and other business activities that involve the transmission and use of the technology authorized under this license exception;

(ii) Use of password systems on electronic devices that will store the technology authorized under this license exception; and

(iii) Use of personal firewalls on electronic devices that will store the technology authorized under this license exception.

(3) *Kits of replacement ''parts'' or ''components.''* Kits consisting of replacement ''parts'' or ''components'' for items that have been exported or reexported to Cuba under a license or license exception, or foreign-origin items that are not subject to the EAR that are owned and used exclusively by private sector entities in Cuba, may be exported or reexported under this paragraph (f)(3) provided:

(i) The kits remain under ''effective control'' of the exporter or reexporter or its employees; and

(ii) All parts and components in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception Servicing and Replacement of Parts and Equipment (RPL) and the defective parts and components returned (see Parts, Components, Accessories and Attachments in § 740.10(a)).

(4) *Exhibition and demonstration.* Commodities or software for exhibition or demonstration at trade shows, or to any entity that would be eligible to receive the commodities or software under paragraphs (a) through (e) of this section, may be exported or reexported under this paragraph

(f). The commodities or software must remain under the ''effective control'' of the exporter or reexporter or its private sector agent, may not be exhibited or demonstrated at any one location for more than 30 days and may not be used for more than the minimum extent required for effective exhibition or demonstration.

(5) *Containers.* Containers that would require a license for export or reexport to Cuba but that are necessary for shipment of commodities being exported to Cuba under a license or license exception may be exported or reexported to Cuba. However, this paragraph (f) does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export or reexport under either a license or a license exception.

PART 746—[AMENDED]

■ 6. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 7. Section 746.2 is amended by revising paragraphs (a) introductory text and (a)(1)(x) and adding paragraphs (a)(2) and (b)(6) to read as follows:

§ 746.2 Cuba.

(a) *License requirements.* As authorized by section 6 of the Export Administration Act of 1979, as amended (EAA) and by the Trading with the Enemy Act of 1917, as amended, you will need a license to export or reexport all items subject to the EAR (see part 734 of the EAR for the scope of items subject to the EAR) to Cuba, including any release of technology or source code subject to the EAR to a Cuban national, except as follows:

(1) * * *

(x) Aircraft, vessels and spacecraft (AVS) for certain aircraft on temporary sojourn; equipment and spare parts for permanent use on a vessel or aircraft, and ship and plane stores; or vessels on temporary sojourn (see § 740.15(a), (b), and (d) of the EAR).

* * * * *

(2) *Deemed exports and deemed reexports.* A license is not required to release technology or source code subject to the EAR but not on the Commerce Control List (*i.e.,* EAR99 technology or source code) to a Cuban national in the United States or a third country.

(b) * * *

(6) License applications for exports or reexports of items to ensure safety in civil aviation, including the safe operation of commercial passenger aircraft will be considered on a case-by-case basis.

* * * * *

PART 772—[AMENDED]

■ 8. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 9. In § 772.1, the definition of ''U.S. Person'' is amended by revising paragraphs (a) introductory text and (b) to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

U.S. Person. (a) For purposes of §§ 740.21(e)(1), 744.6, 744.10, 744.11, 744.12, 744.13, and 744.14 of the EAR, the term U.S. person includes:

* * * * *

(b) See also §§ 740.9, 740.14, and 740.21(f)(2) and parts 746 and 760 of the EAR for definitions of ''U.S. person'' that are specific to those sections and parts.

* * * * *

Dated: September 14, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2015–23495 Filed 9–18–15; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9739]

RIN 1545–BF51; 1545–BM78

Reorganizations Under Section 368(a)(1)(F); Section 367(a) and Certain Reorganizations Under Section 368(a)(1)(F)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the qualification of a transaction as a corporate reorganization under section 368(a)(1)(F) by virtue of being a mere change of identity, form, or place of organization of one corporation (F reorganization). This document also contains final regulations relating to F reorganizations in which the transferor corporation is a domestic corporation and the acquiring corporation is a foreign corporation (an outbound F reorganization). These regulations will affect corporations engaging in transactions that could qualify as F reorganizations (including outbound F reorganizations) and their shareholders.

DATES: *Effective date:* These final regulations are effective on September 21, 2015.

Applicability date: For dates of applicability, *see* §§ 1.367(a)–1(g)(4) and 1.368–2(m)(5).

FOR FURTHER INFORMATION CONTACT: Douglas C. Bates, (202) 317–6065 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

1. Introduction

This Treasury decision contains final regulations (the Final Regulations) that amend 26 CFR part 1 under sections 367 and 368 of the Internal Revenue Code (Code). These Final Regulations provide guidance relating to the qualification of transactions as F reorganizations and the treatment of outbound F reorganizations.

In general, upon the exchange of property, gain or loss must be recognized if the new property differs materially, in kind or extent, from the old property. *See* § 1.1001–1(a); § 1.368–1(b). The purpose of the reorganization provisions of the Code is to except from the general rule of section 1001 certain specifically described exchanges that are required by business exigencies and effect only a readjustment of continuing interests in property under modified corporate forms. *See* § 1.368–1(b). These exchanges, described in sections 354, 356, and 361, must be made in pursuance of a plan of reorganization. *See* § 1.368–1(c).

Section 368(a)(1) describes several types of transactions that constitute reorganizations. One of these, described in section 368(a)(1)(F), is ''a mere change in identity, form, or place of organization of one corporation, however effected'' (a Mere Change). One court has described the F reorganization as follows:

[The F reorganization] encompass[es] only the simplest and least significant of corporate changes. The (F)-type reorganization presumes that the surviving corporation is the same corporation as the predecessor in every respect, except for minor or technical differences. For instance, the (F) reorganization typically has been understood to comprehend only such insignificant modifications as the reincorporation of the same corporate business with the same assets and the same stockholders surviving under a new charter either in the same or in a different State, the renewal of a corporate charter having a limited life, or the conversion of a U.S.-chartered savings and loan association to a State-chartered institution.

Berghash v. *Commissioner,* 43 T.C. 743, 752 (1965) (citation and footnotes omitted), *aff'd,* 361 F.2d 257 (2d Cir. 1966).

Although the statutory description of an F reorganization is short, and courts have described F reorganizations as simple, questions have arisen regarding the requirements of F reorganizations. In particular, when a corporation changes its identity, form, or place of incorporation, questions have arisen as to what other changes (if any) may occur, either before, during, or after the Mere Change, without affecting the status of the Mere Change (that is, what other changes are compatible with the Mere Change). These questions can become more pronounced if the transaction intended to qualify as an F reorganization is composed of a series of steps occurring over a period of days or weeks. Moreover, changes in identity, form, or place of organization are often undertaken to facilitate other changes that are difficult to effect in the corporation's current form or place of organization.

2. Related Regulations

On January 16, 1990, the Treasury Department and the IRS published temporary regulations (TD 8280) in the **Federal Register** (55 FR 1406) under sections 367(a), (b), and (e). A notice of proposed rulemaking (INTL–704–87) cross-referencing these temporary regulations was published the same day under RIN 1545–AL35 in the **Federal Register** (55 FR 1472) (1990 Proposed Regulations). No public hearing was requested or held. Prior to the publication of the 1990 Proposed Regulations, the Treasury Department and the IRS had issued two notices and a revenue ruling providing that, in an outbound F reorganization, the transferor corporation's taxable year closes, and clarifying that, in such F reorganizations, there is an actual or constructive transfer of assets and an exchange of stock. *See* Notice 88–50, 1988–1 CB 535; Notice 87–29, 1987–1 CB 474; Rev. Rul. 87–27, 1987–1 CB 134. The 1990 Proposed Regulations, in relevant part, proposed the rules described in Notice 88–50, Notice 87–29, and Rev. Rul. 87–27. No comments were received on this aspect of the 1990 Proposed Regulations. While this aspect of the 1990 Proposed Regulations has not yet been finalized, final regulations (TD 8834) regarding the primary subject of the 1990 Proposed Regulations—guidance under sections 367(e)(1) and 367(e)(2) regarding outbound distributions under sections 355 and 332—have since been issued. *See, for example,* TD 8834, 64 FR 43072 (Aug. 9, 1999). A new RIN (RIN 1545–BM78, REG–117141–15) has been issued under which the portion of the 1990 Proposed Regulations relating to outbound F reorganizations will be finalized.

On August 12, 2004, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–106889–04) (2004 Proposed Regulations) in the **Federal Register** (69 FR 49836) regarding the requirements for F reorganizations. The 2004 Proposed Regulations are discussed in more detail in section 3. of this Background section of this preamble. In the preamble to the 2004 Proposed Regulations, the Treasury Department and the IRS requested comments from the public. One written comment was received with respect to the 2004 Proposed Regulations. No public hearing was requested or held.

