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## SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 The purpose of this revenue procedure is to update Rev. Proc. 2013–3, 2013–1 I.R.B. 113, 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 Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to issues on which the Internal Revenue Service will not issue letter rulings or determination letters. For a list of areas under the jurisdiction of the Associate Chief Counsel (International) relating to international issues on which the Service will not issue letter rulings or determination letters, see Rev. Proc. 2014–7, this Bulletin. For a list of areas under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division relating to issues, plans, or plan amendments on which the Service will not issue letter rulings or determination letters, see, respectively, section 8 of Rev. Proc. 2014–4, this Bulletin, and section 3.02 of Rev. Proc. 2014–6, this Bulletin.

Additionally, this revenue procedure incorporates the relevant provisions of Rev. Proc. 2013–32, 2013–28 I.R.B. 55, concerning letter rulings addressing issues under §§ 332, 351, 355, 368, and 1036.

.02 Changes.

(1) Section 3.01(3), regarding § 45, has been modified.

(2) Section 3.01(4), regarding § 47, has been added.

(3) Section 3.01(33), regarding §§ 267, 304, 331, 332, 351, and 1502, has been added.

(4) Section 3.01(45), regarding §§ 332, 351, 355, 368, and 1036, has been modified to incorporate the relevant provisions of Rev. Proc. 2013–32, 2013–28 I.R.B. 55.

(5) Section 3.01(73), regarding § 1502, has been added.

- (6) Section 3.02(8), regarding rescissions of completed transactions, has been added and old section 5.02(1) has been deleted.
- (7) Section 3.02(10), regarding questions that the Service determines, in its discretion, should not be issued, has been modified.
- (8) Section 4.01(12), regarding § 165, has been added.
- (9) Old section 4.01(22), regarding §§ 302(b)(4) and (e), 331, 332, and 346, has been deleted. Significant issues arising in the context of these transactions may be addressed under the procedures described in section 3.01(45), below and section 6.03 of Rev. Proc. 2014–1, this Bulletin.
- (10) Section 4.01(41), regarding § 856, has been added.
- (11) Section 4.01(43), regarding § 1031(f), has been added.
- (12) Section 4.01(45), regarding § 1362 and Rev. Proc. 2013–30, 2013–36 I.R.B. 173, has been modified.
- (13) Section 4.02(2), regarding rulings on part of an integrated transaction, has been modified to incorporate the relevant provisions of Rev. Proc. 2013–32.
- (14) Section 4.02(9), regarding comfort rulings, has been modified to incorporate the relevant provisions of Rev. Proc. 2013–32.
- (15) Section 4.02(11), regarding the treatment of “hook equity,” has been added.
- (16) Section 5.01(26), regarding § 6109, has been added.
- (17) Old section 5.02(2), regarding certain transfers of stock, money, or other property between a person and a corporation, has been redesignated as section 5.02.
- (18) Section 6.06, regarding § 1362 and Rev. Proc. 2013–30, 2013–36 I.R.B. 173, has been modified.

## **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.

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. 2014–1, 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. 2014–1.

#### .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. 2014–1, this Bulletin.

(2) Section 45.—Electricity Produced from Certain Renewable Resources, Etc.—Determination as to who is the producer of refined coal for purposes of claiming the renewable electricity production credit.

(3) 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.

(4) 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.

(5) 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.

(6) 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.)

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

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

(14) 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.

(15) 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.

(16) 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).)

(17) 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.)

(18) 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.

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

(20) 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.

(21) 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.

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

(23) 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.

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

(25) 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.)

(26) 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).

(27) 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.

(28) 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.

(29) 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.

(30) 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.

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

(32) 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.

(33) 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.

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

(35) 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.

(36) 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.

(37) 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.

(38) 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.

(39) 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.

(40) 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.

(41) Section 304.—See section 3.01(33), above.

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

(43) 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.

(44) Section 331.—See section 3.01(33), above.

(45) Sections 332, 351, 355, 368, and 1036.—Complete Liquidations of Subsidiaries; Transfer to Corporation Controlled by Transferor; Distribution of Stock and Securities of a Controlled Corporation; Definitions Relating to Corporate Reorganizations; Stock for Stock of Same Corporation.—Whether a transaction qualifies under § 332, 351, 355, or 1036 for nonrecognition treatment or whether it constitutes a corporate reorganization within the meaning of §

368, 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, 355, 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, 355, 368, or 1036. See section 6.03 of Rev. Proc. 2014–1, this Bulletin.

**SIGNIFICANT ISSUE:** A significant issue is an issue of law the resolution of which is not essentially free from doubt and that is germane to determining the tax consequences of the transaction. 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 of Rev. Proc. 2014–1, as well as Rev. Proc. 2014–1, in general.

(46) Section 332.—See section 3.01(33) and (45), above.

(47) Section 351.—See section 3.01(33) and (45), above.

(48) 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). See Rev. Proc. 2003–48, 2003–2 C.B. 86. Notwithstanding the preceding sentence, the Service 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).

(49) Section 355.—See section 3.01(45), above.

(50) 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).

(51) Section 368.—See section 3.01(45), above.

