

## Rev. Proc. 97-3

### SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 The purpose of this revenue procedure is to update Rev. Proc. 96-3, 1996-1 C.B. 456, as amplified and modified by subsequent revenue procedures, by providing a revised list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Domestic) and the Associate Chief Counsel (Employee Benefits and Exempt Organizations) relating to issues on which the Internal Revenue Service will not issue advance letter rulings or determination letters. For a list of areas under the jurisdiction of the Associate Chief Counsel (International) relating to international issues on which the Service will not issue advance letter rulings or determination letters, see Rev. Proc. 97-7, this Bulletin. For a list of areas under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) relating to issues, plans or plan amendments on which the Service will not issue letter rulings and determination letters, see, respectively, section 8 of Rev. Proc. 97-4, this Bulletin, and section 3.02 of Rev. Proc. 97-6, this Bulletin.

#### .02 Changes

(1) Old section 3.01(15), dealing with § 274, has been updated to reference Rev. Procs. 96-28, 1996-1 C.B. 686, and 96-64, 1996-53 I.R.B. 52.

(2) Old section 3.01(23), dealing with corporate business purpose under § 355(b), has been deleted. See Rev. Proc. 96-30, 1996-1 C.B. 696.

(3) Old sections 3.01(22) and 3.01(25), dealing with §§ 351 and 368(a)(1)(B), now include a sentence emphasizing that these no-rule provisions apply only to transactions involving the formation of a holding company.

(4) New section 3.01(23), dealing with § 368, has been moved to section 3 from the section 5 under study area to reflect the Service's unwillingness to rule on certain combining transactions. See Rev. Proc. 96-22, 1996-1 C.B. 662.

(5) Old sections 3.01(45) and 4.01(45), (46), and (47), dealing with § 7701, have been deleted to reflect the new provisions under § 301.7701-1, -2, and -3 of the regulations dealing with partnerships. See T.D. 8697.

(6) New section 4.01(32), dealing with § 355, has been added to reflect

the Service's unwillingness, in general, to rule where the gross assets of the active businesses constitute less than 5 percent of the fair market value of the corporation's total gross assets. See Rev. Proc. 96-43, 1996-35 I.R.B. 6.

(7) Old section 5.05, dealing with § 104, has been deleted from the under study no-rule area to indicate that the Service will rule as to whether certain amounts received are excludable from gross income under § 104(a)(2) in situations affected by *Commissioner v. Schleier*, 515 U.S. \_\_\_\_ (1995), 115 S.Ct. 2159. See Rev. Rul. 96-65, 1996-53 I.R.B. 5.

(8) New section 5.05, dealing with §§ 101, 761, and 7701, has been added to the under study no-rule area to indicate that, in certain situations where a life insurance policy is transferred to an unincorporated organization, the Service will not issue rulings: (i) as to whether the organization will be treated as a partnership under §§ 761 and 7701; and (ii) as to whether the transfer will be exempt from the transfer-for-value rules of § 101. See Rev. Proc. 96-12, 1996-1 C.B. 616.

(9) New section 5.06, dealing with § 101, has been added to the under study no-rule area to indicate that the Service will not issue rulings as to whether there has been a transfer for value for purposes of § 101(a) in certain situations involving a grantor and a trust. This no-rule area deals with certain aspects of transactions that fall under the existing no-rule area under section 5.21, dealing with § 671, and is added to advise taxpayers of the Service's long standing ruling practice that this § 671 no-rule area cannot be avoided by rephrasing the question so as to present it under § 101.

(10) New Section 5.09, dealing with § 115, has been added to the under study no-rule area to indicate that the Service will not issue rulings as to certain questions regarding plans or arrangements created by state statute for paying post-secondary education costs. See Rev. Proc. 96-34, 1996-1 C.B. 721.

(11) New section 5.17, dealing with § 355, has been added to the under study no-rule area to indicate that the Service will not issue rulings where there have been negotiations, agreements or arrangements with respect to transactions or events which, if treated as consummated before the distribution, would result in the distribution of stock or securities of a corporation which is not controlled by the distributing corpo-

ration (or, if stock is retained by the distributing corporation, in a distribution of an amount of stock not constituting control). See Rev. Proc. 96-39, 1996-33 I.R.B. 11.

(12) New section 5.20, dealing with § 457, has been added to the under study no-rule area to indicate that the Service will not issue rulings as to the tax effect of provisions under the Small Business Job Protection Act affecting plans described in § 457. Excluded from this no-rule area are rulings based on prior law. See Rev. Proc. 96-56, 1996-51 I.R.B. 11.

(13) Old section 6.01, dealing with § 442, has been revised by deleting a reference to Rev. Proc. 92-85, 1992-2 C.B. 490, and replacing it with a reference to § 301.9100 of the temporary Procedure and Administration Regulations.

(14) Old section 6.02, dealing with § 446, has been revised to include method of accounting changes for certain § 501(c) organizations complying with the provisions of SFAS 116. See Notice 96-30, 1996-1 C.B. 378. Also, this section has been updated by deleting references to Rev. Procs. 94-49, 1994-2 C.B. 705, 94-30, 1994-1 C.B. 621, 94-28, 1994-1 C.B. 61, 93-48, 1993-2 C.B. 580, and 91-49, 1991-2 C.B. 777.

### SECTION 2. BACKGROUND AND SCOPE OF APPLICATION

#### .01 Background

Whenever appropriate in the interest of sound tax administration, it is the policy of the Service to answer inquiries of individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions, prior to the filing of returns or reports that are required by the revenue laws.

There are, however, certain areas in which, because of the inherently factual nature of the problems involved, or for other reasons, the Service will not issue advance rulings or determination letters. These areas are set forth in four sections of this revenue procedure. Section 3 reflects those areas in which advance rulings and determinations will not be issued. Section 4 sets forth those areas in which they will not ordinarily be issued. "Not ordinarily" means that unique and compelling reasons must be demonstrated to justify the issuance of a ruling or determination letter. Those sections reflect a number of specific ques-

tions and problems as well as general areas. Section 5 lists specific areas for which the Service is temporarily not issuing advance rulings and determinations because those matters are under extensive study. Finally, section 6 of this revenue procedure lists specific areas where the Service will not ordinarily issue advance rulings because the Service has provided automatic approval procedures for these matters.

See Rev. Proc. 97-1, page 11, this Bulletin, particularly section 7 captioned "Under What Circumstances Does the Service Have Discretion to Issue Letter Rulings and Determination Letters?" for general instructions and other situations in which the Service will not or ordinarily will not issue letter rulings or determination letters.

With respect to the items listed, revenue rulings or revenue procedures may be published in the Internal Revenue Bulletin from time to time to provide general guidelines regarding the position of the Service.

Additions or deletions to this revenue procedure as well as restatements of items listed will be made by modification of this revenue procedure. Changes will be published as they occur throughout the year and will be incorporated annually in a new revenue procedure published as the third revenue procedure of the year. These lists should not be considered all-inclusive. Decisions not to rule on individual cases (as contrasted with those that present significant pattern issues) are not reported in this revenue procedure and will not be added to subsequent revisions.

#### .02 Scope of Application

This revenue procedure does not preclude the submission of requests for technical advice to the national office from the Office of a District Director of the Internal Revenue or a Chief, Appeals Office.

### **SECTION 3. AREAS IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED**

#### .01 Specific questions and problems.

(1) Section 79.—Group-Term Life Insurance Purchased for Employees.—Whether a group insurance plan for 10 or more employees qualifies as group-term insurance, if the amount of insurance is not computed under a formula that would meet the requirements of § 1.79-1(c)(2)(ii) of the Income Tax Regulations if the group consisted of fewer than 10 employees.

(2) Section 83.—Property Transferred in Connection with Performance of Services.—Whether a restriction constitutes a substantial risk of forfeiture, if the employee is a controlling shareholder. Also, whether a transfer has occurred, if the amount paid for the property involves a nonrecourse obligation.

