whichever is later, remove the oil dipstick, part number (P/N) 956150, from service, and install a dipstick that has a different P/N. Information on removing oil dipstick P/N 956150 from service can be found in Rotax Service Bulletin SB–912–040/SB–914–026, Revision 1, dated August 2003.

**Prohibition of Oil Dipstick, P/N 956150**

(j) After the effective date of this AD, do not use dipstick P/N 956150 after complying with paragraph (i) of this AD.

**Alternative Methods of Compliance**

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Special Flight Permits**

(l) Special flight permits are not permitted.

**Material Incorporated by Reference**

(m) None.

**Related Information**

(n) Austro Control airworthiness directives No. 113R1, dated August 30, 2002, and No. 116, dated September 15, 2003, Rotax Service Bulletin SB–912–040/SB–914–026, Revision 1, dated August 2003, and Rotax Service Instruction SI–04–1997, Revision 3, dated September 2002 also address the subject of this AD.

Issued in Burlington, Massachusetts, on August 6, 2004.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 04–18440 Filed 8–11–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–128767–04]**

**RIN 1545–BD48**

## Treatment of Disregarded Entities Under Section 752

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The proposed regulations provide rules under section 752 for taking into account certain obligations of a business entity that is disregarded as separate from its owner under sections 856(i), 1361(b)(3), or §§ 301.7701–1 through 301.7701–3 (disregarded entity) for purposes of characterizing and allocating partnership liabilities. The rules affect partnerships with partnership debt and partners in those partnerships. These proposed regulations clarify the existing regulations concerning when a partner may be treated as bearing the economic risk of loss for a partnership liability based upon an obligation of a disregarded entity.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 10, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–128767–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–128767–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs*, or via the Federal eRulemaking Portal at: *http://www.regulations.gov* (IRS-REG–128767–04).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Michael J. Goldman, (202) 622–3070; concerning submissions of the comments and the public hearing, Robin Jones, (202) 622–3521 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by October 12, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.752–2(k). This information is required to ensure proper allocations of partnership liabilities. This information will be used to determine the extent to which certain partners or related persons bear the economic risk of loss with respect to partnership liabilities. The collection of information is mandatory. The likely reporters are individuals and small businesses or organizations.

*Estimated total annual reporting burden:* 500 hours.

The estimated annual burden per respondent varies from 6 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

*Estimated number of respondents:* 500.

*Estimated frequency of responses:* On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

Under section 752, a partner's basis in its partnership interest includes the partner's share of partnership liabilities. The Income Tax Regulations under section 752 provide rules relating to the determination of a partner's share of partnership liabilities. Those rules differ depending upon whether the liability is characterized as recourse or nonrecourse for purposes of section 752. Section 1.752–1(a) provides that a partnership liability is a recourse liability to the extent that any partner or related person bears the economic risk of loss for that liability under § 1.752–2. Section 1.752–1(a) also provides that a partnership liability is a nonrecourse liability to the extent that no partner or related person bears the economic risk of loss for that liability under § 1.752–2.

In general, a partner bears the economic risk of loss for a partnership

liability under § 1.752–2 to the extent that the partner or a related person (as defined in § 1.752–4(b)) has an obligation to make a payment to any person, including a contribution to the partnership, that is recognized under § 1.752–2(b)(3) on account of the partnership liability if the partnership were to constructively liquidate as described in § 1.752–2(b) (payment obligation). As provided in § 1.752–2(b)(3) and (5), all statutory and contractual obligations relating to the partnership liability and reimbursement rights are taken into account in determining whether a partner or related person has a payment obligation under § 1.752–2(b). Moreover, for purposes of determining the extent to which a partner or related person has a payment obligation and the economic risk of loss for a partnership liability, § 1.752–2(b)(6) provides that it is presumed that all partners and related persons who have obligations to make payments actually perform those obligations, irrespective of their actual net worth (presumption of deemed satisfaction), unless the facts and circumstances indicate a plan to circumvent or avoid the obligation.

