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Recent Developments in the Taxation of Corporations and Shareholders

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**RECENT DEVELOPMENTS IN THE TAXATION
OF CORPORATIONS AND SHAREHOLDERS**

THIRTY-THIRD WILLIAM AND MARY TAX CONFERENCE

Saturday, December 5, 1987

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Washington, D.C.**

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1. Accumulated Earnings Tax

- A. J.H. Rutter Rex Manufacturing Co. (T.C. Memo 1987-296, June 16, 1987). IRS was correct, in determining the amount of accumulated earnings tax, in not deducting as "federal income tax accrued during the taxable year," that portion of the tax that was contested in taxpayer's unsuccessful petition to the Tax Court. Section 535(b)(1) requires that the tax have accrued during the taxable year for which the accumulated earnings tax is being computed.
- B. Rev. Rul. 87-54 (I.R.B. 1987-26, 30). Under the Tax Reform Act of 1986, interest now begins to run on the due date of the return for the taxable year involved. Accordingly, Rev. Rul. 72-324, 1972-1 C.B. 399, holding that interest is not due if the tax is paid within ten days from notice and demand, is no longer effective.
- C. Mark Eden v. Commissioner, (T.C. Memo 1987-101, February 19, 1987). Accumulation was justifiable where corporation, which paid no dividends, sought to provide for needed working capital, potential lawsuits and development of new product lines.

2. Alternative Minimum Tax

- A. T.D. 8138 (I.R.B. 1987-26, 4). Temporary and proposed regulations provide rules for computing the corporate book income adjustment as well as rules for estimating that adjustment for estimated tax purposes.
- B. Rev. Rul. 87-44 (I.R.B. 1987-23, 4). An election made under Section 172(b)(3)(C) to relinquish the carryback period is effective for purposes of both the regular tax net operating loss and the alternative minimum tax net operating loss.

3. Annuities

T.D. 8115 (I.R.B. 1987-8, 4). Final regulations revise IRS' life-expectancy tables to make them gender-neutral.

4. Business Expenses

- A. Affiliated Capital Corporation v. Commissioner, (88

T.C. No. 65, May 4, 1987). No current deduction is allowed for the cost of updating SEC registration statements for stock warrants previously issued by the corporation. These were analogous to nondeductible costs of issuing stock.

- B. Colt Industries, Inc. v. U.S. (Cl. Ct., October 23, 1986). Civil penalties assessed against a steel mill by the Environmental Protection Agency pursuant to the Clean Air Act and the Clean Water Act are "fines or similar penalties" and thus not deductible, even though 97 percent of the penalty was remedial in nature and only 3 percent was for "recalcitrance."
- C. Clougherty Packing Co. v. Commissioner (9th Cir., March 3, 1987). That portion of the insurance premiums paid by a parent corporation to an unrelated insurer that is ceded by the insurer to parent's captive insurance subsidiary pursuant to a reinsurance agreement is not deductible.
- D. Fong Venture Capital Corp. v. Commissioner (T.C. Memo 1987-208, April 23, 1987). No deduction is allowed for interest accrued on an undertaking to pay for the corporation's shareholders' loan guarantees. There was no formal commitment to pay interest and, consequently, no "existing, unconditional and legally enforceable obligation" to pay the interest.
- E. RTS Investment Corp. v. Commissioner (T.C. Memo 1987-98, February 17, 1987). Amounts paid for salaries and management fees to shareholder-employees of closely held corporations were in excess of reasonable compensation for services rendered and therefore were nondeductible.
- F. Anesthesia Service Medical Group, v. Commissioner (9th Cir., August 18, 1987). No deduction is allowed for payments by taxpayer into an irrevocable trust set up to cover medical malpractice claims against its employees. Until claims arise, no loss has been incurred. The fund is a "separate and distinct" non-wasting capital asset held for taxpayer's benefit.

5. Charitable Contributions

- A. Walter Bialo v. Commissioner (88 T.C. No. 63, April 30, 1987). No charitable contribution

deduction may be taken for that portion of a gift of preferred stock that would have been treated as ordinary income under Section 306 if a sale had occurred.

