

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 337, 355, 851, 856.)

Rev. Proc. 2015-43

SECTION 1. PURPOSE

This revenue procedure supplements Rev. Proc. 2015-3, 2015-1 I.R.B. 129, which sets forth areas of the Internal Revenue Code (Code) on which the Internal Revenue Service (Service) will not issue letter rulings or determination letters (no-rule areas).

SECTION 2. BACKGROUND

In the interest of sound tax administration, the Service answers inquiries from individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions before the filing of returns or reports that are required by the Code. See Rev. Proc. 2015-1, 2015-1 I.R.B. 1. There are, however, areas in which the Service will not issue letter rulings or determination letters because the issues are inherently factual or for other reasons. The Service publishes guidance setting forth these no-rule areas throughout the year and incorporates them annually into the third revenue procedure of the year, currently Rev. Proc. 2015-3.

Section 4 of Rev. Proc. 2015-3 sets forth areas in which the Service ordinarily will not issue letter rulings or determination letters. “Not ordinarily” means that unique and

compelling reasons must be demonstrated to justify the issuance of a letter ruling or determination letter. Section 2.01 of Rev. Proc. 2015-3.

Section 5 of Rev. Proc. 2015-3 sets forth areas in which the Service temporarily will not issue letter rulings or determination letters because those areas are under study.

Section 2.01 of Rev. Proc. 2015-3 provides that the Service may decline to issue a letter ruling or a determination letter, including a letter ruling on a significant issue requested under section 6.03 of Rev. Proc. 2015-1, 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.

SECTION 3. PROCEDURE

.01 Rev. Proc. 2015-3 is supplemented by adding new paragraphs (57) and (58) to section 4.01 to read as follows:

(57) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue relating to the qualification, under § 355 and related provisions, of a distribution, or another distribution which is part of the same plan or series of related transactions, if property owned by any distributing corporation or any controlled corporation becomes the property of a regulated investment company (RIC), within the meaning of § 851, or a real estate investment trust (REIT), within the meaning of § 856, in a “conversion transaction” (as defined in § 1.337(d)-7(a)(2)(ii)) with respect to which no deemed sale election described in § 1.337(d)-7(c) is made, and the conversion transaction and the distribution are parts of a plan or series of related transactions. This paragraph (57) shall not apply if, immediately after the date of the distribution, both the distributing corporation and the controlled corporation will be RICs, or both of such

corporations will be REITs, and there is no plan or intention on the date of the distribution for either the distributing corporation or the controlled corporation to cease to be a RIC or a REIT.

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

For purposes of determining the fair market value of the gross assets of such corporation and of the gross assets of such trade(s) or business(es), (i) all members of a separate affiliated group, within the meaning of § 355(b)(3)(B), shall be treated as one corporation; and (ii) if the distributing corporation or the controlled corporation relies on an active trade or business of a partnership for purposes of § 355(b), such corporation shall be treated as owning its ratable share of the gross assets of the partnership.

This paragraph (58) shall not apply if (i) all the stock of the controlled corporation that is distributed in the distribution is distributed to one or more members of the affiliated group, as defined in § 243(b)(2)(A), of which the distributing corporation is a member; and (ii) such distribution is not part of a plan or series of related transactions pursuant to which stock of any corporation will be distributed outside such affiliated group in a

distribution described in this paragraph (58), in paragraph (57) of section 4.01 of this revenue procedure, or in paragraph (26) of section 5.01 of this revenue procedure.

.02 Rev. Proc. 2015-3 is supplemented by adding new paragraph (26) to section 5.01 to read as follows:

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

For purposes of determining the fair market value of the distributing corporation's and the controlled corporation's investment assets, assets other than investment assets, assets of the trade or business, and total assets, all members of such corporation's separate affiliated group, within the meaning of § 355(b)(3)(B), shall be treated as one corporation.

If the distributing corporation or the controlled corporation relies on an active trade or business of a partnership for purposes of § 355(b), then for purposes of determining the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of § 355(b), such corporation shall be treated as owning its ratable share of the gross assets of the partnership.

For purposes of this paragraph (26), “investment assets” has the meaning given such term by § 355(g)(2)(B), except as follows: (i) in the case of stock or securities in a corporation any stock of which is traded on (or subject to the rules of) an established financial market within the meaning of § 1.1092(d)-1(b) (publicly traded stock), § 355(g)(2)(B)(iv) shall be applied by substituting “50-percent” for “20-percent;” (ii) except as provided in clause (iv) of this sentence, an interest in a publicly traded partnership (as defined in § 7704(b), regardless of whether such partnership is treated as a corporation pursuant to § 7704(a)) shall be treated in the same manner as publicly traded stock; (iii) except as provided in clause (iv) of this sentence, an interest in a partnership that is not a publicly traded partnership shall be treated in the same manner as stock which is not publicly traded stock; and (iv) in the case of an interest in a partnership (other than a publicly traded partnership treated as a corporation pursuant to § 7704(a)), the active trade or business of which is taken into account by the distributing corporation or the controlled corporation for purposes of § 355(b), or would be taken into account without regard to the five-year requirement of § 355(b)(2)(B), clauses (ii) and (iii) of this sentence shall not apply.

The Service also will not rule on any issue relating to the qualification, under § 355 and related provisions, of a distribution if, as part of a plan or series of related transactions, investment assets are disposed of, or property, including property qualifying as an active trade or business within the meaning of § 355(b), is acquired with a principal purpose of avoiding this paragraph (26).

This paragraph (26) shall not apply if (i) all the stock of the controlled corporation that is distributed in the distribution is distributed to one or more members of the affiliated group, as defined in § 243(b)(2)(A), of which the distributing corporation is a member; and (ii) such distribution is not part of a plan or series of related transactions pursuant to which stock of any corporation will be distributed outside such affiliated group in a distribution described in this paragraph (26), or in paragraph (57) or (58) of section 4.01 of this revenue procedure.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to all ruling requests that are postmarked or, if not mailed, received on or after September 14, 2015, and relate to distributions that occur after such date.

SECTION 5. EFFECT ON OTHER REVENUE PROCEDURE

Rev. Proc. 2015-3 is supplemented.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Stephanie D. Floyd of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Stephanie D. Floyd at (202) 317-6848 (not a toll-free call).