

## The Regulatory Flexibility Act and Executive Order 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

### Drafting Information

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

**Tom Ridge,**

*Secretary, Department of Homeland Security.*  
[FR Doc. 04-18514 Filed 8-12-04; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-116265-04]

RIN 1545-BD25

#### Additional Rules for Exchanges of Personal Property Under Section 1031(a)

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations replacing the use of the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS) for determining what properties are of a like class for purposes of section 1031 of the Internal Revenue Code (Code). The text of those temporary regulations

also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 12, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-116265-04), 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-116265-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS and REG-116265-04).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, J. Peter Baumgarten, 202-622-4920; concerning submissions of comments and/or requests for a public hearing, Guy Traynor, 202-622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 1031(a)(1). The temporary regulations substitute NAICS classification codes for the SIC classification codes in the regulatory text and permit the use of NAICS codes for determining product classes, and therefore property of like kind, of depreciable tangible personal property exchanged under section 1031. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

#### 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, and, because the 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on its impact.

#### Comments and Requests for a Public Hearing

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

#### Drafting Information

The principal author of these regulations is J. Peter Baumgarten, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department 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 for part 1 continues to read, in part, as follows:

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

**Par. 2.** In § 1.1031(a)-2, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) are revised to read as follows:

#### § 1.1031(a)-2 Additional rules for exchanges of personal property.

[The text of proposed § 1.1031(a)-2, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) is the same as the text of § 1.1031(a)-2T, paragraphs (b)(3) through (b)(6), and *Example 3* and *Example 4* of paragraph (b)(7) published elsewhere in this issue of the **Federal Register**.]

#### § 1.1031(j)-1 [Amended]

**Par. 3.** Section 1.1031(j)-1 is amended by removing the language "(SIC Code

3531” in *Example 3(ii)(C)* and *Example 5(i)* of paragraph (d) and adding the language “(NAICS code 333120)” in its place.

**Linda M. Kroening,**

*Acting Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG–149524–03]

RIN 1545–BC66

#### LIFO Recapture Under Section 1363(d)

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations regarding LIFO recapture by corporations converting from C corporations to S corporations. The purpose of the proposed regulations is to provide guidance on the LIFO recapture requirement when the corporation holds inventory accounted for under the last-in, first-out (“LIFO”) method (LIFO inventory) indirectly through a partnership. The proposed regulations affect C corporations that own interests in partnerships holding LIFO inventory and that elect to be taxed as S corporations or that transfer such partnership interests to S corporations in nonrecognition transactions. The proposed regulations also affect S corporations receiving such partnership interests from C corporations in nonrecognition transactions.

**DATES:** Written or electronic comments must be received by November 12, 2004. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Wednesday, December 8, 2004, must be received by Wednesday, November 17, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–149524–03), 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–149524–03), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or submitted electronically via the IRS Internet site

at: <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS and REG–149524–03).

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Pietro Canestrelli, (202) 622–3060, or Martin Schäffer, (202) 622–3070; concerning submissions, Robin Jones, (202) 622–7180 (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 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 can 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 services to provide information.

The collection of information in this proposed regulation is in § 1.1363–2(e)(3). This information is required to inform the IRS of partnerships electing to increase the basis of inventory to reflect any amount included in a partner’s income under section 1363(d). Thus, the collection of information is required to obtain a benefit. The likely respondents are businesses or other for-profit institutions.

The burden for the collection of information in § 1.1363–2(e)(3) is

reflected on Form 1065, “Partnership Return of Income”.

The estimated burden for the collection of information in § 1.1363–2(e)(3) is as follows:

*Estimated total annual reporting burden:* 200 hours.

The estimated annual burden per respondent varies from 1 to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

*Estimated number of respondents:* 100.

*Estimated annual 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 the collection of information displays a valid OMB 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

This document contains proposed amendments to 26 CFR part 1 under section 1363(d) of the Internal Revenue Code (Code). Section 1363(d)(1) provides that a C corporation that owns LIFO inventory and that elects under section 1362(a) to be taxed as an S corporation must include in its gross income for its final tax year as a C corporation the LIFO recapture amount. Under section 1363(d)(3), the LIFO recapture amount is the excess of the inventory amount of the inventory using the first-in, first-out (FIFO) method (the FIFO value) over the inventory amount of the inventory using the LIFO method (the LIFO value) at the close of the corporation’s final tax year as a C corporation (essentially, the amount of income the corporation has deferred by using the LIFO method rather than the FIFO method).

Final regulations (TD 8567) under section 1363(d) were published in the **Federal Register** on October 7, 1994 (59 FR 51105) to describe the recapture of LIFO benefits when a C corporation that owns LIFO inventory elects to become an S corporation or transfers LIFO inventory to an S corporation in a nonrecognition transaction. The final regulations do not explicitly address the indirect ownership of inventory through a partnership. These proposed regulations provide guidance for situations in which a C corporation that owns LIFO inventory through a