''healthy.'' This action is being taken in response to a request for more time to submit comments to FDA.

DATES: Submit written or electronic comments on the proposed rule by July 5, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Constance B. Henry, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 02740–3835, 301–436–1450.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 20, 2003 (68 FR 8163), FDA published a proposed rule that, if finalized, would amend the regulation for sodium levels for foods that use the nutrient content claim ''healthy.'' The agency proposed that a previously established, but not yet implemented, more restrictive second-tier sodium level would be permitted to take effect as a criterion that individual foods must meet to qualify to bear the term ''healthy.'' The agency proposed to retain the current first-tier sodium levels for meal and main dish products because implementing the more restrictive second-tier sodium level could result in the substantial elimination from the marketplace of meal and main dish products bearing the claim ''healthy.''

In the February 20, 2003, proposed rule, FDA announced that the time period for public comment would be 75 days from the date of the publication in the **Federal Register**. On April 9, 2003, FDA received a request to allow an additional 60 days for interested persons to comment. In the requester's view, the time period of 75 days was insufficient to respond fully to FDA's multiple requests for comments and analyses and to enable all potential respondents adequate time to conduct the research necessary to provide complete scientific responses to questions posed in the proposed rule.

FDA believes that an extension of the comment period is appropriate, given the variety of issues raised by the proposed rule. Therefore, FDA is extending the comment period for an additional 60 days, until July 5, 2003. This extension will provide the public with a total of 135 days to submit comments.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding the proposal. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket numbers found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11272 Filed 5–2–03; 11:12 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100818–01]

RIN 1545–AY74

Liabilities Assumed in Certain Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The IRS and Treasury are considering publishing a notice of proposed rulemaking proposing rules regarding the amount of a liability a transferee of property is treated as assuming in connection with a transfer of property and certain tax consequences that result from the transferee's assumption of such a liability. This document describes and explains the issues that the IRS and Treasury are considering addressing in the notice of proposed rulemaking and the rules that the IRS and Treasury might propose to address some of these issues. This document also invites comments regarding these issues and rules.

DATES: Written or electronic comments must be received by August 4, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–100818–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:PA:RU (REG–100818–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposals, please contact Douglas Bates, (202) 622–7550 (not a toll-free number). Concerning submissions, please contact Treena Garrett, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Sections 357(d) and 362(d) of the Internal Revenue Code (Code) were enacted as part of the Miscellaneous Trade and Technical Corrections Act of 1999 (Public Law 106–36) and are effective for transfers after October 18, 1998. Section 357(d) provides rules for determining the amount of liability treated as assumed for purposes of sections 357, 358(d), 358(h), 362(d), 368(a)(1)(C), and 368(a)(2)(B). Section 357(d) was enacted to clarify the amount of liability treated as assumed where multiple assets secure a single liability and some, but not all, of those assets are transferred to a transferee corporation. Section 362(d) was enacted to clarify and limit the amount of the transferee's basis in the transferred property in certain cases. The legislative history of sections 357(d) and 362(d) indicates that Congress was concerned that if multiple transferees were treated as assuming the same liability, taxpayers might assert that the basis of multiple assets reflects the assumption of the same liability, resulting in assets having a basis in excess of their value and, thus, excessive depreciation deductions and mismeasurement of income. Section 357(d) was intended to eliminate the uncertainty of the tax treatment for such liabilities and to prescribe the tax treatment of such liabilities in a manner that better reflects the underlying economics of the transfer. The legislative history of section 357(d) also reflects that Congress intended to eliminate the distinction between the assumption of a liability and the acquisition of an asset that is subject to a liability. *See* S. Rep. No. 106–2 at 75 (1999).