(3) Section 105(h).—Amount Paid to Highly Compensated Individuals Under Discriminatory Self-Insured Medical Expense Reimbursement Plan.—Whether, following a determination that a self-insured medical expense reimbursement plan is discriminatory, that plan had previously made reasonable efforts to comply with tax anti-discrimination rules.

(4) Section 117.—Qualified Scholarships.—Whether an employer-related scholarship or fellowship grant is excludible from the employee's gross income, if there is no intermediary private foundation distributing the grants, as there was in Rev. Proc. 76-47, 1976-2 C.B. 670.

(5) Section 119.—Meals or Lodging Furnished for the Convenience of the Employer.—Whether the value of meals or lodging is excludible from gross income by an employee who is a controlling shareholder of the employer.

(6) Sections 121 and 1034.—One-Time Exclusion of Gain from Sale of Principal Residence by Individual Who Has Attained Age 55; Rollover of Gain on Sale of Principal Residence.—Whether property qualifies as the taxpayer's principal residence.

(7) Section 125.—Cafeteria Plans.—Whether amounts used to provide group-term life insurance under § 79, accident and health benefits under §§ 105 and 106, and dependent care assistance programs under § 129 are includible in the gross income of participants and considered "wages" for purposes of §§ 3401, 3121, and 3306 when the benefits are offered through a cafeteria plan.

(8) Section 162.—Trade or Business Expenses.—Whether compensation is reasonable in amount.

(9) Section 163.—Interest.—The income tax consequences of transactions involving "shared appreciation mortgage" (SAM) loans in which a taxpayer, borrowing money to purchase real property, pays a fixed rate of interest on the mortgage loan below the prevailing market rate and will also pay the lender a percentage of the appreciation in value of the real property upon termination of the mortgage. This applies to all SAM

arrangements where the loan proceeds are used for commercial or business activities, or where used to finance a personal residence, if the facts are not similar to those described in Rev. Rul. 83-51, 1983-1 C.B. 48. (Also §§ 61, 451, 461, 856, 1001, and 7701.)

(10) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a taxpayer who advances funds to a charitable organization and receives therefor a promissory note may deduct as contributions, in one taxable year or in each of several years, amounts forgiven by the taxpayer in each of several years by endorsement on the note.

(11) Section 213.—Medical, Dental, Etc., Expenses.—Whether a capital expenditure for an item that is ordinarily used for personal, living, or family purposes, such as a swimming pool, has as its primary purpose the medical care of the taxpayer or the taxpayer's spouse or dependent, or is related directly to such medical care.

(12) Section 264(b).—Certain Amounts Paid in Connection with Insurance Contracts.—Whether "substantially all" the premiums of a contract of insurance are paid within a period of 4 years from the date on which the contract is purchased. Also, whether an amount deposited is in payment of a "substantial number" of future premiums on such a contract.

(13) Section 264(c)(1).—Certain Amounts Paid in Connection with Insurance Contracts.—Whether § 264(c)(1) applies.

(14) Section 269.—Acquisitions Made to Evade or Avoid Income Tax.—Whether an acquisition is within the meaning of § 269.

(15) Section 274.—Disallowance of Certain Entertainment, Etc., Expenses.—Whether a taxpayer who is traveling away from home on business may, in lieu of substantiating the actual cost of meals, deduct a fixed per-day amount for meal expenses that differs from the amount prescribed in Rev. Proc. 89-67, 1989-2 C.B. 795 (prior to January 1, 1991), in Rev. Proc. 90-60, 1990-2 C.B. 651 (after December 31, 1990, and prior to March 1, 1992), in Rev. Proc. 92-17, 1992-1 C.B. 679 (on or after March 1, 1992, and prior to March 12, 1993), in Rev. Proc. 93-21, 1993-1 C.B. 529 (on or after March 12, 1993, and prior to January 1, 1994), in Rev. Proc. 93-50, 1993-2 C.B. 586 (on or after January 1, 1994, and prior to January 1, 1995), in Rev. Proc. 94-77, 1994-2 C.B. 825 (on or after January 1,

1995, and prior to April 1, 1996), in Rev. Proc. 96-28, 1996-1 C.B. 686 (on or after April 1, 1996, and prior to January 1, 1997), or in Rev. Proc. 96-64, 1996-53 I.R.B. 52 (on or after January 1, 1997).

(16) Section 302.—Distributions in Redemption of Stock.— Whether § 302(b) applies when the consideration given in redemption by a corporation consists entirely or partly of its notes payable, and the shareholder's stock is held in escrow or as security for payment of the notes with the possibility that the stock may or will be returned to the shareholder in the future, upon the happening of specific defaults by the corporation.

(17) Section 302.—Distributions in Redemption of Stock.— Whether § 302(b) applies when the consideration given in redemption by a corporation in exchange for a shareholder's stock consists entirely or partly of the corporation's promise to pay an amount based on, or contingent on, future earnings of the corporation, when the promise to pay is contingent on working capital being maintained at a certain level, or any other similar contingency.

(18) Section 302.—Distributions in Redemption of Stock.— Whether § 302(b) applies to a redemption of stock, if after the redemption the distributing corporation uses property that is owned by the shareholder from whom the stock is redeemed and the payments by the corporation for the use of the property are dependent upon the corporation's future earnings or are subordinate to the claims of the corporation's general creditors. Payments for the use of property will not be considered to be dependent upon future earnings merely because they are based on a fixed percentage of receipts or sales.

(19) Section 302.—Distributions in Redemption of Stock.— Whether the acquisition or disposition of stock described in § 302(c)(2)(B) has, or does not have, as one of its principal purposes the avoidance of federal income taxes within the meaning of that section, unless the facts and circumstances are materially identical to those set forth in Rev. Rul. 85-19, 1985-1 C.B. 94, Rev. Rul. 79-67, 1979-1 C.B. 128, Rev. Rul. 77-293, 1977-2 C.B. 91, Rev. Rul. 57-387, 1957-2 C.B. 225, Rev. Rul. 56-584, 1956-2 C.B. 179, or Rev. Rul. 56-556, 1956-2 C.B. 177.

(20) Section 302(b)(4) and (e).— Redemption from Noncorporate Shareholder in Partial Liquidation; Partial

Liquidation Defined.—The amount of working capital attributable to a business or portion of a business terminated that may be distributed in partial liquidation.

(21) Section 312.—Effect on Earnings and Profits.—The determination of the amount of earnings and profits of a corporation.

(22) Section 351.—Transfer to Corporation Controlled by Transferor.— Whether § 351 applies to an exchange of stock for stock in the formation of a holding company, and whether the taxpayer is subject to the consequences of qualification under that section (such as nonrecognition and basis consequences) that are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin. Transfers that do not involve the formation of a holding company are not subject to this provision.

For purposes of this provision, if such an exchange qualifies under both § 351 and another corporate restructuring provision and the other provision is not covered by this revenue procedure, the Service will treat any request for a qualification ruling under the other provision as a request for a qualification ruling under § 351. A taxpayer or the taxpayer's representative (as the Service deems appropriate) seeking a qualification ruling for such an exchange under any such other provision must, accordingly, state to the best of knowledge and belief that the exchange does not qualify under § 351.

The Service will not rule on the qualification of an exchange of stock under § 351, even if it is an integral part of a larger transaction that involves other issues upon which the Service will rule and it is impossible to determine the tax consequences of the larger transaction without making a determination with regard to the exchange of stock. However, in such event, the Service will rule on the tax consequences of the larger transaction, provided the taxpayer or the taxpayer's representative (as the Service deems appropriate) states to the best of knowledge and belief that the exchange will (or will not) qualify under § 351. If the Service issues a ruling on the larger transaction, the ruling will state that no opinion is expressed as to whether or not the exchange qualifies under § 351.

