

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 355, 368.)

Rev. Proc. 2016-45

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2016-3, 2016-1 I.R.B. 126, 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), by removing two no-rule areas relating to distributions of stock of controlled corporations under § 355 of the Code. The two areas that are no longer no-rule areas are significant legal issues relating to—

.01 The requirement under § 1.355-2(b) of the Income Tax Regulations that a distribution be carried out for a corporate business purpose (the corporate business purpose requirement), and

.02 The requirement under § 355(a)(1)(B) and § 1.355-2(d) that a transaction not be used principally as a device for the distribution of earnings and profits of the distributing corporation, the controlled corporation, or both (a device).

SECTION 2. CHANGES

Section 4 of this revenue procedure modifies section 3.01(53) of Rev. Proc. 2016-3.

SECTION 3. BACKGROUND

.01 Current Procedures

In the interest of sound tax administration, the Service answers written inquiries from individuals and organizations regarding the tax effects of their acts or transactions by issuing letter rulings or determination letters. See section 2.01 and .03 of Rev. Proc. 2016-1, 2016-1 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 from time to time and incorporates them annually into a revenue procedure, currently Rev. Proc. 2016-3.

Section 3 of Rev. Proc. 2016-3 sets forth areas in which the Service will not issue letter rulings or determination letters.

Section 3.01(50) of Rev. Proc. 2016-3 provides, among other things, that the Service will not issue a letter ruling or determination letter with respect to whether a transaction qualifies under § 355 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 those sections. The Service will instead rule only on significant issues presented in such a transaction if a taxpayer submits a letter ruling request complying with all the requirements set forth in section 6.03 of Rev. Proc. 2016-1, as well as Rev. Proc. 2016-1, in general. A significant issue is defined in section 3.01(50) of Rev. Proc. 2016-3 as

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.

Section 3.01(53) of Rev. Proc. 2016-3 provides, among other things, that the Service will not issue a letter ruling or determination letter as to whether a distribution of stock of a controlled corporation satisfies the corporate business purpose requirement or whether it is used principally as a device.

.02 New Procedures

The Service has determined there are a number of unresolved legal issues under § 1.355-2(b) pertaining to the corporate business purpose requirement and under § 355(a)(1)(B) and § 1.355-2(d) pertaining to device that can be germane to determining the tax consequences of a distribution. The Service has also determined that it is appropriate and in the interest of sound tax administration to provide guidance to taxpayers on significant issues (as defined in section 3.01(50) of Rev. Proc. 2016-3) in these two areas.

Accordingly, the Service will issue a letter ruling with respect to a significant issue under § 1.355-2(b) pertaining to the corporate business purpose requirement, and a significant issue under § 355(a)(1)(B) and § 1.355-2(d) pertaining to device, provided that the issue is a legal issue and is not inherently factual in nature. However, as with other requests for letter rulings, the Service may decline to issue a letter ruling addressing these significant issues when appropriate in the interest of sound tax administration or on other grounds when warranted by the facts or circumstances of a particular case. See section 6 of Rev. Proc. 2016-1 and section 3.02(10) of Rev. Proc. 2016-3.

SECTION 4. PROCEDURES

Section 3.01(53) of Rev. Proc. 2016-3 is modified by deleting the following text:

“is being carried out for one or more corporate business purposes, whether the transaction is used principally as a device, and whether the distribution”

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to all ruling requests that are postmarked or, if not mailed, received on or after August 26, 2016, and relate to distributions that occur after such date.

SECTION 6. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2016-3, 2016-1 I.R.B. 126, is modified.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Grid R. Glycer of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Mr. Glycer at (202) 317-6847 (not a toll-free call).