



## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

#### Rev. Rul. 99-58, page 701.

##### **Continuity of interest on repurchase of issuer's shares.**

This ruling holds that an open market repurchase of shares through a broker, following a potential reorganization, has no effect on continuity of interest in a potential reorganization.

#### T.D. 8847, page 701.

Final regulations under section 743, 755, and 1017 of the Code provide guidance to partnerships and their partners concerning the optional adjustments to the basis of partnership property, the allocation of basis adjustments among partnership assets, and the computation of a partner's share of the adjusted basis of depreciable partnership property.

#### Rev. Proc. 99-50, page 757.

**Combined information reporting.** Combined information reporting by a successor business entity following a merger or acquisition is permitted in certain situations. Rev. Proc. 90-57 and Rev. Rul. 69-556 modified and superseded.

### EMPLOYEE PLANS

#### Notice 99-61, page 762.

**Weighted average interest rate update.** The weighted average interest rate for December 1999 and the resulting permissible range of interest rates used to calculate current liabilities for purposes of the full funding limitation of section 412(c)(7) of the Code are set forth.

### EXEMPT ORGANIZATIONS

#### Announcement 99-115, page 763.

A list is given of organizations now classified as private foundations.

### ADMINISTRATIVE

#### T.D. 8848, page 723.

This rule establishes the procedures under which the Ser-

vice may use penalty mail to aid in the location and recovery of missing children.

#### Rev. Proc. 99-49, page 725.

**Methods of accounting; automatic consent.** Procedures are provided under which a taxpayer may obtain automatic consent of the Commissioner to change certain methods of accounting. REV. Proc. 98-60 modified and superseded.

#### Rev. Proc. 99-51, page 760.

This procedure amplifies section 5 of Rev. Proc. 99-3, which sets forth areas of the Code under the jurisdiction of the Associate Chief Counsel (Domestic) in which the Service will not issue advance rulings or determination letters. The following issue is added to those listed in section 5: Whether a state law limited partnership electing under section 301.7701-3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of section 1361(b)(1)(D). Rev. Proc. 99-3 amplified.

#### Notice 99-59, page 761.

**Tax avoidance using distributions of encumbered property.** Taxpayers and their representatives are alerted that the purported losses arising from certain types of transactions are not properly allowable for federal income tax purposes. Also, the Service may impose penalties on participants in these transactions or, as applicable on persons who participate in the promotion or reporting of these transactions.

#### Notice 99-60, page 762.

**Information reporting; royalty payments; Indians.** Taxpayers are informed that the information reporting requirements of section 6050N of the Code do not apply to payments of royalties that are not subject to income tax because they are derived directly by a noncompetent Indian from allotted and restricted land under the General Allotment Act of similar acts.

#### Announcement 99-116, page 763.

This document corrects the Actions on Decisions published in 1999-35 I.R.B. 314. All 7 footnotes describing the "Acquiescence" or "Nonacquiescence" in each decision included the words "in result only," which were erroneous. The correct footnotes are printed in this announcement.

Social Security Contribution and Benefit Base for 2000 on page 763.

Finding Lists begin on page ii.



interest includes rights and obligations not included in a limited partnership interest. If these obligations and rights result in general and limited partnership interests in a limited partnership having non-pro rata distribution rights, such interests are different classes of stock for purposes of § 1361(b)(1)(D).

Given the factual difficulties involved in determining whether the differences between the rights and obligations of general and limited partnership interests give rise to a second class of stock, the issue of whether a state law limited partnership complies with the single class of stock requirement is under extensive study. Accordingly, advanced rulings will not be provided on the issue until the Service resolves it through publication of a revenue ruling, revenue procedure, regulations, or otherwise.

### SECTION 3. PROCEDURE

Rev Proc. 99-3 is amplified by adding the following to section 5.01:

Section 1361. — Definition of a Small Business Corporation. — Whether a state law limited partnership electing under § 301.7701-3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of § 1361(b)(1)(D). The Service will treat any request for a ruling on whether a state law limited partnership is eligible to elect S corporation status as a request for a ruling on whether the partnership complies with § 1361(b)(1)(D).

### SECTION 4. EFFECTIVE DATE

This revenue procedure applies to all ruling requests, including any pending in the National Office and any submitted after the date of this publication.

### SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 99-3 is amplified.

### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Richard Castanon of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Richard Castanon at 202-622-3070 (not a toll free call).

## Tax Avoidance Using Distributions of Encumbered Property

### Notice 99-59

The Internal Revenue Service and Treasury Department have become aware of certain types of transactions, as described below, that are being marketed to taxpayers for the purpose of generating tax losses. This notice is being issued to alert taxpayers and their representatives that the purported losses arising from such transactions are not properly allowable for federal income tax purposes.

The transactions are cast in a variety of forms. In one typical arrangement, taxpayers act through a partnership to contribute cash to a foreign corporation, which has been formed for the purpose of carrying out the transaction, in exchange for the common stock of that corporation. Another party contributes additional capital to the corporation in exchange for the preferred stock of that corporation. The foreign corporation then acquires additional capital by borrowing from a bank and grants the bank a security interest in securities acquired by the foreign corporation that have a value equal to the amount of the borrowing. Thereafter, the foreign corporation makes a distribution of the encumbered securities to the partnership that holds its common stock. The effect of the distribution, combined with fees and other transaction costs incurred at the corporate level, is to reduce the remaining value of the foreign corporation's common stock to zero or a minimal amount. Although the distributed securities are encumbered by the bank debt (and the taxpayers or their partnership may be secondarily liable for the debt as guarantors), the foreign corporation has sufficient other assets to repay the debt, and it is the understanding of all parties that the foreign corporation will repay the debt with such other assets.