On February 25, 2005, the Treasury Department and the IRS published final regulations (TD 9182) (2005 Regulations) in the **Federal Register** (70 FR 9219) adopting a portion of the 2004 Proposed Regulations. The 2005 Regulations provide that the continuity of interest and continuity of business enterprise requirements applicable to reorganizations in general do not apply to reorganizations under section 368(a)(1)(E) or section 368(a)(1)(F). The preamble to the 2005 Regulations stated that the Treasury Department and the IRS would continue to study the other issues addressed in the 2004 Proposed Regulations and would welcome further comments from the public. One written comment was received with regard to the 2005 Regulations.

3. The 2004 Proposed Regulations

A corporation that continues to inhabit its corporate shell can change in many respects. Although these changes may have federal income tax consequences, they do not result in the corporation being treated for federal income tax purposes as a new corporation or as transferring its assets. Nor do these changes cause the corporation's taxable year to close. Unlike a partnership that might terminate for federal income tax purposes upon the transfer of a given percentage of the partnership interests, a corporation that continues to inhabit a single corporate shell continues to exist for federal tax purposes, independent of the identity of its shareholders or the composition of its assets.

The underlying premise of the 2004 Proposed Regulations was that, if a corporate enterprise changes its corporate shell while adhering to four proposed requirements for a Mere Change, the resulting corporation should be treated as the functional equivalent of the transferor corporation.

A. Mere Change

As noted in section 1. of this Background, questions have arisen as to whether other changes are compatible with a Mere Change. In addressing these questions, the 2004 Proposed Regulations embraced the principles derived from the language of section 368(a)(1)(F), the historic practice of the IRS and courts in applying that statutory definition, and functional differences between F reorganizations and other types of reorganizations.

Like other types of reorganizations, an F reorganization generally involves, in form, two corporations, one (a Transferor Corporation) that transfers (or is deemed to transfer) assets to the other (a Resulting Corporation). However, the statute describes an F reorganization as being with respect to ''one corporation'' and provides for treatment that differs from that accorded other types of reorganizations in which assets are transferred from one corporation to another (Asset Reorganizations). As noted in the preamble to the 2004 Proposed Regulations, ''an F reorganization is treated for most purposes of the Code as if the reorganized corporation were the same entity as the corporation in existence before the reorganization.'' Thus, the tax treatment accorded an F reorganization is more consistent with that of a single continuing corporation in that (1) the taxable year of the Transferor Corporation does not close and includes the operations of the Resulting Corporation for the remainder of the year, and (2) the Resulting Corporation's losses may be carried back to taxable years of the Transferor Corporation.

Because an F reorganization must involve ''one corporation,'' and continuation of the taxable year and loss carrybacks from the Resulting Corporation to the Transferor Corporation are allowed, the statute cannot accommodate transactions in which the Resulting Corporation has preexisting activities or tax attributes. *See* H. Rep. Conf. Rep't. 97–760, 97th Cong., 2d Sess., at pp. 540–41 (1982). Accordingly, the 2004 Proposed Regulations did not allow for more than de minimis activities or very limited assets or tax attributes in the Resulting Corporation from sources other than the Transferor Corporation. This is one of the principal distinctions between F reorganizations and Asset Reorganizations. The proposed rule was consistent with the historical interpretation of the statute in this regard.

Similarly, the requirement that there be ''one corporation'' means that the status of the Resulting Corporation as the successor to the Transferor Corporation must be unambiguous. Accordingly, and consistent with the historical interpretation of the statute, the 2004 Proposed Regulations required that, for a transaction to qualify as a Mere Change, the Transferor Corporation be liquidated for tax purposes.

In *Helvering* v. *Southwest Consolidated Corp.,* 315 U.S. 194 (1942), the Supreme Court noted that ''a transaction which shifts the ownership of the proprietary interest in a corporation is hardly a 'mere change in identity, form, or place of incorporation' within the meaning of [the F reorganization provision].'' The 2004 Proposed Regulations also adopted this principle by providing that an F reorganization could not be used as a vehicle to introduce new owners into the corporate enterprise.

Based on these principles, the 2004 Proposed Regulations would have imposed four requirements for an F reorganization, with limited exceptions. First, all the stock of the Resulting Corporation, including stock issued before the transfer, would have had to be issued in respect of stock of the Transferor Corporation. Second, a change in the ownership of the corporation in the transaction would not have been allowed, except a change that had no effect other than that of a redemption of less than all the shares of the corporation. Third, the Transferor Corporation would have had to completely liquidate in the transaction. Fourth, the Resulting Corporation would not have been allowed to hold any property or possess any tax attributes (including those specified in section 381(c)) immediately before the transfer.

As discussed in the preamble to the 2004 Proposed Regulations, the first two requirements reflected the Supreme Court's holding in *Helvering* v. *Southwest Consolidated Corp., supra,* that a transaction cannot be a Mere Change if it shifts the ownership of the proprietary interests in a corporation. These requirements would have prevented a transaction involving the introduction of a new shareholder or new equity capital into the corporation from qualifying as an F reorganization. Notwithstanding these requirements, the first requirement would have allowed the Resulting Corporation to issue a nominal amount of stock not in respect of stock of the Transferor Corporation to facilitate the organization of the Resulting Corporation.

Under the second requirement (no change in ownership), redemptions of less than all the shares of the corporation would have been allowed. The law was not completely clear as to the effect of redemptions on the qualification of a transaction as an F reorganization. Some authorities supported the proposition that changes in ownership resulting from redemptions were compatible with an F reorganization. *See Reef Corp.* v. *U.S.,* 368 F.2d 125 (5th Cir. 1966) (holding that a redemption of 48 percent of the stock of a corporation that occurred during a change in place of incorporation did not cause the transaction to fail to qualify as an F reorganization, because the redemption was functionally separate from the F reorganization even if coincident in time); § 1.301–1(l) (relating in part to the treatment of a distribution with respect to stock that is in substance separate from a reincorporation); Rev. Rul. 66–284, 1966–2 CB 115 (concluding that a transaction could qualify as an F reorganization even though there was less than a one percent change in a corporation's shareholders as a result of stock held by dissenting shareholders being redeemed in the transaction); *cf. Casco Products Corp.* v. *Commissioner,* 49 T.C. 32 (1967) (reaching a comparable result without finding an F reorganization where a nine percent shareholder was redeemed in the transaction).

The third requirement and the fourth requirement implemented the statutory requirement that an F reorganization involve only one corporation. Although the third requirement was that the Transferor Corporation completely liquidate in the transaction, a legal dissolution was not required. This accommodation allowed the value of the Transferor Corporation's charter to be preserved. Further, the Proposed Regulations would have allowed the Transferor Corporation to retain a nominal amount of assets to preserve its legal existence.

The fourth requirement would have precluded the Resulting Corporation from holding any property or having any tax attributes immediately before the transfer. Nevertheless, the Proposed Regulations would have allowed the Resulting Corporation to hold or to have held a nominal amount of assets to facilitate its organization or preserve its existence, and to have tax attributes related to these assets. In addition, the Proposed Regulations provided that the fourth requirement would not be violated if, before the transfer, the

Resulting Corporation held the proceeds of borrowings undertaken in connection with the transaction.

B. Related Transactions

i. Series of Transactions Constituting a Mere Change

The Treasury Department and the IRS concluded that the words ''however effected'' in the statutory definition of F reorganization reflect a Congressional intent to treat as an F reorganization a series of transactions that together result in a Mere Change. The 2004 Proposed Regulations reflected this view by providing that a series of related transactions that together result in a Mere Change may qualify as an F reorganization. This view is consistent with the IRS's historical interpretation of the statute.

ii. Mere Change Within in a Larger Transaction

The Treasury Department and the IRS also recognized that an F reorganization may be a step in a larger transaction that effects more than a Mere Change. For example, in Situation 1 of Rev. Rul. 96–29, 1996–1 CB 50, the IRS ruled that a reincorporation qualified as an F reorganization even though it was a step in a transaction in which the reincorporated entity issued common stock in a public offering and redeemed preferred stock having a value of 40 percent of the aggregate value of its outstanding stock immediately prior to the offering. In Situation 2 of the same ruling, the IRS ruled that a reincorporation of a corporation in another state qualified as an F reorganization even though it was a step in a transaction in which the reincorporated entity acquired the business of another entity.

Consistent with Rev. Rul. 96–29, the 2004 Proposed Regulations provided that events occurring before or after a transaction or series of transactions that otherwise constitutes a Mere Change and related thereto would not cause the Mere Change to fail to qualify as an F reorganization (the Related Events Rule). The 2004 Proposed Regulations further provided that the qualification of the Mere Change as an F reorganization would not alter the treatment of the other events.