- B. Roger B. Morrison v. Commissioner (T.C. Memo 1987-112 (February 24, 1987)). Fair market value of gift of stock to charity is determined as of the date of actual transfer of the stock, not the date donor's broker was directed to effect the transfer.

6. Collapsible Corporations

G.C.M. 39624 (April 29, 1987). Foreign corporations with no taxable income from U.S. sources are subject to the collapsible corporation rules. G.C.M.'s 38351 and 38610 are revoked.

7. Consolidated Returns

U.S. Padding Corporation v. Commissioner (88 T.C. No. 11, January 20, 1987). A Canadian subsidiary was eligible to join its U.S. parent in filing a consolidated return where Canadian government policy "required" formation of a subsidiary in that country. This was sufficient to satisfy Section 1504(d).

8. Constructive Receipt

A. Baxter v. Commissioner (9th Cir., May 6, 1987). Checks "made available" to taxpayer were nevertheless not constructively received because control by taxpayer was subject to significant limitations.

B. L.R. 8725006; L.R. 8725032. Taxpayers were not in constructive receipt of directors' fees deferred pursuant to an agreement entered into prior to the beginning of the taxable year.

9. Corporate Distributions

A. Rev. Rul. 87-22 (I.R.B. 1987-20, 11). IRS sets forth the information that must be included in a request for a ruling that a proposed sale of employees stock, by a shareholder to a qualified defined-contribution employee benefit plan, will be treated as a sale of stock rather than as a Section

301 distribution.

- B. Rev. Rul. 87-47 (I.R.B. 1987-24, 12). A deemed sale, under (prior law) Section 311(d), is treated as an actual sale of foreign corporation stock for purposes of Section 1248.

10. Corporate Divisions

- A. Rev. Rul. 86-125 (I.R.B. 1986-43, 4). Leasing of an office building through an independent management company does not satisfy Section 355's "active business" requirement.
- B. L.R. 8732027; L.R. 8732031; L.R. 8727055; L.R. 8731048; L.R. 8727050. IRS approves a variety of reasons meeting the "business purpose" test implicit in Section 355.

11. Covenant Not to Compete

- A. Patterson v. Commissioner (6th Cir., February 2, 1987). No portion of the purchase price paid for a minority shareholder's interest in a restaurant chain was allocable to taxpayer's covenant not to compete.
- B. Ralph K. Van Landingham v. Commissioner (T.C. Memo 1987-66, February 2, 1987). Portion of purchase price allocated by the parties to "intangible assets" is allocated by the Tax Court entirely to taxpayer's covenant not to compete.

12. Debt vs. Equity

Harold J. Westin v. Commissioner (T.C. Memo 1987-238, May 11, 1987). Advances by a sole shareholder to his corporation are equity, not debt. Accordingly, taxpayer's claimed bad debt deduction is disallowed. The Tax Court applied the Eighth Circuit's ten-factor test.

13. Depreciation

- A. McCarthy v. U.S. (6th Cir., December 29, 1986). Purchaser of an interest in the New York Yankees baseball team is not entitled to amortize the cost of television broadcasting revenues over the life of the current broadcasting contracts; such rights do

not have a limited useful life.

- B. T.D. 8116 (I.R.B. 1987-21, 4). Final regulations implement the Accelerated Cost Recovery System rules contained in the Economic Recovery Tax Act of 1981.
- C. Donrey v. U.S. (8th Cir., January 20, 1987). Purchaser of a newspaper business is entitled to depreciate the acquired subscriber list over a 23-year period. The jury found that the list had a limited useful life.
- D. T.D. 8121 (I.R.B. 1987-24, 5). Final regulations implement the pre-1986 Act first year expensing election.

14. Disguised Dividends

- A. Paul W. Thielking v. Commissioner (T.C. Memo 1987-227, May 4, 1987). Withdrawals by a sole shareholder, purporting to be loans, were held to be dividends.
- B. Owensby and Kritikos, Inc. v. Commissioner (5th Cir., June 26, 1987). Amounts purportedly paid as salary and bonus were held to be unreasonable in amount and were treated instead as dividends.