For example, if the taxpayers' partnership had contributed \$100x for the common stock of the foreign corporation, the partnership might receive a distribution of securities with a fair market value of approximately \$100x, and that distribution would have the economic effect of reducing the remaining value of the foreign

corporation's common stock to zero. Nonetheless, because the distribution to the partnership is subject to the bank debt, the parties take the position, pursuant to § 301(b)(2) of the Internal Revenue Code, that the amount of the distribution is zero for purposes of § 301. On that theory, no part of the distribution is treated either as a dividend or as a reduction of stock basis under § 301(c).

The partnership is treated as having subsequently disposed of the stock of the foreign corporation, giving rise to a tax loss equal to the excess of the partnership's original basis in the stock (\$100x in the example) over the fair market value of the common stock after the distribution of securities (zero). The deemed disposition of the stock may be based upon an election under § 301.7701-3(c) of the regulations to change the federal income tax classification of the foreign corporation from a corporation to a partnership, giving rise to a deemed liquidation of the foreign corporation, or by treating the partnership as a trader in securities which elects under § 475(f) to treat the securities that it holds, including the stock of the foreign corporation, as having been sold for their fair market value on the last business day of the taxable year.

Thereafter, typically in a later taxable year, the bank debt is repaid out of other assets held by the foreign corporation. Although the parties previously treated the debt as reducing the amount of the earlier distribution from the foreign corporation, promoters advise taxpayers to take the position that the foreign corporation's repayment of the debt is not treated as a distribution on its common stock.

A loss is allowable as a deduction for federal income tax purposes only if it is bona fide and reflects actual economic consequences. An artificial loss lacking economic substance is not allowable. See *ACM Partnership v. Commissioner*, 157 F.3d 231, 252 (3d Cir. 1998), cert. denied, 119 S. Ct. 1251 (1999) ("Tax losses such as these . . . which do not correspond to any actual economic losses, do not constitute the type of 'bona fide' losses that are deductible under the Internal Revenue Code and regulations."); *Scully v. United States*, 840 F.2d 478, 486 (7th Cir. 1988) (to be deductible, a loss must be a "genuine economic loss"); *Shoenberg v. Com-*

*missioner*, 77 F.2d 446, 448 (8th Cir. 1935) (to be deductible, a loss must be “actual and real”); § 1.165-1(b) (“Only a bona fide loss is allowable. Substance and not mere form shall govern in determining a deductible loss.”).

In the view of the Service and the Treasury Department, the arrangement described above (or any similar arrangement) does not produce an allowable loss. Through a series of contrived steps, taxpayers claim tax losses for capital outlays that they have in fact recovered. Such artificial losses are not allowable for federal income tax purposes.

The purported tax benefits from these transactions may also be subject to challenge under other provisions of the Code and regulations, including but not limited to §§ 269, 301, 331, 446, 475, 482, 752, and 1001 of the Code.

Additionally, the Service may impose penalties on participants in these transactions or, as applicable, on persons who participate in the promotion or reporting of these transactions, including the accuracy-related penalty under § 6662, the return preparer penalty under § 6694, the promoter penalty under § 6700, and the aiding and abetting penalty under § 6701.

The principal author of this notice is Ken Cohen of the Office of Assistant Chief Counsel (Corporate). For further information regarding this notice, contact Mr. Cohen on (202) 622-7790 (not

a toll-free call).

## Information Reporting – Royalty Payments

### Notice 99-60

Section 6050N(a)(1) requires that every person who makes payments of royalties (or similar amounts) aggregating \$10 or more to any other person during the calendar year shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid. Section 6050N(a)(2) imposes this requirement on every person who receives payments of royalties (or similar amounts) as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the royalties (or similar amounts) so received.

However, the reporting requirement of § 6050N does not apply to payments of royalties that are not subject to income tax because the royalties are derived directly by a noncompetent Indian from allotted and restricted land under the General Allotment Act, 25 U.S.C. §§ 331-358, or from land held under acts or treaties containing an exception provision similar to the General Allotment

Act. See Rev. Rul. 67-284, 1967-2 C.B. 55, *modified on another issue* by Rev. Rul. 74-13, 1974-1 C.B. 14, and *amplified on another issue* by Rev. Rul. 94-16, 1994-1 C.B. 19.

The principal author of this notice is Eric Lucas of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice contact Mr. Lucas at (202) 622-4920 (not a toll-free call).

## Weighted Average Interest Rate Update

### Notice 99-61

Notice 88-73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for November 1999 is 6.15 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
December	1999	6.00	5.40 to 6.30	5.40 to 6.60

## Drafting Information

The principal author of Notice 99-61 is Todd Newman of Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, call the Employee Plans Actuarial hotline, (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Mr. Newman’s number is (202) 622-8458 (also not a toll-free number).