The Related Events Rule would have operated in tandem with the proposal, which was made a final rule in the 2005 Regulations, that the continuity of interest and continuity of business enterprise requirements of § 1.368–1(d) and (e) that are generally applicable to reorganizations under section 368 do not apply to F reorganizations. These rules, together, would have focused the F reorganization analysis on the discrete step or series of steps (to use the words of many observers, those steps occurring ''in a bubble'') that may satisfy the four requirements for a Mere Change, even if these steps constitute part of a larger series of steps. In other words, these rules rejected the application of step transaction principles to integrate all the steps of the overall plan or agreement to accomplish the larger transaction and thereby potentially prevent the transaction from qualifying as an F reorganization. *See* Rev. Rul. 75–456, 1975–2 CB 128 (F reorganization of the acquiring corporation in a stock reorganization under section 368(a)(1)(B) did not prevent that provision's ''solely for voting stock'' requirement from being satisfied); *see also* Rev. Rul. 79–250, 1979–2 CB 156 (F reorganization of issuing corporation immediately after forward triangular merger did not prevent the transaction from satisfying requirements of section 368(a)(2)(D)).

C. Net Effect of the Proposed Regulations

Overall, the 2004 Proposed Regulations would have found certain changes occurring in connection with a change in identity, form, or place of organization to be compatible with the Mere Change requirement. Some changes could have been effected simultaneously with the transaction or series of transactions otherwise qualifying as an F reorganization because these changes would not have violated any of the four proposed requirements for a Mere Change. Thus, for example, a corporation could have bought, sold, or exchanged property, borrowed money, or repaid debt because the 2004 Proposed Regulations would not have required an identity of assets between the Transferor Corporation and the Resulting Corporation. Other changes could not have been effected simultaneously with the potential F reorganization, but could have occurred before or after the F reorganization ''in a bubble,'' for example, the issuance of new equity capital or the transfer of shares to new shareholders.

D. Distributions

Prior to the issuance of the 2004 Proposed Regulations, much commentary had focused on whether distributions of money or other property in F reorganizations were distributions to which section 356 applied, or whether sections 301 and 302, and related provisions, governed the treatment of these distributions. The Treasury Department and the IRS believed it appropriate to treat these distributions as transactions separate from the F reorganization, even if they occurred immediately before or immediately after the F reorganization, after some of the transactions making up the F reorganization and before other transactions making up the F reorganization, or as part of the same plan as the F reorganization. *See,* for example, § 1.301–1(l). Accordingly, the 2004 Proposed Regulations provided that, if a shareholder received money or other property (including in exchange for its shares) from the Transferor Corporation or the Resulting Corporation in a transaction that constituted an F reorganization, the money or other property would be treated as distributed by the Transferor Corporation immediately before the transaction, and that section 356 would not apply.

Explanation of Revisions

1. Overview

After consideration of the comments received with respect to the 2004 Proposed Regulations and the 2005 Regulations, the Treasury Department and the IRS are publishing, in this Treasury decision, additional Final Regulations regarding F reorganizations. The Final Regulations generally adopt the provisions of the 2004 Proposed Regulations not previously adopted in the 2005 Regulations, with changes discussed in the remainder of this preamble, and several clarifying, non-substantive changes. The Final Regulations also include rules regarding outbound F reorganizations by adopting, without substantive change, the provisions of the 1990 Proposed Regulations relating to section 367(a) and making conforming revisions to other regulations.

Like the 2004 Proposed Regulations, the Final Regulations are based on the premise that it is appropriate to treat the Resulting Corporation in an F reorganization as the functional equivalent of the Transferor Corporation and to give its corporate enterprise roughly the same freedom of action as would be accorded a corporation that remains within its original corporate shell. The Final Regulations provide that a transaction that involves an actual or deemed transfer of property by a Transferor Corporation to a Resulting Corporation is a Mere Change that qualifies as an F reorganization if six requirements are satisfied (with certain exceptions). The Final Regulations provide that a transaction or a series of related transactions to be tested against the six requirements (a Potential F

Reorganization) begins when the Transferor Corporation begins transferring (or is deemed to begin transferring) its assets to the Resulting Corporation, and ends when the Transferor Corporation has distributed (or is deemed to have distributed) the consideration it receives from the Resulting Corporation to its shareholders and has completely liquidated for federal income tax purposes. The concept of a Potential F Reorganization was added to the Final Regulations to aid in determining which steps in a multi-step transaction should be considered when applying the six requirements to a potential mere change (that is, which steps are ''in the bubble'').

In the context of determining whether a Potential F Reorganization qualifies as a Mere Change, deemed asset transfers include, but are not limited to, those transfers treated as occurring as a result of an entity classification election under paragraph § 301.7701–3(c)(1)(i), as well as transfers resulting from the application of step transaction principles. One example of such a transfer would be the deemed asset transfer by the Transferor Corporation to the Resulting Corporation resulting from a so-called ''liquidation-reincorporation'' transaction. *See, for example, Davant* v. *Commissioner,* 366 F.2d 874 (5th Cir. 1966); § 1.331–1(c) (liquidation-reincorporation may be a tax-free reorganization). Another example of such a deemed asset transfer would include the deemed transfer of the Transferor Corporation's assets to the Resulting Corporation in a so-called ''drop-and-check'' transaction in which a newly formed Resulting Corporation acquires the stock of a Transferor Corporation from its shareholders and, as part of the plan, the Transferor Corporation liquidates into the Resulting Corporation. *See, for example,* steps (d) and (c) of Rev. Rul. 2015–10, 2015–21 IRB 973; Rev. Rul. 2004–83, 2004–2 CB 157; Rev. Rul. 67–274, 1967–2 CB 141.

Four of the six requirements are generally adopted from the 2004 Proposed Regulations, and the fifth and sixth requirements address comments received with respect to the Proposed Regulations regarding ''overlap transactions'' (for example, transactions involving the Transferor Corporation's transfer of its assets to a potential successor corporation other than the Resulting Corporation in a transaction that could also qualify for nonrecognition treatment under a different provision of the Code). Viewed together, these six requirements ensure that an F reorganization involves only one continuing corporation and is neither an acquisitive transaction nor a divisive transaction. Thus, an F reorganization does not include a transaction that involves a shift in ownership of the enterprise, an introduction of assets in exchange for equity (other than that raised by the Transferor Corporation prior to the F reorganization), or a division of assets or tax attributes of a Transferor Corporation between or among the Resulting Corporation and other acquiring corporations. An F reorganization also does not include a transaction that leads to multiple potential acquiring corporations having competing claims to the Transferor Corporation's tax attributes under section 381.

Certain exceptions, similar to those of the 2004 Proposed Regulations, apply to these six requirements. Three of these exceptions allow de minimis departures from the six requirements for purposes unrelated to federal income taxation.

2. F Reorganization Requirements and Certain Exceptions

A. Resulting Corporation Stock Issuances and Identity of Stock Ownership

As in the 2004 Proposed Regulations, the first and the second requirements of the Final Regulations reflect the Supreme Court's holding in *Helvering* v. *Southwest Consolidated Corp, supra,* that a transaction that shifts the ownership of the proprietary interests in a corporation cannot qualify as a Mere Change. Thus, the Final Regulations provide that a transaction that involves the introduction of a new shareholder or new equity capital into the corporation ''in the bubble'' does not qualify as an F reorganization.

Consistent with the 2004 Proposed Regulations, the first requirement in the Final Regulations is that immediately after the Potential F Reorganization, all the stock of the Resulting Corporation must have been distributed (or deemed distributed) in exchange for stock of the Transferor Corporation in the Potential F Reorganization. The 2004 Proposed Regulations focused on the issuance of the stock of the Resulting Corporation in respect of stock of the Transferor Corporation. The Treasury and the IRS believe, however, that a focus on the distribution of the stock of the Resulting Corporation better matches the transactions that occur (or are deemed to occur) in reorganizations.

Also consistent with the 2004 Proposed Regulations, the second requirement is that, subject to certain exceptions, the same person or persons own all the stock of the Transferor Corporation at the beginning of the Potential F Reorganization and all of the stock of the Resulting Corporation at the end of the Potential F Reorganization, in identical proportions.

Notwithstanding these requirements and also consistent with the Proposed Regulations, the Final Regulations allow the Resulting Corporation to issue a de minimis amount of stock not in respect of stock of the Transferor Corporation, to facilitate the organization or maintenance of the Resulting Corporation. This rule is designed to allow, for example, reincorporation in a jurisdiction that requires minimum capitalization, two or more shareholders, or ownership of shares by directors. It is also intended to allow a transfer of assets to certain pre-existing entities, for reasons explained further in section 2.B. of this Explanation of Revisions.