Section 357(d)(1)(A) provides that, except as provided in regulations, a recourse liability will be treated as assumed if the transferee has agreed, and is expected, to satisfy it, regardless of whether the transferor is relieved of the liability. In addition, section 357(d)(1)(B) provides that a nonrecourse liability is treated as assumed by the

transferee of any asset subject to such liability. Section 357(d)(2), however, reduces the amount of nonrecourse liability treated as assumed pursuant to section 357(d)(1)(B) by the lesser of (1) the amount of such liability that the owner of assets not transferred to the transferee and also subject to such liability has agreed, and is expected, to satisfy or (2) the fair market value of such other assets (determined without regard to section 7701(g)). Section 357(d)(3) directs the Secretary to prescribe such regulations as may be necessary to carry out the purposes of sections 357(d) and 362(d), and to prescribe regulations providing that the manner in which a liability is treated as assumed under section 357(d) is applied, where appropriate, elsewhere in the Code. The rules of section 357(d) apply to determine the amount of liability treated as assumed for purposes of not only those Code provisions listed in section 357(d), but also certain other Code provisions, including sections 584 and 1031.

Section 362(d)(1) provides that in no event will the basis of any property be increased under section 362(a) or (b) above the fair market value of such property (determined without regard to section 7701(g)) by reason of any gain recognized to the transferor as a result of the assumption of a liability. Section 362(d)(2) provides that, except as provided in regulations, if gain is recognized to the transferor as a result of an assumption of a nonrecourse liability by a transferee which is also secured by assets not transferred to such transferee and no person is subject to tax under the Code on such gain, then, for purposes of determining basis under section 362(a) and (b), the amount of gain recognized by the transferor as a result of the assumption of the liability will be determined as if the liability assumed by the transferee equaled such transferee's ratable portion of such liability determined on the basis of the relative fair market values (determined without regard to section 7701(g)) of all of the assets subject to such liability.

Special Analyses

It has been determined that this advance notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Request for Comments

The IRS and Treasury have been studying these and other rules governing the amount of a liability a transferee of property is treated as assuming in connection with a transfer of property. The IRS and Treasury are concerned that some of these rules do not always produce appropriate results and that it might be desirable to modify certain rules by regulation. The following sections describe and explain the issues the IRS and Treasury are studying in this regard. In addition, they describe and explain the rules the IRS and Treasury are considering proposing in a notice of proposed rulemaking.

A. Assumptions of Nonrecourse Liabilities Generally

Section 357(d) sets forth one set of criteria that is applied to determine whether a transferee is treated as assuming a recourse liability and a different set of criteria that is applied to determine whether a transferee is treated as assuming a nonrecourse liability. The statute's distinction between the assumption of recourse and nonrecourse liabilities appears to be based on the premise that in the case of recourse liabilities, the parties' agreement and expectation regarding the satisfaction of the liability is a reliable predictor of which party will bear the burden of the liability. In the case of nonrecourse liabilities, the statute presumes that the transferee of assets subject to the liability assumes the entire liability. That amount, however, is reduced by the amount that an owner of other assets subject to that liability has agreed, and is expected, to satisfy, but only up to the amount of the fair market value of the assets that are subject to such liability that are owned by such other owner.

Section 357(d)(1)(B) is consistent with the principles of *Crane* v. *Commissioner,* 331 U.S. 1 (1947), and *Tufts* v. *Commissioner,* 461 U.S. 300 (1983). Section 357(d)(2) is consistent with the principle that a party other than the transferee will be responsible for the satisfaction of a nonrecourse liability only to the extent of the fair market value of the property that it owns that is subject to that liability.

The rules that apply to nonrecourse liabilities raise a number of issues that the IRS and Treasury are considering. First, the IRS and Treasury are considering whether the presumption that a transferee of assets subject to a nonrecourse liability is treated as assuming the entire nonrecourse liability absent an agreement is appropriate. Second, the IRS and Treasury are considering whether agreements between the transferor and the transferee regarding the satisfaction of nonrecourse liabilities, other than the agreements described in section 357(d)(2), should be respected. Finally, the IRS and Treasury are considering whether the rules regarding the amount of a nonrecourse liability treated as assumed by a transferee should be based solely on the agreement of the parties and their expectations as to which party will satisfy the nonrecourse liability. Central to these last two issues is the question of whether the rules that apply to assumptions of nonrecourse liabilities should more closely conform to those that apply to assumptions of recourse liabilities. The following sections describe these issues more fully.

