

Rev. Proc. 2002-3

SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 The purpose of this revenue procedure is to update Rev. Proc. 2001-3, 2001-1 I.R.B. 111, 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 (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to issues on which the Internal Revenue Service will not issue 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 letter rulings or determination letters, see Rev. Proc. 2002-7, this Bulletin. For a list of areas under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division 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. 2002-4, this Bulletin, and section 3.02 of Rev. Proc. 2002-6, this Bulletin.

.02 Changes.

(1) Section 3.01(9) has been revised to reflect the changes made by Ann. 2001-25, 2001-11 I.R.B. 895.

(2) New section 3.01(10), which concerns § 115 and income of states, municipalities, etc., has been moved from old section 3.01(9).

(3) Section 3.01(30) has been revised to reflect changes made by Ann. 2001-25, 2001-11 I.R.B. 895.

(4) New section 3.01(55) has been added, which concerns §§ 3121, 3306 and 3401, and determination of worker status for purposes of federal employment taxes and income tax withholding and Form SS-8.

(5) New section 3.02(9), which describes frivolous issues on which the Service generally will not rule, has been moved from old section 4.02(8) and amended to cross reference section 7.04 of Rev. Proc. 2002-1.

(6) Section 4.01(8) has been revised to reflect updated procedures contained in Rev. Proc. 96-16, 1996-1 C.B. 630.

(7) Section 4.01(11) has been revised to reflect that Rev. Rul. 2001-31, 2001-26 I.R.B. 1348, superseded Rev. Rul. 77-316 and modified Rev. Rul. 78-338.

(8) New section 5.01 has been added, reflecting that Rev. Proc. 2001-30, 2001-19 I.R.B. 1163, deleted old section 5.01.

(9) New section 5.06 has been added, reflecting that Rev. Proc. 2001-51, 2001-43 I.R.B. 369, deleted old section 5.06.

(10) Section 6.02 has been revised to reflect that recent publications modified and amplified Rev. Proc. 99-49, 1999-2 C.B. 725.

(11) New section 6.06 has been added, which concerns requests from Qualified Master-Feeder Structures, as described in section 4.02 of Rev. Proc. 2001-36, 2001-23 I.R.B. 1326, for permission to aggregate built-in gains and losses from contributed qualified financial assets.

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 rulings or determination letters. These areas are set forth in four sections of this revenue procedure. Section 3 reflects those areas in which 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 questions and problems as well as general areas. Section 5 lists specific areas for which the Service is temporarily not issuing 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 rulings because the Service has provided automatic approval procedures for these matters.

See Rev. Proc. 2002-1, 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 other offices of the Service.

.03 No-Rule Issues Part of Larger Transactions.

If it is impossible for the Service to determine the tax consequences of a larger transaction without knowing the resolution of an issue on which the Service will not issue rulings and determinations under this revenue procedure involving a part of the transaction or a related transaction, the taxpayer must

state in the request to the best of the taxpayer's knowledge and belief the tax consequences of the no-rule issue. The Service's ruling or determination letter will state that the Service did not consider, and no opinion is expressed upon, that issue. In appropriate cases the Service may decline to issue rulings or determinations on such larger transactions due to the relevance of the no-rule issue, despite the taxpayer's representation.

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

.01 Specific questions and problems.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) Sections 101, 761, and 7701.—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.

(6) 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.

(7) 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.

(8) 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.

(9) Section 115.—Income of states, municipalities, etc.—Whether 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 115.—Income of states, municipalities, etc.—Whether the income of membership organizations established by states exclusively to reimburse members for losses arising from workmen's compensation claims is excluded from gross income under § 115.

(11) 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.

(12) 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.

(13) Section 121 and former § 1034.—Exclusion of Gain from Sale of Principal Residence; Rollover of Gain on Sale of Principal Residence.—Whether property qualifies as the taxpayer's principal residence.

(14) 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.

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

(16) 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.)

(17) 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.

(18) 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.

(19) 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.

