made.

§ 349.3 Change of legal interpretation or administrative ruling.

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

§ 349.4 Late completion of timely investigation.

(a) A decision may be revised after the applicable time period in §§ 349.2(a) or (b) expires if the Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within six months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

§ 349.5 Notice of revised decision.

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a

decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

§ 349.6 Effect of revised decision.

A revised decision is binding unless:

(a) The revised decision is being reconsidered or appealed in accord with part 320 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

§ 349.7 Time and place to request a review and/or hearing on revised decision.

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 320 of this chapter. Further review or a hearing will be held according to the rules set forth in part 320 of this chapter.

§ 349.8 Discretion of the three-member Board to reopen or not to reopen a final decision.

In any case in which the three-member Board may deem proper, the Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: October 26, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00-28211 Filed 11-3-00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8862]

RIN 1545-A132

Stock Transfer Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to Treasury Decision 8862, which was published in the **Federal Register** on Monday, January 24, 2000

(65 FR 3589). The corrections relate to the stock transfer rules under section 367(b).

DATES: Effective February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Harris, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 367 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

PART 1—INCOME TAXES

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

§ 1.367(b)-0 [Corrected]

Par. 2. In § 1.367(b)-0, the entry for § 1.367(b)-1(c)(5) is revised to read as follows:

§ 1.367(b)-0 Table of contents.

* * * * *

§ 1.367(b)-1 * * *

(c) * * *

(5) Abbreviated notice provision for shareholders that make the election described in § 1.367(b)-3(c)(3).

* * * * *

§ 1.367(b)-1 [Corrected]

Par. 3. Section 1.367(b)-1, the heading for paragraph (c)(5) is revised to read as follows:

§ 1.367(b)-1 Other transfers.

* * * * *

(c) * * *

(5) *Abbreviated notice provision for shareholders that make the election described in § 1.367(b)-3(c)(3).* * * *

* * * * *

§ 1.367(b)-2 [Corrected]

Par. 4. Section 1.367(b)-2 is amended as follows:

1. Paragraph (c)(1)(i) is amended by removing the language “corporation, and” and adding “corporation; and” in its place.

2. Paragraph (e)(4) *Example 3*, the penultimate sentence, the language “56” is removed and “356” is added in its place.

3. Revising the introductory text of paragraph (f)(4).

4. Revising the penultimate sentence of paragraph (j)(2)(i).

The revisions read as follows:

§ 1.367(b)-2 Definition and special rules.

* * * * *

(f) * * *

(4) *Closing of taxable year.* In a reorganization described in paragraph (f)(1) of this section, the taxable year of the foreign transferor corporation shall end with the close of the date of the transfer and, except as otherwise required under the Internal Revenue Code (e.g. section 1502 and the regulations thereunder), the taxable year of the acquiring corporation shall end with the close of the date on which the transferor's taxable year would have ended but for the occurrence of the reorganization if—

* * * * *

(j) * * *

(2) * * *

(i) * * * The exchange gain or loss recognized under this paragraph (j)(2)(i) will increase or decrease the exchanging shareholder's adjusted basis in the stock of the foreign corporation, including for purposes of computing gain or loss realized with respect to the stock on the transaction. * * *

* * * * *

§ 1.367(b)-3 [Corrected]

Par. 5. Section 1.367(b)-3 is amended as follows:

1. Revising paragraph (b)(2).

2. In paragraph (d)(1), the first sentence, the language “Unused foreign tax credits allowable to the foreign acquired corporation under section 906” is removed and “Excess foreign taxes under section 904(c) allowable to the foreign acquired corporation under section 906” is added in its place.

The revision reads as follows:

§ 1.367(b)-3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(b) * * *

(2) *United States shareholder.* For purposes of this section (and for purposes of the other section 367(b) regulation provisions that specifically refer to this paragraph (b)(2)), the term *United States shareholder* means any shareholder described in section 951(b) (without regard to whether the foreign corporation is a controlled foreign corporation), and also any shareholder

described in section 953(c)(1)(A) (but only if the foreign corporation is a controlled foreign corporation as defined in section 953(c)(1)(B) subject to the rules of section 953(c)).

* * * * *

§ 1.367(b)-4 [Corrected]

Par. 6. Section 1.367(b)-4 is amended as follows:

1. In paragraph (a) the language “another” is removed in the first sentence and “a” is added in its place.

2. A new sentence is added after the first sentence of paragraph (a).

3. Paragraph (b)(1)(i)(B)(2) is revised.

4. Revising the first sentence of paragraph (d) (1).

The addition and revisions read as follows:

§ 1.367(b)-4 Acquisition of foreign corporate stock or assets by foreign corporation in certain nonrecognition transactions.

(a) * * * This section applies notwithstanding that the foreign acquiring corporation and the foreign acquired corporation may be the same corporation (such as in a section 368(a)(1)(E) reorganization). * * *

(b) * * *

(1) * * *

(i) * * *

(B) * * *

(2) Immediately after the exchange, the foreign acquiring corporation or the foreign acquired corporation (if any, such as in a transaction described in section 368(a)(1)(B) and/or section 351), is not a controlled foreign corporation as to which the United States person described in paragraph (b)(1)(i)(A) of this section is a section 1248 shareholder.

