



Internal Revenue bulletin

Bulletin No. 2000-49
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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. 2000-54, page 566.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for December 2000.

T.D. 8907, page 558.

Final regulations clarify the tax consequences for the amortization of intangibles under section 197 of the Code in the context of partnership basis adjustments.

Notice 2000-60, page 568.

Stock compensation corporate tax shelter. This notice alerts taxpayers and their representatives that losses generated by transactions involving the purchase of a parent corporation's stock by a subsidiary, a subsequent transfer of the purchased parent stock from the subsidiary to the parent's employees, and the eventual liquidation or sale of the subsidiary are not properly allowable for federal income tax purposes. This notice also alerts taxpayers and their representatives of certain responsibilities that may arise from participation in such transactions.

Notice 2000-61, page 569.

This notice clarifies that section 935 of the Code applies only to individuals and, therefore, does not relieve a trust from any obligation it may have to file an income tax return for the taxable year with the United States. The notice also provides that transactions entered into by taxpayers who claim that section 935 applies to trusts as part of a scheme to avoid both U.S. and Guamanian tax liability are designated as "listed transactions" for purposes of sections 6011, 6111, and 6112 of the Code.

ADMINISTRATIVE

Rev. Proc. 2000-48, page 570.

Optional standard mileage rates. This procedure announces 34.5 cents as the optional rate for deducting or accounting for expenses for business use of an automobile, 14 cents for use of an automobile as a charitable contribution, and 12 cents for use of an automobile as a medical or moving expense for 2001. It provides rules for substantiating the deductible expenses of using an automobile for business, moving, medical, or charitable purposes. Rev. Proc. 99-38 superseded.

Finding Lists begin on page ii.
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Department of the Treasury
Internal Revenue Service

vide loss is allowable. Substance and not mere form shall govern in determining a deductible loss.”). This transaction is no more than a series of contrived steps that effect an artificial loss on P’s disposition of S stock. Consequently, the arrangement described above, or any similar arrangement, does not produce an allowable loss.

The purported tax benefits from these transactions may also be subject to challenge for other reasons, including other provisions of the Code and the regulations, such as § 269.

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.

Transactions that are the same as or substantially similar to those described in this Notice 2000–60 are identified as “listed transactions” for the purposes of § 1.6011–4T(b)(2) of the Temporary Income Tax Regulations and § 301.6111–2T(b)(2) of the Temporary Procedure and Administration Regulations. See also § 301.6112–1T, A–4. It should be noted that independent of their classification as “listed transactions” for purposes of §§ 1.6011–4T(b)(2) and 301.6111–2T(b)(2), such transactions may already be subject to the tax shelter registration and list maintenance requirements of §§ 6111 and 6112 under the regulations issued in February 2000 (§§ 301.6111–2T and 301.6112–1T, A–4), as well as the regulations issued in 1984 and amended in 1986 (§§ 301.6111–1T and 301.6112–1T, A–3). Persons required to register these tax shelters who have failed to register the shelters may be subject to the penalty under § 6707(a) and to the penalty under § 6708(a) if the requirements of § 6112 are not satisfied.

The principal author of this notice is Megan Fitzsimmons of the Office of the Associate Chief Counsel (Corporate). For further information regarding this notice, contact Ms. Fitzsimmons at 202-622-7790 (not a toll-free call).

Trusts Not Considered Individuals for Purposes of Section 935

Notice 2000–61

The Internal Revenue Service and the Treasury Department have become aware of certain types of transactions that are being marketed to taxpayers for the avoidance of federal income taxes. The promoters of these transactions claim that section 935 applies to a trust as part of a scheme in which the trust seeks effectively to avoid both U.S. and Guamanian tax liability. As explained below, section 935 applies to individuals only and not to trusts. These transactions may also be subject to challenge on other grounds. In addition, such transactions are hereby designated as “listed transactions” for purposes of sections 6011, 6111 and 6112.

Prior to 1973, U.S. citizens who were residents of Guam, and whose citizen status did not derive from birth or naturalization in Guam, were required to file both U.S. and Guamanian tax returns. H.R. Rep. No. 92–1479, 92d Cong., 2d Sess. 1 (1972); see also Section 31 of the Organic Act of Guam, 48 U.S.C. § 1421 *et seq.* In addition, most other individuals who derived income from both Guam and the United States had to file tax returns with both jurisdictions. *Id.*

Section 935 was enacted, effective for tax years beginning after 1972, to permit such individuals to file a single income tax return, in Guam, thus eliminating the administrative burdens associated with the filing of two income tax returns. It was recognized that the foreign tax credit generally eliminated the tax liability to one of the jurisdictions and, therefore, that section 935 generally would not affect the amount of tax ultimately due. See H.R. Rep. No. 92–1479, 92d Cong., 2d Sess. 1 (1972). Section 935 was repealed by P.L. 99–514, sec. 1272(d)(2) (1986), but the repeal takes effect only if (and for so long as) an implementing agreement under P.L. 99–514, section 1271, is in force between the United States and Guam. No such implementing agreement is in force, and thus section 935 remains in effect.

The single filing rule contained in section 935 applies solely to individuals who

are resident in Guam, individuals who are citizens of Guam and are not otherwise citizens of the United States, individuals who are U.S. citizens or residents and have income derived from Guam, and individuals who file joint returns with any of these persons.

