

### Part III Administrative, Procedural and Miscellaneous

#### Request For Comments Regarding Rev. Proc. 81-70, 1981-2 C.B. 729

##### Notice 2004-44

Section 368(a)(1)(B) of the Internal Revenue Code defines as a reorganization the acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition) (a B reorganization). Section 362(b) generally provides that the basis of property acquired by a corporation in connection with a reorganization shall be the same as it would be in the hands of the transferor. Therefore, the acquiring corporation's basis in the stock acquired in a B reorganization is determined by reference to the basis of the former shareholders in such stock.

In Rev. Proc. 81-70, 1981-2 C.B. 729, the Internal Revenue Service set forth guidelines for estimating the basis of stock acquired by an acquiring corporation in a B reorganization. That revenue procedure permits the acquiring corporation in a B reorganization to apply certain statistical sampling techniques to determine its basis in the acquired stock. The guidelines reflect the recognition that the information needed by the acquiring corporation to establish the basis of the acquired corporation's stock is in the possession of the former shareholders of the acquired corporation, who may not respond to basis inquiries. They also reflect the recognition that, in certain cases, it may be time consuming, burdensome and costly for the acquiring corporation to contact each former shareholder of the acquired corporation.

The Service is concerned that changes in the marketplace since Rev. Proc. 81-70 was issued may have rendered compliance with its requirements for statistical sampling unduly burdensome or impossible and that, therefore, taxpayers are not complying with those requirements. For example, the Service understands that the way stock is held today may prevent or hinder access to the information necessary to determine the shareholder's basis in such stock.

A number of commentators have suggested that the Service revise Rev. Proc. 81-70. The Service requests comments regarding problems taxpayers are encountering in their effort to comply with the requirements of Rev. Proc. 81-70 and whether it should be modified.

The Service particularly seeks comments from those who perform basis studies that are intended to comply with the requirements of Rev. Proc. 81-70, those engaged in providing services and information to the investment community (including those who maintain custodial information that may be used in such studies, such as broker/dealers, banks, and similar organizations), and other interested parties.

In addition, from those that perform basis studies that are intended to comply with the requirements of Rev. Proc. 81-70, the following information is specifically requested: (i) descriptions of the sources of information, both historic and recent, available for use in performing basis studies; and (ii) descriptions of the methodologies utilized to determine the basis of stock held by persons that do not respond to requests for basis information.

From record keepers, the following information is specifically requested: (i) descriptions of the kinds of information that are maintained that may be used to perform basis studies and of the sources of this information; (ii) statements describing the length of time that this information is generally maintained and available for use; and (iii) descriptions of confidentiality concerns, if any, that may impair or delay a response to a basis inquiry.

Please submit all comments by September 30, 2004. Written comments should be sent to:

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2004-44)  
Room 5203  
P. O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Or hand delivered between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk  
Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2004-44)  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Alternatively, comments may be submitted electronically via e-mail to the following address: [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include "Notice 2004-44" in the subject line. All comments will be available for public inspection and copying in their entirety.

#### FOR FURTHER INFORMATION

For information regarding estimates and sampling techniques, please contact Edward Cohen at (212) 719-6693 (not a toll-free call). For further information regarding this notice generally, please contact George Johnson or Reginald Mombrun at (202) 622-7930 (not a toll-free call).