* * * * *

(d) * * * (1) *In general.* If income is not required to be included under paragraph (b) of this section in a section 367(b) exchange described in paragraph (a) of this section (non-inclusion exchange) then, for purposes of applying section 367(b) or 1248 to subsequent exchanges and subject to the limitation of § 1.367(b)-2(d)(3)(iii) (in the case of a transaction described in § 1.367(b)-3), the determination of the earnings and profits attributable to an exchanging shareholder's stock received in the non-inclusion exchange shall include a computation that refers to the exchanging shareholder's pro rata interest in the earnings and profits of the foreign acquiring corporation (and, in the case of a stock transfer, the foreign acquired corporation) that accumulate after the non-inclusion exchange, as well as its pro rata interest in the earnings and profits of the foreign

acquired corporation that accumulated before the non-inclusion exchange. * * *

§ 1.367(b)–5 [Corrected]

Par. 7. Section 1.367(b)–5 is amended as follows:

1. Paragraph (a)(1) is amended by revising the first sentence.
 2. Paragraph (f) is revised.
 3. Paragraph (g), *Example 1*(ii)(B), the second sentence is amended by removing the language “\$60 and \$0” and by adding “\$0 and \$60” in its place.
 4. Revising the fourth sentence of paragraph (g), *Example 1*(ii)(C) by removing the language “from FC”.
 5. Adding two new sentences after the fourth sentence of paragraph (g), *Example 1*(ii)(C).
 6. Adding a new sentence at the end of paragraph (g), *Example 2*(ii)(C).
- The additions and revisions read as follows:

§ 1.367(b)–5 Distributions of stock described in section 355.

(a) * * * (1) *Scope.* This section provides rules relating to a distribution described in section 355 (or so much of section 356 as relates to section 355) and to which section 367(b) applies. * * *

(f) *Exclusion of deemed dividend from foreign personal holding company income.* In the event an amount is included in income as a deemed dividend by a foreign corporation under paragraph (c) or (d) of this section (including amounts received as an intermediate owner under the rule of § 1.367(b)–2(e)(2)), such deemed dividend shall not be included as foreign personal holding company income under section 954(c).

(g) * * *

Example 1. * * *

(ii) * * *

(C) * * * Under § 1.367(b)–2(e)(2), the \$20 deemed dividend is considered as having been paid by FC to FD, and by FD to USS, immediately prior to the distribution. Under paragraph (f) of this section, the deemed dividend is not included by FD as foreign personal holding company income under section 954(c). * * *

Example 2. * * *

(ii) * * *

(C) * * * Under paragraph (f) of this section, the deemed dividend is not included by FD as foreign personal holding company income under section 954(c).

Dale D. Goode,

Federal Register Liaison, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00–28433 Filed 11–3–00; 8:45 am]

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB05

Changes To Implement Eighteen-Month Publication of Patent Applications; Correction

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (Office) published a final rule in the **Federal Register** of September 20, 2000, revising the rules of practice in patent cases to implement the eighteen-month publication provisions of the American Inventors Protection Act of 1999. This document corrects two errors in that final rule.

EFFECTIVE DATE: November 29, 2000.

FOR FURTHER INFORMATION CONTACT:

Concerning this rule: Robert W. Bahr by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: The Office published a final rule in the **Federal Register** of September 20, 2000 (65 FR 57023), entitled “Changes to Implement Eighteen-Month Publication of Patent Applications.” This document corrects errors in § 1.55 and § 1.99 as discussed below.

Section 1.55(a) should refer to “35 U.S.C. 119(a) through (d) and (f), 172, and 365(a) and (b)” rather than “35 U.S.C. 119(a) through (d), 172, and 365(a)” (references to 35 U.S.C. 119(f) and 365(b) were inadvertently omitted). Section 1.55(c) should refer to “35 U.S.C. 119(a) through (d) and (f), and 365(a)” rather than “35 U.S.C. 119(a) through (d) and 365(a)” (a reference to 35 U.S.C. 119(f) was inadvertently omitted).

Section 1.99(f) should not include its last sentence (“[N]o further submission on behalf of the member of the public will be considered, unless such submission raises new issues which could not have been earlier presented.”).

In rule FR Doc. 00–23822, published on September 20, 2000 (65 FR 57023), make the following corrections:

§ 1.55 [Corrected]

1. On page 57053, in the third column, in § 1.55, in paragraph (a)

introductory text, in lines 5 and 6, correct “119(a) through (d), 172, and 365(a)” to read “119(a) through (d) and (f), 172, and 365(a) and (b);” and on page 57054, in the first column, in § 1.55, in paragraph (c) introductory text, in each of lines 4, 9, and 19, correct “119(a)–(d) or 365(a)” to read “119(a) through (d) and (f), or 365(a)”.

§ 1.99 [Corrected]

2. On page 57056, in the second column, in § 1.99, in paragraph (f), in lines 14 through 19, remove the sentence “No further submission on behalf of the member of the public will be considered, unless such submission raises new issues which could not have been earlier presented.”

Dated: October 30, 2000.

Albin F. Drost,

Acting General Counsel.

[FR Doc. 00–28315 Filed 11–3–00; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–6896–9]

RIN 2040–AD66

Identification of Approved and Disapproved Elements of the Great Lakes Guidance Submission From the State of Wisconsin, and Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA published the final Water Quality Guidance for the Great Lakes System (the Guidance) on March 23, 1995. Section 118(c) of the Clean Water Act (CWA) requires the Great Lakes States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin to adopt within two years of publication of the final Guidance (*i.e.*, March 23, 1997) minimum water quality standards, antidegradation policies and implementation procedures that are consistent with the Guidance, and to submit them to EPA for review and approval. Each of the Great Lakes States made those submissions.

Today, EPA is taking final action on the Guidance submission of the State of Wisconsin. EPA’s final action consists of approving those elements of the State’s submission that are consistent with the Guidance, disapproving those elements that are not consistent with the Guidance, and specifying in a final rule the elements of the Guidance that apply