

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 355, 1.355-2.)

Rev. Proc. 2003-48

SECTION 1. PURPOSE

This revenue procedure modifies and amplifies Rev. Proc. 96-30, 1996-1 C.B. 696, which sets forth in a checklist questionnaire the information that must be included in a request for a ruling under § 355 of the Internal Revenue Code. In addition, this revenue procedure modifies Rev. Proc. 2003-3, 2003-1 I.R.B. 113, which sets forth the 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.

SECTION 2. BACKGROUND

Section 355(a) applies to distributions of stock or securities of a corporation controlled by the distributing corporation if the requirements of § 355 are satisfied. Rev. Proc. 96-30 sets forth in a checklist questionnaire the information that must be included in a request for rulings under § 355.

Section 1.355-2(b) of the Income Tax Regulations provides that to qualify as a distribution described in § 355, a distribution must not only satisfy the statutory requirements of § 355, but also must satisfy certain requirements in the regulations, including the business purpose requirement. Section 1.355-2(b)(1) provides that a distribution must be motivated, in whole or substantial part, by one or more corporate business purposes. A corporate business purpose is a real and substantial non-Federal tax purpose germane to the business of the distributing corporation, the controlled corporation, or the affiliated group to which the distributing corporation belongs. Section 1.355-2(b)(2). Section 4.04 and Appendix A of Rev. Proc. 96-30 provide guidelines and request certain information and representations regarding whether a distribution satisfies the business purpose requirement.

Section 355(a)(1)(B) provides that a distribution will not qualify for nonrecognition treatment under § 355 if it is used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation, or both. Generally, the determination of whether a transaction was used principally as a device will be made from all the facts and circumstances, including, but not limited to, the presence of certain device and nondevice factors. Section 1.355-2(d)(1). Section 4.05 of Rev. Proc. 96-30 requests certain information and representations regarding whether a distribution is used principally as a device.

Section 355(e) provides that the stock of a controlled corporation will not be qualified property under § 355(c)(2) or § 361(c)(2) if the stock is distributed as "part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation." See § 355(e)(2)(A)(ii). For this purpose, a 50-percent or greater interest means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock. See § 355(e)(4)(A) (referring to § 355(d)(4) for the definition of 50-percent or greater interest). Section 1.355-7T generally provides that whether a distribution and an acquisition are part of a plan (or series of related transactions) (hereinafter, plan) is determined based on all the facts and circumstances. That section provides a nonexclusive list of factors to consider in determining whether a plan exists, as well as a number of safe harbors that may be relied upon in determining whether a plan exists.

Ordinarily, the Service refrains from issuing letter rulings requesting determinations on issues that are primarily factual. See Rev. Proc. 2003-1, 2003-1 I.R.B. 1, section 7.01, and Rev. Proc. 2003-3, sections 2.01 and 4.02(1). Moreover, it generally is the policy of the Service not to issue "comfort rulings" on transactions the treatment of which is clearly and adequately addressed in published guidance. See Rev. Proc. 2003-1, section 5.17, and Rev. Proc. 2003-3, section 4.02(9). Nonetheless, the Service has not strictly applied its policies of not ruling on factual issues and not issuing comfort rulings in the context of letter ruling requests regarding transactions intended to qualify under § 355.

The Service has concluded that it is appropriate to adhere more closely to its general policies in the context of requests for letter rulings under § 355 and that it can better

serve taxpayers by dedicating its resources to increasing the amount of published guidance regarding § 355, including the business purpose requirement, and other legal questions. Thus, this revenue procedure provides that the National Office will not determine whether a proposed or completed 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, or whether the distribution and an acquisition are part of a plan under § 355(e). Rather, these determinations may be made upon an examination of the taxpayer's return. Hence, sections 4.01, 4.02, and 4.03 of this revenue procedure require taxpayers seeking a ruling under § 355 to submit representations regarding the business purpose and device requirements and whether there is a plan under § 355(e)(2)(A)(ii). The request for a letter ruling, including representations, must be accompanied by a penalties of perjury statement signed and dated by the taxpayer indicating that the submission contains all the relevant facts relating to the request and such facts are true, correct, and complete. See Rev. Proc. 2003-1, sections 8.01(15) and 10.07(1).

This is a pilot program that applies to ruling requests postmarked or, if not mailed, received after August 8, 2003. This pilot program is intended to operate for at least one year. After that time, the Service may consider further changes, including ruling only on significant issues (as defined in Section 3.01(29) of Rev. Proc. 2003-3) under § 355.

Section 4.05 of this revenue procedure provides that the Service will decline a request for a ruling regarding a proposed or completed transaction if the Service has previously declined to rule on that transaction (or a similar transaction) because the Service was not satisfied that the distribution met the corporate business purpose requirement, was not a device for the distribution of earnings and profits, or was not part of a plan under § 355(e).

Section 4.06 of this revenue procedure provides that the Service will decline a request for a supplemental ruling, unless the request presents a significant issue (as defined in section 3.01(29) of Rev. Proc. 2003-3).

Section 4.01(30) of Rev. Proc. 2003-3 provides that a letter ruling ordinarily will not be issued regarding the issue of whether the active business requirement of § 355(b) is met when the gross assets of the trades or businesses relied on to satisfy that requirement will have a fair market value that is less than 5 percent of the total fair market value of the gross assets of the corporation directly conducting the trades or businesses. Section 4.07 of this revenue procedure modifies Rev. Proc. 2003-3 by deleting section 4.01(30).