SUBISSUES: Additionally, the Service will have the discretion to rule on

significant subissues that must be resolved to determine whether a transaction that is in this no-rule area qualifies under § 351. However, the Service will only rule on these subissues if in the view of the Service they are significant and not clearly and adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

To obtain a ruling on a subissue, the taxpayer must explain the significance of the subissue, set forth the authorities most closely related to the subissue, and explain why the subissue is not resolved by the authorities. The Service will require the taxpayer or the taxpayer's representative (as the Service deems appropriate) to state to the best of knowledge and belief that the transaction will (or will not) qualify under § 351 if the Service rules as the taxpayer proposes on the subissue.

A taxpayer may seek a presubmission conference to determine whether a ruling on the subissue can be obtained under this section. See section 11.07 of Rev. Proc. 97-1. If the Service issues a ruling on a subissue, the ruling will state that no opinion is expressed as to whether the transaction in question qualifies under § 351.

COLLATERAL ISSUES: Although the Service will not rule on the consequences of qualification of an exchange of stock for stock in the formation of a holding company under § 351 if the consequences are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin, it will rule where the consequences of qualification are not adequately addressed by these authorities. To obtain a ruling on a collateral issue, the taxpayer or the taxpayer's representative (as the Service deems appropriate) must state to the best of knowledge and belief that the exchange qualifies under § 351, set forth the authorities most closely related to the collateral issue, and explain why the collateral issue is not resolved by these authorities. If the Service issues a ruling on a collateral issue, the ruling will state that no opinion is expressed as to whether the exchange in question qualifies under § 351.

The Service will also continue to rule on issues that arise in connection with an exchange of stock for stock in the

formation of a holding company but do not depend upon or affect qualification under § 351.

(23) Section 368.—Definitions Relating to Corporate Reorganizations.—The tax consequences under § 368 or other provisions of the Code with respect to a transaction in which one corporation owns stock in a second corporation, the first corporation is not an “80-percent distributee” of the second corporation under § 337(c), and the two corporations are combined.

(24) Section 368(a)(1)(A).—Definitions Relating to Corporate Reorganizations.—Whether a transaction constitutes a corporate reorganization within the meaning of § 368(a)(1)(A), including a transaction that qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(D) or § 368(a)(2)(E), and whether the taxpayer is subject to the consequences of qualification under that section (such as nonrecognition and basis consequences) that are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

For purposes of this provision, if a transaction qualifies under both § 368(a)(1)(A) and another corporate restructuring provision and the other provision is not covered by this revenue procedure, the Service will treat any request for a qualification ruling under the other provision as a request for a qualification ruling under § 368(a)(1)(A). A taxpayer or the taxpayer’s representative (as the Service deems appropriate) seeking a qualification ruling under any such other provision must, accordingly, state to the best of knowledge and belief that the transaction does not qualify under § 368(a)(1)(A). The Service will continue to rule on transactions that qualify under § 368(a)(1)(G), even if they are also defined in § 368(a)(1)(A).

The Service will not rule on the qualification of a reorganization under § 368(a)(1)(A), even if it is an integral part of a larger transaction that involves other issues upon which the Service will rule and it is impossible to determine the tax consequences of the larger transaction without determining the tax consequences of the reorganization. However, in such event, the Service will rule on the tax consequences of the larger transaction, provided the taxpayer or the taxpayer’s representative (as the Service deems appropriate) states to the best of

knowledge and belief that the reorganization will (or will not) qualify under § 368(a)(1)(A). If the Service issues a ruling on the larger transaction, the ruling will state that no opinion is expressed as to whether or not the reorganization qualifies under § 368(a)(1)(A). For example, the Service will not rule on whether a transaction constitutes a corporate reorganization within the meaning of § 368(a)(1)(A), even if the larger transaction also involves the issue of whether a prior distribution of stock in a subsidiary containing assets unwanted by the acquiring corporation qualifies under § 355. See Rev. Rul. 78–251, 1978–1 C.B. 89. However, in such event, if the taxpayer or the taxpayer’s representative (as the Service deems appropriate) states to the best of knowledge and belief that the merger qualifies under § 368(a)(1)(A), the Service will rule as to whether the prior stock distribution qualifies under § 355. Such ruling will state that no opinion is expressed as to whether or not the reorganization qualifies under § 368(a)(1)(A).

SUBISSUES: Additionally, the Service will have the discretion to rule on significant subissues that must be resolved to determine whether the transaction qualifies under § 368(a)(1)(A) (including transactions qualifying by reason of § 368(a)(2)(D) or § 368(a)(2)(E)). However, the Service will only rule on such subissues if in the view of the Service they are significant and not clearly and adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin. To obtain a ruling on such a subissue, the taxpayer must explain the significance of the subissue, set forth the authorities most closely related to the subissue, and explain why the subissue is not resolved by these authorities. The taxpayer or the taxpayer’s representative (as the Service deems appropriate) will also be required to state to the best of knowledge and belief that the transaction will (or will not) qualify under § 368(a)(1)(A), if the Service rules as the taxpayer proposes on the subissue.

A taxpayer may seek a presubmission conference to determine whether a ruling on the subissue can be obtained under this section. See section 11.07, Rev. Proc. 97–1. If the Service issues a ruling on a subissue, the ruling will state that no opinion is expressed as to

whether the transaction in question qualifies under § 368(a)(1)(A).

COLLATERAL ISSUES: Although the Service will not rule on the consequences of qualification as a reorganization under § 368(a)(1)(A) if the consequences are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin, it will rule where the consequences of qualification are not adequately addressed by these authorities. For example, the Service will issue a § 381(c)(4) ruling in connection with a § 368(a)(1)(A) reorganization. To obtain a ruling on a collateral issue, the taxpayer or the taxpayer’s representative (as the Service deems appropriate) must state to the best of knowledge and belief that the transaction qualifies under § 368(a)(1)(A), set forth the authorities most closely related to the collateral issue, and explain why the collateral issue is not resolved by these authorities. If the Service issues a ruling on a collateral issue, the ruling will state that no opinion is expressed as to whether the transaction in question qualifies under § 368(a)(1)(A).

The Service will also continue to rule on issues that arise in connection with a transaction under § 368(a)(1)(A) but do not depend upon or affect qualification under § 368(a)(1)(A).

(25) Section 368(a)(1)(B).—Definitions Relating to Corporate Reorganizations.—Whether the acquisition of stock in the formation of a holding company constitutes a corporate reorganization within the meaning of § 368(a)(1)(B), and whether the taxpayer is subject to the consequence of qualification under that section (such as nonrecognition and basis consequences) that are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin. Acquisitions of stock that do not involve the formation of a holding company are not subject to this provision.

For purposes of this provision, if such an acquisition of stock qualifies under both § 368(a)(1)(B) and another corporate restructuring provision, and the other provision is not covered by this revenue procedure, the Service will treat any request for a qualification ruling under the other provision as a request for a qualification ruling under § 368(a)(1)(B). A taxpayer or the taxpayer’s

representative (as the Service deems appropriate) seeking a qualification ruling for such an acquisition under any such other provision must, accordingly, state to the best of knowledge and belief that the acquisition does not qualify under § 368(a)(1)(B).

The Service will not rule on the qualification of an acquisition of stock under § 368(a)(1)(B), even if it is an integral part of a larger transaction that involves other issues upon which the Service will rule and it is impossible to determine the tax consequences of the larger transaction without determining the tax consequences of the acquisition. However, in such event, the Service will rule on the tax consequences of the larger transaction, provided the taxpayer or the taxpayer's representative (as the Service deems appropriate) states to the best of knowledge and belief that the acquisition will (or will not) qualify under § 368(a)(1)(B). If the Service issues a ruling on the larger transaction, the ruling will state that no opinion is expressed as to whether or not the acquisition qualifies under § 368(a)(1)(B).