These proposed regulations clarify the existing regulations concerning when a partner may be treated as bearing the economic risk of loss for a partnership liability based upon a payment obligation of a business entity that is disregarded as separate from its owner under sections 856(i), 1361(b)(3), or §§ 301.7701–1 through 301.7701–3 of this chapter (disregarded entity). Because a disregarded entity and its owner are treated as a single entity, the presumption of deemed satisfaction of obligations undertaken by the owner arguably should include payment obligations undertaken by the disregarded entity. However, because of statutory limitations on liability, the owner of a disregarded entity may have no obligation to satisfy payment obligations undertaken by the disregarded entity. The current regulations consider such limitations on the payment obligations of a partner or related person to be relevant in determining the extent to which the partner or related person is treated as bearing the economic risk of loss for a partnership liability. The IRS and Treasury Department believe that because only the assets of a disregarded entity may be available to satisfy payment obligations undertaken by the disregarded entity, a partner should be treated as bearing the economic risk of loss for a partnership liability as a result of those payment obligations only to the extent of the net value of the disregarded entity's assets.

**Explanation of Provisions**

The proposed regulations provide that in determining the extent to which a partner bears the economic risk of loss for a partnership liability, payment obligations of a disregarded entity are taken into account for purposes of section 752 only to the extent of the net value of the disregarded entity as of the date on which the partnership determines the partner's share of partnership liabilities pursuant to §§ 1.752–4(d) and 1.705–1(a). However, the proposed regulations do not apply to an obligation of a disregarded entity to the extent that the owner of the disregarded entity otherwise is required to make a payment (that satisfies the requirements of § 1.752–2(b)(1)) with respect to such obligation of the disregarded entity.

Under the proposed regulations, the net value of a disregarded entity equals the fair market value of all assets owned by the disregarded entity that may be subject to creditors' claims under local law, including the disregarded entity's enforceable rights to contributions from its owner but excluding the disregarded entity's interest in the partnership (if any) and the fair market value of property pledged to secure a partnership liability (which is already taken into account under § 1.752–2(h)(1)), less obligations of the disregarded entity that do not constitute, and are senior or of equal priority to, payment obligations of the disregarded entity. After the net value of a disregarded entity is initially determined under the rules of the proposed regulations, the net value of the disregarded entity is not redetermined unless the obligations of the disregarded entity that do not constitute, and are senior or of equal priority to, payment obligations of the disregarded entity change by more than a de minimis amount or there is more than a de minimis contribution to or distribution from the disregarded entity. The IRS and Treasury Department request comments on whether other events (such as a sale of substantially all of a disregarded entity's assets) should be specified as revaluation events and whether a partner should be able to make an election to revalue a disregarded entity annually regardless of the occurrence of a revaluation event. An election to revalue annually would be revocable only with the Commissioner's consent.

The proposed regulations also provide that the net value of a disregarded entity is determined by taking into account a subsequent reduction in the net value of the entity if the subsequent reduction is anticipated and is part of a plan that has as one of its principal purposes creating the appearance that a partner bears the economic risk of loss for a partnership liability. In addition, under the proposed regulations, if one or more disregarded entities have payment obligations with respect to one or more partnership liabilities, or liabilities of more than one partnership, the partnership must allocate the net value of each disregarded entity among partnership liabilities in a reasonable and consistent manner, taking into account priorities among partnership liabilities.

To facilitate the partnership's determination of the net value of a disregarded entity, the proposed regulations provide that a partner that may be treated as bearing the economic risk of loss for a partnership liability based upon a payment obligation of a disregarded entity must provide information as to the entity's tax classification and net value to the partnership on a timely basis.

The IRS and Treasury Department are considering and request comments regarding whether the rules of the proposed regulations should be extended to the payment obligations of other entities, such as entities that are capitalized with nominal equity.

The proposed regulations also include conforming changes to § 1.704–2(f)(2), (g)(3) and (i)(4). Section 1.704–2 includes rules that apply when the character of partnership debt under section 752 changes as a result of a guarantee, lapse of a guarantee, conversion, refinancing or other change in the debt instrument. Under the proposed regulations, those rules would apply upon any change in the character of partnership debt under section 752, whether as a result of the circumstances specified in the current regulations or as a result of changes under the rules of the proposed regulations.

Finally, the proposed regulations clarify that the pledge rules of the regulations under § 1.752–2(h) refer to the net fair market value of property pledged to secure a partnership liability. The IRS and Treasury Department are considering and request comments regarding whether partners should be able to make an election, revocable only with the Commissioner's consent, to revalue pledged assets annually.

