

INTERNAL REVENUE SERVICE

Number: **200004002**

Release Date: 1/28/2000

July 29, 1999

CC:DOM:FS:IT&A

UILC: 451.00-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR DISTRICT COUNSEL, OHIO, CLEVELAND

FROM: Deborah A. Butler
Assistant Chief Counsel CC:DOM:FS

SUBJECT:

This Field Service Advice responds to your memorandum dated April 29, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

A =
B = _____

ISSUE:

Whether the automobile leasing transaction at issue requires lessor (A) to recognize income equal to the cash down payment and/or vehicle trade-in value received by the automobile dealer from the lessee at the inception of the lease.

CONCLUSION:

We have insufficient facts to analyze this issue.

FACTS:

A is a subsidiary of B and is engaged in automobile leasing. The leasing transactions have several variations, but the form identified so far is as follows.

A lease agreement is entered into between A, as lessors, and the automobile lessee. The lease document is a preprinted form of A's creation, bearing A's trademark, and setting forth standard terms which they require in all similar leases. The automobile dealer is not a party to the lease agreement, and does not sell the automobile to A subject to the lease, but rather sells it outright to A (at a reduced price reflecting the down payment or trade-in value received and retained by the dealer from the lessee). You note that A is not a mere assignee of the lease, but rather is a party to it and is responsible for its terms.

As a participant in the formation of the lease, A has discretion regarding how the down payment is handled. If the dealer gives the down payment to A, then it must charge A full price for the automobile. Conversely, if the dealer retains the down payment, it must reduce the sales price charged A for the automobile by a like amount. A would be in a favorable tax position if, upon determining that a dealer will keep a down payment, such payment is not includible in A's income.

You raise the question of whether, given the discretion that A possesses at the formation of the lease to direct whether the down payment is retained by the dealer or turned over to A, A has sufficient dominion and control over the down payment to be considered in constructive receipt of it.

ANALYSIS:

We find that we have insufficient facts to respond to your request for field service advice.

CASE DEVELOPMENT:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DEBORAH A. BUTLER

By: _____

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