15. Dividends: Waiver of

T.A.M. 8723007. Failure to compel payment of noncumulative preferred stock dividends is deemed to be a taxable gift by the preferred shareholders to the common shareholders.

16. Employee Benefit Plans

- A. Notice 86-14; Proposed Regulations. IRS provides guidance, in question and answer format, as to the minimum distribution requirements applicable to qualified employee benefit plans and Individual Retirement Accounts.
- B. Notice 87-2 (I.R.B. 1987-2, 17). IRS publishes model amendments to conform qualified plans to the changes mandated by the Tax Reform Act of 1986.
- C. Notice 87-13 (I.R.B. 1987-4, 14). IRS provides guidance, in question and answer format, regarding

the pension plan provisions of the Tax Reform Act of 1986.

- D. Notice 87-28 (I.R.B. 1987-14, 46). IRS issues guidelines for amending qualified pension plans to comply with the requirements of the Retirement Equity Act of 1984.
- E. Notice 87-33 (I.R.B. 1987-18, 7). IRS publishes model amendments for master and prototype pension plans seeking to comply with the requirements of the Tax Reform Act of 1986.
- F. Notice 87-34 (I.R.B. 1987-18, 17). IRS publishes model amendments, both required and optional, for cash or deferred profit-sharing plans seeking to comply with the requirements of the Tax Reform Act of 1986.
- G. Rev. Rul. 87-18 (I.R.B. 1987-18, 45). IRS sets forth conditions under which it will accept applications for opinion letters for master and prototype plans that include cash or deferred arrangements.
- H. Proposed Regulations. Regulations under Section 162(i) and (k) would reflect changes made by several recent statutory enactments requiring that qualified group health plans offer continuation coverage to certain persons who otherwise would lose their coverage by reason of a change in circumstances.
- I. George H. Gordon v. Commissioner (88 T.C. No. 34, March 17, 1987). A lump-sum distribution from a profit-sharing plan to an employee on grounds of total disability was not an excludible payment from an accident or health plan and, even if it were, it would not be exempt because it fails to meet the requirement of Section 105(c)(2) that it be determined by reference to the nature of the injury.

17. Employee Death Benefits

Estate of Anthony Di Marco (87 T.C. 653, September 24, 1986). Employee is not subject to gift tax on value of prospective payment to be made by his employer corporation to his surviving spouse pursuant to an unfunded and uninsured survivor's income benefit plan.

18. Employee v. Independent Contractor

Rev. Rul. 87-41 (I.R.B. 1987-23, 7). IRS applies common law rules in three situations, describing twenty factors that are used in determining whether an individual qualifies as an employee or as an independent contractor.

19. Employment Taxes

- A. Gephart v. U.S. (6th Cir., April 14, 1987). Employee charged with distributing payroll checks is held liable as a "responsible person" under Section 6672 even though he had instructed the bookkeeper to pay the taxes but then was overruled by his employer who told him "it's none of your business."
- B. U.S. v. Volta (D. Oregon, September 23, 1986). Administratrix is held liable for unpaid employment taxes where she allowed another person (her mother) to operate a business after the decedent-owner's death. A reasonable inquiry by a prudent person would have disclosed that the taxes were unpaid.

20. Estimated Tax

- A. T.D. 8132 (I.R.B. 1987-14, 42). Temporary regulations offer a safe harbor providing relief for underpayment penalties to corporations required to make estimated tax payments.
- B. L.R. 8637036. Shareholder of S corporation engaged in farming is entitled to the relief accorded to farmers under the estimated tax rules.

21. Extraordinary Dividends

Rev. Rul. 87-33 (I.R.B. 1987-29, 11). IRS provides guidance to corporate taxpayers concerning the valuation of stock held by them for purposes of determining whether they received "extraordinary dividends" triggering the basis-reduction rules of Section 1059.

22. Foreign Corporations: Section 367

Mars, Inc. v. Commissioner (88 T.C. No. 19, February 11, 1987). Transformation of foreign loss partnership into foreign corporation was not for purpose of avoiding taxes. IRS's refusal to grant favorable Section 367 ruling (under pre-1985 statute) was unreasonable.