1. Amount of Nonrecourse Liability Assumed Absent an Agreement

As described above, pursuant to section 357(d)(1)(B), where some (but not all) of the assets that secure a nonrecourse liability are transferred to a transferee, and the owner of other assets that are subject to such liability does not agree, or agrees but is not expected, to satisfy any of the liability, the transferee is treated as assuming the entire amount of the liability. For example, suppose P owns Asset A, with a basis of $0 and a value of $100, and Asset B, with a basis of $0 and a value of $400, both of which secure a nonrecourse liability in the amount of $500. P also owns Asset C with a basis of $0 and a value of $500. P transfers Asset A and Asset C to S, a newly formed corporation, in exchange for 100 percent of the stock of S in a transfer to which section 351 applies. P and S have no agreement regarding the satisfaction of the nonrecourse liability to which Asset A and Asset B are subject. Pursuant to section 357(d)(1)(B), S is treated as assuming the entire nonrecourse liability. As a result, P recognizes gain in the amount of $500 pursuant to section 357(c).

The IRS and Treasury are concerned that treating S as assuming the entire $500 of the nonrecourse liability in this case does not reflect the underlying economics of the transfer of property. That is, suppose P defaults on the nonrecourse liability and the lender moves to foreclose on Asset A. Absent compensation from P, S may have no incentive to satisfy more than $100 of the nonrecourse liability (either by surrendering Asset A to the lender or by paying the lender $100 in exchange for the release of Asset A from the liability). To address these cases, the IRS and Treasury are considering adopting a rule that would modify the rule of section 357(d)(1)(B) such that, in certain cases where the transferor and the transferee have no agreement regarding the satisfaction of a nonrecourse liability, the transferee will not be treated as assuming the entire amount of the nonrecourse liability. A proposed rule might provide that if one or more of the

assets that secure a nonrecourse liability are transferred to a transferee, then the transferee would be treated as assuming a *pro rata* amount of such nonrecourse liability that is a liability of the transferor, determined on the basis of the fair market value of those assets that secure the liability that are transferred to the transferee as compared to the total fair market value of all of the assets that secure the liability that are owned by the transferor immediately before the transfer. The IRS and Treasury invite comments regarding whether the rule of section 357(d)(1)(B) should be modified by regulation and whether the rule described above should be proposed.

2. Agreements to Satisfy Nonrecourse Liabilities

a. Agreement by the Transferee Regarding Satisfaction of a Nonrecourse Liability in the Absence of a Transfer of Assets Subject to That Liability

Section 357(d) contemplates that a transferee may be treated as assuming all or a portion of a nonrecourse liability only if assets that are subject to such nonrecourse liability are transferred to it. For example, suppose P owns Asset A, with a basis of $0 and a value of $100, and Asset B, with a basis of $0 and a value of $400. Asset A is subject to a nonrecourse liability in the amount of $50. P transfers Asset B to S, a newly formed corporation, in exchange for 100 percent of the stock of S and S's agreement with P to satisfy the nonrecourse liability to which Asset A is subject. For purposes of section 357(d), it appears that S is not treated as assuming the $50 nonrecourse liability.