In addition, the Final Regulations allow changes of ownership that result from either (i) a holder of stock in the Transferor Corporation exchanging that stock for stock of equivalent value in the Resulting Corporation having terms different from those of the stock in the Transferor Corporation or (ii) receiving a distribution of money or other property from either the Transferor Corporation or the Resulting Corporation, whether or not in redemption of stock of the Transferor Corporation or the Resulting Corporation. In other words, the corporation involved in a Mere Change may also recapitalize, redeem its stock, or make distributions to its shareholders, without causing the Potential F Reorganization to fail to qualify as an F reorganization. These exceptions reflect the determination of the Treasury Department and the IRS that allowing certain transactions to occur contemporaneously with an F reorganization is appropriate so long as one corporation could effect the transaction without undergoing an F reorganization. These exceptions also reflect the case law, discussed in section 3.A. of the Background, holding that certain transactions qualify as F reorganizations even if some shares are redeemed in the transaction, and rulings by the IRS that a recapitalization may happen at the same time as an F reorganization. See, for example, Rev. Rul. 2003–19, 2003–1 CB 468, and Rev. Rul. 2003–48, 2003–1 CB 863 (both providing that certain demutualization transactions may involve both E reorganizations and F reorganizations).

B. Resulting Corporation's Assets or Attributes and Liquidation of Transferor Corporation

As in the 2004 Proposed Regulations, the third requirement (limiting the assets and attributes of the Resulting Corporation immediately before the transaction) and the fourth requirement (requiring the liquidation of the Transferor Corporation) under the Final Regulations reflect the statutory mandate that an F reorganization involve only one corporation. Although the Final Regulations generally require the Resulting Corporation not to hold any property or have any tax attributes immediately before the Potential F Reorganization, as in the 2004 Proposed Regulations, the Resulting Corporation is allowed to hold a de minimis amount of assets to facilitate its organization or preserve its existence (and to have tax attributes related to these assets), and the Resulting Corporation is allowed to hold proceeds of borrowings undertaken in connection with the Potential F Reorganization.

A commenter responding to the 2004 Proposed Regulations stated that the Final Regulations should allow the Resulting Corporation to hold, in addition to the proceeds of borrowings, cash proceeds of stock issuances before the Mere Change. The Treasury Department and the IRS do not believe that the Resulting Corporation should be allowed to issue more than a de minimis amount of stock before a transaction constituting a Mere Change because that would allow a substantial investment of new capital and/or new shareholders, or an acquisition of assets from more than one corporation. This rule does not, however, preclude the Transferor Corporation from issuing new stock before a Potential F Reorganization constituting an F reorganization. Nor does it preclude the Resulting Corporation from issuing new stock after the Potential F Reorganization.

Under the fourth requirement in the Final Regulations, the Transferor Corporation must completely liquidate in the Potential F Reorganization for federal income tax purposes. Nevertheless, as in the 2004 Proposed Regulations, the Transferor Corporation is not required to legally dissolve and is allowed to retain a de minimis amount of assets for the sole purpose of preserving its legal existence.

C. One Section 381(a) Acquiring Corporation, One Section 381(a) Transferor Corporation

The fifth requirement under the Final Regulations is that immediately after the Potential F Reorganization, no corporation other than the Resulting Corporation may hold property that was held by the Transferor Corporation immediately before the Potential F Reorganization, if such other corporation would, as a result, succeed to and take into account the items of the transferor corporation described in section 381(c). Thus, a transaction that divides the property or tax attributes of a Transferor Corporation between or among acquiring corporations, or that leads to potential competing claims to such tax attributes, will not qualify as a Mere Change.

The sixth requirement under the Final Regulations is that immediately after the Potential F Reorganization, the Resulting Corporation may not hold property acquired from a corporation other than the Transferor Corporation if the Resulting Corporation would, as a result, succeed to and take into account the items of such other corporation described in section 381(c). Thus, a transaction that involves simultaneous acquisitions of property and tax attributes from multiple transferor corporations (such as the transaction described in Rev. Rul. 58–422, 1958–2 CB 145) will not qualify as a Mere Change.

These requirements address a comment received with respect to the second requirement of the 2004 Proposed Regulations that there not be a change in the ownership of the corporation in the transaction, except a change that has no effect other than a redemption of less than all the shares of the corporation. The comment stated that allowing a corporation to distribute property in redemption of less than all of its shares could result in satisfying both the requirements for an F reorganization with respect to one transferee corporation and the requirements of another nonrecognition provision with respect to a different transferee corporation. The result would be uncertainty as to which corporation should succeed to the Transferor Corporation's tax attributes.

For example, assume that corporation P owns all of the stock of corporation T, and T operates two separate businesses, Business 1 (worth $297) and Business 2 (worth $3). Further assume that T merges into newly formed corporation R, and that, pursuant to the merger agreement, P receives Business 1 and all of R's stock in exchange for surrendering all of the T stock, and R receives Business 2. Under the 2004 Proposed Regulations, the transaction could have qualified as an F reorganization, with T as the Transferor Corporation and R as the Resulting Corporation, because the only change in ownership is a redemption of less than all of the T shares. However, because T transfers 99 percent of its historic business assets (Business 1) to P in exchange for all of T's stock, the transaction might also qualify as a complete liquidation under sections 332 and 337 or an upstream reorganization under section 368(a)(1)(C) of T into P. This overlap—with two potential acquiring corporations—would present unintended complexities. For example, as discussed above, there would be uncertainty as to which corporation should succeed to T's tax attributes.

Accordingly, notwithstanding the overall flexibility provided with respect to transactions occurring contemporaneously with a Mere Change, the Final Regulations provide that a Mere Change cannot accommodate transactions that occur at the same time as the Potential F Reorganization if those other transactions could result in a corporation other than the Resulting Corporation acquiring the tax attributes of the Transferor Corporation.

The same commenter requested clarification of the treatment of combinations of several corporations into a single, newly-created corporation. Consistent with the statutory language of section 368(a)(1)(F), the Treasury Department and the IRS believe that a Mere Change involves only one Transferor Corporation and one Resulting Corporation. Thus, the Final Regulations provide that only one Transferor Corporation can transfer property to the Resulting Corporation in the Potential F Reorganization. If more than one corporation transfers assets to the Resulting Corporation in a Potential F Reorganization, none of the transfers would constitute an F reorganization.

3. Series of Transactions

In some cases, business or legal considerations may require extra steps to complete a transaction that is intended to qualify as a Mere Change. As discussed in section 3.B.i. of the Background, the Treasury Department and the IRS concluded that the words ''however effected'' in the statutory definition of F reorganization reflect a Congressional intent to treat a series of transactions that together result in a Mere Change as an F reorganization, even if the transfer (or deemed transfer) of property from the Transferor Corporation to the Resulting Corporation occurs indirectly. The Final Regulations confirm this conclusion by providing that a Potential F Reorganization consisting of a series of related transactions that together result in a Mere Change may qualify as an F reorganization, whether or not certain steps in the series, viewed in isolation, might, for example, be treated as a redemption under section 304(a), as a complete liquidation under section 331 or section 332, or as a transfer of property under section 351. For example, the first step in an F reorganization of a corporation owned by individual shareholders could be a dissolution of the Transferor Corporation, so long as this step is followed by a transfer of all the assets of the Transferor Corporation to a Resulting Corporation. However, *see* § 1.368–2(k) for completed reorganizations that will not be recharacterized as a Mere Change as a result of one or more subsequent transfers of assets or stock, such as where a Transferor Corporation transfers all of its assets to its parent corporation in liquidation, followed by the parent corporation's retransfer of those assets to a new corporation. *See also* Rev. Rul. 69–617, 1969–2 CB 57 (an upstream merger followed by a contribution of all the target assets to a new subsidiary corporation is a reorganization under sections 368(a)(1)(A) and 368(a)(2)(C)).

4. Mere Change Within Larger Transaction

As discussed in section 3.B.ii. of the Background, the Treasury Department and the IRS recognized that an F reorganization may be a step, or a series of steps, before, within, or after other transactions that effect more than a Mere Change, even if the Resulting Corporation has only a transitory existence following the Mere Change. In some cases an F reorganization sets the stage for later transactions by alleviating non-tax impediments to a transfer of assets. In other cases, prior transactions may tailor the assets and shareholders of the Transferor Corporation before the commencement of the F reorganization. Although an F reorganization may facilitate another transaction that is part of the same plan, the Treasury Department and the IRS have concluded that step transaction principles generally should not recharacterize F reorganizations because F reorganizations involve only one corporation and do not resemble sales of assets. From a federal income tax perspective, F reorganizations are generally neutral, involving no change in ownership or assets, no end to the taxable year, and inheritance of the tax attributes described in section 381(c) without a limitation on the carryback of losses. *See, for example,* Rev. Rul. 96–29 (discussed in section 3.B.ii. of the Background); § 1.381(b)–1(a)(2).

