

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel **Notice**

CC-2003-010

March 14, 2003

Change in Litigating Position
Subject: UIL#482.02-00

Until Incorporation
Cancel Date: into the CCDM

Purpose

The purpose of this notice is to announce a change in the Service's litigating position concerning the application of section 482 to certain aspects of "lease strips" or other "stripping transactions" described in Notice 95-53, 1995-2 C.B. 334.

Discussion

Section 482 provides, in part:

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations.

Control is defined to include any kind of control, direct or indirect, whether legally enforceable or not, and however exercisable or exercised, including control resulting from the actions of two or more taxpayers acting in concert or with a common goal or purpose. Treas. Reg. § 1.482-1(i)(4). It is the reality of control that is decisive, not its form or the mode of its exercise. *Id.*; *Ach v. Commissioner*, 42 T.C. 114 (1964), *aff'd*, 358 F.2d 342 (6th Cir.), *cert. denied*, 385 U.S. 899 (1966). A presumption of control arises if income or deductions have been arbitrarily shifted. Treas. Reg. § 1.482-1(i)(4).

Based upon this definition of control, the Service announced in Notice 95-53 that it would apply section 482 to reallocate gross income, deductions, credits, or allowances among parties to lease-stripping transactions as appropriate. The Notice did not specify, however, the manner or the particular step of the transactions to which section 482 would be applied. Pursuant to the

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