23. Foreign Sales Corporations

T.D. 8125 (I.R.B. 1987-11, 4); T.D. 8126 (I.R.B. 1987-13, 5); T.D. 8127 (I.R.B. 1987-22, 4). Temporary and final regulations implement the foreign sales corporation incentives enacted in 1984.

24. Foreign Tax Credit

A. Proposed Regulations. Regulations would implement the separate limitation rules provided with respect to the foreign tax credit by the Tax Reform Act of 1986.

B. T.D. 8153. Final regulations deal with the treatment of foreign losses for purposes of the foreign tax credit.

25. Formation of a Corporation

Rev. Rul. 87-9 (I.R.B. 1987-5, 4). Section 351 is not applicable in the case of a transfer to an investment company if nonidentical assets are transferred. Here, although only eleven percent of the assets were nonidentical, IRS finds that sufficient to render Section 351 inapplicable.

26. General Utilities Repeal

Rev. Rul. 86-141 (I.R.B. 1986-49, 6). IRS advises small corporations regarding transition relief from the provisions of the Tax Reform Act of 1986 repealing the General Utilities doctrine, including advice regarding the tax on built-in gains applicable to corporations shifting from C to S corporation status.

27. Gift Tax: Gift to Corporation

Daniel V. Tilton v. Commissioner (88 T.C. No. 31, March 16, 1987). Shareholders of a transferee corporation are not liable for the gift tax payable on a nonshareholder's transfer to their near-bankrupt corporation, where IRS failed to show corporation's value before and after the gift.

28. Gross Income: Security Deposits

Indianapolis Power and Light Co. v. Commissioner (88 T.C. No. 52, April 20, 1987). Deposits received from customers by a utility were true security deposits, not advance payments, and therefore were not includible in gross income.

29. Incentive Stock Options

Notice 87-49 (I.R.B. 1987-31, 13). IRS provides temporary guidance relating to the qualification requirement of incentive stock options; the guidelines reflect not only the Tax Reform Act of 1986, but also the pending Technical Corrections Bill of 1987.

30. Interest Expense

Dillon, Read & Co., Inc. v. U.S. (Cl. Ct., January 22, 1987). The mere fact that an investment banking firm's borrowings were collateralized by taxable securities is not conclusive proof that the loans were not incurred to acquire or carry tax-exempt securities.

31. Investment Tax Credit: Recapture

L.R. 8731008. Distribution of property in redemption of stock results in recapture of I.T.C. (as well as depreciation recapture under Sections 1245 and 1250 and recognition of gain under Section 311.)

32. Liquidations

A. H.K. Porter Company, Inc. v. Commissioner (87 T.C. No. 42, September 29, 1986). Section 332 is not applicable, and consequently loss is recognized by the shareholder parent corporation, where its subsidiary is liquidated and assets are distributed only with respect to the preferred stock and not the common. Section 332 requires that the distribution be in redemption of all of the stock that parent owned in the subsidiary.

B. Rev. Proc. 87-23 (I.R.B. 1987-31, 18). IRS will not issue rulings under new Section 336 until it resolves the issue whether stock ownership, for purposes of gain or loss nonrecognition on distribution to 80 percent shareholders, is to be

determined by the application of rules similar to § 1.1502-34, which treats an affiliated group member as owning stock held by another member of the group.

- C. Notice 87-5 (I.R.B. 1987-3, 7). IRS will issue regulations under Section 367 addressing foreign-to-foreign liquidations in the context of the repeal of the General Utilities rule.
- D. Rev. Rul. 87-4 (I.R.B. 1987-2, 6). The transitional rules of the Tax Reform Act of 1986, in the case of corporations liquidating before 1989, apply not only to the repeal of the General Utilities doctrine, but also to Section 333 availability, i.e., to both shareholder-level and corporate-level gain recognition.
- E. Rev. Rul. 87-1 (I.R.B. 1987-2, 4). The retroactive change made to Section 312(b) by the Tax Reform Act of 1986 (regarding increase in earnings and profits to the extent of the excess of fair market value over basis) was not intended to affect Section 333 liquidations.
- F. Carlton L. Byrd (87 T.C No. 52, October 27, 1986). Distribution by liquidating corporation of fully expensed items was "fundamentally inconsistent" with the premise on which the expense deductions were allowed. Consequently, the tax benefit rule requires inclusion of the expensed amount in the corporation's income for its final taxable year.