The IRS and Treasury are concerned that there may not be a sufficient distinction between recourse and nonrecourse liabilities to warrant treating a transferee as assuming a nonrecourse liability for purposes of section 357(d) only if assets subject to that liability are transferred to it. Accordingly, the IRS and Treasury are considering whether a transferee that agrees, and is expected, to satisfy all or a portion of a nonrecourse liability should be treated as assuming the nonrecourse liability to the extent of such agreement, even if no assets that are subject to such liability are transferred to the transferee. The IRS and Treasury request comments on this matter.

b. Effect of Agreement by Owner of Nontransferred Property

As described above, pursuant to section 357(d)(2), the amount of the nonrecourse liability that is treated as assumed pursuant to section 357(d)(1)(B) by a transferee of assets subject to the nonrecourse liability is reduced by the lesser of (i) the amount of such liability that the owner of other assets that are subject to such liability but not transferred to the transferee has agreed, and is expected, to satisfy or (ii) the fair market value of such other assets (determined without regard to section 7701(g)). In certain circumstances, the limitation of section 357(d)(2) effectively permits the amount of the nonrecourse liability treated as assumed by the transferee to be reduced only to the extent of the value of other assets subject to the nonrecourse liability, even where the owner of such assets agrees, and is expected, to satisfy an amount of the liability in excess of such value.

For example, suppose P owns Asset A, with a basis of $0 and a value of $100, and Asset B, with a basis of $0 and a value of $400, both of which secure a nonrecourse liability in the amount of $250. P also has $600 in cash. P transfers Asset B to S, a newly formed corporation, in exchange for 100 percent of the stock of S in a transfer to which section 351 applies. P agrees with S, and is expected, to satisfy the entire $250 nonrecourse liability. Pursuant to section 357(d)(1)(B), S is treated as assuming the entire $250 of the nonrecourse liability. Pursuant to section 357(d)(2), however, this amount is reduced by $100, the lesser of the amount of the liability that P has agreed, and is expected, to satisfy ($250) and the fair market value of Asset A ($100). Accordingly, S is treated as assuming $150 of the nonrecourse liability and P recognizes gain in the amount of $150 pursuant to section 357(c). In this case, given that P is expected to satisfy the entire $250 of the nonrecourse liability, the IRS and Treasury are considering whether it is appropriate to treat S as assuming no amount of the nonrecourse liability. In particular, the IRS and Treasury are considering proposing a rule that modifies the rule in section 357(d)(2) such that the amount of the nonrecourse liability a transferee is treated as assuming is reduced to reflect the amount another person has agreed, and is expected, to satisfy, even if such amount is in excess of the fair market value of the assets subject to such liability that such person owns immediately after the transfer. The IRS and Treasury, however, are concerned regarding whether such a rule is appropriate where the nonrecourse liability exceeds the value of the assets securing it.

B. Subsequent Transfers of Property Subject to Nonrecourse Liabilities

A transferee of property is treated as assuming all or a portion of a recourse liability if it has agreed, and is expected, to satisfy that liability (or portion). That treatment is not conditioned on any arrangement between the transferee and the original lender; it can be based entirely on an arrangement between the transferor and transferee of the property. The implicit premise underlying this treatment is that the transferee's agreement to be personally liable to the transferor is equivalent to the transferor's agreement to be personally liable to the original lender. This recourse justifies treating the transferee as having assumed the recourse liability. (Conversely, the transferee of property securing a recourse liability will not be treated as assuming the liability without an agreement.)

As described above, the IRS and Treasury are considering applying standards similar to those that apply for purposes of determining whether a transferee of property has assumed a recourse liability to determine whether a transferee of property has assumed a nonrecourse liability where the transferee agrees to satisfy all or a portion of the liability. Such an agreement might create the same level of recourse against the transferee as would an agreement to assume an actual recourse liability. In that case, if property securing the debt is transferred again, the IRS and Treasury are considering whether the amount treated as assumed by the subsequent transferee should be determined with reference to the rules for nonrecourse liabilities (because the original lender's rights continue to be nonrecourse) or for recourse liabilities (because the first transferee agreed, and was expected, to satisfy the liability).