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

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

(22) 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 the revenue procedure providing optional rules for substantiating the amount of travel expenses for the period in which the expense was paid or incurred, such as Rev. Proc. 97-59, 1997-2 C.B. 594, or its successor, Rev. Proc. 98-64, 1998-2 C.B. 825.

(23) 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.

(24) 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.

(25) 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.

(26) 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.

(27) 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.

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

(29) 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.

(30) Sections 332, 351, 368(a)(1)(A), (B), (C), (E), and (F), and 1036. Complete Liquidations of Subsidiaries; Transfer to Corporation Controlled by Transferor; Definitions Relating to Corporate Reorganizations; and Stock for Stock of Same Corporation.—Whether a transaction qualifies under § 332, § 351 or § 1036 for nonrecognition treatment, or whether it 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)), § 368(a)(1)(B), § 368(a)(1)(C), § 368(a)(1)(E) or § 368(a)(1)(F), and whether various consequences (such as nonrecognition and basis) result from the application of that section, unless the Service determines that there is a significant issue that must be resolved in order to decide those matters. Notwithstanding the foregoing, and to the extent the transaction is not described in another no-rule section: (1) the Service will rule on the entire transaction, and not just the significant issue; and (2) the Service will rule on the application of § 351 to a controlled corporation when the transaction is undertaken prior to the distribution of the stock of the controlled corporation in a transaction qualifying under § 355.

SIGNIFICANT ISSUE: A significant issue is an issue of law that meets the three following tests: (1) the issue is not

clearly and adequately addressed by a statute, regulation, decision of a court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin; (2) the resolution of the issue is not essentially free from doubt; and (3) the issue is legally significant and germane to determining the major tax consequences of the transaction.

OBTAINING A RULING: To obtain a ruling on a transaction involving a significant issue, the taxpayer must in its ruling request explain the significance of the issue, set forth the authorities most closely related to the issue, and explain why the issue is not resolved by these authorities.

As a pilot program to better serve taxpayers the No-Rule for §§ 368(a)(1)(A), (B), (C), (E) and (F), and §§ 332, 351, and 1036 were combined, simplified and expanded. Our objective is to encourage taxpayers to seek rulings on transactions involving these provisions where there are significant issues that are not essentially free from doubt, and to prevent expending limited Service resources on the tax consequences of transactions that are clear under controlling authorities. In addition, the Service will now rule on an entire transaction if there is a significant issue, and the Service eliminated the overlap provision which prohibited the Service from issuing rulings under any Code section if the transaction qualifies under both one of the sections listed in this revenue procedure and under a section not listed in this revenue procedure.

(31) Section 351.—See section 3.01(30) above.

(32) Section 368.—See section 3.01(30) above.

(33) 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).

(34) 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 modifica-

tion 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).

(35) 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.

(36) 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.

(37) 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.

(38) Section 453.—See section 3.01(29), above.

(39) 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(b), if such provisions do not comply with section 4 of Rev. Proc. 98-40, 1998-2 C.B. 134.

(40) 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.

(41) 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.

(42) 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.

(43) 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.

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

(45) Section 761.—See section 3.01(5), above.

(46) 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.

(47) Section 1034 (prior to TRA 1997).—See section 3.01(13), above.

(48) 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.

(49) Section 1239.—See section 3.01(29), above.

(50) Section 1551.—Disallowance of the Benefits of the Graduated Corporate

Rates and Accumulated Earnings Credit.—Whether a transfer is within § 1551.

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

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

(53) 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.

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

(55) Sections 3121, 3306, 3401.—Definitions.—For purposes of determining employment classification pursuant to the filing of Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, whether a worker is a *bona fide* partner and, therefore, not an employee of the business is at issue.

(56) 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.)

(57) Section 7701.—Definitions.—The classification of an instrument that has certain voting and liquidation 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.

(58) Section 7701.—*See* section 3.01(5), above.

.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) 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.