Nothing in the language of section 935, its legislative history, or the policy behind its enactment indicates that a trust is to be considered an individual for purposes of section 935. The fact that under section 641(b) the taxable income of a trust is generally determined in the same manner as the taxable income of an individual has no bearing on whether a trust is an individual for purposes of section 935. Section 935 does not relieve a trust from any obligation it may have to file an income tax return for the taxable year with the United States and to pay to the United States any tax due.

Transactions in which it is claimed that section 935 applies to a trust as part of a scheme in which the trust seeks effectively to avoid both U.S. and Guamanian tax liability may also be subject to challenge on other grounds.

The Service may impose penalties on participants in transactions subject to this Notice, or, as applicable, on persons who participate in the promotion or reporting of these transactions, including the accuracy-related penalty under section 6662, the return preparer penalty under section 6694, the promoter penalty under section 6700, and the aiding and abetting penalty under section 6701. Failure to file penalties under section 6651 on the trust may also be appropriate.

In addition, transactions subject to this Notice are hereby identified as “listed transactions” for the purposes of § 1.6011–4T(b)(2) of the Temporary Income Tax Regulations, to the extent applicable, and § 301.6111–2T(b)(2) of the Temporary Procedure and Administration Regulations. See also § 301.6112–1T, A–4. It should be noted that independent of their classification as “listed transactions” for purposes of §§ 1.6011–4T(b)(2) and 301.6111–2T(b)(2), such transactions may already be subject to the tax shelter registration and list maintenance requirements of sections 6111 and 6112 under the regulations issued in February 2000

(§§ 301.6111-2T and 301.6112-1T, A-4). Persons required to register these tax shelters who have failed to register the shelters may be subject to the penalty under section 6707(a) and to the penalty under section 6708(a) if the requirements of section 6112 are not satisfied.

The principal author of this notice is Karen A. Rennie-Quarrie of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Ms. Rennie-Quarrie at (202) 622-3880 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, Sections 62, 162, 170, 213, 217, 274, 1016; 1.62-2, 1.162-17, 1.170A-1, 1.213-1, 1.217-2, 1.274-5, 1.1016-3.)

Rev. Proc. 2000-48

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 99-38, 1999-43 I.R.B. 525, by providing optional standard mileage rates for employees, self-employed individuals, or other taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This revenue procedure also provides rules under which the amount of ordinary and necessary expenses of local travel or transportation away from home that are paid or incurred by an employee will be deemed substantiated under § 1.274-5 of the Income Tax Regulations when a payor (the employer, its agent, or a third party) provides a mileage allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. Use of a method of substantiation described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation.

SECTION 2. SUMMARY OF STANDARD MILEAGE RATES

.01 *Standard mileage rates.*

- (1) Business (section 5 below) 34.5 cents per mile
- (2) Charitable (section 7 below) 14 cents per mile
- (3) Medical and Moving (section 7 below) 12 cents per mile

.02 *Determination of standard mileage rates.* The business, medical, and moving standard mileage rates reflected in this revenue procedure are based on an annual study of the fixed and variable costs of operating an automobile conducted on behalf of the Service by an independent contractor, and the charitable standard mileage rate is provided in § 170(i) of the Internal Revenue Code.

SECTION 3. BACKGROUND

.01 Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under that provision, an employee or self-employed individual may deduct the cost of operating an automobile to the extent that it is used in a trade or business. However, under § 262, no portion of the cost of operating an automobile that is attributable to personal use is deductible.

.02 Section 274(d) provides, in part, that no deduction shall be allowed under § 162 with respect to any listed property (as defined in § 280F(d)(4) to include passenger automobiles and any other property used as a means of transportation) unless the taxpayer complies with certain substantiation requirements. The section further provides that regulations may prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed an amount prescribed by such regulations.

.03 Section 1.274-5(j), in part, grants the Commissioner the authority to establish a method under which a taxpayer may use mileage rates to substantiate, for purposes of § 274(d), the amount of the ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home.

.04 Section 1.274-5(g), in part, grants the Commissioner the authority to prescribe rules relating to mileage allowances for ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home. Pursuant to this grant of authority, the Commissioner may prescribe rules under which such allowances, if in accordance with reasonable business practice, will be regarded as (1) equivalent to substantiation, by adequate records

or other sufficient evidence, of the amount of such travel and transportation expenses for purposes of § 1.274-5(c), and (2) satisfying the requirements of an adequate accounting to the employer of the amount of such expenses for purposes of § 1.274-5(f).

.05 Section 62(a)(2)(A) allows an employee, in determining adjusted gross income, a deduction for the expenses allowed by Part VI (§ 161 and following), subchapter B, chapter 1 of the Code, paid or incurred by the employee in connection with the performance of services as an employee under a reimbursement or other expense allowance arrangement with a payor.

.06 Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it—

(1) does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) provides the employee with the right to retain any amount in excess of the substantiated expenses covered under the arrangement. Section 62(c) further provides that the substantiation requirements described therein shall not apply to any expense to the extent that, under the grant of regulatory authority prescribed in § 274(d), the Commissioner has provided that substantiation is not required for such expense.

.07 Under § 1.62-2(c)(1), a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses as specified in the regulations. Section 1.62-2(e)(2) specifically provides that substantiation of certain business expenses in accordance with rules prescribed under the authority of § 1.274-5(g) will be treated as substantiation of the amount of such expenses for purposes of § 1.62-2. Under § 1.62-2(f)(2), the Commissioner may prescribe rules under which an arrangement providing mileage allowances will be treated as satisfying the requirement of returning amounts in excess of expenses, even though the arrangement does not require the employee to return the portion of such an allowance that relates to miles of travel substantiated and that exceeds the amount