For example, suppose P owns Asset A, with a value of $50, and Asset B, with a value of $100, both of which secure a nonrecourse liability in the amount of $100. In Year 1, P transfers Asset A to S1, a newly formed corporation, in exchange for 100 percent of the stock of S1 in a transfer to which section 351 applies. S1 agrees with P, and is expected, to satisfy $20 of the nonrecourse liability. In addition, P agrees to indemnify S1 to the extent that it has losses in excess of $20 that are attributable to the nonrecourse liability. In Year 2, S1 transfers Asset A to S2, a newly formed corporation, in exchange for 100 percent of the stock of S2 in a transfer to which section 351 applies. S1 and S2 have no agreement regarding the

satisfaction of the nonrecourse liability to which Asset A is subject.

The IRS and Treasury are considering two alternatives for determining the amount of liability S2 is treated as assuming upon the subsequent transfer of Asset A following S1's agreement with P regarding the satisfaction of the liability. Under the first alternative, the $20 of the nonrecourse liability assumed by S1 would be treated as though it were a recourse liability of S1, and thus S2 would be treated as assuming no portion of the liability in accordance with section 357(d)(1)(A). Under the second alternative, the $20 of the nonrecourse liability assumed by S1 would be treated as a nonrecourse liability of S1, and thus S2 would be treated as assuming $20 of the liability in accordance with section 357(d)(1)(B). The IRS and Treasury request comments regarding whether the amount of liability (if any) assumed by S2 should be determined with reference to the rules pertaining to assumptions of nonrecourse liabilities or, given S1's agreement with P regarding the satisfaction of the liability, with reference to the rules pertaining to assumptions of recourse liabilities.

The IRS and Treasury also request comments regarding the subsequent treatment of nonrecourse liabilities that are treated as assumed by a transferee where the transferee has not agreed to assume any portion of the nonrecourse liability but rather is treated as assuming all or a portion of the nonrecourse liability pursuant to section 357(d)(1)(B) or a substitute rule that is adopted by regulation.

C. Identifying the Amount of the Agreement

1. Transferee at Risk in Excess of Amount It Agreed To Satisfy

The IRS and Treasury are concerned that, where the transferee has agreed to satisfy an amount of a nonrecourse liability that is less than the lesser of (i) the total amount of the nonrecourse liability that is a liability of the transferor, or (ii) the fair market value of the assets that are subject to the nonrecourse liability that are owned by such transferee immediately after the transfer, that agreement may not reflect the amount that the transferee is expected to satisfy, particularly where neither the transferor nor another person has agreed to protect the transferee from liability for any amount of the liability in excess of the amount it has agreed to satisfy. For example, suppose P owns Asset A, with a basis of $0 and a value of $100, and Asset B, with a basis of $0 and a value of $400, both of which secure a nonrecourse liability in the amount of $500. P transfers Asset A to S, a newly formed corporation, in exchange for 100 percent of the stock of S in a transfer to which section 351 applies. S agrees with P to satisfy $80 of the nonrecourse liability but S's agreement with P does not give S the right to seek indemnification from P in the event that S is required to satisfy more than $80 of the liability. Accordingly, if the lender of the nonrecourse liability forecloses on Asset A immediately after the transfer, S will satisfy $100 rather than $80 of the nonrecourse liability.

The IRS and Treasury request comments as to the proper approach to address this situation. One possible approach might be to respect the transferee's agreement to the extent of $80 and to treat the transferee as assuming the additional amount of the liability, if any, that it is expected to satisfy based on the facts and circumstances. Another possible approach is to treat the transferor and the transferee as having no agreement regarding the extent to which the transferee will satisfy the liability.

