
From: KHyde@foley.com
Sent: Monday, December 23, 2019 10:53 AM
To: Vinyard, Herschel T. - Chief Administrative Officer
Subject: IRS Ruling

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Please see comment below from Bob Bernstein as to length of time it takes to receive a private letter ruling.

-Kevin E. Hyde

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From: Bernstein, Robert S.
Sent: Monday, December 23, 2019 10:02 AM
To: Hyde, Kevin E. ; Russell Jr, W. Bradley
Subject: RE: JEA Question

Two issues. First, the only way to get the IRS' views on something like this is to request a private letter ruling. It often takes 4 months to get a private letter ruling, although I have seen the requests drag on much longer. Second, the IRS will not rule on every aspect of deferred compensation plans. Specifically, in their annual listing of areas that they will not rule upon, they list rulings under Section 409A as a no-rule area. See attached IRS Notice (highlighted text). For deferred compensation to be non-taxable until paid (as opposed to taxable when deferred), you must comply with a host of rules, including the rules of Section 409A (which address various procedural aspects of deferred compensation plans). Hence, while the IRS may

rule on some aspects of the plan, you are unlikely to obtain a comprehensive ruling that addresses every applicable federal income tax issue.

I think that the best that JEA could do is get an opinion of counsel on the issue if they wanted all the issues analyzed and addressed.

Regards, Bob

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From: Hyde, Kevin E. <KH Hyde@foley.com>
Sent: Monday, December 23, 2019 9:28 AM
To: Bernstein, Robert S. <RBernstein@foley.com>; Russell Jr, W. Bradley <wbrussell@foley.com>
Subject: JEA Question

Bob, Brad:

During the course of discussing the JEA Performance Unit Plan (PUP) we reviewed whether the Plan could be treated as deferred compensation under Florida law. See provision of our memo below. One of the requirements is that there be a determination that the plan proceeds would not be immediately taxable. See highlighted provision. Presumably JEA would get this from the IRS. Generally, how long would it take to get such a determination. I can also send you the whole PUP memo if that helps. Thanks.

The PUP is not a traditional deferred compensation plan such as the one currently in place with JEA. However, the PUP is akin to and fits with the deferred compensation plan allowed by F.S. 112.215. If JEA desires to treat the PUP as a deferred compensation plan pursuant to §112.215, the JEA Board must approve the PUP (it has); **as required JEA will seek a determination that the compensation deferred by employees to purchase the PUP is not currently taxable (F.S. 112.215(5) and (6)(b)); and that the proceeds to the employees from the PUP, if any, will not be included in the employee's taxable income until proceeds are actually received (F.S. 112.215(6)(a)).** Finally, the PUP does not impose any liability on

JEA, “except to show that the payments have been [or will be] remitted for the purposes for which the compensation has been deferred.” (F.S. 112.215(9)). Specifically, Section 9(c) of the JEA Long-Term Performance Unit Plan states, “[t]his Plan is intended to constitute an ‘unfunded’ program, and no amount shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA’s obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.” Further, a JEA Employee stands to gain nothing if the Threshold Value Target is not attained during the applicable Performance Period (Section 2(t) of the JEA Long-Term Performance Unit Plan).

In addition to the requirements under F.S. 112.215, the Administrator of the PUP should consult F.S. 112.21 to determine the applicability of requirements of custodial accounts in which the deferred compensation used to purchase performance units will be held. It is our understanding that JEA intends to hold the deferred compensation in an interest-bearing FDIC- insured account such as those currently used for other existing JEA deferred compensation plans.

-Kevin E. Hyde

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SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 The purpose of this revenue procedure is to update Rev. Proc. 2018–3, 2018–1 I.R.B. 130, 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 and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) (EEE) relating to issues on which the Internal Revenue Service (the “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. 2019–7, this Bulletin. For a list of areas under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division relating to issues, exempt organizations, plans, or plan amendments on which the Service will and will not issue letter rulings or determination letters, see Rev. Proc. 2019–4 and Rev. Proc. 2019–5, this Bulletin.

.02 Changes.

- (1) Section 3.01(7), regarding § 61, has been added.
- (2) Section 3.01(31), regarding § 162, has been added.
- (3) Section 3.01(33), regarding §§ 165, 381, and 1502, has been clarified and paragraph (ii) has been added.
- (4) Section 3.01(85), regarding § 643(f), has been added.
- (5) Section 3.01(125), regarding § 6050P, has been added.
- (6) Section 4.01(46), regarding § 1031(f), has been modified.

(7) Old sections 5.01(15) and 5.01(16), regarding § 6050P, have been moved to sections 3.01(126) and 3.01(127).

(8) References to Associate Chief Counsel (Tax Exempt and Government Entities) (TEGE) have been changed to Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) (EEE) throughout the revenue procedure to reflect the Office's name change.

SECTION 2. BACKGROUND, SCOPE OF APPLICATION, AND NO-RULE ISSUES PART OF INTEGRATED TRANSACTION

.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. In employee plans matters described in section 5.15 of Rev. Proc. 2019–1, this Bulletin, the Associate Chief Counsel (EEE) may issue letter rulings after 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 or determination letters will not be issued. Section 4 sets forth those areas in which rulings or determination letters 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. Section 5 sets forth those areas in which the Service is temporarily not issuing rulings or determination letters because those matters are under study. Finally, section 6 of this revenue procedure lists specific areas in which the Service will not ordinarily issue rulings because the Service has provided automatic approval procedures for these matters.

See Rev. Proc. 2019–1, this Bulletin, particularly section 6 captioned "Under What Circumstances Does The Service Not Issue Letter Rulings Or 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 because the Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration (including due to resource constraints) or on other grounds whenever warranted by the facts or circumstances of a particular case. 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.

If the Service determines that it is not in the interest of sound tax administration to issue a letter ruling or determination letter due to resource constraints, it will adopt a consistent approach with respect to taxpayers that request a ruling on the same issue. The Service will also consider adding the issue to the no rule list at the first opportunity. See section 6.02 of Rev. Proc. 2019–1, this Bulletin.

.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 Integrated Transaction.

If it is impossible for the Service to determine the tax consequences of an integrated transaction without knowing the resolution of an issue on which the Service will not issue rulings or determination letters 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 determination letters on such integrated transactions due to the relevance of the no-rule issue, despite the taxpayer's representation. See also section 4.02(2) of this revenue procedure.

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

.01 Specific Questions and Problems.

(1) Section 42.—Low-Income Housing Credit.—Whether under § 42(j)(4)(E) a casualty loss has been restored by reconstruction or replacement within a reasonable period of time. The Service may issue a determination letter in this case. See section 12 of Rev. Proc. 2019–1, this Bulletin.

(2) Section 45.—Electricity Produced from Certain Renewable Resources, Etc.—The allocation by a partnership of the § 45 credit, the validity of the partnership, or whether any taxpayer is a valid partner in the partnership.

(3) Section 45.—Electricity Produced from Certain Renewable Resources, Etc.—Whether the taxpayer meets the requirements of § 45 or Notice 2010–54, 2010–40 I.R.B. 403, for refined coal.