(52) 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).

(53) 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).

(54) 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.

(55) 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.

(56) 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.

(57) Section 451.—See section 3.01(7), above.

(58) Section 453.—See section 3.01(43), above.

(59) Section 457.—See section 3.01(56), above.

(60) 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.

(61) 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.

(62) 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.

(63) 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.

(64) 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.

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

(66) Section 761.—See section 3.01(12), above.

(67) 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.

(68) Section 1001.—See section 3.01(7), above.

(69) 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 taxable year in which the property was converted. The Service may issue a determination letter in this case. See section 12.01 of Rev. Proc. 2014-1, this Bulletin.

(70) Section 1036.—See section 3.01(45), above.

(71) 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.



(72) Section 1239.—See section 3.01(43), above.

(73) 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. 2014–1, this Bulletin.

(74) Section 1502.—See section 3.01(33), above.

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

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

(77) 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).

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

(79) 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).

(80) 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).

(81) 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.

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

(83) 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 *abona fide* partner and, therefore, not an employee of the business.

(84) 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.

(85) 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.)

(86) 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.

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

(88) 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.

(89) Section 7701.—See section 3.01(12), above.

(90) 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).

#### .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) Whether, under the common law rules applicable in determining the employer-employee relationship, a professional staffing corporation (loan-out corporation) or the subscriber is the employer of individuals, if:

- i. the loan-out corporation hires employees of the subscriber and assigns the employees back to the subscriber, or
- ii. the loan-out corporation assigns individuals to subscribers for more than a temporary period (1 year or longer).

(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. 2014–1, this Bulletin.

(12) A request that does not comply with the provisions of Rev. Proc. 2014–1, 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) Sections 83 and 451.—Property Transferred in Connection with Performance of Services; General Rule for Taxable Year of Inclusion.—When compensation is realized by a person who, in connection with the performance of services, is granted a nonstatutory option without a readily ascertainable fair market value to purchase stock at a price that is less than the fair market value of the stock on the date the option is granted.

(5) Section 103.—Interest on State and Local Bonds.—Whether the interest on state or local bonds will be excludible from gross income under § 103(a), if the proceeds of issues of bonds (other than advance refunding issues) are placed in escrow or otherwise not expended for a governmental purpose for an extended period of time even though the proceeds are invested at a yield that will not exceed the yield on the state or local bonds prior to their expenditure.

(6) Section 103.—Interest on State and Local Bonds.—Whether a state or local governmental obligation that does not meet the criteria of section 5 of Rev. Proc. 89–5, 1989–1 C.B. 774, is an “arbitrage bond” within the meaning of former § 103(c)(2) solely by reason of the investment of the bond proceeds in acquired nonpurpose obligations at a materially higher yield more than 3 years after issuance of the bonds or 5 years after issuance of the bonds in the case of construction issues described in former § 1.103–13(a)(2)(ii)(E) or § 1.148–2(e)(2)(ii).

(7) 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: (i) subparagraph (5) output of the facility as defined in § 1.103–7(b)(5)(ii)(b) (issued under former § 103(b)), or (ii) 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).

(8) 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).

(9) 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)).

(10) 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.

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

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

(13) Section 167.—Depreciation.

- i. Useful lives of assets.
- ii. Depreciation rates.
- iii. Salvage value of assets.

(14) 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.

(15) 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).

(16) 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).

(17) 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.

(18) 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).

(19) Section 262.—See section 4.01(10), above.

(20) 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.

(21) 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.

(22) 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.)

(23) 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).

(24) 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.

(25) 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.

(26) 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).

(27) 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).

(28) 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).

(29) 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).

(30) 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.

(31) 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 who are minors or legal incompetents under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701 through 2721), if the trust meets the requirements of section 5.02 of Rev. Proc. 2011-56, 2011-49 I.R.B. 834.

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

(33) 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.)

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

(35) 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.

(36) 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.

(37) Section 664.—Charitable Remainder Trusts.—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, causes the trust to have ceased to qualify as a charitable remainder trust within the meaning of § 664.

(38) 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.

(39) 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 who are minors or legal incompetents under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) is the grantor and owner of the trust, if the trust meets the requirements of section 5.02 of Rev. Proc. 2011–56, 2011–49 I.R.B. 834.

(40) 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.

(41) 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.

(42) 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.

(43) 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, 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).

(44) 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.

(45) 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.)

(46) 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.

(47) 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.

(48) Section 2036.— See section 4.01(47), above.

(49) Section 2037.— See section 4.01(47), above.

(50) Section 2038.— See section 4.01(47), above.

(51) Section 2042.— See section 4.01(47), above.

(52) 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).

(53) 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).

(54) 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.

(55) 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.

(56) 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.

(57) 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).

(58) 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).

(59) 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.

(60) 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.

(61) 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.

(62) 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.

(63) 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.

## .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, a taxpayer should call the Office of the Associate Chief Counsel having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether 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. 2014–1, this Bulletin. For a list of telephone numbers for the different associate offices, see section 10.07 of Rev. Proc. 2014–1.