33. Losses

- A. Arkansas Best Corp. v. Commissioner (Cert. granted, March 23, 1987). The Supreme Court will revisit the Corn Products doctrine in resolving the split between the Fifth and Eighth Circuits as to the deductibility of losses on sales of stock acquired for reasons relating to the taxpayer's trade or business.
- B. Commissioner v. Fink (U.S. Sup. Ct., June 22, 1987). Voluntary surrender to a corporation, by its dominant shareholder, of a portion of his stock does not produce an immediately deductible loss to the extent of the shareholder's basis in the transferred stock. The surrender constitutes a capital contribution, adding to the taxpayer's adjusted basis in his continuing stock interest.

34. Net Operating Losses

T.D. 8149. Temporary and proposed regulations deal with the question of what constitutes a corporate ownership change under the new NOL rules adopted in the Tax Reform Act of 1986.

35. Nominee Corporations

- A. Commissioner v. Bollinger (6th Cir., December 2, 1986; cert. granted, June 8, 1987). The Supreme Court will resolve the nominee corporation issue that has divided the Fourth and Fifth Circuits, which have supported the government's position rejecting nominee status, and the Sixth Circuit, which has allowed the taxpayer to demonstrate that the corporation was acting merely as an agent of the real taxpayer.
- B. Wolfe v. U.S. (9th Cir., August 29, 1986; cert. denied, June 16, 1987). The "alter ego" doctrine can be applied to require an individual shareholder to pay the taxes of a disregarded corporate entity.

36. Penalties

Commissioner v. Asphalt Products Co. (U.S. Sup. Ct., June 1, 1987). Resolving a conflict between the Second and Sixth Circuits, the Supreme Court holds that the negligence penalty, for pre-1987 taxable years, applies to the full amount of the deficiency and not only to the portion of the deficiency that is attributable to the taxpayer's negligence.

37. Reallocation of Income

- A. Stanley W. Haag v. Commissioner (88 T.C. No. 32, March 16, 1987). A portion of the income reported by taxpayer's one-man professional corporation is allocable to him. The corporation was genuine and is treated as such, but taxpayer did not deal with it at arms' length. (The taxable years involved were prior to the effective date of Section 269A.)
- B. Roger M. Dolese (10th Cir., February 10, 1987). IRS is warranted in reallocating income where an individual and his wholly-owned corporation were partners and dealt on a non-arms' length basis.

- C. G.D. Searle & Co. v. Commissioner (88 T.C. No. 16, February 4, 1987). A Section 351 transfer of intangible property to a subsidiary is upheld as a valid nonrecognition exchange, but the IRS is authorized to reallocate income between parent and subsidiary where they did not subsequently deal on an arms' length basis.
- D. P.R. Farms v. Commissioner (9th Cir., June 26, 1987). Income was reallocated within a controlled group of corporations and the dominant shareholder is deemed to have received a constructive dividend where his children were benefitted by the transactions.

38. Redemptions of Stock

- A. L.R. 8725030. IRS applies Section 304 in a 304/351 overlap situation, but then allows exchange (rather than Section 301) treatment under Section 302(b)(3).
- B. L.R. 8719024. IRS allows complete termination exchange treatment under Section 302(b)(3), honoring family attribution waiver notwithstanding continuing lease of real and personal property from former shareholder to corporation.
- C. L.R. 8722052. Three-year extension of term of twelve-year installment note issued in exchange for stock will not jeopardize prior favorable ruling finding complete termination of shareholder's interest.
- D. Lynch v. Commissioner (9th Cir., October 8, 1986). Redeemed shareholder who provides post-redemption services, either as an employee or as an independent contractor, holds a prohibited interest under Section 302(c)(2)(A)(ii) because he is more than merely a creditor.