(4) Sections 45 and 48.—Electricity Produced from Certain Renewable Resources, Etc.; Energy Credit.—The application of the beginning of construction requirement under § 45(d) and § 48(a)(5).

(5) Section 47.—Rehabilitation Credit.—The allocation by a partnership of the § 47 rehabilitation credit, the validity of the partnership, or whether any taxpayer is a valid partner in the partnership.

(6) Section 48.—See section 3.01(4), above.

(7) Section 61.—Gross Income Defined.—Whether an amount is not included in a taxpayer's gross income under section 61 because the taxpayer receives the amount subject to an unconditional obligation to repay the amount.

(8) 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 an eligible plan maintained by an eligible employer pursuant to the provisions of § 457(b)) are currently includible in the taxpayer's gross income.

(9) Section 61.—Gross Income Defined.—Whether a split-dollar life insurance arrangement is "materially modified" within the meaning of § 1.61–22(j)(2) of the Income Tax Regulations. (Also §§ 83, 301, 1401, 2501, 3121, 3231, 3306, 3401, and 7872.)

(10) Sections 61, 451, and 1001.—Gross Income Defined; General Rule for Taxable Year of Inclusion; Determination of Amount of and Recognition of Gain or Loss.—Whether, under authorization by an appropriate state agency to recover certain costs pursuant to state specified cost recovery legislations, any investor-owned utility company realizes income upon: (i) the creation of an intangible property right; (ii) the transfer of that intangible property right; or (iii) the securitization of the intangible property right.

(11) 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 had the group consisted of fewer than 10 employees.

(12) 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.

(13) Section 83.—Property Transferred in Connection with Performance of Services.—Which corporation is entitled to the deduction under § 83(h) in cases in which a corporation undergoes a corporate division, if the facts are not similar to those described in Rev. Rul. 2002–1, 2002–1 C.B. 268.

(14) 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.

(15) Sections 101, 761, and 7701.—Certain Death Benefits; Terms Defined; 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 consist or will consist of life insurance policies on the lives of the members.

(16) Section 102.—Gifts and Inheritances.—Whether a transfer is a gift within the meaning of § 102(a).

(17) Section 105(h).—Amount Paid to Highly Compensated Individuals Under a Discriminatory Self-Insured Medical Expense Reimbursement Plan.—Whether a self-insured medical reimbursement plan satisfies the requirements of § 105(h) for a plan year.

(18) 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.

(19) Section 107.—Rental Value of Parsonages.—Whether an individual is a “minister of the gospel” for Federal tax purposes. (Also §§ 1402(a)(8), (c)(4), and (e), 3121(b)(8)(A), and 3401(a)(9).)

(20) Section 115.—Income of States, Municipalities, Etc.—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.)

(21) 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.

(22) Section 115.—Income of States, Municipalities, Etc.—Whether some, but not all, income of an entity is from the exercise of an essential government function in order to be excluded from gross income under § 115.

(23) Section 115.—Income of States, Municipalities, Etc.—Whether income accruing to a trust, or other entity, relating to or associated with a qualified retirement plan described in § 401(a) is excluded from gross income under § 115.

(24) Section 117.—Qualified Scholarships.—Whether amounts paid to research fellows and research associates are scholarships or fellowships excluded from wages for FICA tax purposes.

(25) 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 described in Rev. Proc. 76-47, 1976-2 C.B. 670.

(26) Section 118.—Contributions to the Capital of a Corporation.—Whether a transfer of an intangible as defined in section III. B. 2. of Notice 2016-36, 2016-25 I.R.B. 1029, meets all of the requirements under the safe harbor provided by Notice 2016-36.

(27) 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.

(28) Section 121.—Exclusion of Gain from Sale of Principal Residence.—Whether property qualifies as the taxpayer's principal residence.

(29) 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.

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

(31) Section 162.—Trade or Business Expenses.—Whether a taxpayer is engaged in a trade or business. This area does not include a request for a ruling that relies on a representation from a taxpayer that the taxpayer is or is not engaged in a trade or business, or a request for a ruling that relies on factual information provided by the taxpayer evidencing the active conduct of a trade or business (for example, a request that relies on the taxpayer's active conduct of a trade or business as evidenced by financial statements provided by the taxpayer).

(32) 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 in which the loan proceeds are used for commercial or business activities, or 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.)

(33) Sections 165, 381, and 1502.—Losses; Carryovers in Certain Corporate Acquisitions; Regulations.—In determining whether a loss for worthless securities is subject to § 165(g)(3), (i) whether the source of any gross receipts may be determined by reference to the source of gross receipts of a counter party to an intercompany transaction, as defined in § 1.1502-13(b)(1) (e.g., an intercompany distribution to which § 1.1502-13(f)(2) applies), other than an intercompany transaction to which § 381(a) applies, and (ii) in an intercompany transaction to which § 381(a) applies, whether the acquiring corporation takes into account historic gross receipts of the distributor or transferor corporation, if the intercompany transaction is part of a plan to claim a deduction for worthless securities under § 165(g)(3).

(34) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a charitable contribution deduction under § 170 is allowed for a transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in § 170(c).

(35) 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.

(36) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether an organization is or continues to be described in § 170(b)(1)(A) (other than clause (v)) or § 170(c)(2) – (5), including, for example, whether changes in an organization’s activities or operations will affect or jeopardize the organization’s status as an organization described in those sections. The Associate Chief Counsel (EEE) will rule, however, on specific legal questions related to §§ 170(b)(1)(A) or 170(c) that are not otherwise described in this revenue procedure. See Rev. Proc. 2019–5, this Bulletin, for the procedures for obtaining determination letters on public charity status under § 170.

(37) Section 181.—Treatment of Certain Qualified Film and Television Productions.—The determination under § 1.181–1(a)(1) and (2) as to who is the owner of a qualified film or television production.

(38) Section 199.—Income Attributable to Domestic Production Activities.—The determination under § 1.199–3(f)(1) as to who is the taxpayer that has the benefits and burdens of ownership under Federal income tax principles of any qualifying production property (as defined in § 1.199–3(j)(1)), qualified film (as defined in § 1.199–3(k)), or utilities (as defined in § 1.199–3(l)) during the period in which a qualifying activity under § 199 occurs.

(39) 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.

(40) Section 216.—Deduction of Taxes, Interest, and Business Depreciation by Cooperative Housing Corporation Tenant-Stockholder.—Whether a unit constitutes an “apartment in a building” under § 216(b)(1)(B).

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

(42) Section 264(c)(1).—Contracts Treated as Single Premium 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.

(43) Sections 267, 304, 331, 332, 351, and 1502.—Losses, Expenses, and Interest with Respect to Transactions Between Related Taxpayers; Redemption Through Use of Related Corporations; Gain or Loss to Shareholders in Corporate Liquidations; Complete Liquidations of Subsidiaries; Transfer to Corporation Controlled by Transferor; Regulations.—The treatment of transactions in which stock of a corporation is transferred with a plan or intention that the corporation be liquidated in a transaction intended to qualify under § 331.