2. Agreement To Satisfy in Excess of Satisfaction Expectations

The IRS and Treasury recognize that, in certain cases, a transferee may agree to satisfy an amount of a nonrecourse liability that is greater than the amount of such liability that it, in fact, is expected to satisfy. For example, a transferor of assets subject to a nonrecourse liability may require more than one transferee to agree to satisfy the same liability so as to ensure that the transferor ultimately will not incur any loss resulting from the liability. Nonetheless, as described above, the legislative history of section 357 reflects that Congress intended that where more than one person agrees to satisfy a liability or portion thereof, only one would be treated as expected to satisfy the liability or portion thereof. The IRS and Treasury are considering proposing a rule that would provide that, if the transferee has agreed to satisfy an amount of a liability that is greater than the amount that it is expected to satisfy, the transferee will be treated as having agreed to satisfy the amount of such liability that it is expected to satisfy, provided that the transferor, the transferee, and each person related to the transferor and transferee within the meaning of sections 267(b) and 707(b) treat the transferee as having agreed to satisfy the amount of the liability that it is expected to satisfy. If this condition were not satisfied, the transferor and the transferee might be treated as having no agreement regarding the extent to which the transferee will satisfy the liability.

D. Accounting for Liabilities

In furtherance of the legislative intent that all or a portion of a liability be treated as a liability of only one person, the IRS and Treasury are considering proposing two rules. The first rule would provide that the amount of a liability treated as assumed by a transferee from a transferor will not thereafter be treated as a liability of the transferor. The second rule would provide that a transferee may not be treated as assuming from a transferor an amount of liabilities greater than the amount of the liabilities of the transferor. The following example illustrates the operation of these two rules.

Suppose P owns Asset A, with a basis of $0 and a value of $100, and Asset B, with a basis of $0 and a value of $400, both of which secure a nonrecourse liability in the amount of $400. P also has $600 in cash. In Year 1, P transfers Asset A to S1, a newly formed corporation, in exchange for 100 percent of the stock of S1 in a transfer to which section 351 applies. P agrees, and is expected, to satisfy $350 of the nonrecourse liability and agrees to indemnify S1 to the extent that it has losses in excess of $50 that are attributable to the nonrecourse liability. In Year 2, P transfers Asset B to S2, a newly formed corporation, in exchange for 100 percent of the stock of S2 in a transfer to which section 351 applies. At that time, Asset A and Asset B are subject to the nonrecourse liability and the amount of the nonrecourse liability remains $400. P and S2 have no agreement regarding the satisfaction of the nonrecourse liability. Assume that the presumption of section 357(d)(1)(B) that the transferee assumes the entire nonrecourse liability to which the property received is subject is not modified by regulation.

Pursuant to section 357(d)(1)(B), S1 would be treated as assuming the entire $400 of the nonrecourse liability. That amount, however, would be reduced by $350 to $50 pursuant to section 357(d)(2). Pursuant to the first rule described above, immediately after the Year 1 transfer to S1, $50 of the nonrecourse liability would no longer be treated as a liability of P as a result of S1's assumption of that amount. Pursuant to the second rule described above, even though Asset B may be subject to the $400 nonrecourse liability for purposes of state law, S2 cannot be treated as assuming more than $350 of the nonrecourse liability, the amount of the nonrecourse liability that is treated

as a liability of P at the time of the Year 2 transfer. In this example, because P and S2 had no agreement regarding the satisfaction of the nonrecourse liability, S2 would be treated as assuming $350 of the nonrecourse liability.

E. Requirements of an Agreement To Satisfy a Liability

The IRS and Treasury are considering whether proposed rules should set forth the requirements of an agreement between the transferor and the transferee regarding which party will satisfy a liability, and how such an agreement must be evidenced.

F. Acts Constituting Satisfaction of a Liability

The IRS and Treasury are also considering whether proposed rules should provide that, for purposes of determining whether a person is expected to satisfy a liability, such person's expected payment (of money or property, including property securing the liability) to the creditor or to a person indemnified with respect to the liability will be considered. The IRS and Treasury request comments regarding whether an agreement to indemnify a person with respect to a liability, and any other agreement, should be treated as an agreement to satisfy a liability.