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

(6) A request that does not comply with the provisions of Rev. Proc. 2002-1.

(7) 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).

(8) Questions that the Service determines, in its discretion, should not be answered in the general interests of tax administration.

(9) Any frivolous issue, as that term is defined in section 7.04 of Rev. Proc. 2002-1, this Bulletin.

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.—Determina-

tions 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) 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.

(5) 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.

(6) 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 former § 1.103-13(a)(2)(ii)(E).

(7) Sections 104(a)(2) and 3121.—Compensation for Injuries or Sickness; Definitions.—Whether an allocation of the amount of a settlement award (including a lump sum award) between back pay, compensatory damages, punitive damages, etc., is a proper allocation for federal tax purposes.

(8) Section 141.—Private Activity Bond; Qualified Bond.—With respect to requests made pursuant to Rev. Proc. 96-16, 1996-1 C.B. 630, 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).

(9) 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 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).

(10) 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 former § 1.103-13(g) (issued under former § 103(c)) or replaced proceeds described in § 148(a)(2) (or former § 103(c)(2)(B)).

(11) 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.

(12) 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. 99-7, 1999-1 C.B. 361.

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

(14) Section 167.—Depreciation.

- (i) Useful lives of assets.

(ii) Depreciation rates.

(iii) Salvage value of assets.

(15) 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.

(16) 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).

(17) 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.

(18) 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).

(19) 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).

(20) Section 262.—See section 4.01(12), above.

(21) 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.

(22) 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.

(23) 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.)

(24) 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 transfer of all or a part of the business assets to another corporation (1) that is the alter ego of the liquidating corporation, and (2) which, directly or indirectly, is owned more than 20 percent in value by persons holding directly or indirectly more than 20 percent in value of the liquidating corporation's stock. For purposes of this section, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).

(25) Section 306.—Dispositions of Certain Stock.—Whether the distribution, 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).

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

(27) 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.

(28) Section 346(a).—See sections 4.01(24) and (27) above.

(29) 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.

(30) 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).

(31) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the active business requirement of § 355(b) is met when the gross assets of the trades or businesses relied on to satisfy that requirement 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 be established 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.

(32) 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).

(33) 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).

(34) 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.

(35) Section 451.—See section 4.01(4), above.

(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) Section 664.—Charitable Remainder Trusts.—Whether a trust that will calculate the unitrust amount under § 664(d)(3) qualifies as a § 664 charitable remainder trust when a grantor, a trustee, a beneficiary, or a person related or subordinate to a grantor, a trustee, or a beneficiary can control the timing of the trust's receipt of trust income from a partnership or a deferred annuity contract to take advantage of the difference between trust income under § 643(b) and income for federal income tax purposes for the benefit of the unitrust recipient.

(40) 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.

(41) 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.

(42) Section 1362.—Election; Revocation; Termination.—All situations in which an S corporation is eligible to obtain relief for late S corporation, qualified subchapter S subsidiary, qualified subchapter S trust, or electing small business trust elections under sections 4 and 5 of Rev. Proc. 98-55, 1998-2 C.B. 645. (For instructions on how to seek this relief, see Rev. Proc. 98-55.)

(43) 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.

(44) 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).

(45) 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).

(46) 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 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.

(47) 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.

(48) 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).

(49) 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).

(50) 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.

(51) Section 2702.—Special Valuation Rules in Case of Transfers of Interests in Trusts.—Whether annuity interests are qualified annuity interests under § 2702 if the amount of the annuity payable annually is more than 50 percent of the initial net fair market value of the property transferred to the trust, or if the value of the remainder interest is less than 10 percent of the initial net fair market value of

the property transferred to the trust. For purposes of the 10 percent test, the value of the remainder interest is the present value determined under § 7520 of the right to receive the trust corpus at the expiration of the term of the trust. The possibility that the grantor may die prior to the expiration of the specified term is not taken into account, nor is the value of any reversion retained by the grantor or the grantor's estate.