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

(45) 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 authorized by the revenue procedure providing optional rules for substantiating the amount of travel expenses for the period in which the expense was paid or incurred.

(46) 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.

(47) 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.

(48) 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.

(49) 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.

(50) 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.

(51) Section 304.—See section 3.01(43), above.

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

(53) Sections 331, 453, and 1239.—Gain or Loss to Shareholders in Corporate Liquidations; Installment Method; Gain from Sale of Depreciable Property Between Certain Related Taxpayers.—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.

(54) Section 331.—See section 3.01(43), above.

(55) Sections 332, 351, 368, and 1036.—Complete Liquidations of Subsidiaries; Transfer to Corporation Controlled by Transferor; Definitions Relating to Corporate Reorganizations; 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, except a transaction intended to qualify under §§ 368(a)(1)(D) and 355, and whether various tax consequences (such as nonrecognition and basis) result from the application of that section. The Service will instead rule only on significant issues presented in a transaction described in § 332, 351, 368, or 1036. Additionally, the Service will rule on one or more significant issues under the Code sections that address the tax consequences (such as nonrecognition and basis) that result from the qualification of a transaction under § 332, 351, 368, or 1036. See section 6.03(2) of Rev. Proc. 2019-1, this Bulletin.

SIGNIFICANT ISSUE: A significant issue is a germane and specific issue of law, provided that a ruling on the issue would not be a comfort ruling, as defined in section 6.11 of Rev. Proc. 2019-1, or the conclusion in such a ruling otherwise would not be essentially free from doubt. An issue is germane if resolution of the issue is necessary to determine an element of the tax treatment of the transaction. An

issue is specific if it is the narrowest articulation of the germane issue. A change of circumstances arising after a transaction ordinarily does not present a significant issue with respect to the transaction.

OBTAINING A LETTER RULING: To obtain a letter ruling on a significant issue presented in a transaction, the taxpayer in its letter ruling request must comply with all the requirements set forth in section 6.03(2) of Rev. Proc. 2019–1, as well as Rev. Proc. 2019–1, in general.

(56) Section 332.—See section 3.01(43), above.

(57) Section 351.—See sections 3.01(43) and (55), above.

(58) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the distribution of the stock of a controlled corporation is being carried out for one or more corporate business purposes, whether the transaction is used principally as a device, and whether the distribution and an acquisition are part of a plan under § 355(e). Notwithstanding the preceding sentence, the Service: (i) will issue a letter ruling with respect to a significant issue under § 1.355–2(b) pertaining to the corporate business purpose requirement, provided that the issue is a legal issue and is not inherently factual in nature, (ii) will issue a letter ruling with respect to a significant issue under § 355(a)(1)(B) and § 1.355–2(d) pertaining to device, provided that the issue is a legal issue and is not inherently factual in nature, and (iii) may issue a ruling regarding the effect of redemptions under § 355(e) pending the issuance of temporary or final regulations regarding redemptions under § 355(e) if an adverse ruling on such question would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e).

(59) Section 358.—Basis to Distributees.—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).

(60) Section 368.—See section 3.01(55), above.

(61) Section 381.—See section 3.01(33), above.

(62) Section 403(b).—Taxability of Beneficiary Under Annuity Purchased by Section 501(c)(3) Organization or Public School.—Whether the form of a plan satisfies the requirements of § 403(b) as provided in Rev. Proc. 2019–4, this Bulletin.

(63) Section 409A.—Inclusion in Gross Income of Deferred Compensation Under Nonqualified Deferred Compensation Plans.—The income tax consequences of establishing, operating, or participating in a nonqualified deferred compensation plan within the meaning of § 1.409A–1(a); whether a plan is described in § 1.409A–1(a)(3)(iv) or (v); whether a plan is a *bona fide* vacation leave, sick leave, or compensatory time plan described in § 1.409A–1(a)(5); and whether a plan provides for the deferral of compensation under § 1.409A–1(b).

(64) Section 411(d)(3).—Termination or Partial Termination; Discontinuance of Contributions.—Whether there has been a partial termination of an employee plan. The Service may issue a determination letter involving the partial termination of an employee plan. See Rev. Proc. 2019–4, this Bulletin.

(65) Section 414(d).—Governmental Plan.—Whether a plan is a governmental plan under § 414(d).

(66) Section 419(e).—Welfare Benefit Fund.—Whether a captive insurance arrangement through which an employer provides health insurance to current or retired employees is a welfare benefit fund.

(67) Section 424.—Definitions and Special Rules.—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 modification which results in the issuance of a new option by reason of failing to satisfy the spread test requirement of § 424(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 § 424(a)(2).

(68) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a nonqualified unfunded deferred-compensation arrangement with respect to a controlling shareholder-employee eligible to participate in the arrangement.

(69) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of nonqualified unfunded deferred-compensation arrangements in which 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.

(70) Sections 451 and 457.—General Rule for Taxable Year of Inclusion; Nonqualified 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.

(71) Section 451.—See section 3.01(10), above.

(72) Section 453.—See section 3.01(53), above.

(73) Section 457.—See section 3.01(70), above.

(74) Section 457A.—Nonqualified Deferred Compensation from Certain Tax Indifferent Parties.—The income tax consequences of establishing, operating, or participating in a nonqualified deferred compensation plan within the meaning of § 457A(d)(3).

(75) Section 501.—Exemption from Tax on Corporations, Certain Trusts, Etc.—Whether an organization is or continues to be exempt from taxation under § 501(a) as an organization described in §§ 501(c) or 501(d), including, for example, whether changes in an organization's activities or operations will affect or jeopardize the organization's exempt status. The Associate Chief Counsel (EEE) will rule, however, on specific legal questions related to §§ 501(c) or 501(d) that are not otherwise described in this revenue procedure. For example, although the Associate Chief Counsel (EEE) would not rule on whether a change in a § 501(c)(3) organization's activities would jeopardize the organization's exempt status, the Associate Chief Counsel (EEE) would (subject to the limitations described in this revenue procedure) rule on whether such new activities would further an exempt purpose described in § 501(c)(3). See Rev. Proc. 2019–5, this Bulletin, for the procedures for issuing determination letters on tax-exempt status under § 501.

(76) Sections 501, 511, 512, 513, and 514.—Exemption from Tax on Corporations, Certain Trusts, Etc.; Imposition of Tax on Unrelated Business Income of Charitable, Etc., Organizations; Unrelated Business Taxable Income; Unrelated Trade or Business; Unrelated Debt-Financed Income.—Whether a joint venture between a tax-exempt organization and a for-profit organization affects an organization's exempt status, furthers an exempt purpose, or results in unrelated business income.

(77) Sections 507, 664, 4941, and 4945.—Termination of Private Foundation Status; Charitable Remainder Trusts; Taxes on Self-Dealing; Taxes on Taxable Expenditures.—Issues pertaining to the tax consequences of the termination of a charitable remainder trust (as defined in § 664) before the end of the trust term as defined in the trust's governing instrument in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets.