(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, a taxpayer should call the Office of the Associate Chief Counsel having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether a letter ruling will be issued on part of the transaction. To determine which associate office has jurisdiction over a particular issue, see section 3 of Rev. Proc. 2014–1, this Bulletin. For a list of telephone numbers for the different associate offices, see section 10.07 of Rev. Proc. 2014–1.

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(45)). See section 6.03 of Rev. Proc. 2014–1.

(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 shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination in order to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

(8) A matter involving the Federal tax consequences of any proposed Federal, state, local, municipal, or foreign legislation. The Service may provide general information in response to an inquiry. However, the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) may issue letter rulings regarding the effect of proposed state, local, or municipal legislation upon an eligible deferred compensation plan under § 457(b) provided that the letter ruling request relating to the plan complies with the other requirements of Rev. Proc. 2014-1, this Bulletin.

(9) 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, 355, 368, and 1036 and the tax consequences resulting from the application of such Code sections (see generally section 6.03 of Rev. Proc. 2014-1, 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 paragraph ordinarily shall 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.

## **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) 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).

(2) Sections 101 and 7702.—Certain Death Benefits; Life Insurance Contract Defined.—Whether amounts received under an arrangement 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.

(3) Section 148.—Arbitrage.—Whether a taxpayer has permission to use a single yield for two or more issues of qualified mortgage bonds or qualified student loan bonds under § 1.148-4(a).

(4) Sections 162 and 1502.—Trade or Business Expenses; Regulations.—Treatment of manufacturer incentive payments under the intercompany transaction regulations of § 1.1502-13. See T.D. 9261, 2006-1 C.B. 919.

(5) 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.

(6) Sections 302 and 304.—Distributions in Redemption of Stock; Redemptions Through Use of Related Corporations.—Treatment of basis in a §§ 302/304 redemption. See Announcement 2006–30, 2006–1 C.B. 879.

(7) Section 304.—See section 5.01(6), above.

(8) 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.

(9) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether a corporation is a “controlled corporation” within the meaning of § 355(a)(1)(A) if, in anticipation of a distribution of the stock of the corporation, a distributing corporation acquires putative control of the controlled corporation (directly or through one or more corporations) in any transaction (including a recapitalization) in which stock or securities were exchanged for stock having a greater voting power than the stock or securities relinquished in the exchange, or if, in anticipation of a distribution of the stock of the putative controlled corporation, such corporation issues stock to another person having different voting power per share than the stock held by the distributing corporation.

(10) Sections 355 and 361.—Distribution of Stock and Securities of a Controlled Corporation; Nonrecognition of Gain or Loss to Corporations; Treatment of Distributions.—Whether either § 355 or § 361 applies to a distributing corporation’s distribution of stock or securities of a controlled corporation in exchange for, and in retirement of, any putative debt of the distributing corporation if such distributing corporation debt is issued in anticipation of the distribution.

(11) Section 358.—See section 5.01(8), above.

(12) Section 361.—See section 5.01(10), above.

(13) Section 362.—See section 5.01(8), above.

(14) 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 (regardless of whether they are minors or legal incompetents) under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) if the trust does not meet the requirements of section 5.02 of Rev. Proc. 2011–56, 2011–49 I.R.B. 834.

(15) 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).

(16) 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.

(17) 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 (regardless of whether they are minors or legal incompetents) under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701 to 2721) is the grantor and owner of the trust if the trust does not meet the requirements of section 5.02 of Rev. Proc. 2011–56, 2011–49 I.R.B. 834.

(18) 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).

(19) Section 1502.—See section 5.01(4), above.

(20) 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.

(21) 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.

(22) 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.

(23) 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.

(24) 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.

(25) 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.

(26) Section 6109.—Identifying Numbers.—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.

(27) Section 7702.—See section 5.01(2), above.

## .02 General Areas.

Whether transfers of stock, money, or other property by a person to a corporation and transfers of stock, money, or property by that corporation to that person (or a person related to such person) in what are ostensibly two separate transactions (so-called "north-south" transactions), at least one of which is a distribution with respect to the corporation's stock, a contribution to the corporation's capital, or an acquisition of stock, are respected as separate transactions for Federal income tax purposes.

## **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 section 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; 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; 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. 2014–1, 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. 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 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. 2013–3, 2013–1 I.R.B. 113 is superseded, and Rev. Proc. 2013–32, 2013–28 I.R.B. 55, is superseded in part.

## **SECTION 8. EFFECTIVE DATE**

This revenue procedure is effective January 2, 2014.

## **SECTION 9. PAPERWORK REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1522.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 2.03 and 3.01(45).

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. 2014–1, this Bulletin is 305,540 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 79.88 hours. The estimated number of respondents and/or record keepers is 3,825.

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 Amie Colwell Breslow of the Office of the Associate Chief Counsel (Corporate). For further information about this revenue procedure, please contact Ms. Colwell Breslow at (202) 317-5024 (not a toll-free call), or call the associate office contacts listed in section 10.07 of Rev. Proc. 2014–1, this Bulletin. See section 3 of Rev. Proc. 2014-1 to determine which associate office has jurisdiction over a particular issue.