(52) Section 3121.—Definitions.—Determinations as to which of two entities, under common law rules applicable in determining the employer-employee relationship, is the employer, when one entity is treating the worker as an employee.

(53) Section 3121.—See section 4.01(7), above.

.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 Office of the Associate Chief Counsel 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.

(8) A matter involving the federal tax consequences of any proposed federal, state, local, municipal, or foreign legislation. The Service may provide general information in response to an inquiry. However, the Office of Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities) may issue letter rulings regarding the effect of proposed state, local, or municipal legislation upon an eligible deferred compensation plan under § 457(b) provided that the letter ruling request relating to the plan complies with the other requirements of Rev. Proc. 2002-1.

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 62(c).—Reimbursement Arrangements.—Whether amounts related to a salary reduction and paid under a purported reimbursement or other expense allowance arrangement will be treated as paid under an “accountable plan” in accordance with § 1.62–2(c)(2).

.02 Section 457.—Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.—The tax treatment of any § 457 plan that provides that a loan may be made from assets held by such plan to any participants or beneficiaries under the plan.

.03 Section 1031.—Exceptions.—Whether an undivided fractional interest in real property is an interest in an entity that is not eligible for tax-free exchange under § 1031(a)(1).

.04 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).

.05 Sections 3121, 3306, and 3401.—Definitions; Employment Taxes.—Who is the employer of employees of an entity that is disregarded under § 1361(b)(3) or § 301.7701–2.

.06 Section 7701.—Definitions.—Whether arrangements where taxpayers acquire undivided fractional interests in real property constitute separate entities for federal tax purposes.

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 requests for change in annual accounting period where the Service has provided an administrative procedure for obtaining a change in annual accounting period. *See* Rev. Procs. 2000–11, 2000–1 C.B. 309 (certain corporations); 87–32, 1987–2 C.B. 396, as modified by § 301.9100–3 (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.—Except as otherwise provided in the listed revenue procedures, all requests for change in method of accounting where the Service has provided an administrative procedure for obtaining a change in method of accounting. *See* Rev. Proc. 99–49, 1999–2 C.B. 725 (accounting method changes described in the Appendix to Rev. Proc. 99–49 involving §§ 56, 162, 167, 168, 171, 174, 197, 263, 263A, 404, 446, 451, 454, 455, 461, 467, 471, 472, 475, 585, 1272, 1273, 1278, and 1281, and former § 168), as modified and amplified by Rev. Proc. 2001–46, 2001–37 I.R.B. 263 (certain taxpayers seeking to change their method of accounting for railroad track structure expenditures to the track maintenance allowance method provided in Rev. Proc. 2001–46), Rev. Proc. 2001–25, 2001–12 I.R.B. 913 (certain taxpayers seeking to change their method of accounting for stated interest on short-term loans made in the ordinary course of business), Rev. Proc. 2001–24, 2001–10 I.R.B. 788 (certain taxpayers seeking to change their method of accounting for cash advances on commissions paid to their agents), Rev. Proc. 2001–23, 2001–10 I.R.B. 784 (certain taxpayers seeking to change their method of accounting to the Used Vehicle Alternative LIFO Method provided in Rev. Proc. 2001–23), Rev. Proc. 2001–10, 2001–2 I.R.B. 272 (qualifying taxpayers with average annual gross receipts of \$1 million or less seeking to change from an accrual method to the cash method or