39. Reorganizations

- A. Rev. Rul. 87-76 (I.R.B. 1987-33, ___). Where the acquired corporation sells all of its historic business assets (an investment portfolio of corporate stocks and bonds) and buys municipal bonds, the business the acquiring corporation will continue is not the same and therefore the "continuity of business enterprise" requirement of

§ 1.368-1(d) is not met and the transaction fails as a reorganization.

- B. Robert A. Penrod (88 T.C. No. 79, May 27, 1987). Sale by shareholders of more than 90 percent of the acquiring corporation's stock received in the reorganization within eight months of its receipt does not disqualify reorganization under "continuity of interest" doctrine. Acquisition of stock and subsequent sale were not interdependent events.
- C. Rev. Proc. 86-44 (I.R.B. 1986-49, 15). IRS now will rule as to whether the control requirement of Section 368(a)(2)(E)(ii) is met where a step transaction approach may be applied to treat a prior redemption of stock as part of a corporate reorganization structured as a reverse triangular merger.
- D. Rev. Proc. 86-42 (I.R.B. 1986-45, 12). IRS sets forth the exact language of the representations required to be included in reorganization ruling requests.
- E. Clark v. Commissioner (4th Cir., September 4, 1987). Dividend equivalence of "boot" received in a reorganization is to be determined by treating the boot as if it had been received in a post-reorganization redemption of a portion of the shareholder's stock interest in the acquiring corporation.

40. Revenue-Raising Options (Joint Committee List)

- A. Intercorporate dividends-received deduction
- B. Debt financing and corporate acquisitions
- C. Stock Redemptions
- D. Tax benefit mergers
- E. Sales of losses using preferred stock
- F. Limitation on NOL carryforwards following worthless securities deduction by shareholders
- G. Deemed dividends to corporate shareholders
- H. Denial of graduated rates for personal service corporations

- I. Conversion of C corporation to S status
- J. Corporate alternative minimum tax
- K. Nondeductibility of business meals
- L. Immediate write-off of advertising expenses
- M. LIFO inventory method
- N. Cash method of accounting
- O. Limitation on employee benefit exclusions
- P. Master limited partnerships
- Q. Foreign tax provisions
- R. Stepped-up basis at death
- S. Special use valuation
- T. Life insurance proceeds
- U. Stock sales to ESOP's

41. S Corporations

- A. Lewis Bader v. Commissioner (T.C. Memo 1987-30, January 14, 1987). Debt of S corporation did not run to shareholder and therefore gave shareholder no basis for loss deductibility.
- B. Rev. Rul. 86-141 (I.R.B. 1986-49, 6). Effective date of new Section 1374 tax on built-in gains turns upon date S corporation election is made, not date it becomes operative.
- C. L.R. 8729048; L.R. 8729014. IRS agrees that terminations were inadvertent where (1) trustees were unaware of Section 1361(d)(2) election requirement; and (2) trustee's election was not filed because envelope containing it fell behind attorney's filing cabinet.
- D. Notice 87-23 (I.R.B. 1987-9, 6). Fiscal-year S corporations are subject to the new 80 percent deduction limitation for meal and entertainment expenses incurred after January 1, 1987, regardless of date fiscal year ends.

- E. Notice 87-45 (I.R.B. 1987-25, 9). Regulations under Section 1366(a)(1)(A) will require fiscal-year S corporations to make separate reporting of meal and entertainment expenses to their shareholders.
- F. New Form 1120S. IRS revises form to reflect new reporting requirement for passive activity losses. No allocation is called for to separate 1986 and 1987 segments in the case of fiscal year S corporations, i.e., entire FY 1987 loss is subject to limitation.
- G. Proposed Regulations. Amendments would conform the regulations to changes enacted in the Subchapter S Revision Act of 1982 and the Tax Reform Act of 1984.
- H. T.D. 8122 (I.R.B. 1987-22, 16). Temporary regulations explain the provisions of Sections 6241-6245 setting forth unified audit and litigation procedures for some S corporations.

42. Social Security

Ruehle v. Department of Health and Human Services (D. Michigan, 1987). Arrangement whereby shareholder-employee kept salary artificially low during years when he was 65 to 70 years of age, and then tripled his salary once the 1-for-2 phaseout period was past, was a sham and he must now repay the social security benefits improperly received.