The Final Regulations adopt the Related Events Rule of the 2004 Proposed Regulations, which provided that related events preceding or following the Potential F Reorganization that constitutes a Mere Change generally would not cause that Potential F Reorganization to fail to qualify as an F reorganization. Notwithstanding the Related Events Rule, in the cross-border context, related events preceding or following an F reorganization may be relevant to the tax consequences under certain international provisions that apply to F reorganizations. For example, such events may be relevant for purposes of applying certain rules under section 7874 and for purposes of determining whether stock of the Resulting Corporation should be treated as stock of a controlled foreign corporation for purposes of section 367(b). *See, for example,* section 2.03(b)(iv), *Example 2* in Notice 2014–52, 2014–52 IRB 712; Rev. Rul. 83–23, 1983–1 CB 82.

The Final Regulations also adopt the provision of the 2004 Proposed Regulations that the qualification of a Potential F Reorganization as an F reorganization would not alter the treatment of other related transactions. For example, if an F reorganization is part of a plan that includes a subsequent merger involving the Resulting Corporation, the qualification of a Potential F Reorganization as an F reorganization will not alter the tax consequences of the subsequent merger.

5. Transactions Qualifying Under Other Provisions of Section 368(a)(1)

A comment to the Proposed Regulations stated that, in some cases, an asset transfer that would constitute a step in an F reorganization is also a necessary step for characterizing a larger transaction as a nonrecognition transaction that would not constitute an F reorganization. For example, assume that corporation P acquires all of the stock of unrelated corporation T in exchange for consideration consisting of $50 cash and P voting stock with $50 value (without making an election under section 338), and, immediately thereafter and as part of the same plan, T is merged into corporation S, a newly-formed corporation wholly owned by P. Viewed in isolation, the merger of T into S appears to constitute a Mere Change. Provided the requirements for Asset Reorganization treatment are otherwise satisfied, however, the step transaction doctrine is applied to integrate the steps and treat the transaction as a statutory merger of T into S in which S acquires T's assets in exchange for $50 cash, $50 of P voting stock and assumption of T's liabilities, and T distributes the cash and P stock to its shareholders. This merger qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D), and P's momentary ownership of T stock is disregarded. *See* Situation 2 of Rev. Rul. 2001–46, 2001–2 CB 321 (same). The stock of S is not treated as issued for the assets of T; the historic shareholders of T are replaced by P as the shareholder of the resulting corporation (S); and the transaction is not a Mere Change.

To clarify this and similar situations, the Treasury Department and the IRS have determined that, if the Potential F Reorganization or a step thereof involving a transfer of property from the Transferor Corporation to the Resulting Corporation is also a reorganization or part of a reorganization in which a corporation in control (within the meaning of section 368(c)) of the Resulting Corporation is a party to the reorganization (within the meaning of section 368(b)), the Potential F Reorganization is not a Mere Change and does not qualify as an F reorganization. This rule will apply to transactions qualifying as reorganizations (i) under section 368(a)(1)(C) by reason of the parenthetical language therein, (ii) under section 368(a)(1)(A) by reason of section 368(a)(2)(D), and (iii) under sections 368(a)(1)(A) or (C) by reason of section 368(a)(2)(C).

The IRS has long taken the position that, if a Transferor Corporation's transfer of property qualifies as a step in both an F reorganization and another type of reorganization in which the Resulting Corporation is the acquiring corporation, the transaction qualifies for the benefits accorded to an F reorganization. *See, for example,* Rev. Rul. 57–276, 1957–1 CB 126 (section 381(b) applies such that the parts of the Transferor Corporation's taxable year before and after an F reorganization constitute a single taxable year of the Acquiring Corporation, notwithstanding that the transaction also qualifies as another type of reorganization under section 368(a)(1)); Rev. Rul. 79–289, 1979–2 CB 145 (section 357(c) does not apply to an F reorganization even if the transaction also qualifies as another type of reorganization to which section 357(c) applies); § 1.381(b–1(a)(2) (providing for rules applicable to F reorganizations, regardless of whether such reorganizations also qualify as another type of reorganization).

To avoid confusion in the application of the reorganization provisions, the Treasury Department and the IRS have decided that, except as provided earlier in this section 5. of the Explanation of

Revisions, if a Potential F Reorganization qualifies as a reorganization under section 368(a)(1)(F) and would also qualify as a reorganization under section 368(a)(1)(A), 368(a)(1)(C), or 368(a)(1)(D), then for all federal income tax purposes the Potential F Reorganization qualifies only as a reorganization under section 368(a)(1)(F). This rule does not apply to a reorganization within the meaning of sections 368(a)(1)(E) (*see* Rev. Rul. 2003–19, 2003–1 CB 468, and Rev. Rul. 2003–48, 2003–1 CB 863 (providing that certain demutualization transactions may involve both E Reorganizations and F reorganizations)) or 368(a)(1)(G) (*see* section 368(a)(3)(C)).

6. Distributions

As described in section 3.D. of the Background, the 2004 Proposed Regulations provided that, if a shareholder received money or other property (including in exchange for its shares) from the Transferor Corporation or the Resulting Corporation in a transaction that constituted an F reorganization, the money or other property would be treated as distributed by the Transferor Corporation immediately before the transaction, not as additional consideration under section 356(a). The preamble to the 2004 Proposed Regulations indicated that this treatment would also be appropriate for distributions of money or other property in E reorganizations.

Although the Treasury Department and the IRS considered whether a distribution occurring during a Potential F Reorganization should prevent it from qualifying as an F reorganization, the Treasury Department and the IRS determined to allow flexibility for such distributions. Nevertheless, unlike other types of reorganizations, which generally involve substantial changes in economic position, F reorganizations are mere changes in form. Accordingly, the Treasury Department and the IRS have concluded that any concurrent distribution should be treated as a transaction separate from the F reorganization. *See* § 1.301–1(l); *see also Bazley* v. *Commissioner,* 331 U.S. 737 (1947) (distribution in the context of a purported E reorganization treated as a dividend).

An F reorganization is a Mere Change involving only one continuing corporation and is neither an acquisitive transaction nor a divisive transaction. From a federal income tax perspective, F reorganizations generally are neutral, involving no change in ownership or assets, no end to the taxable year, and inheritance of the tax attributes described in section 381(c). A distribution that occurs at the same time as a Mere Change is, in substance, a distribution from one continuing corporation and is functionally separate from the Mere Change. The Treasury Department and the IRS believe that a distribution from one continuing corporation should not be treated the same as an exchange of money or other property for stock of a target corporation in an acquisitive reorganization. Instead, the distribution should be treated as a separate transaction occurring at the same time. Although the 2004 Proposed Regulations would have treated a distribution as occurring immediately before the transaction qualifying as an F reorganization, the Treasury Department and the IRS believe it is sufficient to treat the distribution as a separate transaction that occurs at the same time as the F reorganization.

7. Entities Treated as Corporations for Federal Tax Purposes

As explained in this preamble, the first requirement of the Final Regulations is that all of the stock of the Resulting Corporation be distributed in exchange for stock of the Transferor Corporation. Certain entities may be treated as corporations for federal tax purposes even though they do not have owners that could be treated as shareholders for federal tax purposes to whom the profits of the corporation would inure (for example, some charitable organizations described in section 501(c)(3)). Nevertheless, these entities may be able to engage in corporate reorganizations. Thus, no inference should be drawn from the use of the terms ''stock'' or ''shareholders'' in these Final Regulations with respect to the ability of such entities to engage in reorganizations under section 368(a)(1)(F).

8. Employer Identification Numbers

The Treasury Department and the IRS are studying how to assign (or reassign) employer identification numbers (EINs) to taxpayers following an F reorganization, including in cases in which the Transferor Corporation remains in existence as a disregarded entity, and comments on this issue are welcome.

Effective Date

These final regulations are effective for transactions occurring on or after September 21, 2015.

Effect on Other Documents

The following publications are obsolete as of September 21, 2015.

Rev. Rul. 57–276, 1957–1 CB 126; Rev. Rul. 58–422, 1958–2 CB 145; Rev. Rul. 66–284, 1966–2 CB 115; Rev. Rul. 79–250, 1979–2 CB 156; Rev. Rul. 79–289, 1979–2 CB 145; and Rev. Rul. 96–29, 1996–1 CB 50; are obsoleted. Rev. Rul. 87–27, 1987–1 CB 134; and Rev. Rul. 88–25, 1988–1 CB 116; are obsoleted in part (with respect to the determination of whether a transaction qualifies as a reorganization under section 368(a)(1)(F)).

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses, and no comments were received.

Drafting Information

The principal author of these final regulations is Douglas C. Bates of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

Availability of IRS Documents

IRS revenue rulings, revenue procedures, and notices cited in this Treasury decision are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.269B–1 [Amended]

■ **Par. 2.** Section 1.269B–1 is amended by removing the language in paragraph (c) ''1.367(a)–1T(e), (f)'' and adding ''1.367(a)–1(e), (f)'' in its place.

■ **Par. 3.** Section 1.367(a)–1 is amended by:

■ 1. Revising paragraph (d)(4) through (d)(5).