(78) Section 509.—Private Foundation Defined.—Whether an organization is or continues to be described in § 509(a) including, for example, whether changes in an organization's activities or operations will affect or jeopardize the organization's status as a public charity described in § 509(a)(1) – (4). The Associate Chief Counsel (EEE) will rule, however, on specific legal questions related to § 509(a) that are not otherwise described in this revenue procedure. See Rev. Proc. 2019–5, this Bulletin, for the procedures for obtaining determination letters on public charity status under § 509.

- (79) Sections 511, 512, 513, and 514.—Imposition of Tax on Unrelated Business Income of Charitable, Etc., Organizations; Unrelated Business Taxable Income; Unrelated Trade or Business; Unrelated Debt-Financed Income.—Whether unrelated business income tax issues arise when charitable lead trust assets are invested with charitable organizations.
- (80) Sections 511, 512, 513, and 514.—See section 3.01(76), above.
- (81) Section 529.—Qualified Tuition Programs.—Whether a state-run tuition program qualifies under § 529.
- (82) Sections 542, 543, and 544.—Definition of Personal Holding Company; Personal Holding Company Income; Rules for Determining Stock Ownership.—Whether the application of § 544(a) causes a corporation to meet the stock ownership requirements under § 542(a)(2), § 543(a)(4), § 543(a)(6), or § 543(a)(7).
- (83) 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.
- (84) 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.
- (85) Section 643(f).—Treatment of multiple trusts.—Whether two or more trusts shall be treated as one trust for purposes of subchapter J of chapter 1.
- (86) 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.
- (87) Section 664.—See section 3.01(77), above.
- (88) 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.
- (89) Section 704(b).—Determination of Distributive Share.—Whether the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or an item thereof) has substantial economic effect or is in accordance with the partner's interest in the partnership.
- (90) Section 761.—Terms Defined.—Matters relating to the validity of a partnership or whether a person is a partner in a partnership.
- (91) Section 761.—See section 3.01(15), above.
- (92) 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.
- (93) Section 1001.—Determination of Amount of and Recognition of Gain or Loss.—Whether the termination of a charitable remainder trust before the end of the trust term as defined in the trust's governing instrument, in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets, is treated as a sale or other disposition by the beneficiaries of their interests in the trust.
- (94) Section 1001.—See section 3.01(10), above.

(95) Section 1033.—Involuntary Conversions.—Whether the replacement or proposed replacement of compulsorily or involuntarily converted property does or does not qualify under § 1033(a), if the taxpayer has already filed a Federal tax return for the first taxable year in which any of the gain was realized from the converted property. The Service may issue a determination letter in this case. See section 12.01 of Rev. Proc. 2019–1, this Bulletin.

(96) Section 1036.—See section 3.01(55), above.

(97) 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.

(98) Section 1221.—Capital Asset Defined.—Whether the termination of a charitable remainder trust before the end of the trust term as defined in the trust’s governing instrument, in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets, is treated as a sale or exchange of a capital asset by the beneficiaries.

(99) Section 1239.—See section 3.01(53), above.

(100) Section 1361.—S Corporation Defined.—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).

(101) Section 1502.—Regulations.—If a member of an affiliated group fails to file Form 1122 or fails to join in the making of a consolidated return due to a mistake of law or fact, or inadvertence, whether such member will be treated as if it had filed a Form 1122. The Service may issue a determination letter in this case. See section 12.01 of Rev. Proc. 2019–1, this Bulletin. But see also section 6.07 of this revenue procedure.

(102) Section 1502.—See sections 3.01(33) and (43), above.

(103) Section 1551.—Disallowance of the Benefits of the Graduated Corporate Rates and Accumulated Earnings Credit.—Whether a transfer is within § 1551.

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

(105) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a charitable contribution deduction under § 2055 is allowed for the transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in § 2055(a).

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

(107) Section 2522.—Charitable and Similar Gifts.—Whether a charitable contribution deduction under § 2522 is allowable for a transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in § 2522(a).

(108) Section 2601.—Tax Imposed.—Whether a trust exempt from generation-skipping transfer (GST) tax under § 26.2601–1(b)(1), (2), or (3) of the Generation-Skipping Transfer Tax Regulations will retain its GST exempt status when there is a modification of a trust, change in the administration of a trust, or a distribution from a trust in a factual scenario that is similar to a factual scenario set forth in one or more of the examples contained in § 26.2601–1(b)(4)(i)(E).

(109) 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.

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

(111) Sections 3121, 3306, and 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.

(112) Section 4052(f)(1).—Certain Repairs and Modifications Not Treated as Manufacture.—Whether a chassis repaired or modified using a “glider kit” is treated as manufactured or produced if the cost of the repairs or modifications does not exceed 75 percent of the retail price of a comparable new chassis.

(113) Section 4191.—Medical Devices.—Whether a device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) intended for humans is not a “taxable medical device” within the meaning of § 4191(b)(1) due to the application of the exemption provided in § 4191(b)(2) for eyeglasses, contact lenses, hearing aids, and any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.

(114) Section 4216(b).—Constructive Sale Price.—Whether a particular methodology for determining the tax base is allowable under the constructive sale price rules.

(115) Sections 4375, 4376, and 4377.—Health Insurance; Self-Insured Health Plans; Definitions and Special Rules.—Whether an arrangement is a specified health insurance policy or an applicable self-insured health plan that is subject to the fee applicable to such arrangements.

(116) Sections 4940 and 4942.—Excise Tax Based on Investment Income; Taxes on Failure to Distribute Income.—Whether an organization is or continues to be an “operating foundation” described in § 4942(j)(3) or an “exempt operating foundation” described in § 4940(d)(2), including, for example, whether changes in an organization’s activities or operations will affect or jeopardize the organization’s status as an operating foundation or exempt operating foundation. The Associate Chief Counsel (EEE) will rule, however, on specific legal questions related to §§ 4940(d)(2) or 4942(j)(3) that are not otherwise described in this revenue procedure. See Rev. Proc. 2019–5, this Bulletin, for the procedures for obtaining determination letters on foundation status under §§ 4940 and 4942.

(117) Section 4941.—Taxes on Self-Dealing.—Whether transactions during the administration of an estate or trust meet the requirements of the exception to § 4941 set forth in § 53.4941(d)–1(b)(3) of the Private Foundation Excise Tax Regulations, in cases in which a disqualified person issues a promissory note in exchange for property of an estate or trust.

(118) Section 4941.—See section 3.01(77), above.

(119) Section 4942.—See section 3.01(116), above.

(120) Section 4945.—See section 3.01(77), above.

(121) Section 4958.—Taxes on Excess Benefit Transactions.—Whether a compensation or property transaction satisfies the rebuttable presumption that the transaction is not an excess benefit transaction as described in § 53.4958–6 of the Excess Benefit Transactions Excise Tax Regulations.

(122) Section 4975(d).—Exemptions.—Whether the renewal, extension, or refinancing of an exempt loan satisfies the requirements of § 4975(d)(3). Also, whether the pre-payment of employee stock ownership plan (ESOP) loans satisfies the requirements of § 4975(d)(3) other than with respect to plan termination.