**SUBISSUES:** Additionally, the Service will have the discretion to rule on significant subissues that must be resolved to determine whether a transaction that is in this no-rule area qualifies under § 368(a)(1)(B). However, the Service will only rule on these subissues if in the view of the Service they are significant and not clearly and adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin. To obtain a ruling on a subissue, the taxpayer must explain the significance of the subissue, set forth the authorities most closely related to the subissue, and explain why the subissue is not resolved by these authorities. The Service will require the taxpayer or the taxpayer's representative (as the Service deems appropriate) to state to the best of knowledge and belief that the acquisition will (or will not) qualify under § 368(a)(1)(B), if the Service rules as the taxpayer proposes on the subissue.

A taxpayer may seek a presubmission conference to determine whether a ruling on the subissue can be obtained under this section. See section 11.07, Rev. Proc. 97-1. If the Service issues a ruling on a subissue, the ruling will state

that no opinion is expressed on whether the acquisition in question qualifies under § 368(a)(1)(B).

**COLLATERAL ISSUES:** Although the Service will not rule on the consequence of qualification of an acquisition of stock in the formation of a holding company under § 368(a)(1)(B) if the consequences are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin, it will rule where the consequences of qualification are not adequately addressed by these authorities. To obtain a ruling on a collateral issue, the taxpayer or the taxpayer's representative (as the Service deems appropriate) must state to the best of knowledge and belief that the acquisition qualifies under § 368(a)(1)(B), set forth the authorities most closely related to the collateral issue, and explain why the collateral issue is not resolved by these authorities. If the Service issues a ruling on a collateral issue, the ruling will state that no opinion is expressed as to whether the acquisition in question qualifies under § 368(a)(1)(B).

The Service will also continue to rule on issues that arise in connection with an acquisition of stock in the formation of a holding company but do not depend upon or affect qualification under § 368(a)(1)(B).

(26) Section 368(a)(1)(B).—Definitions Relating to Corporate Reorganizations.—The acceptability of an estimation procedure or the acceptability of a specific sampling procedure to determine the basis of stock acquired by an acquiring corporation in a reorganization described in § 368(a)(1)(B).

(27) Section 368(a)(1)(E).—Definitions Relating to Corporate Reorganizations.—Whether a transaction constitutes a corporate recapitalization within the meaning of § 368(a)(1)(E) (or a transaction that also qualifies under § 1036) when either (i) the transaction involves a closely held corporation or (ii) the issues involved are substantially similar to those described in the following revenue rulings:

Rev. Rul. 82-34, 1982-1 C.B. 59 (continuity of business enterprise);

Rev. Rul. 77-479, 1977-2 C.B. 119 (continuity of shareholder interest);

Rev. Rul. 77-238, 1977-2 C.B. 115 (conversion of shares of one class of stock into shares of another class, as permitted by certificate of incorporation);

Rev. Rul. 74-269, 1974-1 C.B. 87 (major shareholder's exchange of common stock for preferred stock);

Rev. Rul. 56-654, 1956-2 C.B. 216 (corporate charter amended to provide preferred stock with increased redemption and liquidation value, where common and preferred stock held pro rata);

Rev. Rul. 55-112, 1955-1 C.B. 344 (common stock exchanged for preferred stock); and

Rev. Rul. 54-482, 1954-2 C.B. 148 (old common stock exchanged for new common stock).

The above no-ruling area does not apply, however, to any corporate recapitalization that is an integral part of a larger transaction, if it is impossible to determine the tax consequences of the larger transaction without making a determination with regard to the recapitalization.

(28) Section 368(a)(1)(F).—Definitions Relating to Corporate Reorganizations.—Whether a transaction constitutes a reorganization within the meaning of § 368(a)(1)(F), and whether the taxpayer is subject to the consequences of qualification under that section (such as nonrecognition and basis consequences) that are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

For purposes of this provision, if a transaction qualifies under both § 368(a)(1)(F) and another corporate restructuring provision, and the other provision is not covered by this revenue procedure, the Service will treat any request for a qualification ruling under the other provision as a request for a qualification ruling under § 368(a)(1)(F). A taxpayer or the taxpayer's representative (as the Service deems appropriate) seeking a qualification ruling under any such other provision must, accordingly, state to the best of knowledge and belief that the transaction does not qualify under § 368(a)(1)(F).

The Service will not rule on the qualification of a reorganization under § 368(a)(1)(F), even if it is an integral part of a larger transaction that involves other issues upon which the Service will rule and it is impossible to determine the tax consequences of the larger transaction without determining the tax consequences of the reorganization. However, in such event, the Service will rule on the tax consequences of the larger

transaction, provided the taxpayer or the taxpayer's representative (as the Service deems appropriate) states to the best of knowledge and belief that the reorganization will (or will not) qualify under § 368(a)(1)(F). If the Service issues a ruling on the larger transaction, the ruling will state that no opinion is expressed as to whether or not the reorganization qualifies under § 368(a)(1)(F).

**SUBISSUES:** Additionally, the Service will have the discretion to rule on significant subissues that must be resolved to determine whether a transaction that is in this no-rule area qualifies under § 368(a)(1)(F). However, the Service will only rule on such subissues if in the view of the Service they are significant and not clearly and adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin. To obtain a ruling on such a subissue, the taxpayer must explain the significance of the subissue, set forth the authorities most closely related to the subissue, and explain why the subissue is not resolved by these authorities. The Service will require the taxpayer or the taxpayer's representative (as the Service deems appropriate) to state to the best of knowledge and belief that the transaction will (or will not) qualify under § 368(a)(1)(F), if the Service rules as the taxpayer proposes on the subissue.

A taxpayer may seek a presubmission conference to determine whether a ruling on the subissue can be obtained under this section. *See* section 11.07, Rev. Proc. 97-1. If the Service issues a ruling on a subissue, the ruling will state that no opinion is expressed on whether the transaction in question qualifies under § 368(a)(1)(F).

**COLLATERAL ISSUES:** Although the Service will not rule on the consequences of qualification as a reorganization under § 368(a)(1)(F) if the consequences are adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin, it will rule where the consequences of qualification are not adequately addressed by these authorities. To obtain a ruling on a collateral issue, the taxpayer or the taxpayer's representative (as the Service deems appropriate) must state to the best of knowledge and belief that the transac-

tion qualifies under § 368(a)(1)(F), set forth the authorities most closely related to the collateral issue and explain why the collateral issue is not resolved by these authorities. If the Service issues a ruling on a collateral issue, the ruling will state that no opinion is expressed as to whether the transaction in question qualifies under § 368(a)(1)(F).

The Service will also continue to rule on issues that arise in connection with a transaction under § 368(a)(1)(F) but do not depend upon or affect qualification under § 368(a)(1)(F).

(29) Section 425.—Substitution or Assumption of Incentive Stock Options.—Whether the substitution of a new Incentive Stock Option ("ISO") for an old ISO, or the assumption of an old ISO, by an employer by reason of a corporate transaction constitutes a modification which results in the issuance of a new option by reason of failing to satisfy the spread test requirement of § 425(a)(1) or the ratio test requirement of § 1.425-1(a)(4). The Service will continue to rule on the issue of whether the new ISO or the assumption of the old ISO gives the employee additional benefits not present under the old option within the meaning of § 425(a)(2).

(30) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a non-qualified unfunded deferred-compensation arrangement with respect to a controlling shareholder-employee eligible to participate in the arrangement.

(31) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of unfunded deferred-compensation arrangements where the arrangements fail to meet the requirements of Rev. Proc. 92-65, 1992-2 C.B. 428, and Rev. Proc. 71-19, 1971-1 C.B. 698.

(32) Sections 451 and 457.—General Rule for Taxable Year of Inclusion; Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.—The tax consequences to unidentified independent contractors in nonqualified unfunded deferred-compensation plans. This applies to plans established under § 451 by employers in the private sector and to plans of state and local governments and tax-exempt organizations under § 457. However, a ruling with respect to a specific independent contractor's participation in such a plan may be issued.