**Proposed Effective Date**

The regulations are proposed to apply to liabilities incurred or assumed by a partnership on or after the date the regulations are published as final regulations in the **Federal Register**,

other than liabilities incurred or assumed by a partnership pursuant to a written binding contract in effect prior to that date.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the amount of time necessary to report the required information will be minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand and the administrability of the rules in the proposed regulations. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Michael J. Goldman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be 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 * * *

**Par. 2**. Section 1.704–2 is amended as follows:

1. Paragraph (f)(2) is revised.

2. The first sentence of paragraph (g)(3) is revised.

3. The third sentence of paragraph (i)(4) is revised.

4. Paragraph (l)(1)(iv) is added.

The revisions and addition read as follows:

**§ 1.704–2 Allocations attributable to nonrecourse liabilities.**

* * * * *

(f) * * *

(2) *Exception for certain conversions and refinancings.* A partner is not subject to the minimum gain chargeback requirement to the extent the partner's share of the net decrease in partnership minimum gain is caused by a recharacterization of nonrecourse partnership debt as partially or wholly recourse debt or partner nonrecourse debt, and the partner bears the economic risk of loss (within the meaning of § 1.752–2) for the liability.

* * * * *

(g) * * *

(3) *Conversions of recourse or partner nonrecourse debt into nonrecourse debt.* A partner's share of minimum gain is increased to the extent provided in this paragraph (g)(3) if a recourse or partner nonrecourse liability becomes partially or wholly nonrecourse. * * *

* * * * *

(i) * * *

(4) * * * A partner is not subject to this minimum gain chargeback, however, to the extent the net decrease in partner nonrecourse debt minimum gain arises because a partner nonrecourse liability becomes partially or wholly a nonrecourse liability. * * *

* * * * *

(l) * * * (1) * * *

(iv) Paragraph (f)(2), the first sentence of paragraph (g)(3), and the third sentence of paragraph (i)(4) of this section apply to liabilities incurred or assumed by a partnership on or after the date the regulations are published as final regulations in the **Federal Register**, other than liabilities incurred or assumed by a partnership pursuant to a written binding contract in effect prior to that date. Otherwise, the rules applicable to liabilities incurred or assumed (or subject to a binding contract in effect) prior to the date the regulations are published as final regulations in the **Federal Register** are contained in § 1.704–2 in effect prior to the date the regulations are published as final regulations in the **Federal Register** (see 26 CFR part 1 revised as of April 1, 2004).

* * * * *

**Par. 3**. Section 1.752–2 is amended as follows:

1. Paragraph (a) is revised.

2. The last sentence of paragraph (b)(6) is revised.

3. Paragraph (h)(3) is revised.

4. Paragraphs (k) and (l) are added.

The revisions and additions read as follows:

**§ 1.752–2 Partner's share of recourse liabilities.**

(a) *In general.* A partner's share of a recourse partnership liability equals the portion of that liability, if any, for which the partner or related person bears the economic risk of loss. The determination of the extent to which a partner bears the economic risk of loss for a partnership liability is made under the rules in paragraphs (b) through (k) of this section.

(b) * * *

(6) * * * See paragraphs (j) and (k) of this section.

* * * * *

(h) * * *

(3) *Valuation.* The extent to which a partner bears the economic risk of loss for a partnership liability as a result of a direct pledge described in paragraph (h)(1) of this section or an indirect pledge described in paragraph (h)(2) of this section is limited to the net fair market value of the property at the time of the pledge or contribution. For purposes of this paragraph, if property is subject to one or more other obligations that are senior or of equal priority to the partnership liability, those obligations must be taken into account in determining the net fair market value of pledged property.

* * * * *

(k) *Effect of a disregarded entity*—(1) *In general.* In determining the extent to which a partner bears the economic risk of loss for a partnership liability, obligations of a business entity that is disregarded as an entity separate from its owner under sections 856(i) or 1361(b)(3) or §§ 301.7701–1 through 301.7701–3 of this chapter (disregarded entity), that may be taken into account under paragraph (b)(1) of this section, are taken into account only to the extent

of the net value of the disregarded entity (as determined under paragraph (k)(2) of this section) as of the date on which the partnership determines the partner's share of partnership liabilities pursuant to §§ 1.752–4(d) and 1.705–1(a) that is allocated to the liability under paragraph (k)(4) of this section. The rules of this paragraph (k) do not apply to an obligation of a disregarded entity to the extent that the owner of the disregarded entity otherwise is required to make a payment (that satisfies the requirements of paragraph (b)(1) of this section) with respect to such obligation of the disregarded entity.