(123) 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.)

(124) Section 4980H.—Shared Responsibility for Employers Regarding Health Coverage.—Whether an employer is required to make an assessable payment under § 4980H(a) or (b).

(125) Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities.—Requests for a ruling that the creditor is not required to report a discharge that include as grounds for the request a dispute regarding the underlying liability.

(126) Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities.—Whether amounts reduced pursuant to the terms of a debt instrument are reportable under § 6050P and the regulations.

(127) Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities.—Whether amounts discharged in a nonlending transaction are reportable under § 6050P and the regulations.

(128) Section 6166.—Extension of Time for Payment of Estate Tax Where Estate Consists Largely of Interest in Closely Held Business.—Requests involving § 6166 if there is no decedent.

(129) Section 6901.—Transferred Assets.—Whether a taxpayer is liable for tax as a transferee.

(130) Section 7216.—Disclosure or Use of Information by Preparers of Returns.—Whether a criminal penalty is applicable for any disclosure or use of information by preparers of returns.

(131) 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.

(132) Section 7701.—Definitions.—The classification for Federal tax purposes of a fideicomiso or other land trust created under local law, applying the principles of Rev. Rul. 2013–14, 2013–26 I.R.B. 1267, or Rev. Rul. 92–105, 1992–2 C.B. 204.

(133) Section 7701.—See section 3.01(15), above.

(134) Section 7704.—Certain Publicly Traded Partnerships Treated as Corporations.—Whether interests in a partnership that are not traded on an established securities market (within the meaning of § 7704(b) and § 1.7704–1(b) of the Procedure and Administration Regulations) are readily tradable on a secondary market or the substantial equivalent thereof under § 1.7704–1(c)(1). This specifically includes, but is not limited to, whether an investment fund or portfolio supporting variable contract arrangements of life insurance companies is a publicly traded partnership.

(135) Section 9815.—Additional Market Reforms.—Whether an insured group health plan satisfies the requirements of § 2716 of the Public Health Service Act, Prohibition on Discrimination in Favor of Highly Compensated Individuals, as incorporated into the Code by § 9815.

.02 General Areas.

(1) Whether the economic substance doctrine is relevant to any transaction or whether any transaction complies with the requirements of § 7701(o).

(2) The results of transactions that lack a *bona fide* business purpose or have as their principal purpose the reduction of Federal taxes.

(3) 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.

(4) A matter involving alternate plans of proposed transactions or involving hypothetical situations.

(5) 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.

(6) A matter involving the regulations governing practice before the Service under 31 CFR Part 10 (reprinted as Treasury Department Circular No. 230).

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

- (8) Whether a completed transaction can be rescinded for Federal income tax purposes.
- (9) The income tax (including unrelated business income tax) or excise tax consequences of the contribution of stock options to, or their subsequent exercise from, plans described in Part 1 of Subchapter D of Chapter 1 of Subtitle A of the Code.
- (10) Questions that the Service determines, in its discretion, should not be answered in the general interests of sound tax administration, including due to resource constraints.
- (11) Any frivolous issue, as that term is defined in section 6.10 of Rev. Proc. 2019–1, this Bulletin.
- (12) A request that does not comply with the provisions of Rev. Proc. 2019–1, 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.—Application of these sections if 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, if 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.—Determinations 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) Section 62(c).—Certain Arrangements Not Treated as 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).
- (5) 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.
- (6) Sections 101 and 7702.—Certain Death Benefits; Life Insurance Contract Defined.—Whether amounts received under an arrangement with an entity that is not regulated as an insurance company may be treated as received under a “life insurance contract” within the meaning of §§ 101(a) and 7702.
- (7) 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.
- (8) 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) or § 1.148–2(e)(2)(ii).

(9) Section 141.—Private Activity Bond; Qualified Bond.—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 available output of the facility as defined in § 1.141–7(b)(1). 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).

(10) Sections 142 and 144(a).—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 nonqualified costs equals more than 5 percent of the net proceeds, as defined in § 150(a)(3).

(11) 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)).

(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 162(m).—Certain Excessive Employee Remuneration.—Whether the deduction limit under § 162(m) applies to compensation attributable to services performed for a related partnership.

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

(15) Section 165.—Losses.—Whether stock in a corporation has been abandoned.

(16) Section 167.—Depreciation.

(i) Useful lives of assets.

(ii) Depreciation rates.

(iii) Salvage value of assets.

(17) Sections 167 and 168.—Depreciation; Accelerated Cost Recovery System.—Application of those sections in which the formal ownership of property is in a party other than the taxpayer except when title is held merely as security.

(18) 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).

(19) 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).

(20) Section 170.—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.

(21) 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).

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

(23) Section 265(a)(2).—Interest.—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.

(24) 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.

(25) 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.)

(26) 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).

(27) Sections 331 and 346(a).—Gain or Loss to Shareholders in Corporate Liquidations; Complete Liquidation.—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 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.

(29) 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).

(30) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue relating to the qualification, under § 355 and related provisions, of a distribution, or another distribution which is part of the same plan or series of related transactions, if, immediately after any such distribution, the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of § 355(b) is less than five percent of the fair market value of the total gross assets of such corporation.

For purposes of determining the fair market value of the total gross assets of such corporation and of the gross assets of such trade(s) or business(es), (i) all members of a separate affiliated group, within the meaning of § 355(b)(3)(B), are treated as one corporation; and (ii) if the distributing corporation or

the controlled corporation relies on an active trade or business of a partnership for purposes of § 355(b), such corporation is treated as owning its ratable share of the gross assets of the partnership.

This section 4.01(30) does not apply if (i) all the stock of the controlled corporation that is distributed in the distribution is distributed to one or more members of the affiliated group, as defined in § 243(b)(2) (A), of which the distributing corporation is a member; and (ii) such distribution is not part of a plan or series of related transactions pursuant to which stock of any corporation will be distributed outside such affiliated group in a distribution described in this section 4.01(30) or section 5.01(3) of this revenue procedure.

(31) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue under § 355(e) other than whether a distribution and an acquisition are part of a plan (i.e., any non-plan issue). Notwithstanding the preceding sentence, the Service generally will rule on a non-plan issue or issues (e.g., whether a corporation constitutes a predecessor of distributing) if an adverse ruling on such non-plan issue or issues would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e).

(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 § 1.441–3(c)(1)(iii).

(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 if the trust fails to meet the requirements of Rev. Proc. 92–64, 1992–2 C.B. 422.

(35) Section 451.—General Rule for Taxable Year of Inclusion.—The income tax consequences as a result of being a beneficiary of a trust that an Indian tribe (as defined in 25 U.S.C. § 2703(5)) establishes to receive and invest *per capita* payments for its members under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701 through 2721).

(36) Section 451.—See section 4.01(5), above.

(37) 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.)

(38) Section 642.—Special Rules for Credits and Deductions.—Whether a pooled income fund satisfies the requirements described in § 642(c)(5).