(33) Section 641.—Imposition of Tax.—Whether the period of administration or settlement of an estate or a trust

(other than a trust described in § 664) is reasonable or unduly prolonged.

(34) Section 642(c).—Deduction for Amounts Paid or Permanently Set Aside for a Charitable Purpose.—Allowance of an unlimited deduction for amounts set aside by a trust or estate for charitable purposes when there is a possibility that the corpus of the trust or estate may be invaded.

(35) Section 664.—Charitable Remainder Trusts.—Whether the settlement of a charitable remainder trust upon the termination of the noncharitable interest is made within a reasonable period of time.

(36) Section 704(e).—Family Partnerships.—Matters relating to the validity of a family partnership when capital is not a material income producing factor.

(37) Section 856.—Definition of Real Estate Investment Trust.—Whether a corporation whose stock is "paired" with or "stapled" to stock of another corporation will qualify as a real estate investment trust under § 856, if the activities of the corporations are integrated.

(38) Section 1034.—*See* section 3.01(6), above.

(39) Section 1221.—Capital Asset Defined.—Whether specialty stock allocated to an investment account by a registered specialist on a national securities exchange is a capital asset.

(40) Section 1551.—Disallowance of the Benefits of the Graduated Corporate Rates and Accumulated Earnings Credit.—Whether a transfer is within § 1551.

(41) Section 2031.—Definition of Gross Estate.—Actuarial factors for valuing interests in the prospective gross estate of a living person.

(42) Section 2512.—Valuation of Gifts.—Actuarial factors for valuing prospective or hypothetical gifts of a donor.

(43) Sections 3121, 3306, and 3401.—Definitions.—For purposes of determining prospective employment status, whether an individual will be an employee or an independent contractor. A ruling with regard to prior employment status may be issued.

(44) Section 4980B.—Failure to Satisfy Continuation Coverage Requirements of Group Health Plans.—Whether an action is "gross misconduct" within the meaning of § 4980B(f)(3)(B). (*See* section 3.05 of Rev. Proc. 87-28, 1987-1 C.B. 770, 771.)

(45) Section 7701.—Definitions.—The classification of an instrument that

has certain voting and liquidations rights in an issuing corporation but whose dividend rights are determined by reference to the earnings of a segregated portion of the issuing corporation's assets, including assets held by a subsidiary.

#### .02 General Areas.

(1) The results of transactions that lack a bona fide business purpose or have as their principal purpose the reduction of federal taxes.

(2) A matter upon which a court decision adverse to the Government has been handed down and the question of following the decision or litigating further has not yet been resolved.

(3) A matter involving alternate plans of proposed transactions or involving hypothetical situations.

(4) A matter involving the federal tax consequences of any proposed federal, state, local or municipal legislation. The Service may provide general information in response to an inquiry.

(5) Whether under Subtitle F (Procedure and Administration) reasonable cause, due diligence, good faith, clear and convincing evidence, or other similar terms that require a factual determination exist.

(6) Whether a proposed transaction would subject the taxpayer to a criminal penalty.

(7) A request that does not comply with the provisions of Rev. Proc. 97-1.

(8) Whether, under the common law rules applicable in determining the employer-employee relationship, a professional staffing corporation (loan-out corporation) or the subscriber is the employer of individuals, if:

(i) the loan-out corporation hires employees of the subscriber and assigns the employees back to the subscriber, or

(ii) the loan-out corporation assigns individuals to subscribers for more than a temporary period (1 year or longer).

### **SECTION 4. AREAS IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED**

#### .01 Specific questions and problems.

(1) Sections 38, 39, 46, and 48.—General Business Credit; Carryback and Carryforward of Unused Credits; Amount of Credit; Energy Credit; Reforestation Credit.—Application of these sections where the formal ownership of property is in a party other than the taxpayer, except when title is held merely as security.

(2) Section 61.—Gross Income Defined.—Determination as to who is the true owner of property in cases involving the sale of securities, or participation interests therein, where the purchaser has the contractual right to cause the securities, or participation interests therein, to be purchased by either the seller or a third party.

(3) Sections 61 and 163.—Gross Income Defined; Interest.—Determinations as to who is the true owner of property or the true borrower of money in cases in which the formal ownership of the property, or the liability for the indebtedness, is in another party.

(4) Section 103.—Interest on State and Local Bonds.—Whether the interest on state or local bonds will be excludible from gross income under § 103(a), if the proceeds of issues of bonds (other than advance refunding issues) are placed in escrow or otherwise not expended for a governmental purpose for an extended period of time even though the proceeds are invested at a yield that will not exceed the yield on the state or local bonds prior to their expenditure.

(5) Section 103.—Interest on State and Local Bonds.—Whether a state or local governmental obligation that does not meet the criteria of section 5 of Rev. Proc. 89-5, 1989-1 C.B. 774, is an "arbitrage bond" within the meaning of former § 103(c)(2) solely by reason of the investment of the bond proceeds in acquired nonpurpose obligations at a materially higher yield more than 3 years after issuance of the bonds or 5 years after issuance of the bonds in the case of construction issues described in § 1.103-13(a)(2)(ii)(E).

(6) Section 141.—Private Activity Bond; Qualified Bond.—With respect to requests made pursuant to Rev. Proc. 88-33, 1988-1 C.B. 835, whether state or local bonds will meet the "private business use test" and the "private security or payment test" under § 141(b)(1) and (2) in situations in which the proceeds are used to finance certain output facilities and, pursuant to a contract to take, or take or pay for, a nongovernmental person purchases 30 percent or more of the actual output of the facility but 10 percent or less of the subparagraph (5) output of the facility as defined in § 1.103-7(b)(5)(ii)(b) (issued under former § 103(b)). In similar situations, the Service will not ordinarily issue rulings or determination letters concerning questions arising under paragraphs (3), (4), and (5) of § 141(b).

(7) Sections 142 and 144.—Exempt Facility Bond; Qualified Small Issue Bond.—Whether an issue of private activity bonds meets the requirements of § 142 or § 144(a), if the sum of—

(i) the portion of the proceeds used to finance a facility in which an owner (or a related person) or a lessee (or a related person) is a user of the facility both after the bonds are issued and at any time before the bonds were issued, and

(ii) the portion used to pay issuance costs and non-qualified costs, equals more than 5 percent of the net proceeds, as defined in § 150(a)(3).

(8) Section 148.—Arbitrage.—Whether amounts received as proceeds from the sale of municipal bond financed property and pledged to the payment of debt service or pledged as collateral for the municipal bond issue are sinking fund proceeds within the meaning of § 1.103-13(g) (issued under former § 103(c)) or replaced proceeds described in § 148(a)(2) (or former § 103(c)(2)(B)).

(9) Section 162.—Trade or Business Expenses.—Whether the requisite risk shifting and risk distribution necessary to constitute insurance are present for purposes of determining the deductibility under § 162 of amounts paid (premiums) by a taxpayer for insurance, unless the facts of the transaction are within the scope of Rev. Rul. 78-338, 1978-2 C.B. 107, or Rev. Rul. 77-316, 1977-2 C.B. 53.

(10) Sections 162 and 262.—Trade or Business Expenses; Personal, Living, and Family Expenses.—Whether expenses are nondeductible commuting expenses, except for situations governed by Rev. Rul. 90-23, 1990-1 C.B. 28.

(11) Section 163.—See section 4.01(3), above.

(12) Section 167.—Depreciation.

(i) Useful lives of assets.

(ii) Depreciation rates.

(iii) Salvage value of assets.

(13) Sections 167 and 168.—Depreciation; Accelerated Cost Recovery System.—Application of those sections where the formal ownership of property is in a party other than the taxpayer except when title is held merely as security.

(14) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable contribution deduction under § 170(f)(2)(A).