(2) *Net value of a disregarded entity.* For purposes of paragraph (k)(1) of this section, the net value of a disregarded entity equals the fair market value of all assets owned by the entity that may be subject to creditors' claims under local law, including the entity's enforceable rights to contributions from its owner but excluding the entity's interest in the partnership (if any) and the fair market value of property pledged to secure a partnership liability under paragraph (h)(1) of this section, less obligations of the disregarded entity that do not constitute, and are senior or of equal priority to, obligations of the disregarded entity that may be taken into account under paragraph (b)(1) of this section. After the net value of a disregarded entity is initially determined for purposes of paragraph (k)(1) of this section, the net value of the disregarded entity is not redetermined unless the obligations of the disregarded entity that are described in the preceding sentence change by more than a *de minimis* amount or there is more than a *de minimis* contribution to or distribution from the disregarded entity of property other than property pledged to secure a partnership liability under paragraph (h)(1) of this section.

(3) *Reduction in net value of a disregarded entity.* For purposes of paragraph (k)(2) of this section, the net value of a disregarded entity is determined by taking into account a subsequent reduction in the net value of the disregarded entity if at the time the net value of the disregarded entity is determined it is anticipated that the net value of the disregarded entity will subsequently be reduced and the reduction is part of a plan that has as one of its principal purposes creating the appearance that a partner bears the economic risk of loss for a partnership liability.

(4) *Allocation of net value.* If one or more disregarded entities have obligations that may be taken into account under paragraph (b)(1) of this section with respect to one or more partnership liabilities, or liabilities of more than one partnership, the partnership must allocate the net value of each disregarded entity among partnership liabilities in a reasonable and consistent manner, taking into account priorities among partnership liabilities.

(5) *Information to be provided by the owner of a disregarded entity.* A partner that may be treated as bearing the economic risk of loss for a partnership liability based upon an obligation of a disregarded entity that may be taken in account under paragraph (b)(1) of this section must provide information as to the entity's tax classification and net value to the partnership on a timely basis.

(6) The following examples illustrate the rules of this paragraph (k):

*Example 1. Disregarded entity with net value of zero.* (i) In 2005, *A* forms a wholly owned domestic limited liability company, *LLC,* with a contribution of $100,000. *A* has no liability for *LLC's* debts, and *LLC* has no enforceable right to contribution from *A*. *A* files no election with respect to *LLC* under § 301.7701–3 of this chapter. Also in 2005, *LLC* contributes $100,000 to *LP,* a limited partnership with a calendar year taxable year, in exchange for a general partnership interest in *LP*, and B and C each contributes $100,000 to *LP* in exchange for a limited partnership interest in *LP*. The partnership agreement provides that only *LLC* is required to make up any deficit in its capital account. On January 1, 2006, *LP* borrows $300,000 from a bank and uses $600,000 to purchase nondepreciable property. The $300,000 debt is secured by the property and is also a general obligation of *LP*. *LP* makes payments of only interest on its $300,000 debt during 2006. Under §§ 1.752–4(d) and 1.705–1(a), *LP* determines its partners' shares of the $300,000 debt at the end of its taxable year, December 31, 2006. As of that date, *LLC* holds no assets other than its interest in *LP*.

(ii) Under § 301.7701–3(b)(1)(ii) of this chapter, *LLC* is a disregarded entity. Because *LLC* is a disregarded entity, *A* is treated as the partner in *LP* for federal tax purposes. Only *LLC* has an obligation to make a payment on account of the $300,000 debt if *LP* were to constructively liquidate as described in paragraph (b)(1) of this section. Therefore, under paragraph (k) of this section, *A* is treated as bearing the economic risk of loss for *LP's* $300,000 debt only to the extent of *LLC's* net value. Because that net value is $0 on December 31, 2006, when *LP* determines its partners' shares of its $300,000 debt, *A* is not treated as bearing the economic risk of loss for any portion of *LP's* $300,000 debt. As a result, *LP's* $300,000 debt is characterized as nonrecourse under § 1.752–1(a) and is allocated as required by § 1.752–3.