(39) Section 664.—Charitable Remainder Trusts.—Whether a charitable remainder trust that provides for annuity or unitrust payments for one or two measuring lives or for annuity or unitrust payments for a term of years satisfies the requirements described in § 664.

(40) 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.

(41) Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—In a nonqualified, unfunded deferred compensation arrangement described in Rev. Proc. 92–64, 1992–2 C.B. 422, the tax consequences of the use of a trust, other than the model trust described in that revenue procedure.

(42) Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—Whether an Indian tribe (as defined in 25 U.S.C. § 2703(5)) that establishes a trust to receive and invest *per capita* payments for its members under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701–2721) is the grantor and owner of the trust.

(43) Section 678.—Person Other than Grantor Treated as Substantial Owner.— Whether a person will be treated as the owner of any portion of a trust over which that person has a power to withdraw the trust property (or had such power prior to a release or modification, but retains other powers which would cause that person to be the owner of the trust under § 671 if the person were the grantor), other than a power which would constitute a general power of appointment within the meaning of § 2041, if the trust purchases the property from that person with a note and the value of the assets with which the trust was funded by the grantor is nominal compared to the value of the property purchased.

(44) Section 851.—Definition of Regulated Investment Company.—Any issue relating to the treatment of a corporation as a regulated investment company under § 851 and related provisions that requires a determination whether a financial instrument or position is a security as defined in the Investment Company Act of 1940.

(45) Section 856.—Definition of Real Estate Investment Trust.—Whether an outdoor advertising display constitutes real property for purposes of § 856. However, if the real estate investment trust has made an election under § 1.1033(g)–1(b), the Service may rule on whether an asset that is not within the scope of the election, but is related to the outdoor advertising display, constitutes real property for purposes of § 856.

(46) Section 1031(f).—Special Rules for Exchanges Between Related Persons.—Except in the case of (i) a transaction involving an exchange of undivided interests in different properties that results in each taxpayer holding either the entire interest in a single property or a larger undivided interest in any of the properties or (ii) a disposition of property in a nonrecognition transaction in which the taxpayer or the related party receives no cash or other property that results in gain recognition, whether an exchange described in § 1031(f) involving related parties, or a subsequent disposition of property involved in the exchange, has as one of its principal purposes the avoidance of Federal income tax, or is part of a transaction (or series of transactions) structured to avoid the purposes of § 1031(f).

(47) Section 1362.—Election; Revocation; Termination.—All situations in which the Service has provided an automatic approval procedure or administrative procedure for an S corporation to obtain relief for late S corporation, qualified subchapter S subsidiary, qualified subchapter S trust, or electing small business trust elections. See Rev. Proc. 2013–30, 2013–36 I.R.B. 173. (For instructions on how to seek this relief, see the preceding revenue procedure.)

(48) 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.

(49) Sections 2035, 2036, 2037, 2038, and 2042.—Adjustments for Certain Gifts Made Within Three Years of Decedent's Death; Transfers with Retained Life Estate; Transfers Taking Effect at Death; Revocable Transfers; Proceeds of Life Insurance.—Whether trust assets are includible in a trust beneficiary's gross estate under § 2035, 2036, 2037, 2038, or 2042 if the beneficiary sells property (including insurance policies) to the trust or dies within 3 years of selling such property to the trust, and (i) the beneficiary has a power to withdraw the trust property (or had such power prior to a release or modification, but retains other powers which would cause that person to be the owner if the person were the grantor), other than a power which would constitute a general power of appointment within the meaning of § 2041, (ii) the trust purchases the property with a note, and (iii) the value of the assets with which the trust was funded by the grantor is nominal compared to the value of the property purchased.

(50) 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).

(51) 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 or a term of years qualifies for a charitable deduction under § 2055(e)(2)(A).

(52) Section 2501.—Imposition of Tax.—Whether the sale of property (including insurance policies) to a trust by a trust beneficiary will be treated as a gift for purposes of § 2501 if (i) the beneficiary has a power to withdraw the trust property (or had such power prior to a release or modification, but retains other powers which would cause that person to be the owner if the person were the grantor), other than a power which would constitute a general power of appointment within the meaning of § 2041, (ii) the trust purchases the property with a note, and (iii) the value of the assets with which the trust was funded by the grantor is nominal compared to the value of the property purchased.

(53) 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.

(54) 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.

(55) 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).

(56) 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 or a term of years qualifies for a charitable deduction under § 2522(c)(2)(A).

(57) Section 2601.—Tax Imposed.—Whether a trust that is exempt from the application of the generation-skipping transfer tax because it was irrevocable on September 25, 1985, will lose its exempt status if the situs of the trust is changed from the United States to a situs outside of the United States.

(58) 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.

(59) Section 2702.—Special Valuation Rules in Case of Transfers of Interests in Trusts.—Whether a trust with one term holder satisfies the requirements of § 2702(a)(3)(A) and § 25.2702-5(c) to be a qualified personal residence trust.

(60) Section 2702.—Special Valuation Rules in Case of Transfers of Interests in Trusts.—Whether the sale of property (including insurance policies) to a trust by a trust beneficiary is subject to § 2702 if (i) the beneficiary has a power to withdraw the trust property (or had such power prior to a release or modification, but retains other powers which would cause that person to be the owner if the person were the grantor), other than a power which would constitute a general power of appointment within the meaning of § 2041, (ii) the trust purchases the property with a note, and (iii) the value of the assets with which the trust was funded by the grantor is nominal compared to the value of the property purchased.

(61) 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.

(62) Section 7702.—See section 4.01(6), 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. Although it is generally inappropriate for the Service to issue a letter ruling on whether an interest in a corporation is stock or indebtedness, there may be instances in which the Service may issue a letter ruling. For example, the Service may issue a letter ruling with respect to an instrument issued by a domestic corporation if (i) the taxpayer believes that the facts strongly support the classification of the instrument as stock and (ii) the taxpayer can demonstrate that there are unique and compelling reasons to justify the issuance of a letter ruling. Before preparing the letter ruling request, the taxpayer should call the Office of Associate Chief Counsel having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether the Service will consider issuing a letter ruling for a particular factual situation. To determine which Associate office has jurisdiction over a particular issue see section 3 of Rev. Proc. 2019–1, this Bulletin. For a list of telephone numbers for the different Associate offices, see section 10.07 of Rev. Proc. 2019–1.

(2) Situations in which 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, the taxpayer should call the Office of 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. To determine which Associate office has jurisdiction over a particular issue, see section 3 of Rev. Proc. 2019–1, this Bulletin. For a list of telephone numbers for the different Associate offices, see section 10.07 of Rev. Proc. 2019–1.

Notwithstanding the previous paragraph, in connection with transactions described in § 332, 351, 355, or 1036 and reorganizations within the meaning of § 368, the Associate Chief Counsel (Corporate) may issue a letter ruling on part of an integrated transaction if and to the extent that the transaction presents a significant issue (within the meaning of section 3.01(55)). See section 6.03(2) of Rev. Proc. 2019–1.

(3) Situations in which 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 in which 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 do 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 Associate Chief Counsel (EEE) 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. 2019-1, this Bulletin.