(15) Section 170(c).—Charitable, Etc., Contributions and Gifts.—Whether a taxpayer who transfers property to a charitable organization and thereafter leases back all or a portion of the transferred property may deduct the fair market value of the property transferred and leased back as a charitable contribution.

(16) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under § 170(f)(2)(A).

(17) Section 216.—Deduction of Taxes, Interest, and Business Depreciation by Cooperative Housing Corporation Tenant-Stockholder.—If a cooperative housing corporation (CHC), as defined in § 216(b)(1), transfers an interest in real property to a corporation (not a CHC) in exchange for stock or securities of the transferee corporation, which engages in commercial activity with respect to the real property interest transferred, whether (i) the income of the transferee corporation derived from the commercial activity, and (ii) any cash or property (attributable to the real property interest transferred) distributed by the transferee corporation to the CHC will be considered as gross income of the CHC for the purpose of determining whether 80 percent or more of the gross income of the CHC is derived from tenant-stockholders within the meaning of § 216(b)(1)(D).

(18) Section 262.—See section 4.01(10), above.

(19) Section 265(a)(2).—Expenses and Interest Relating to Tax-Exempt Income.—Whether indebtedness is incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by subtitle A.

(20) Section 302.—Distributions in Redemption of Stock.—The tax effect of the redemption of stock for notes, when the payments on the notes are to be made over a period in excess of 15 years from the date of issuance of such notes.

(21) Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—Whether a distribution will qualify as a distribution in partial liquidation under § 302(b)(4) and (e)(1)(A), unless it results in a 20 percent or greater reduction in (i) gross

revenue, (ii) net fair market value of assets, and (iii) employees. (Partial liquidations that qualify as § 302(e)(2) business terminations are not subject to this provision.)

(22) Sections 302(b)(4) and (e), 331, 332, and § 346(a).—Effects on Recipients of Distributions in Corporate Liquidations.—The tax effect of the liquidation of a corporation preceded or followed by the reincorporation of all or a part of the business and assets when more than a nominal amount of the stock (that is, more than 20 percent in value) of both the liquidating corporation and the transferee corporation is owned by the same shareholders; or when a liquidation is followed by the sale of the corporate assets by the shareholders to another corporation in which such shareholders own more than a nominal amount of the stock (that is, more than 20 percent in value).

(23) Section 306.—Dispositions of Certain Stock.—Whether the distribution or disposition or redemption of “section 306 stock” in a closely held corporation is in pursuance of a plan having as one of its principal purposes the avoidance of federal income taxes within the meaning of § 306(b)(4).

(24) Sections 331 and 332.—See section 4.01(22), above.

(25) Sections 331 and 346(a).—Gain or Loss to Shareholders in Corporate Liquidations.—The tax effect of the liquidation of a corporation by a series of distributions, when the distributions in liquidation are to be made over a period in excess of 3 years from the adoption of the plan of liquidation.

(26) Section 341.—Collapsible Corporations.—Whether a corporation will be considered to be a “collapsible corporation,” that is, whether it was “formed or availed of” with the view of certain tax consequences. However, ruling requests will be considered on this matter when the enterprise (i) has been in existence for a least 20 years or has clearly demonstrated that it has realized two-thirds of the taxable income to be derived from the manufacturing, constructing, producing, or purchasing of property as stated in § 341(b)(1)(A) and as described in Rev. Rul. 72-48, 1972-1 C.B. 102; (ii) has had an aggregate change in the shareholders’ interests of not more than 10 percent during that period (except for transfers among family members, as defined in § 267(c)(4), or redemptions of stock to pay death taxes pursuant to § 303); and (iii) has conducted substantially the same trade

or business during that period. The period referred to in (ii) and (iii) above is the lesser of 20 years of corporate existence or the period in which the enterprise has realized two-thirds of the taxable income from activities specified in § 341(b)(1)(A).

(27) Section 346(a).—See section 4.01(22), above.

(28) Section 346(a).—See section 4.01(25), above.

(29) Section 351.—Transfer to Corporation Controlled by Transferor.—The tax effect of the transfer when part of the consideration received by the transferors consists of an instrument that is a bond, debenture, or any other evidence of indebtedness of the transferee and a determination as to whether the “indebtedness” is properly classified as debt or equity is required in order to establish that the requirements of § 351 are met.

(30) Section 351.—Transfer to Corporation Controlled by Transferor.—Whether § 351 applies to the transfer of an interest in real property by a cooperative housing corporation (as described in § 216(b)(1)) to a corporation in exchange for stock or securities of the transferee corporation, if the transferee engages in commercial activity with respect to the real property interest transferred.

(31) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the active business requirement of § 355(b) is met when, within the 5-year period described in § 355(b)(2)(B), a distributing corporation acquired control of a controlled corporation as a result of the distributing corporation transferring cash or other liquid or inactive assets to the controlled corporation in a transaction in which gain or loss was not recognized as a result of the transfer meeting the requirements of § 351(a) or § 368(a)-(1)(D).

(32) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether a distribution of stock or securities is described in § 355(a)(1) when the gross assets of the trades or businesses relied on to satisfy the active trade or business requirement of § 355(b) will have a fair market value that is less than 5 percent of the total fair market value of the gross assets of the corporation directly conducting the trades or businesses. The Service may rule that the trades or businesses satisfy the active trade or business requirement of § 355(b) if it



can establish that, based upon all relevant facts and circumstances, the trades or businesses are not *de minimis* compared with the other assets or activities of the corporation and its subsidiaries.

(33) Section 441(i).—Taxable Year of Personal Service Corporations.—Whether the principal activity of the taxpayer during the testing period for the taxable year is the performance of personal services within the meaning of § 1.441-4T(d)(1)(ii).

(34) Section 448(d)(2)(A).—Limitation on Use of Cash Method of Accounting; Qualified Personal Service Corporation.—Whether 95 percent or more of the time spent by employees of the corporation, serving in their capacity as such, is devoted to the performance of services within the meaning of § 1.448-1T(e)(4)(i).

(35) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a nonqualified deferred compensation arrangement using a grantor trust where the trust fails to meet the requirements of Rev. Proc. 92-64, 1992-2 C.B. 422.

(36) Section 584.—Common Trust Funds.—Whether a common trust fund plan meets the requirements of § 584. (For § 584 plan drafting guidance, see Rev. Proc. 92-51, 1992-1 C.B. 988.)

(37) Section 642.—Special Rules for Credits and Deductions; Pooled Income Fund.—Whether a pooled income fund satisfies the requirements described in § 642(c)(5).

(38) Section 664.—Charitable Remainder Trusts.—Whether a charitable remainder trust that provides for annuity or unitrust payments for one or two measuring lives satisfies the requirements described in § 664.

(39) Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—In a nonqualified, unfunded deferred compensation arrangement described in Rev. Proc. 92-64, the tax consequences of the use of a trust, other than the model trust described in that revenue procedure.

(40) Section 816.—Life Insurance Company Defined.—Whether the requisite risk shifting and risk distribution necessary to constitute insurance are present for purposes of determining if a company is an “insurance company” under § 1.801-3(a), unless the facts of the transaction are within the scope of Rev. Rul. 78-338, 1978-2 C.B. 107, or Rev. Rul. 77-316, 1977-2 C.B. 53.

(41) Section 1502.—Regulations.—Whether a parent cooperative housing

corporation (as defined in § 216(b)(1)) will be permitted to file a consolidated income tax return with its transferee subsidiary, if the transferee engages in commercial activity with respect to the real property interest transferred to it by the parent.

(42) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable deduction under § 2055(e)(2)(A).

(43) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under § 2055(e)(2)(A).

(44) Section 2522.—Charitable and Similar Gifts.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable deduction under § 2522(c)(2)(A).

(45) Section 2522.—Charitable and Similar Gifts.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under § 2522(c)(2)(A).

.02 General areas.

