INCOME TAX

The earnings and profits of a corporate employer are reduced to reflect the deduction the corporation takes when an employee receives stock upon exercise of a nonstatutory stock option.

Payments made or received with respect to floor stocks must be accounted for as adjustments to the invoice price or production cost of the goods physically held on the floor stocks date to which the payments relate, rather than as an adjustment to the tax basis (carrying value) of those goods. This ruling provides, for costing purposes, an optional simplifying assumption for LIFO taxpayers regarding identification of the goods physically held on the floor stocks date to which the floor stocks payments relate. Rev. Ruls. 85–30 and 88–95 clarified. Rev. Proc. 99–49 modified and amplified.

EXEMPT ORGANIZATIONS

This procedure describes the Voluntary Compliance on Alien Withholding Program (VCAP), which is available to certain public and other not-for-profit colleges and universities and their charitable affiliates to resolve issues arising from the payment, withholding, and reporting of certain taxes due on payments made to alien individuals.

ADMINISTRATIVE

Final regulations under section 118(c) of the Code relate to the exclusion from gross income for a contribution in aid of construction (CIAC) from any person (whether or not a shareholder) to a regulated public utility that provides water or sewerage disposal services. The regulations define what property constitutes a CIAC for purposes of the exclusion from gross income and provide rules for adjusting the basis of water or sewerage disposal facilities acquired as, or acquired or constructed with any money received as, a CIAC. The regulations also provide the time and manner for taxpayers to notify the Secretary of amounts treated as a contribution to capital under this provision.

Intermediary transactions tax shelter. The Service may challenge certain transactions in which assets of a corporation are sold following the purported sale of the corporation’s stock to an intermediary. Such transactions are designated as “listed transactions” for purposes of sections 1.6011–4T(b)(2) and 301.6111–2T of the regulations.

Contingent liability tax shelter. The Service may challenge certain transactions in which a taxpayer transfers assets to a corporation and the transferee assumes a liability that the transferor has not yet taken into account for federal income tax purposes. Such transactions are designated as “listed transactions” for purposes of sections 1.6011–4T(b)(2) and 301.6111–2T of the regulations.

(Continued on the next page)
The Service may impose penalties on participants in these transactions, or, as applicable, on persons who participate in the promotion or reporting of these transactions, including the accuracy-related penalty under § 6662, the return preparer penalty under § 6694, the promoter penalty under § 6700, and the aiding and abetting penalty under § 6701.

Transactions that are the same as or substantially similar to those described in the Notice 2001–16 are identified as “listed transactions” for the purposes of § 1.6011–4T(b)(2) of the Temporary Income Tax Regulations and § 301.6111–2T(b)(2) of the Temporary Procedure and Administration Regulations. See also § 301.6112–1T, A–4. It should be noted that, independent of their classification as “listed transactions” for purposes of §§ 1.6011–4T(b)(2) and 301.6111–2T(b)(2), such transactions may already be subject to the tax shelter registration and list maintenance requirements of §§ 6111 and 6112 under the regulations issued in February 2000 (§§ 301.6111–2T and 301.6112–1T, A–4). Persons required to register these tax shelters who have failed to register the shelters may be subject to the penalty under § 6707(a) and to the penalty under § 6708(a) if the requirements of § 6112 are not satisfied.

For further information regarding this notice, contact Theresa Abell, of the Office of Associate Chief Counsel (Corporate), at (202)622-7700 (not a toll-free call).

Contingent Liability Tax Shelter Notice 2001-17

The Internal Revenue Service and the Treasury Department have become aware of certain types of transactions, described below, that are being marketed to taxpayers for the purpose of accelerating and, in some cases, duplicating tax deductions. This notice is intended to alert taxpayers and their representatives that the losses generated by such transactions are not properly allowable for federal income tax purposes. This notice also alerts taxpayers and their representatives of certain responsibilities that may arise from participation in such transactions.

FACTS

These transactions take several forms but, in all cases, involve the transfer of a high basis asset (i.e., an asset with a basis that approximates its fair market value) to a corporation purportedly in exchange for stock of the transferee corporation, and the transferee corporation’s assumption of a liability (such as a liability for deferred compensation or other deferred employee benefits or an obligation for environmental remediation) that the transferor has not yet taken into account for federal income tax purposes. The transferor typically remains liable on the underlying obligation. The basis and fair market value of the transferred asset, which may be a security of another member of the same affiliated group of corporations, are generally only marginally greater than the present value of the assumed liability. Therefore, the value of the stock of the transferee received by the transferor is minimal relative to the basis and fair market value of the asset transferred to the transferee corporation.

The transaction is purported to qualify as an exchange under § 351 of the Internal Revenue Code, with the intent that the basis of the stock that the transferor receives from the transferee corporation will be equal to the basis of the transferred asset, unreduced by the liability assumed by the transferee corporation. Under § 358(a), a transferor’s basis in stock received in a § 351 exchange is equal to the transferor’s basis in property exchanged for such stock, subject to certain adjustments, including a reduction for any money or other property received by the transferor. Under § 358(d)(1), liabilities assumed by the transferee corporation are treated as money received by the transferor. Under certain circumstances, however, liabilities assumed by a transferee corporation in a § 351 exchange are not treated as money received by the transferor and thus do not reduce the basis of the stock received in the exchange. See § 358(d)(2); § 357(c)(3).

The transferor typically sells the stock of the transferee corporation for its fair market value within a relatively short