SECTION 3. REQUEST FOR COMMENTS

The Service requests comments regarding issues under § 355 that should be addressed in published guidance. Moreover, the Service continues to study language for, and requests comments regarding, § 355(e) representations. Comments should refer to Rev. Proc. 2003-48, and should be submitted to:

Internal Revenue Service
P. O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:RU
Room 5226

or electronically via the Service internet site at:

Notice.Comments@irs.counsel.treas.gov (the Service comments e-mail address). All comments will be available for public inspection and copying.

SECTION 4. PROCEDURE

.01 Rev. Proc. 96-30 is modified by deleting section 4.04(1) through 4.04(7) and Appendices A and C, and amplified by adding new section 4.04(1) as follows:

(1) Detailed Description. Describe in narrative form each corporate business purpose for the distribution of the stock of Controlled. Do not provide any documentation or substantiation in support thereof. Submit the following

REPRESENTATION: The distribution of the stock, or stock and securities, of the controlled corporation is carried out for the following corporate business purposes: [list these corporate business purposes]. The distribution of the stock, or stock and securities, of the controlled corporation is motivated, in whole or substantial part, by one or more of these corporate business purposes. The Service will decline to issue a letter ruling in all cases in which the taxpayer fails to submit the required representation. The National Office will not determine whether the distribution is being carried out for one or more corporate business purposes. This determination may be made upon an examination of the taxpayer's return.

.02 Rev. Proc. 96-30 is modified by deleting section 4.05(1) through 4.05(5) and amplified by adding new section 4.05(1) as follows:

(1) Dispositions of stock or securities. Submit the following **REPRESENTATION:** The transaction is not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both. See § 355(a)(1)(B). The Service will decline to issue a letter ruling in all cases in which the taxpayer fails to submit the required representation. The National Office will not determine whether the transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation, or both. This determination may be made upon an examination of the taxpayer's return.

.03 Rev. Proc. 96-30 is amplified by adding new section 4.08(12) as follows:

(12) Distributions in Connection with Acquisitions. Regarding whether there is

a plan (or series of related transactions) under § 355(e)(2)(A)(ii), submit one of the following **REPRESENTATIONS**: (i) There is no acquisition of stock of the distributing corporation or any controlled corporation (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7T) that includes the distribution of the controlled corporation stock; (ii) Each of the following acquisitions of stock of the distributing corporation or any controlled corporation (including any predecessor or successor of any such corporation) is or may be part of a plan or series of related transactions (within the meaning of § 1.355-7T) that includes the distribution of controlled corporation stock: [DESCRIBE ACQUISITIONS HERE]. Taking all of these acquisitions into account, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in the distributing or controlled corporation (including any predecessor or successor of any such corporation) will not be acquired by any person or persons; or (iii) The distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7T) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation). If a representation cannot be submitted exactly as requested, an explanation must be given. The taxpayer must submit one of the three representations set forth above (as set forth above or in appropriately modified form to the satisfaction of the Service) before the Service will issue a letter ruling. While the National Office will not determine whether a distribution and an acquisition are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii), the Service may rule on related significant

issues (as defined in section 3.01(29) of Rev. Proc. 2003-3, 2003-1 I.R.B. 113 at 115).

The determination of whether a distribution and an acquisition are part of a plan (or series of related transactions) may be made upon an examination of the taxpayer's return.

.04 Rev. Proc. 96-30 is amplified by adding new section 4.08(13) as follows:

(13) Regulatory filings. Provide copies of any proxy statements, information statements, or prospectuses filed or prepared in connection with the distribution or any related transaction.

.05 Rev. Proc. 96-30 is amplified by adding new section 4.08(14) as follows:

(14) Previously Declined Request for Ruling. The Service will not entertain any ruling request regarding a proposed or completed transaction if the Service has previously declined to rule on that transaction (or a similar transaction) because the Service was not satisfied that the distribution met the corporate business purpose requirement, was not a device for the distribution of earnings and profits, or was not part of a plan (or series of related transactions) under § 355(e).

.06 Rev. Proc. 96-30 is amplified by adding new section 4.08(15) as follows:

(15) Request for Supplemental Ruling. The Service will decline a request for a supplemental letter ruling, unless the request presents a significant issue (as defined in section 3.01(29) of Rev. Proc. 2003-3). A change in circumstances arising after the transaction ordinarily does not present a significant issue.

.07 Rev. Proc. 2003-3, 2003-1 I.R.B. 113, is modified by deleting section 4.01(30).

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 96-30, 1996-1 C.B. 696, is modified and amplified and Rev. Proc. 2003-3, 2003-1 I.R.B. 113, is modified.

SECTION 6. EFFECTIVE DATE

This revenue procedure applies to all ruling requests postmarked or, if not mailed, received after August 8, 2003. Ruling requests postmarked or received after June 24, 2003 and on or before August 8, 2003 that are not in compliance with Rev. Proc. 2003-1 and Rev. Proc. 96-30 will be, in the sole discretion of the Service, either returned to the taxpayer or treated as being subject to this revenue procedure. Taxpayers, however, may use the guidelines of this revenue procedure in ruling requests filed after June 24, 2003 and on or before August 8, 2003.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1846.

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 OMB control number.

The collections of information in this revenue procedure are in section 4. This information is required to determine whether a taxpayer would qualify for nonrecognition treatment under this revenue procedure. The collections of information are required to obtain a benefit. The likely respondents are corporations that control another corporation, as well as the management of the corporation the stock of which is being distributed or that controls the corporation the stock of which is being distributed.

The estimated total annual reporting burden is 36,000 hours.

The estimated annual burden per respondent varies from 150 hours to 250 hours, depending on individual circumstances, with an estimated average of 200 hours. The estimated number of respondents is 180.

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 tax law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Richard M. Heinecke of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure contact Mr. Heinecke at (202) 622-7930 (not a toll free call).