(1) Any matter in which the determination requested is primarily one of fact, *e.g.*, market value of property, or whether an interest in a corporation is to be treated as stock or indebtedness.

(2) Situations where the requested ruling deals with only part of an integrated transaction. Generally, a letter ruling will not be issued on only part of an integrated transaction. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, a taxpayer should call the Branch having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether a letter ruling will be issued on part of the transaction.

(3) Situations where two or more items or sub-methods of accounting are interrelated. If two or more items or sub-methods of accounting are interrelated, ordinarily a letter ruling will not be issued on a change in accounting method involving only one of the items or sub-methods.

(4) The tax effect of any transaction to be consummated at some indefinite future time.

(5) Any matter dealing with the question of whether property is held primarily for sale to customers in the ordinary course of a trade or business.

(6) The tax effect of a transaction if any part of the transaction is involved in litigation among the parties affected by the transaction, except for transactions involving bankruptcy reorganizations.

(7)(a) Situations where the taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection (a) above shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination in order to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

## **SECTION 5. AREAS UNDER EXTENSIVE STUDY IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED UNTIL THE SERVICE RESOLVES THE ISSUE THROUGH PUBLICATION OF A REVENUE RULING, REVENUE PROCEDURE, REGULATIONS OR OTHERWISE**

.01 Section 61.—Gross Income Defined.—Whether amounts voluntarily deferred by a taxpayer under a deferred-compensation plan maintained by an organization described in § 501 (other than a plan maintained by an eligible employer pursuant to the provisions of § 457) are currently includible in the taxpayer's gross income.

.02 Sections 61 and 162.—Gross Income Defined; Trade or Business Expenses.—The tax consequences with respect to a salary reduction arrangement under which an employee receives and returns salary amounts to the employer. (Also §§ 3121, 3306, and 3401.)

.03 Section 79.—Group-Term Life Insurance Purchased for Employees.—Whether life insurance provided for employees under a “retired lives reserve” plan will be considered group-term insurance. (Also §§ 61, 72, 83, 101, 162, 264, and 641.)

.04 Sections 83 and 451.—Property Transferred in Connection with Performance of Services; General Rule for Taxable Year of Inclusion.—When compensation is realized by a person who, in connection with the performance of services, is granted a nonstatutory option without a readily ascertainable fair market value to purchase stock at a price that is less than the fair market value of the stock on the date the option is granted.

.05 Sections 101, 761, and 7701.—Certain Death Benefits; Terms Defined; Definitions.—Whether, in connection with the transfer of a life insurance policy to an unincorporated organization, (i) the organization will be treated as a partnership under §§ 761 and 7701, or (ii) the transfer of the life insurance policy to the organization will be exempt from the transfer-for-value rules of § 101, when substantially all of the organization’s assets consists or will consist of life insurance policies on the lives of the members.

.06 Section 101.—Certain Death Benefits.—Whether there has been a transfer for value for purposes of § 101(a) in situations involving a grantor and a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor’s spouse, (ii) the trustee or any other person has a power to apply the trust’s income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor’s spouse, (iii) the trustee or any other person has a power to use the trust’s assets to make loans to the grantor’s estate or to purchase assets from the grantor’s estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

.07 Section 105.—Amounts Received Under Accident and Health Plans.—Whether a medical reimbursement plan,

funded by employer contributions, containing a provision allowing unused amounts to be carried over and accumulated in an employee’s account qualifies as an accident and health plan under § 105.

.08 Section 107.—Rental Value of Parsonages.—Whether amounts distributed to a retired minister from a pension or annuity plan should be excludible from the minister’s gross income as a parsonage allowance under § 107.

.09 Section 115.—Income of States, Municipalities, etc.—The results of transactions pursuant to a plan or arrangement created by state statute a primary objective of which is to enable participants to pay for the costs of a post-secondary education for themselves or a designated beneficiary, including: (i) whether the plan or arrangement, itself, is an entity separate from a state and, if so, how the plan or arrangement is treated for federal tax purposes; and (ii) whether any contract under the plan or arrangement is a debt instrument and, if so, how interest or original issue discount attributable to the contract is treated for federal tax purposes. (Also §§ 61, 163, 1275, 2501, and 7701.)

.10 Section 162.—See section 5.02, above.

.11 Section 162.—Trade or Business Expenses.—Whether payments paid or accrued by a corporation to an exempt organization as described in § 501(c)(7) or § 501(c)(20) are deductible under § 162.

.12 Section 213.—Medical, Dental, etc., Expenses.—Whether amounts paid for medical insurance (or other medical care) extending substantially beyond the close of the taxable year may be deducted under § 213 in the year of payment, if the conditions of § 213(d)(7) are not satisfied.

.13 Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—Whether a deemed surrender of stock as described in Rev. Rul. 90-13, 1990-1 C.B. 65, satisfies the requirements for a redemption, when:

(i) The corporation has outstanding more than one class of stock and there are priorities as to dividend or liquidating distributions or any other differences in stock rights, or

(ii) Either under the terms of the stock or as established contractually, there are outstanding any rights affecting the corporation’s stock, such as, but not limited to, warrants, options, con-

vertible securities, shareholder agreements, or rights of first refusal.

.14 Section 306(b)(4).—Transactions Not in Avoidance.—Whether § 306(b)(4) applies to the distribution and disposition or redemption of “section 306 stock” that is subject to mandatory redemption.

.15 Sections 331, 453, and 1239.—The Tax Effects of Installment Sales of Property Between Entities with Common Ownership.—The tax effects of a transaction in which there is a transfer of property by a corporation to a partnership or other noncorporate entity (or the transfer of stock to such entity followed by a liquidation of the corporation) when more than a nominal amount of the stock of such corporation and the capital or beneficial interests in the purchasing entity (that is, more than 20 percent in value) is owned by the same persons, and the consideration to be received by the selling corporation or the selling shareholders includes an installment obligation of the purchasing entity.

.16 Section 351.—Transfer to Corporation Controlled by Transferor.—Whether § 351 applies to the transfer of widely held developed or undeveloped real property or interests therein; widely held oil and gas properties or interests therein; or any similarly held properties or interests to a corporation in exchange for shares of stock of such corporation when (i) the transfer is the result of solicitation by promoters, brokers, or investment houses, or (ii) the transferee corporation’s stock is issued in a form designed to render it readily tradable.

.17 Section 355.—Distribution of Stock or Securities of a Controlled Corporation.—Whether a distribution of stock or securities is described in § 355(a)(1) if there have been negotiations, agreements or arrangements with respect to transactions or events which, if treated as consummated before the distribution, would result in the distribution of stock or securities of a corporation which is not controlled by the distributing corporation (or, if stock is retained by the distributing corporation, in a distribution of an amount of stock not constituting control).

.18 Section 451.—See section 5.04, above.

.19 Section 453.—See section 5.15, above.

.20 Section 457.—Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.—The tax effect of provisions under the

Small Business Job Protection Act affecting plans described in § 457. Taxpayers may, however, still receive rulings on § 457 plans based on the law in effect prior to enactment of the Small Business Job Protection Act.

.21 Section 671.—Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners.—Whether the grantor will be considered the owner of any portion of a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

.22 Section 721.—Nonrecognition of Gain or Loss on Contribution.—Whether § 721 applies to the contribution of widely held developed or undeveloped real property or interests therein; widely held oil and gas properties or interests therein; or any similarly held properties or interests to a partnership in exchange for an interest in the partnership when (i) the contribution is the result of solicitation by promoters, brokers, or investment houses, or (ii) the interest in the transferee partnership is issued in a form designed to render it readily tradable.

.23 Section 761.—See section 5.05, above.

.24 Section 1239.—See section 5.15, above.