(9) Except with respect to a Covered Transaction within the meaning of section 2.03(1)(a) of Rev. Proc. 2017-52, 2017-41 I.R.B. 283, a letter ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decision of a court, revenue rulings, revenue procedures, notices, or other authority published in the Internal Revenue Bulletin (Comfort Ruling). However, except with respect to issues under §§ 332, 351, 368, and 1036 and the tax consequences resulting from the application of such Code sections (see generally section 6.03(2) of Rev. Proc. 2019-1, this Bulletin), an Associate office may in its discretion issue a Comfort Ruling if the Associate office is otherwise ruling on another issue arising in the same transaction.

(10) Whether an amount received (in periodic payments or as a lump sum) in connection with a legal action or a settlement of a legal action is properly allocated (including an allocation of all payments to one category) to recovery of capital, compensatory damages, punitive damages, dividends, interest, back pay, etc., for Federal tax purposes.

(11) The treatment or effects of hook equity, including as a result of its issuance, ownership, or redemption. This section 4.02(11) ordinarily will not apply if (i) an interest's status as hook equity is only transitory, such as in a triangular reorganization, or (ii) the treatment of the hook equity is not relevant to the treatment of the overall transaction and issue presented. For this purpose, "hook equity" means an ownership interest in a business entity (such as stock in a corporation) that is held by another business entity in which at least 50 percent of the interests (by vote or value) in such latter entity are held directly or indirectly by the former entity. However, if an entity directly or indirectly owns all of the equity interests in another entity, the equity interests in the latter entity are not hook equity.

(12) Whether a tax-qualified plan satisfies the requirements for qualification under §§ 401 through 420 and § 4975(e)(7). These matters are generally handled through the Employee Plans Determinations program as provided in Rev. Proc. 2019-4, this Bulletin, Rev. Proc. 2016-37, 2016-29 I.R.B. 136, and Rev. Proc. 2015-36, 2015-27 I.R.B. 20. Notwithstanding the preceding sentence, the Office of Associate Chief Counsel (EEE) may issue a ruling if (i) the taxpayer has demonstrated to the satisfaction of the Office of Associate Chief Counsel (EEE) that the qualification issue involved is unique and requires immediate guidance, (ii) as a practical matter, it is not likely that such issue will be addressed through the determination letter process, and (iii) the Office determines that it is in the interest of good tax administration to provide guidance to the taxpayer with respect to such qualification issue.

(13) Any issue that is being considered by the Pension Benefit Guaranty Corporation (PBGC) or the Department of Labor (DOL), and involves the same taxpayer, will be issued at the discretion of the Office of Associate Chief Counsel (EEE).

SECTION 5. AREAS UNDER STUDY IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED UNTIL THE SERVICE RESOLVES THE ISSUE THROUGH PUBLICATION OF A REVENUE RULING, A REVENUE PROCEDURE, REGULATIONS, OR OTHERWISE

.01 Specific Questions and Problems.

(1) Sections 302 and 304.—Distributions in Redemption of Stock; Redemptions Through Use of Related Corporations.—Treatment of basis in a § 302/304 redemption.

(2) Sections 351, 358, and 362.—Transfer to Corporation Controlled by Transferor; Basis to Distributees; Basis to Corporations.—The issues described as being under study in Rev. Rul. 2006–2, 2006–1 C.B. 261.

(3) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue relating to the qualification, under § 355 and related provisions, of a distribution, or another distribution which is part of the same plan or series of related transactions, if, immediately after any such distribution, all of the following conditions exist: (i) the fair market value of the gross investment assets of the distributing corporation or the controlled corporation is two-thirds or more of the fair market value of its total gross assets; (ii) the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of § 355(b) is less than 10 percent of the fair market value of its gross investment assets; and (iii) the ratio of the fair market value of the gross investment assets to the fair market value of the gross assets other than the gross investment assets of the distributing corporation or the controlled corporation is three times or more of such ratio for the other corporation (i.e., the controlled corporation or the distributing corporation, respectively).

For purposes of determining the fair market value of the distributing corporation's and the controlled corporation's gross investment assets, gross assets other than gross investment assets, gross assets of the trade or business, and total gross assets, all members of such corporation's separate affiliated group, within the meaning of § 355(b)(3)(B), are treated as one corporation. If the distributing corporation or the controlled corporation relies on an active trade or business of a partnership for purposes of § 355(b), then for purposes of determining the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of § 355(b), such corporation is treated as owning its ratable share of the gross assets of the partnership.

For purposes of this section 5.01(3), "investment assets" has the meaning given such term by § 355(g)(2)(B), except as follows: (i) in the case of stock or securities in a corporation any stock of which is traded on (or subject to the rules of) an established financial market within the meaning of § 1.1092(d)–1(b) (publicly traded stock), § 355(g)(2)(B)(iv) is applied by substituting "50-percent" for "20-percent;" (ii) except as provided in clause (iv) of this sentence, an interest in a publicly traded partnership (as defined in § 7704(b), regardless of whether such partnership is treated as a corporation pursuant to § 7704(a)) is treated in the same manner as publicly traded stock; (iii) except as provided in clause (iv) of this sentence, an interest in a partnership that is not a publicly traded partnership is treated in the same manner as stock which is not publicly traded stock; and (iv) in the case of an interest in a partnership (other than a publicly traded partnership treated as a corporation pursuant to § 7704(a)), the active trade or business of which is taken into account by the distributing corporation or the controlled corporation for purposes of § 355(b), or would be taken into account without regard to the five-year requirement of § 355(b)(2)(B), clauses (ii) and (iii) of this sentence do not apply.

The Service also will not rule on any issue relating to the qualification, under § 355 and related provisions, of a distribution if, as part of a plan or series of related transactions, investment assets are disposed of, or property, including property qualifying as an active trade or business within the meaning of § 355(b), is acquired with a principal purpose of avoiding this section 5.01(3). This section 5.01(3) does not apply if (i) all the stock of the controlled corporation that is distributed in the distribution is distributed to one or more members of the affiliated group, as defined in § 243(b)(2)(A), of which the distributing corporation is a member; and (ii) such distribution is not part of a plan or series of related transactions pursuant to which stock of any corporation will be distributed outside such affiliated group in a distribution described in this section 5.01(3) or in section 4.01(30) of this revenue procedure.

(4) Section 358.—See section 5.01(2), above.

(5) Section 362.—See section 5.01(2), above.

(6) Section 613A.—Limitations on Percentage Depletion in Case of Oil and Gas Wells.—Whether the sale of oil or gas, or any product derived from oil or gas, is a bulk sale for purposes of § 613A(d)(2).

(7) Sections 661 and 662.—Deduction for Estates and Trusts Accumulating Income or Distributing Corpus; Inclusion of Amounts in Gross Income of Beneficiaries of Estates and Trusts Accumulating Income or Distributing Corpus.—Whether the distribution of property by a trustee from an irrevocable trust to another irrevocable trust (sometimes referred to as a “decanting”) resulting in a change in beneficial interests is a distribution for which a deduction is allowable under § 661 or which requires an amount to be included in the gross income of any person under § 662.