■ 2. Adding paragraphs (e) and (f).

■ 3. Revising paragraphs (g)(1) through (g)(3).

■ 4. Adding two sentences at the end of paragraph (g)(4).

The additions and revisions read as follows:

§ 1.367(a)–1 Transfers to foreign corporations subject to section 367(a): In general.

* * * * *

(d) * * *

(4) through (5) [Reserved]. For further guidance, *see* § 1.367(a)–1T(d)(4) through (5).

(e) *Close of taxable year in certain section 368(a)(1)(F) reorganizations.* If a domestic corporation is the transferor corporation in a reorganization described in section 368(a)(1)(F) after March 30, 1987, in which the acquiring corporation is a foreign corporation, then the taxable year of the transferor corporation shall end with the close of the date of the transfer and 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 transfer. With regard to the consequences of the closing of the taxable year, *see* section 381 and the regulations thereunder.

(f) *Exchanges under sections 354(a) and 361(a) in certain section 368(a)(1)(F) reorganizations*—(1) *Rule.* In every reorganization under section 368(a)(1)(F), where the transferor corporation is a domestic corporation, and the acquiring corporation is a foreign corporation, there is considered to exist—

(i) A transfer of assets by the transferor corporation to the acquiring corporation under section 361(a) in exchange for stock (or stock and securities) of the acquiring corporation and the assumption by the acquiring corporation of the transferor corporation's liabilities;

(ii) A distribution of the stock (or stock and securities) of the acquiring corporation by the transferor corporation to the shareholders (or shareholders and security holders) of the transferor corporation; and

(iii) An exchange by the transferor corporation's shareholders (or shareholders and security holders) of their stock (or stock and securities) of the transferor corporation for stock (or stock and securities) of the acquiring corporation under section 354(a).

(2) *Rule applies regardless of whether a continuance under applicable law.* For purposes of paragraph (f)(1) of this section, it shall be immaterial that the applicable foreign or domestic law treats the acquiring corporation as a continuance of the transferor corporation.

(g)(1) through (3) [Reserved]. For further guidance, *see* § 1.367(a)–1T(g)(1) through (3).

(4) * * * The rules in paragraph (e) of this section apply to transactions occurring on or after March 31, 1987. The rules in paragraph (f) of this section apply to transactions occurring on or after January 1, 1985.

■ **Par. 4.** Section 1.367(a)–1T is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.367(a)–1T Transfers to foreign corporations subject to section 367(a): In general (temporary).

* * * * *

(e) [Reserved]. For further guidance, *see* § 1.367(a)–1(e).

(f) [Reserved]. For further guidance, *see* § 1.367(a)–1(f).

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■ **Par. 5.** Section 1.368–2 is amended by adding paragraph (m) to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(m) *Qualification as a reorganization under section 368(a)(1)(F)*—(1) *Mere change.* To qualify as a reorganization under section 368(a)(1)(F), a transaction must result in a mere change in identity, form, or place of organization of one corporation, however effected (a mere change). A mere change can consist of a transaction that involves an actual or deemed transfer of property from one corporation (a transferor corporation) to one other corporation (a resulting corporation). Such a transaction is a mere change and qualifies as a reorganization under section 368(a)(1)(F) only if all the requirements set forth in paragraphs (m)(1)(i) through (vi) of this section are satisfied. For purposes of this paragraph (m), a transaction or a series of related transactions that can be tested against the requirements set forth in paragraphs (m)(1)(i) through (vi) of this section (a potential F reorganization) begins when the transferor corporation begins transferring (or is deemed to begin transferring) its assets, directly or indirectly, to the resulting corporation, and it ends when the transferor corporation has distributed (or is deemed to have distributed) to its shareholders the consideration it receives (or is deemed to receive) from the resulting corporation and has completely liquidated for federal income tax purposes. For purposes of this paragraph (m), deemed transfers include, for example, those provided in § 301.7701–3(g)(1)(iv) of this chapter (when an entity disregarded as separate from its owner elects under paragraph § 301.7701–3(c)(1)(i) of this chapter to be classified as an association, the owner of the entity is deemed to transfer all of the assets and liabilities of the entity to the association in exchange for stock of the association). Deemed transfers also include those resulting from the application of step transaction principles. For example, step transaction principles may disregard a transitory holding of property by an individual after a liquidation of the transferor corporation and before a subsequent transfer of the transferor corporation's property to the resulting corporation. Step transaction principles may also treat a contribution of all the stock of the transferor corporation to the resulting corporation, followed by a liquidation (or deemed liquidation) of the transferor corporation, as a deemed transfer of the transferor corporation's property to the resulting corporation, followed by a distribution of stock of the resulting corporation in complete liquidation of the transferor corporation.

(i) *Resulting corporation stock distributed in exchange for transferor corporation stock.* Immediately after the potential F reorganization, all the stock of the resulting corporation, including any stock of the resulting corporation issued before the potential F reorganization, must have been distributed (or deemed distributed) in exchange for stock of the transferor corporation in the potential F reorganization. However, for purposes of this paragraph (m)(1)(i) and paragraph (m)(1)(ii) of this section, a de minimis amount of stock issued by the resulting corporation other than in respect of stock of the transferor corporation to facilitate the organization of the resulting corporation or maintain its legal existence is disregarded.

(ii) *Identity of stock ownership.* The same person or persons must own all of the stock of the transferor corporation, determined immediately before the potential F reorganization, and of the resulting corporation, determined immediately after the potential F reorganization, in identical proportions. However, this requirement is not violated if one or more holders of stock in the transferor corporation exchange stock in the transferor corporation for stock of equivalent value in the resulting corporation, but having different terms from those of the stock in the transferor corporation, or receive a distribution of money or other property from either the transferor corporation or the resulting corporation, whether or not in exchange for stock in the transferor corporation or the resulting corporation.

(iii) *Prior assets or attributes of resulting corporation.* The resulting corporation may not hold any property or have any tax attributes (including those specified in section 381(c)) immediately before the potential F reorganization. However, this requirement is not violated if the resulting corporation holds or has held a de minimis amount of assets to facilitate its organization or maintain its legal existence, and has tax attributes related to holding those assets, or holds the proceeds of borrowings undertaken in connection with the potential F reorganization.

(iv) *Liquidation of transferor corporation.* The transferor corporation must completely liquidate, for federal income tax purposes, in the potential F reorganization. However, the transferor corporation is not required to dissolve under applicable law and may retain a de minimis amount of assets for the sole purpose of preserving its legal existence.

(v) *Resulting corporation is the only acquiring corporation.* Immediately after the potential F reorganization, no corporation other than the resulting corporation may hold property that was held by the transferor corporation immediately before the potential F reorganization, if such other corporation would, as a result, succeed to and take into account the items of the transferor corporation described in section 381(c).

(vi) *Transferor corporation is the only acquired corporation.* Immediately after the potential F reorganization, the resulting corporation may not hold property acquired from a corporation other than the transferor corporation if the resulting corporation would, as a result, succeed to and take into account the items of such other corporation described in section 381(c).

(2) *Non-application of continuity of interest and continuity of business enterprise requirements.* A continuity of the business enterprise and a continuity of interest are not required for a potential F reorganization to qualify as a reorganization under section 368(a)(1)(F). *See* § 1.368–1(b).

(3) *Related transactions*—(i) *Series of transactions.* A potential F reorganization consisting of a series of related transactions that together result in a mere change of one corporation may qualify as a reorganization under section 368(a)(1)(F), whether or not certain steps in the series, viewed in isolation, could be subject to other Code provisions, such as sections 304(a), 331, 332, or 351. However, *see* paragraph (k) of this section for transactions that qualify as reorganizations under section 368(a) and will not be recharacterized as a mere change as a result of one or more subsequent transfers of assets or stock.

(ii) *Mere change within a larger transaction.* A potential F reorganization that qualifies as a reorganization under section 368(a)(1)(F) may occur before, within, or after other transactions that effect more than a mere change, even if the resulting corporation has only transitory existence. Related events that precede or follow the potential F reorganization generally will not cause that potential F reorganization to fail to qualify as a reorganization under section 368(a)(1)(F). Qualification of a potential F reorganization as a reorganization under section 368(a)(1)(F) will not alter the character of other transactions for federal income tax purposes, and step transaction principles may be applied to other transactions without regard to whether certain steps qualify as a reorganization or part of a reorganization under section 368(a)(1)(F).

(iii) *Distributions treated as separate transactions.* As provided in paragraph (m)(1)(ii) of this section, a potential F reorganization may qualify as a mere change even though a holder of stock in the transferor corporation receives a distribution of money or other property from either the transferor corporation or the resulting corporation. If a shareholder receives money or other property (including in exchange for its shares) from the transferor corporation or the resulting corporation in a potential F reorganization that qualifies as a reorganization under section 368(a)(1)(F), then the receipt of money or other property (including any exchanged for shares) is treated as an unrelated, separate transaction from the reorganization, whether or not connected in a formal sense. *See* § 1.301–1(l).