.25 Section 2503.—Taxable Gifts.—Whether the transfer of property to a trust will be a gift of a present interest in property when (i) the trust corpus consists or will consist substantially of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, (iv) the trust beneficiaries have the power to with-

draw, on demand, any additional transfers made to the trust, and (v) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

.26 Section 2514.—Powers of Appointment.—If the beneficiaries of a trust permit a power of withdrawal to lapse, whether § 2514(e) will be applicable to each beneficiary in regard to the power when (i) the trust corpus consists or will consist substantially of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, (iv) the trust beneficiaries have the power to withdraw, on demand, any additional transfers made to the trust, and (v) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

.27 Section 2601.—Tax Imposed.—Whether a trust that is excepted from the application of the generation-skipping transfer tax because it was irrevocable on September 25, 1985, will lose its excepted status if the situs of the trust is changed from the United States to a situs outside of the United States.

.28 Sections 3121, 3306, and 3401.—Definitions; Employment Taxes.—Who is the employer of an "employee-owner" as defined in § 269A(b)(2).

.29 Section 7701.—See section 5.05, above.

.30 Section 7701.—Definitions.—The classification of separately tradable instruments that are issued by a corporation as a unit, the components of which collectively contain the attributes of stock.

## **SECTION 6. AREAS COVERED BY AUTOMATIC APPROVAL PROCEDURES IN WHICH RULINGS WILL NOT ORDINARILY BE ISSUED**

.01 Section 442.—Change of Annual Accounting Period.—All situations where the Service has provided an administrative procedure for obtaining a change in annual accounting period. *See* Rev. Procs. 92-13, 1992-1 C.B. 665 (as modified by Rev. Proc. 94-12, 1994-1

C.B. 565, and as modified and amplified by Rev. Proc. 92-13A, 1992-1 C.B. 668) (certain corporations that have not changed their accounting period within the prior 6 calendar years or other specified time); 87-32, 1987-2 C.B. 396, as modified by § 301.9100-3T (partnership, S corporation, or personal service corporation seeking a natural business year or an ownership taxable year); 68-41, 1968-2 C.B. 943 (as modified by Rev. Proc. 81-40, 1981-2 C.B. 604) (trusts held by certain fiduciaries needing a workload spread); and 66-50, 1966-2 C.B. 1260 (as modified by Rev. Proc. 81-40) (individual seeking a calendar year).

.02 Section 446.—General Rule for Methods of Accounting.—All situations where the Service has provided an administrative procedure for obtaining a change in method of accounting. *See* Notice 96-30, 1996-1 C.B. 378 (certain § 501(c) organizations complying with the provisions of SFAS 116); Notice 95-57, 1995-2 C.B. 337 (cash method banks in the Eighth Circuit seeking to change to the cash method of accounting for stated interest on short-term loans made in the ordinary course of business); and Rev. Procs. 96-31, 1996-1 C.B. 378 (certain taxpayers seeking to change depreciation or amortization for certain depreciable or amortizable property); 95-33, 1995-2 C.B. 380 (certain small resellers, formerly small resellers, or reseller-producers changing their method of accounting for costs subject to § 263A); 95-25, 1995-1 C.B. 701 (certain taxpayers on a simplified production or simplified resale method of accounting for fewer than 3 taxable years electing an historic absorption ratio under § 263A); 95-19, 1995-1 C.B. 664 (certain taxpayers changing their method of accounting for interest costs subject to § 263A(f)); 94-29, 1994-1 C.B. 616 (certain taxpayers seeking to use the principal-reduction method for *de minimis* OID on certain loans originated by the taxpayer); 93-13, 1993-1 C.B. 482 (certain domestic taxpayers required to change their method of accounting to comply with § 267(a)(3) for deducting amounts owed to related foreign persons); 92-98, 1992-2 C.B. 512 (certain accrual method taxpayers selling multi-year service warranty contracts seeking to elect the service warranty income method); 92-75, 1992-2 C.B. 448 (certain taxpayers, other than those required to use inventories, seeking to change to an accrual method); 92-74, 1992-2 C.B.

442 (certain taxpayers, required to use inventories, seeking to change to an accrual method); 92-67, 1992-2 C.B. 429 (certain taxpayers with one or more market discount bonds seeking to make a constant interest rate election or an election under § 1278(b)); 92-29, 1992-1 C.B. 748 (certain taxpayers seeking to use an alternative method under § 461(h) for the inclusion of common improvement costs in basis) this no-rule provision, however, does not apply to those situations where Rev. Proc. 92-29 requires the taxpayer to file a ruling request; 91-51, 1991-2 C.B. 779 (certain taxpayers that sell mortgages and retain rights to service the mortgages); 91-31, 1991-1 C.B. 566, 568, 569 (certain utilities holding customer deposits); 90-63, 1990-2 C.B. 664 (certain taxpayers changing their accounting treatment of package design costs); 90-37, 1990-2 C.B. 361 (certain taxpayers with interest income from short-term loans); 89-46, 1989-2 C.B. 597 (cash basis taxpayers with certain United States savings bonds); 88-15, 1988-1 C.B. 683 (certain taxpayers seeking to discontinue LIFO inventory); 85-8, 1985-1 C.B. 495 (certain taxpayers seeking to change from specific charge-off method to reserve method for bad debts); 84-76, 1984-2 C.B. 751 (taxpayers seeking to treat prepaid subscription income under the provisions of § 455); 84-30, 1984-1 C.B. 482 (taxpayers who used the Rule of 78's for interest on consumer loans); 84-29, 1984-1 C.B. 480 (individual borrowers who reported interest deductions in accordance with the Rule of 78's); and 74-11, 1974-1 C.B. 420 (taxpayers seeking to change their method of depreciation accounting).

.03 Section 461.—General Rule for Taxable Year of Deduction.—All situations where the Service has provided an administrative procedure for making or revoking an election under § 461. *See* Rev. Procs. 92-29, 1992-1 C.B. 748

(dealing with the use of an alternative method for including in basis the estimated cost of certain common improvements in a real estate development); and 92-28, 1992-1 C.B. 745, as amplified by Rev. Proc. 94-32, 1994-1 C.B. 627 (dealing with ratable accrual of real property taxes).

.04 Section 1362.—Election; Revocation; Termination.—All situations in which an S corporation qualifies for automatic inadvertent termination relief under Rev. Proc. 94-23, 1994-1 C.B. 609.

.05 Sections 1502, 1504, and 1552.—Regulations; Definitions; Earnings and Profits.—All situations where the Service has provided an administrative procedure for obtaining waivers or consents on consolidated return issues. *See* Rev. Procs. 90-53, 1990-2 C.B. 636 (certain corporations seeking reconsolidation within the 5-year period specified in § 1504(a)(3)(A)); 90-39, 1990-2 C.B. 365 (certain affiliated groups of corporations seeking, for earnings and profits determinations, to make an election or a change in their method of allocating the group's consolidated federal income tax liability); and 89-56, 1989-2 C.B. 643 (certain affiliated groups of corporations seeking to file a consolidated return where member(s) of the group use a 52-53 week taxable year).

## **SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES**

Rev. Procs. 96-3, 96-12, 96-22, 96-34, 96-39, 96-43, and 96-56 are superseded.

## **SECTION 8. PAPERWORK REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under con-

trol number 1545-1522.

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 control number.

The collections of information in this revenue procedure are in sections 3.01(22), (24), (25), (27), and (28), 3.02(1) and (3), 4.01(26), and 4.02(1) and (7)(b).

This information is required to evaluate whether the request for a letter ruling or determination letter is not covered by the provisions of this revenue procedure. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 90 hours.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 3 hours, depending on individual circumstances, with an estimated average burden of 2 hours. The estimated number of respondents and/or recordkeepers is 45.

The estimated annual frequency of responses is on occasion.

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 § 6103.

## **DRAFTING INFORMATION**

The principal author of this revenue procedure is Michael Danbury of the Office of Assistant Chief Counsel (Corporate). For further information about this revenue procedure, please contact Mr. Danbury at (202) 622-7750 (not a toll-free call).