*Example 2. Disregarded entity with positive net value.* (i) The facts are the same as in *Example 1* except that on January 1, 2007, *A* contributes $250,000 to *LLC* and *LLC* shortly thereafter uses the $250,000 to purchase unimproved land. *LP* makes payments of only interest on its $300,000 debt during 2007. Under §§ 1.752–4(d) and 1.705–1(a), *LP* again determines its partners' shares of the $300,000 debt at the end of its taxable year, December 31, 2007. As of that date, *LLC* holds its interest in *LP* and the land, the value of which has declined to $175,000.

(ii) *A's* contribution of $250,000 to *LLC* on January 1, 2007, constitutes a more than *de minimis* contribution of property to *LLC*. Accordingly, under paragraph (k)(2) of this section, *LLC's* value is redetermined on December 31, 2007, when *LP* determines its partners' shares of its $300,000 debt. As of that date, *LLC's* net value is $175,000. Therefore, under paragraph (k) of this section, *A* is treated as bearing the economic risk of loss for $175,000 of *LP's* $300,000 debt. As a result, $175,000 of *LP's* $300,000 debt is recharacterized as recourse under § 1.752–1(a) and is allocated to *A* under this section, and the remaining $125,000 of *LP's* $300,000 debt remains characterized as nonrecourse under § 1.752–1(a) and is allocated as required by § 1.752–3.

*Example 3. Allocation of net value among partnership liabilities.* (i) The facts are the same as in *Example 2* except that on January 1, 2008, *A* forms another wholly owned domestic limited liability company, *LLC2*, with a contribution of $120,000. Shortly thereafter, *LLC2* uses the $120,000 to purchase stock in X corporation. *A* has no liability for *LLC2's* debts, and *LLC2* has no enforceable right to contribution from *A*. *A* files no election with respect to *LLC2* under § 301.7701–3 of this chapter. On July 1, 2008, *LP* borrows $100,000 from a bank and uses the $100,000 to purchase nondepreciable property. The $100,000 debt is secured by the property and is also a general obligation of *LP*. The $100,000 debt is senior in priority to *LP's* existing $300,000 debt. Also on July 1, 2008, *LLC2* agrees to guarantee both *LP's* $100,000 and $300,000 debts. *LP* makes payments of only interest on both its $100,000 and $300,000 debts during 2008. Under §§ 1.752–4(d) and 1.705–1(a), *LP* determines its partners' shares of its $100,000 and $300,000 debts at the end of its taxable year, December 31, 2008. As of that date, *LLC* holds its interest in *LP* and the land, and *LLC2* holds the X corporation stock which has appreciated in value to $140,000.

(ii) Under § 301.7701–3(b)(1)(ii) of this chapter, *LLC2* is a disregarded entity. Both *LLC* and *LLC2* have obligations to make a payment on account of *LP's* debts if *LP* were to constructively liquidate as described in paragraph (b)(1) of this section. Therefore, under paragraph (k) of this section, *A* is treated as bearing the economic risk of loss for *LP's* $100,000 and $300,000 debts only to the extent of the net values of *LLC* and *LLC2*, as allocated among those debts in a reasonable manner pursuant to paragraph (k)(4) of this section.

(iii) No events have occurred that would allow a revaluation under paragraph (k)(2) of this section. Therefore, *LLC's* net value remains $175,000. *LLC2's* net value on December 31, 2008, when *LP* determines its partners' shares of its liabilities, is $140,000. Under paragraph (k)(4) of this section, *LP* must allocate the net values of *LLC* and *LLC2* between its $100,000 and $300,000 debts in

a reasonable and consistent manner. Because the $100,000 debt is senior in priority to the $300,000 debt, *LP* first allocates the net values of *LLC* and *LLC2*, *pro rata*, to its $100,000 debt. Thus, *LP* allocates $56,000 of *LLC's* net value and $44,000 of *LLC2's* net value to its $100,000 debt, and *A* is treated as bearing the economic risk of loss for all of *LP's* $100,000 debt. As a result, all of *LP's* $100,000 debt is characterized as recourse under § 1.752–1(a) and is allocated to *A* under this section. *LP* then allocates the remaining $119,000 of *LLC's* net value and *LLC2's* $96,000 net value to its $300,000 debt, and *A* is treated as bearing the economic risk of loss for a total of $215,000 of the $300,000 debt. As a result, $215,000 of *LP's* $300,000 debt is characterized as recourse under § 1.752–1(a) and is allocated to *A* under this section, and the remaining $85,000 of *LP's* $300,000 debt is characterized as nonrecourse under § 1.752–1(a) and is allocated as required by § 1.752–3. This example illustrates one reasonable method for allocating net values of disregarded entities among multiple partnership liabilities.