(iv) *Transactions also qualifying under other provisions of section 368(a)(1).* In certain cases, a potential F reorganization would (but for this paragraph (m)(3)(iv)) qualify both as a reorganization under section 368(a)(1)(F) and as a reorganization or part of a reorganization under another provision of section 368(a)(1). The following rules determine which of these overlapping qualifications applies.

(A) If the potential F reorganization or a step thereof qualifies as a reorganization or part of a reorganization under another provision of section 368(a)(1), and if a corporation in control (within the meaning of section 368(c)) of the resulting corporation is a party to such other reorganization (within the meaning of section 368(b)), the potential F reorganization will not qualify as a reorganization under section 368(a)(1)(F).

(B) Except as provided in paragraph (m)(3)(iv)(A) of this section, if, but for this paragraph (m)(3)(iv)(B), the potential F reorganization would qualify as a reorganization under both section 368(a)(1)(F) and one or more of sections 368(a)(1)(A), 368(a)(1)(C), or 368(a)(1)(D), then for all federal income tax purposes the potential F reorganization will qualify as a reorganization only under section 368(a)(1)(F).

(4) *Examples.* The following examples illustrate the application of this paragraph (m). Unless the facts otherwise indicate, A, B, and C are domestic individuals; P, S, T, X, Y, and Z (and similar designations) are domestic corporations; each transaction is entered into for a valid business purpose; all persons and transactions are unrelated; and all other relevant facts are set forth in the examples.

Example 1. Cash contribution and redemption—no mere change. C owns all of the stock of X, a State A corporation. The net value of X's assets and liabilities is $1,000,000. Y, a State B corporation, seeks to acquire the assets of X for cash. To effect the acquisition, Y and X enter into an agreement under which Y will contribute $1,000,000 to Z, a newly formed corporation of which Y is the sole shareholder, in exchange for Z stock and X will merge into Z. In the merger, C surrenders all of the X stock and receives the $1,000,000 Y contributed to Z. C receives no Z stock in the transaction. After the merger, Y holds all of the Z stock, and Z holds all of the assets and liabilities previously held by X. Z stock is not distributed to the shareholders of X in exchange for their stock in X as required by paragraph (m)(1)(i) of this section, and the transaction results in a change in the ownership of X that does not result from an exchange or distribution described in paragraph (m)(1)(ii) of this section. Therefore, the merger of X into Z is not a mere change of X and does not qualify as a reorganization under section 368(a)(1)(F).

Example 2. Cash redemption—mere change. A owns 75%, and B owns 25%, of the stock of X, a State A corporation. The management of X determines that it would be in the best interest of X to reorganize under the laws of State B. Accordingly, X forms Y, a State B corporation, and X and Y enter into an agreement under which X will merge into Y. A does not wish to own stock in Y. In the merger, A surrenders A's X stock and receives cash, and B surrenders all of B's X stock and receives all the stock of Y. The change in ownership caused by A's surrender of X stock results from a distribution and exchange described in paragraph (m)(1)(ii) of this section. Therefore, the merger of X into Y is a mere change of X and qualifies as a reorganization under section 368(a)(1)(F). Under paragraph (m)(3)(iii) of this section, A's surrender of X stock for cash is treated as a transaction, separate from the reorganization, to which section 302(a) applies.

Example 3. Pre-transaction de minimis stock issuance—mere change—other provisions of section 368(a)(1). P owns all of the stock of S, a Country A corporation. The management of P determines that it would be in the best interest of S to change its place of incorporation to Country B. Under Country B law, a corporation must have at least two shareholders to enjoy limited liability. P is advised by its Country B advisors that the new corporation should issue 1% of its stock to a shareholder that is not P's nominee to assure satisfaction of the two-shareholder requirement. As part of an integrated plan, C, an officer of S, organizes Y, a Country B corporation with 1,000 shares of common stock authorized, and contributes cash to Y in exchange for ten of the common shares. S then merges into Y under the laws of Country A and Country B. Pursuant to the plan of merger, P surrenders its shares of S stock and receives 990 shares of Y common stock. The ten shares of Y stock issued to C not in respect of the S stock are de minimis and are used to facilitate the organization of Y within the meaning of paragraph (m)(1)(i) of this section. Therefore, the issuance of this stock to a new shareholder does not prevent the merger of S into Y from qualifying as a mere change of S. Accordingly, the merger is a reorganization under section 368(a)(1)(F). Without regard to the merger's qualification under section 368(a)(1)(F), the merger would also qualify as a reorganization under both section 368(a)(1)(A) and section 368(a)(1)(D). Under paragraph (m)(3)(iv)(B) of this section, if a potential F reorganization qualifies as a reorganization under section 368(a)(1)(F), and would also qualify under one or more of sections 368(a)(1)(A) or 368(a)(1)(D), the potential F reorganization qualifies only as a reorganization under 368(a)(1)(F), and neither section 368(a)(1)(A) nor section 368(a)(1)(D) will apply.

Example 4. Pre-transaction assets, attributes—no mere change. A owns all of the stock of P, and P owns all of the stock of S, which is engaged in a manufacturing business. P has owned the stock of S for many years. P owns no assets other than the stock of S. A decides to eliminate the holding company structure by merging P into S. Because it operates a manufacturing business, the potential resulting corporation, S, holds property and has tax attributes immediately before the potential F reorganization. Therefore, under paragraph (m)(1)(iii) of this section, the merger of P into S is not a mere change of P and does not qualify as a reorganization under section 368(a)(1)(F). The same result would occur under paragraph (m)(1)(iii) of this section if, instead of P merging into S, S merged into P, because P, the potential resulting corporation, holds property (the stock of S) and has tax attributes immediately before the potential F reorganization.

Example 5. Series of related transactions—mere change. P owns all of the stock of S1, a State A corporation. The management of P determines that it would be in the best interest of S1 to change its place of incorporation to State B. Accordingly, under an integrated plan, P forms S2, a new State B corporation; P contributes the S1 stock to S2; and S1 merges into S2 under the laws of State A and State B. Under paragraph (m)(3)(i) of this section, a series of transactions that together result in a mere change of one corporation may qualify as a reorganization under section 368(a)(1)(F). The contribution of S1 stock to S2 and the merger of S1 into S2 together constitute a mere change of S1. Therefore, the potential F reorganization qualifies as a reorganization under section 368(a)(1)(F). Without regard to its qualification under section 368(a)(1)(F), the potential F reorganization would also qualify as a reorganization under both section 368(a)(1)(A) and section 368(a)(1)(D). Under paragraph (m)(3)(iv)(B) of this section, if a potential F reorganization qualifies as a reorganization under section 368(a)(1)(F) and would also qualify under one or more of sections 368(a)(1)(A) or 368(a)(1)(D), it qualifies only as a reorganization under 368(a)(1)(F), and neither section 368(a)(1)(A) nor section 368(a)(1)(D) will apply. The result would be the same with respect to qualification under section 368(a)(1)(F) if, instead of merging into S2, S1 completely liquidates.

Example 6. Post-transaction stock sale—mere change. P owns all of the stock of S1, a State A corporation. The management of P determines that it would be in the best interest of S1 to change its place of incorporation to State B. Accordingly, P forms S2, a new State B corporation. S1 then merges into S2 under the laws of State A and State B. Immediately thereafter, and as part of the same plan, P sells all of its stock in S2 to an unrelated party. Without regard to P's sale of S2 stock, the merger of S1 into S2 is a potential F reorganization that qualifies as a mere change of S1 within the meaning of paragraph (m)(1) of this section. Under paragraph (m)(3)(ii) of this section, related events that occur before or after a potential F reorganization that qualifies as a mere change generally do not cause that potential F reorganization to fail to qualify as a reorganization under section 368(a)(1)(F). Therefore, P's sale of the S2 stock is disregarded in determining whether the merger of S1 into S2 is a mere change of S1. Accordingly, the merger of S1 into S2 qualifies as a reorganization under section 368(a)(1)(F). The result would be the same if, instead of the S2 stock being sold by P, S2 merges into a previously unrelated corporation and terminates its separate existence.

