

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

N o t i c e

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March 12, 2001

Subject: Multiple Domestic Corporations **Cancellation Date:** March 7, 2002

PURPOSE

The purpose of this Notice is to alert all Chief Counsel attorneys to the Service's position regarding corporations that own stock of multiple corporations operating similar businesses in different locations.

POSITION

When the same corporations own all of the stock of multiple corporations that operate similar businesses in different locations, section 269 may apply to deny use of the graduated rate brackets of section 11.

DISCUSSION

The fact pattern is as follows: National Retail Corporation ("National") and Supplier, Inc., a manufacturer of widgets, agree to jointly operate the widget departments in National's stores by forming a separate corporation to operate the widget department at each store. Supplier owns 51%, and National owns 49% of the stock of each corporation. Each corporation purchases widgets from Supplier, leases space in National's store for the widget department, and has its own employees who staff the widget department. Each corporation pays an annual management fee to Supplier and rent based on a percentage of gross sales to National. Each corporation distributes its profits annually to Supplier and National as dividends. Each corporation files a Form 1120 and calculates its tax liability using the graduated rates under section 11 of the Internal Revenue Code which, in most cases, have not been recaptured.

In the situation described, the use of a separate corporation for the widget department of each National store improperly reduces the Federal income taxes paid by the National-Supplier joint venture because each corporation takes advantage of the graduated corporate rates under section 11(b). In the absence of any compelling nontax business purpose for separate corporations, instead of a single corporation, to operate the widget departments in National's stores, section 269(a)(1) applies to disallow the benefit of the graduated corporate tax rates under section 11(b) to each corporation separately. Thus, the graduated rate brackets of section 11(b) should be allocated among all of the corporations. Sections 1.269-1(c) and

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