43. Statute of Limitations

- A. Rasmussen v. U.S. (5th Cir., March 10, 1987). IRS action successfully seeking deficiency determination against shareholder under Section 331 does not trigger Section 1311 permitting corporation to claim Section 337 relief after statute of limitations has expired.
- B. Estate of William Fry v. Commissioner (88 T.C. No. 55, April 22, 1987). Six-year statute of limitations applies; shareholder did not adequately inform IRS that a redemption of his stock had occurred by simply reporting a sale of stock on his return.

44. Stock Options (Nonqualified)

- A. Robinson v. Commissioner (1st Cir., November 13, 1986). One-year sellback provision was a restriction creating a "substantial risk of forfeiture," resulting in deferral of taxability until lapse of the one-year period.
- B. Rupprecht v. U.S. (Cl. Ct., February 20, 1987). Buyout of former employee's nonqualified stock options produces compensation income, not capital gain, notwithstanding facts payments were made by corporation acquiring taxpayer's employer and he never performed any services for the acquiring corporation.

45. Subchapter C Reform

Treasury study. Treasury has issued an outline of the issues it expects to cover in its report, due by the end of this year.

46. Tax Accounting

- A. U.S. v. General Dynamics Corp. (U.S. Sup. Ct., April 22, 1987). Under the "all events" test of § 1.461-1(a)(2), an accrual basis taxpayer is not entitled to deductions for liabilities under its employee medical benefits plan where a mere estimate of actual liability is being made.
- B. T.D. 8143 (1987-30, 4). Temporary regulations implement Section 448 requiring use of the accrual method by C corporations other than qualified personal service corporations.
- C. Marcor, Inc. v. Commissioner (89 T.C. No. 16, July 27, 1987). Costs incurred in providing merchandise installation and preparation services in connection with installment sales are currently deductible.
- D. T.D. 8131 (I.R.B. 1987-14, 8); T.D. 8148. Temporary and proposed regulations implement the Tax Reform Act of 1986 provisions on inventory capitalization. The practical capacity method of accounting is expressly prohibited.
- E. I.R. 169. IRS will not permit taxpayers to deduct the full cost of a multi-year subscription to a business or investment publication in the first year of the subscription. The portion that extends the

subscription period beyond one year must be amortized over the remaining term of the subscription.

- F. Rev. Rul. 87-57 (I.R.B. 1987-28, 7); Rev. Proc. 87-32 (I.R.B. 1987-28, 14). IRS sets forth rules and procedures relating to the Tax Reform Act of 1986 requirement of conformity of the taxable years of S corporations and personal service corporations to the taxable years of their owners unless a business purpose is established justifying use of a different taxable year.

47. Tax Procedure

- A. Rev. Proc. 87-1; Rev. Proc. 87-2 (I.R.B. 1987-1, 7 and 19). IRS updates its procedures governing the issuance of advance letter rulings and for seeking technical advice from the national office.
- B. Rev. Proc. 87-3 (I.R.B. 1987-1, 27). IRS sets forth areas in which advance rulings or determination letters will not be issued. This revenue procedure was supplemented by Rev. Procs. 87-23, 87-30, 87-37, and 87-39.

48. Technical Corrections Bill

H.R. 2936; S.1350. The chairmen of the Ways and Means and Finance Committees have introduced a 500-page bill (with a 296-page explanation) making corrections to the Tax Reform Act of 1986. Numerous amendments are likely to be made to this bill.

49. Valuation of Stock

- A. Estate of Saul R. Gilford v. Commissioner (88 T.C. No. 4, January 12, 1987). A substantial discount (33 percent) was permitted in evaluating decedent's stock because of the Rule 144 restrictions on its transfer. No discount for blockage was permitted, however, because it was not established that any such discount was appropriate. (Decedent owned 23 percent of the outstanding stock of the corporation.)
- B. Estate of Dean A. Chenoweth v. Commissioner (88 T.C.

No. 90, June 29, 1987). A different per-share value may be used for marital deduction purposes than was used for purposes of inclusion in decedent's gross estate. A 38 percent premium value was upheld because decedent's wife was left a controlling interest in the corporation.