Example 7. Post-transaction redemption—mere change. A owns all of the stock of T. P owns all of the stock of S. Each of T and S is a State A corporation engaged in a manufacturing business. The following transactions occur pursuant to a single plan. First, T merges into S with A receiving solely stock in P. Second, P changes its state of incorporation to State B by merging into newly incorporated New P under the laws of State A and State B. Third, New P redeems all the New P stock issued to A in respect of A's P stock (initially issued to A in respect of A's T stock) for cash. Without regard to the other steps, the merger of P into New P is a potential F reorganization that qualifies as a reorganization under section 368(a)(1)(F). Under paragraph (m)(3)(ii) of this section, related events that occur before or after a potential F reorganization that qualifies as a mere change generally do not prevent that potential F reorganization from qualifying as a reorganization under section 368(a)(1)(F). Therefore, the merger of P into New P qualifies as a reorganization under section 368(a)(1)(F). Under paragraph (m)(3)(ii) of this section, the qualification of the merger of P into New P as a reorganization under section 368(a)(1)(F) does not alter the tax treatment of the merger of T into S. Because the P shares received by A in respect of the T shares (exchanged for New P shares in the mere change of P into New P) are redeemed for cash pursuant to the plan, the merger of T into S does not satisfy the continuity of interest requirement of § 1.368–1(e) and therefore does not qualify as a reorganization under section 368(a).

Example 8. Series of related transactions—mere change. P owns all of the stock of S, a State A corporation. The management of P determines that it would be in the best interest of S to change its form from a State A corporation to a State A limited partnership but to continue to be treated as a corporation for federal tax purposes. Accordingly, P contributes 1% of the S stock to newly formed LLC, a limited liability company, in exchange for all of the membership interests in LLC. P is the sole member of LLC. Under § 301.7701–3 of this chapter, LLC is disregarded as an entity separate from its owner, P. Then, under a State A statute, S converts to a State A limited partnership. In the conversion, P's interest as a 99% shareholder of S is converted into a 99% limited partner interest, and LLC's interest as a 1% shareholder of S is converted into a 1% general partner interest. S also elects, under § 301.7701–3(c) of this chapter, to be classified as a corporation for federal income tax purposes, effective on the same day as the conversion. Under paragraph (m)(3)(i) of this section, the conversion of S from a State A corporation to a State A limited partnership, together with the election to treat S as a corporation for federal tax purposes, results in a mere change of S and qualifies as a reorganization under section 368(a)(1)(F).

Example 9. Other acquiring corporation—no mere change. P owns 80%, and A owns 20%, of the stock of S. A and the management of P determine that it would be in the best interest of S to completely liquidate while A continues to operate part of the business of S in corporate form. Accordingly, S distributes 80% of its assets to P and 20% of its assets to A; S dissolves; and A contributes the assets it receives from S to newly incorporated New S in exchange for all of the stock of New S. S's distribution of 80% of its property to P as part of the complete liquidation of S meets the requirements of section 332. Thus, section 381(a)(1) applies to P's acquisition of 80% of the property held by S immediately before the transaction. Under paragraph (m)(1)(v) of this section, the potential F reorganization in which 20% of the property held by S immediately before the transaction is transferred to New S cannot be a mere change of S, because section 381(a) applies to P's acquisition of property held by S immediately before the potential F reorganization. Accordingly, sections 331 and 336 apply to A's acquisition of property from S and S's distribution of property to A, and section 351 applies to A's contribution of that property to New S.

Example 10. Other acquiring corporation—no mere change. P owns all of the stock of S1. The management of P determines that it would be in the best interest of S1 to merge S1 into P. Accordingly, pursuant to a state merger statute, S1 merges into P. Immediately afterward and as part of the same plan, P contributes 50% of the former assets of S1 to newly incorporated S2 in exchange for all of the stock of S2. The transaction does not qualify as a complete liquidation of S1 under section 332 (because of the reincorporation of some of S1's assets) but does qualify as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(C) and paragraph (k) of this section. Under paragraph (m)(1)(v) of this section, the potential F reorganization in which some of the former assets of S1 are transferred (in form) first to P, and then to S2, is not a mere change of S1, because section 381(a) applies to P's acquisition of property held by S1 immediately before the potential F reorganization. Furthermore, under paragraph (m)(3)(iv)(A) of this section, P, the corporation in control of S2 within the meaning of section 368(c), is a party to the reorganization within the meaning of section 368(b). Thus, the indirect transfer of property from S1 to S2 does not qualify under section 368(a)(1)(F).

Example 11. Other acquiring corporation—mere change. P owns all of the stock of S1. S1's only asset is all of the equity interest in LLC2, a domestic limited liability company. Under § 301.7701–3 of this chapter, LLC2 is disregarded as an entity separate from its owner, S1. Pursuant to an integrated plan to undergo a reorganization under 368(a)(1)(F), S1 and LLC2 undergo the following two state law conversions. First, under state law LLC2 converts into S2, a corporation. Second, under state law S1 converts into LLC1, a domestic limited liability company. Under § 301.7701–3 of this chapter, LLC1 is disregarded as an entity separate from its owner, P. As a result of the two conversions, S1 is deemed to transfer its assets to S2 in exchange for all of the stock in S2 and then distribute the S2 stock to P in complete liquidation of S1. The two conversions, viewed as a potential F reorganization, constitute a mere change of S1, and that potential F reorganization qualifies as a reorganization under section 368(a)(1)(F). The result would be the same if, instead of converting into S2 pursuant to state law, LLC2 elected under § 301.7701–3(c) to change its classification for federal tax purposes and be treated as an association taxable as a corporation, provided the effective date of the election (and its resulting deemed transactions) occurs before the conversion of S1.

Example 12. Other acquiring corporation—no mere change. The facts are the same facts as in *Example 11,* except that S1 converts into LLC1 prior to the conversion of LLC2 into S2. As a result of these conversions, S1 is deemed to distribute all of its assets to P in exchange for all of P's S1 stock, and P is deemed to transfer all of those assets to S2 in exchange for all of the stock in S2. The transaction does not qualify as a complete liquidation of S1 under section 332 (because of the reincorporation of S1's assets), but does qualify as a reorganization under section 368(a)(1)(C) by reason of section 368(a)(2)(C) and paragraph (k) of this section. Under paragraph (m)(1)(v) of this section, the potential F reorganization in which the former assets of S1 are deemed transferred, first by S1 to P, and then by P to S2, is not a mere change of S1 because section 381(a) applies to P's acquisition of property held by S1 immediately before the potential F reorganization. Furthermore, the corporation in control of S2, within the meaning of section 368(c), is a party to the reorganization within the meaning of section 368(b). Thus, the indirect transfer of property from S1 to S2 does not qualify under section 368(a)(1)(F).

Example 13. Series of related transactions—no mere change. X owns all of the stock of T. P acquires all of the stock of T in exchange for consideration consisting of $50 cash and P voting stock with $50 value. No election is made under section 338. Immediately thereafter and as part of the same plan, P forms S as a wholly-owned subsidiary, and T is merged into S. Viewed in isolation as a potential F reorganization, the merger of T into S appears to constitute a mere change of T. However, the acquisition of the T stock by P and the merger of T into S, viewed together, qualify as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D). The step transaction doctrine is applied treat the transaction as a statutory merger of T into S in exchange for $50 cash and $50 of P's voting stock (and S's assumption of T's liabilities), P's momentary ownership of T stock is disregarded. Under paragraph (m)(3)(iv)(A) of this section, P, the corporation in control of S, is a party to the reorganization within the meaning of section 368(b). Thus, the transfer of property from T to S does not qualify under section 368(a)(1)(F).

Example 14. Multiple transferor corporations—no mere change. P owns all the stock of S1 and S2. The management of P determines it would be in the best interest of S1 and S2 to operate as a single corporation. P forms S3 and, under applicable corporate law, S1 and S2 simultaneously merge into S3. Immediately after the merger, P owns all the stock of S3. Each of the mergers can be tested as a potential F reorganization. However, immediately after the simultaneous mergers, the resulting corporation, S3, holds property acquired from a corporation other than the transferor corporation, and section 381(a) would apply to the acquisition of such property. Therefore, under paragraph (m)(1)(vi) of this section, neither potential F reorganization is a mere change, and neither merger into S3 qualifies as a reorganization under section 386(a)(1)(F). The result would be different if the mergers were not simultaneous. If S1 completed its merger into S3 before S2 began its merger into S3, the merger of S1 into S3 would qualify as a reorganization under section 368(a)(1)(F), but the merger of S2 into S3 would not so qualify (although it would qualify as a reorganization under sections 368(a)(1)(A) and 368(a)(1)(D)).

(5) *Effective/Applicability Date.* This paragraph (m) applies to transactions occurring on or after September 21, 2015.

§ 1.381(b)–1 [Amended]

■ **Par. 6.** Section 1.381(b)–1 is amended by removing the language in paragraph (a)(1) ''1.367(a)–1T(e)'' and adding ''1.367(a)–1(e)'' in its place.

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: September 9, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to further implement elements of the policy announced by the President on December 17, 2014 to engage and empower the Cuban people. Among other things, these amendments further facilitate travel to Cuba for authorized purposes (including authorizing by general license the provision of carrier services by vessel), expand the telecommunications and Internet-based services general licenses, authorize certain persons subject to U.S. jurisdiction to establish a physical presence in Cuba, allow certain additional persons subject to U.S. jurisdiction to open and maintain bank