from an inventory method to a method complying with § 1.162–3, this revenue procedure is effective for taxable years ending on or after December 17, 1999, and was released to the public on December 6, 2000), Rev. Rul. 2001–60, 2001–51 I.R.B. 1 (certain taxpayers seeking to change their method of accounting for depreciation of modern golf course greens), Rev. Rul. 2001–8, 2001–9 I.R.B. 726 (certain taxpayers seeking to change their method of accounting for payments made or received with respect to floor stocks taxes to conform with the holding of Rev. Rul. 2001–8), Rev. Rul. 2001–4, 2001–3 I.R.B. 295 (certain taxpayers seeking to change their method of accounting for costs incurred to perform work on aircraft airframes as part of a heavy maintenance visit to conform to the holding of Rev. Rul. 2001–4), and Notice 2001–23, 2001–12 I.R.B. 911 (modifying Rev. Rul. 2001–4 by extending the application of the automatic consent for change in method of accounting for certain taxpayers); Rev. Proc. 2000–50, 2000–2 C.B. 601 (taxpayers seeking to change their treatment of certain computer software costs), Rev. Proc. 2000–38, 2000–2 C.B. 310 (certain taxpayers seeking to change to any of the three permissible methods of accounting for distributor commissions prescribed in Rev. Proc. 2000–38), Rev. Rul. 2000–7, 2000–1 C.B. 712 (certain taxpayers seeking to change their method of accounting for removal costs to conform with the holding in Rev. Rul. 2000–7), Rev. Rul. 2000–4, 2000–1 C.B. 331 (certain taxpayers seeking to change their method of accounting for ISO 9000 certification costs to conform with the holding in Rev. Rul. 2000–4), and Notice 2000–4, 2000–1 C.B. 313 (certain taxpayers seeking to change their method of accounting for depreciation of MACRS property acquired in a transaction to which § 1031 or § 1033 applies); Rev. Proc. 98–58, 1998–2 C.B. 710 (certain taxpayers seeking to change to the installment method of accounting under § 453 for alternative minimum tax purposes for certain deferred payment sales contracts relating to property used or produced in the trade or business of farming); Rev. Proc. 97–43, 1997–2 C.B. 494 (certain taxpayers required to change their method of accounting as a result of making elections

out of certain exemptions from dealer status for purposes of § 475); Rev. Proc. 92-67, 1992-2 C.B. 429 (certain taxpayers with one or more market discount bonds seeking to make a § 1278(b) election or a constant interest rate election); Rev. Proc. 92-29, 1992-1 C.B. 748 (certain taxpayers seeking to use an alternative method under § 461(h) for including common improvement costs in basis); and Rev. Proc. 91-51, 1991-2 C.B. 779 (certain taxpayers under examination that sell mortgages and retain rights to service the mortgages).

.03 Section 461.—General Rule for Taxable Year of Deduction.—All requests for making or revoking an election under § 461 where the Service has provided an administrative procedure for making or revoking an election under § 461. *See* Rev. Proc. 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).

.04 Section 1362.—Election; Revocation; Termination.—All situations in which an S corporation qualifies for automatic late S corporation relief under Rev. Proc. 97-48, 1997-2 C.B. 521, or for automatic inadvertent termination or inadvertent invalid election relief under section 6 of Rev. Proc. 98-55, 1998-2 C.B. 643.

.05 Sections 1502, 1504, and 1552.—Regulations; Definitions; Earnings and Profits.—All requests for waivers or consents on consolidated return issues where the Service has provided an administrative procedure for obtaining waivers or consents on consolidated return issues. *See* Rev. Procs. 91-71, 1991-2 C.B. 900 (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 corpora-

tions 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).

.06 Section 704(c).—Contributed Property—Requests from Qualified Master-Feeder Structures, as described in section 4.02 of Rev. Proc. 2001-36, 2001-23 I.R.B. 1326, for permission to aggregate built-in gains and losses from contributed qualified financial assets for purposes of making § 704(c) and reverse § 704(c) allocations.

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Procs. 2001-3, 2001-1 I.R.B. 111, 2001-30, 2001-19 I.R.B. 1163, 2001-36, 2001-23 I.R.B. 1326, and 2001-51, 2001-43 I.R.B. 369, are superseded.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective January 7, 2002.

SECTION 9. 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 control 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(30), 3.02(1) and (3), 4.01(31), 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 recording 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 Graham L. Barron of the Office of Associate Chief Counsel (Corporate). For further information about this revenue procedure, please contact Mr. Barron at (202) 622-7790 (not a toll-free call).