(l) *Effective dates.* Paragraphs (a), (b)(6), (h)(3), and (k) of this section apply to liabilities incurred or assumed by a partnership on or after the date the regulations are published as final regulations in the **Federal Register,** other than liabilities incurred or assumed by a partnership pursuant to a written binding contract in effect prior to that date. Otherwise, the rules applicable to liabilities incurred or assumed (or subject to a binding contract in effect) prior to the date the regulations are published as final regulations in the **Federal Register** are contained in §§ 1.752–2 and 1.752–3 in effect prior to the date the regulations are published as final regulations in the **Federal Register,** (*see* 26 CFR part 1 revised as of April 1, 2004).

Approved: July 12, 2004.

**Nancy Jardini,**

*Acting Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04–18372 Filed 8–11–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–106889–04]**

**RIN 1545–BD31**

## Reorganizations Under Section 368(a)(1)(E) or (F)

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that provide guidance regarding the requirements for a transaction to qualify as a reorganization under section 368(a)(1)(E) or (F) of the Internal Revenue Code. The proposed regulations will affect corporations and their shareholders.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 10, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–106889–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–106889–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Internal Revenue Service Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–106889–04).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Robert B. Gray, (202) 622–7550; concerning submissions of comments, Guy R. Traynor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

In general, upon the exchange of property, gain or loss must be accounted for if the new property differs materially, in kind or extent, from the old property. See Internal Revenue Code (Code) § 1001; § 1.368–1(b). The purpose of the reorganization provisions of the Internal Revenue Code (the Code) is to except from the general rule 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).

Section 368(a)(1)(E) provides that the term reorganization includes a recapitalization (an E reorganization). A recapitalization has been defined as a ''reshuffling of a capital structure within the framework of an existing corporation.'' *Helvering* v. *Southwest Consolidated Corp.,* 315 U.S. 194 (1942).

Section 368(a)(1)(F) provides that the term reorganization includes a mere change in identity, form, or place of organization of one corporation, however effected (an F reorganization). 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 (2nd Cir. 1966).

To qualify as a reorganization, a transaction must generally satisfy not only the statutory requirements of the reorganization provisions but also certain nonstatutory requirements, including the continuity of interest and continuity of business enterprise requirements. *See* § 1.368–1(b). The purpose of the continuity requirements is to ensure that reorganizations are limited to readjustments of continuing interests in property under modified corporate form and to prevent transactions that resemble sales from qualifying for nonrecognition of gain or loss available to corporate reorganizations. § 1.368–1(d)(1) and (e)(1); *see also LeTulle* v. *Scofield,* 308 U.S. 415 (1940); *Helvering* v. *Minnesota Tea Co.,* 296 U.S. 378 (1935); *Pinellas Ice & Cold Storage Co.* v. *Commissioner,* 287 U.S. 462 (1933).

Despite the general rule, the courts and the Service have taken the position that the continuity of interest and continuity of business enterprise requirements need not be satisfied for a transaction to qualify as an E reorganization. *See Hickok* v. *Commissioner,* 32 T.C. 80 (1959); Rev. Rul. 82–34 (1982–1 C.B. 59); Rev. Rul. 77–415 (1977–2 C.B. 311). In Revenue Rulings 77–415 and 82–34, the IRS reasoned that the continuity of interest and continuity of business enterprise requirements are necessary in an acquisitive reorganization to ensure that the transaction does not involve an otherwise taxable transfer of stock or assets, but that they are not necessary when the transaction involves only a single corporation.

Although an F reorganization may involve an actual or deemed transfer of assets from one corporation to another, such a transaction effectively involves only one corporation. In this way, an F reorganization is much like an E