



## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

#### Rev. Rul. 2001-1, page 726.

**E & P adjustments on exercise of option.** 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.

#### Rev. Rul. 2001-8, page 726.

**Inventories; floor stocks payments.** 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

#### Rev. Proc. 2001-20, page 738.

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

#### T.D. 8936, page 720.

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.

#### Notice 2001-16, page 730.

**Intermediary transactions tax shelter.** The Service may challenge certain transactions in which the 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.

#### Notice 2001-17, page 730.

**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.

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Actions Relating to Court Decisions is on the page following the Introduction.

Finding Lists begin on page ii.

Announcements of Disbarments and Suspensions begin on page 752.



## Part III. Administrative, Procedural, and Miscellaneous

### Intermediary Transactions Tax Shelter

#### Notice 2001-16

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 avoidance of federal income taxes. The Service and Treasury are issuing this notice to alert taxpayers and their representatives of certain responsibilities that may arise from participation in these transactions.

These transactions generally involve four parties: seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and buyer (Y) who desires to purchase the assets (and not the stock) of T. Pursuant to a plan, the parties undertake the following steps. X purports to sell the stock of T to M. T then purports to sell some or all of its assets to Y. Y claims a basis in the T assets equal to Y's purchase price. Under one version of this transaction, T is included as a member of the affiliated group that includes M, which files a consolidated return, and the group reports losses (or credits) to offset the gain (or tax) resulting from T's sale of assets. In another form of the transaction, M may be an entity that is not subject to tax, and M liquidates T (in a transaction that is not covered by § 337(b)(2) of the Internal Revenue Code or § 1.337(d)-4 of the Income Tax Regulations, resulting in no reported gain on M's sale of T's assets.

Depending on the facts of the particular case, the Service may challenge the purported tax results of these transactions on several grounds, including but not limited to one of the following: (1) M is an agent for X, and consequently for tax purposes T has sold assets while T is still owned by X, (2) M is an agent for Y, and consequently for tax purposes Y has purchased the stock of T from X, or (3) the transaction is otherwise properly recharacterized (*e.g.*, to treat X as having sold assets or to treat T as having sold assets while T is still owned by X). Alternatively, the Service may examine M's consolidated group to determine whether it may properly offset losses (or credits) against the gain (or tax) from the sale of assets.

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