(8) Section 1014.—Basis of Property Acquired from a Decedent.—Whether the assets in a grantor trust receive a § 1014 basis adjustment at the death of the deemed owner of the trust for income tax purposes when those assets are not includible in the gross estate of that owner under chapter 11 of subtitle B of the Internal Revenue Code.

(9) Section 2036.—Transfers with Retained Life Estate.—Whether the corpus of a trust will be included in a grantor’s estate when the trustee of the trust is a private trust company owned partially or entirely by members of the grantor’s family.

(10) Section 2038.—Revocable Transfers.—Whether the corpus of a trust will be included in a grantor’s estate when the trustee of the trust is a private trust company owned partially or entirely by members of the grantor’s family.

(11) Section 2041.—Powers of Appointment.—Whether the corpus of a trust will be included in an individual’s estate when the trustee of the trust is a private trust company owned partially or entirely by members of the individual’s family.

(12) Section 2501.—Imposition of Tax.—Whether the distribution of property by a trustee from an irrevocable trust to another irrevocable trust (sometimes referred to as a “decanting”) resulting in a change in beneficial interests is a gift under § 2501.

(13) Sections 2601 and 2663.—Tax Imposed; Regulations.—Whether the distribution of property by a trustee from an irrevocable generation-skipping transfer tax (GST) exempt trust to another irrevocable trust (sometimes referred to as a “decanting”) resulting in a change in beneficial interests is the loss of GST exempt status or constitutes a taxable termination or taxable distribution under § 2612.

(14) Sections 4966 and 4967.—Taxes on Taxable Distributions; Taxes on Prohibited Benefits.—Issues involving interpretation of §§ 4966 and 4967 regarding distributions from donor advised funds.

(15) Section 6109.I—Identifying Numbers.I—The proper assignment or retention of an employer identification number (EIN) in the case of a reorganization within the meaning of § 368(a)(1)(F) if the transferor corporation becomes disregarded as an entity separate from its owner under § 301.7701–3.

.02 General Areas.

None at this time.

SECTION 6. AREAS COVERED BY AUTOMATIC APPROVAL PROCEDURES IN WHICH RULINGS WILL NOT ORDINARILY BE ISSUED

.01 Section 338.—Certain Stock Purchases Treated as Asset Acquisitions.—All requests for an extension of time under § 301.9100–3 within which to make an election under § 338(g) or (h)(10) where the Service has provided an administrative procedure to seek such an extension. See Rev. Proc. 2003–33, 2003–1 C.B. 803 (extension automatically granted to certain persons required to file Form 8023 to make a valid § 338 election that have not filed Form 8023 by its due date).

.02 Section 442.—Change of Annual Accounting Period.—All requests for a change in annual accounting period where the Service has provided an automatic change procedure for obtaining such a change in annual accounting period. See Rev. Proc. 2002–39, 2002–1 C.B. 1046 (general procedures for prior approval), as clarified and modified by Notice 2002–72, 2002–2 C.B. 843, and modified by Rev. Proc. 2003–34, 2003–1 C.B. 856, and Rev. Proc. 2018–17, 2018–9 I.R.B. 384; Rev. Proc. 2006–45, 2006–2 C.B. 851 (certain corporations), as clarified and modified by Rev. Proc. 2007–64, 2007–2 C.B. 818, and modified by Rev. Proc. 2018–17, 2018–9 I.R.B. 384; Rev. Proc. 2006–46, 2006–2 C.B. 859 (partnership, S corporation, personal service corporation, or trust); and Rev. Proc. 2003–62, 2003–2 C.B. 299 (individual seeking a calendar year).

.03 Section 446.—General Rule for Methods of Accounting.—Except as otherwise specifically provided in applicable procedures published in the Internal Revenue Bulletin, all requests for a change in method of accounting where the Service has provided an automatic change request procedure for obtaining such a change in method of accounting. See the automatic change request procedures listed in section 9.22 of Rev. Proc. 2019–1, this Bulletin.

.04 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 such 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).

.05 Section 704(c).—Contributed Property.—Requests from Qualified Master Feeder Structures, as described in section 4.02 of Rev. Proc. 2001–36, 2001–1 C.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.

.06 Section 1362.—Election; Revocation; Termination.—All situations in which an S corporation qualifies for automatic late S corporation relief under Rev. Proc. 2013–30, 2013–36 I.R.B. 173.

.07 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 such waivers or consents on consolidated return issues. See Rev. Proc. 2014–24, 2014–13 I.R.B. 879 (certain subsidiary members treated as if they filed a Form 1122 even though they failed to do so); Rev. Proc. 2002–32, 2002–1 C.B. 959, as modified by Rev. Proc. 2006–21, 2006–1 C.B. 1050 (certain corporations seeking reconsolidation within the 5-year period specified in § 1504(a)(3)(A)); Rev. Proc. 90–39, 1990–2 C.B. 365, as modified by Rev. Proc. 2006–21, and as clarified by Rev. Proc. 90–39A, 1990–2 C.B. 367 (certain affiliated groups of corporations 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 Rev. Proc. 89–56, 1989–2 C.B. 643, as modified by Rev. Proc. 2006–21 (certain affiliated groups of corporations seeking to file a consolidated return in which member(s) of the group use a 52–53 week taxable year).

.08 Section 2010(c)(5)(A).—Election Required.—All requests filed before the second anniversary of the decedent's date of death for an extension of time under § 301.9100–3 to make an election under § 2010(c)(5)(A), where the Service has provided an administrative procedure to seek such an extension.

See Rev. Proc. 2017–34, 2017–26 I.R.B. 1282 (procedure providing for an extension of time to certain taxpayers to make a “portability” election under § 2010(c)(5)(A)).

.09 Section 7701.—Definitions.—All requests for an extension of time under § 301.9100–3 within which to make an entity classification election under § 301.7701–3 where the Service has provided an administrative procedure to seek such an extension. See Rev. Proc. 2009–41, 2009–39 I.R.B. 439 (extension automatically granted to certain persons required to file Form 8832 to make a valid entity classification election that have not filed Form 8832 by its due date).

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2018–3, 2018–1 I.R.B. 130, is superseded.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective January 2, 2019.

SECTION 9. PAPERWORK REDUCTION ACT

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 2.03 and 3.01(55).

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 businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden of this revenue procedure, and Rev. Proc. 2019–1, this Bulletin is 316,020 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 200 hours, depending on individual circumstances, with an estimated average burden of 80 hours. The estimated number of respondents and/or recordkeepers is 3,956.

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 26 U.S.C. § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jean Broderick of the Office of Associate Chief Counsel (Corporate). For further information about this revenue procedure, please contact Ms. Broderick at (202) 317–6848 (not a toll-free call), or phone the Associate office contacts listed in section 10.07 of Rev. Proc. 2019–1, this Bulletin. See section 3 of Rev. Proc. 2019–1 to determine which Associate office has jurisdiction over a particular issue.

Rev. Proc. 2019–4