

Disguised Sales of Partnership Interests—Request for Comments

Notice 2001-64

The Internal Revenue Service and the Treasury Department are considering issuing proposed regulations under § 707(a)(2)(B) of the Internal Revenue Code relating to disguised sales of partnership interests. As part of this consideration, comments are being solicited concerning the scope and substance of this guidance.

Effective April 24, 1991, the Service and Treasury issued final regulations adding new regulations § 1.707-0 and § 1.707-2 through § 1.707-9 to the Income Tax Regulations (26 CFR part 1) under section 707(a)(2). These regulations apply to transfers described in § 707(a)(2)(A) and (B). Section 1.707-7 was reserved for rules on disguised sales of partnership interests.

The legislative history of § 707(a)(2) indicates that the provision was adopted as a result of Congress' concern that taxpayers were deferring or avoiding tax on sales of partnership property, including sales of partnership interests, by characterizing sales as contributions of property, including money, followed or preceded by a related partnership distribution. See H.R. Rep. No. 861, 98th Cong., 2nd Sess. 861 (1984), 1984-3 (Vol. 2) C.B. 115. Specifically, Congress was concerned about court decisions that allowed tax-free treatment in cases that were economically indistinguishable from sales of property to a partnership or another partner and believed that these transactions should be treated for tax purposes in a manner consistent with their underlying economic substance. See H.R. Rep. No. 432, 98th Cong., 2nd Sess. 1218 (1984), and S. Prt. No. 169 (Vol. I), 98th Cong., 2nd Sess. 225 (1984) (discussing *Communications Satellite Corp. v. United States*, 625 F.2d 997 (Ct. Cl. 1980), and *Jupiter Corp. v. United States*, 2 Cl. Ct. 58 (1983), both of

which involved the disguised sale of a partnership interest).

Comments are requested on the scope and substance of guidance concerning disguised sales of partnership interests, including any applicable safe harbors or exceptions. Prior to the issuance of regulations, the determination of whether a transaction is a disguised sale of a partnership interest under § 707(a)(2)(B) is to be made on the basis of the statute and its legislative history.

Direct all written comments to Internal Revenue Service, Attn: CC:MSP:R (NT 2001-64), Room 5228, CC:PSI:01, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered between the hours of 8:00 a.m. and 5:00 p.m. to the courier's desk at 1111 Constitution Avenue, NW, Washington, DC, or submitted electronically to: *Notice.Comments@m1.irs.counsel.treas.gov*. Please submit comments by March 31, 2002. All submissions will be open to public inspection.

The principal author of this notice is Carolyn Gray of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Carolyn Gray at (202) 622-3050 (not a toll-free call).