G. Collateral Consequences of Satisfaction of a Liability

The IRS and Treasury believe that, if a liability is satisfied by a person other than the person that the rules of section 357(d) treat as having assumed the liability, the consequences of such satisfaction are determined under general Federal income tax principles. For example, the satisfaction may be treated as a deemed payment that is characterized as a capital contribution or a distribution. The IRS and Treasury are considering proposing regulations confirming this result in the context of section 357(d).

H. Application of Principles of Section 357(d) Regulations in Other Contexts

As described above, section 357(d) was designed to address the amount of a nonrecourse liability that is treated as assumed by a transferee of property when multiple properties secure the liability, but the transferor either retains or transfers to other transferees some of the property securing the liability. The regulations under section 1001 provide that the amount realized in connection with a sale or other disposition of property includes the amount of liabilities from which the transferor is discharged as a result of the sale or disposition. Section 1.1001–2(a)(1). The IRS and Treasury request comments regarding whether any differences in the amount of liabilities treated as assumed are appropriate for exchanges under section 1001 as opposed to exchanges under sections 351 and 361, or, alternatively, whether the rules adopted under section 357 should also apply for purposes of computing amount realized in transactions governed by section 1001.

In addition, section 7701(g) provides that, for purposes of subtitle A of the Code, in determining the amount of gain or loss with respect to any property, the fair market value of such property is treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject. Comments are requested regarding whether the rule of section 7701(g) should be consistent with those of section 357(d) and the regulations thereunder.

Furthermore, as described above, the rules of section 357(d) also apply to certain Code provisions that are not listed in section 357(d), including section 1031, which permits the nonrecognition of gain or loss on certain exchanges of property of like kind. The IRS and Treasury request comments concerning whether the rules described above should also apply for purposes of these other provisions that specifically invoke section 357(d) as well as other provisions that do not specifically invoke section 357(d).

Finally, certain provisions of the Code, including sections 304 and 336, continue to distinguish between a liability assumed and a liability to which property is subject. Given that the legislative history of section 357 reflects that Congress intended to eliminate the distinction between the assumption of a liability and the acquisition of an asset subject to a liability, the IRS and Treasury are considering whether the proposed rules should provide that, for purposes of sections 304 and 336, and certain other statutory provisions, property is transferred subject to a liability if and only if the liability is assumed under the rules proposed under section 357.

I. The Basis of Property Received in Exchange for the Assumption of a Liability

At this time, the IRS and Treasury are not considering modifying section 362(d) or displacing general Federal income tax principles that apply for purposes of determining basis under section 1012, including those principles set forth in *Estate of Franklin* v. *Commissioner*, 544 F.2d 1045 (9th Cir. 1976). Nonetheless, the IRS and Treasury invite comments regarding the extent to which those rules or principles should be modified to reflect the proposal of rules governing the amount of liability treated as assumed in connection with a transfer of property.

Dated: February 24, 2003.

William D. Alexander,

Associate Chief Counsel (Corporate).

[FR Doc. 03–11212 Filed 5–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–012]

RIN 1625–AA00 (Formerly RIN 2115–AA97)

Safety and Security Zones; New London Harbor, CT—Security Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the boundaries of the security zone in the waters adjacent to the General Dynamics Electric Boat Corporation (EB) facility in Groton, CT. The proposed rule is necessary to better protect the facility, U.S. Naval Vessels and other vessels located at the facility, material storage areas, and adjacent residential and industrial areas from sabotage or other subversive acts, accidents or incidents of a similar nature, and to specify the horizontal datum employed to describe the geographic coordinates that establish zone boundaries. This security zone would exclude all vessels from operating within the prescribed security zone without first obtaining authorization from the Captain of the Port, Long Island Sound.

DATES: Comments and related material must reach the Coast Guard on or before July 7, 2003.

ADDRESSES: You may mail comments and related material to Waterways Management, Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Coast Guard Group/MSO Long Island Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m.