1980

Professional Corporations - Practical Problems and Solutions

K. Maxwell Dale

PROFESSIONAL CORPORATIONS—PRACTICAL PROBLEMS AND SOLUTIONS

K. MAXWELL DALE

Significant legislative and administrative changes recently have redefined the means and methods by which professional corporations may confer benefits upon their employees. This presentation shall address three of the most significant changes and consider the ramifications flowing from the new statutory language and case law.

The nature of professional corporations.

Professional corporations differ in only a few respects from other closely-held corporations. Although the various statutes and regulations dealing with professional corporations have not yet agreed upon a common definition, a common thread running among all definitions denotes professional corporations as those which render intellectual services to the public. Section 13.1-543 of the Code of Virginia, for example, lists pharmacists, practitioners of the healing arts, veterinarians, surgeons, dentists, architects, professional engineers, land surveyors, public accountants, certified public accountants and attorneys-at-law among those classifications of professionals permitted to form professional corporations. Seven recent Pension Benefit Guaranty Corporation (PBGC) opinion letters amplified this principle by advising opticians, food brokers, artists-designers, real estate brokers, individuals in advertising and public relations, foresters and river boat pilots that they do not constitute "professional service employees" within the meaning of Section 4021(b)(13) of the Employee Retirement Income Security Act (ERISA). None of those professions were held to qualify for that exemption from the PBGC termination insurance program because individuals therein, while rendering services to the public, are not "required to possess knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study . . . and the rendering of such services is not predominantly intellectual in character." See PBGC opinion letters 80-9 to 80-15.

Although many of the principles discussed today may be applied equally to professional corporations and other closely-held corporations, each statutory definition must be reviewed with care to determine whether any particular classification of professionals falls within the ambit of its provisions. Inasmuch as qualified retirement plans and other compensation benefits are the principal reasons that most professional corporations are formed and professional persons creating such organizations tend to be highly-paid individuals, it is not surprising that new schemes for taxing the benefits available to such individuals appear regularly in all of the legislative bodies.

Controlled group legislation—Section 414(m)

Senator Lloyd Bentsen and Congressman Al Ullman simultaneously introduced bills in the House and Senate on December 13, 1979, which would expand the categories of controlled groups of professional corporations which are treated as a single employer for purposes of determining whether pension plans, cafeteria plans, medical expense reimbursement plans or simplified employee pensions meet the non-discrimination requirements of the Internal Revenue Code. This action was precipitated by two Tax Court cases involving partnerships of professional corporations which refused to require the professional corporation partners to extend the same pension benefits to the employees of the partnership as were provided the employees of the respective professional corporations.

Partnerships of professional cvorporations commonly are formed when several professionals desire to affiliate but are unable to agree on what salary structure, fringe benefits or qualified retirement plans they will maintain for employees. One or more professionals often will incorporate and form a partnership with the remaining corporations or individual professionals in order to solve these problems. The corporate partners typically hire only professional employees, while all non-professional employees are hired by the partnership and their services are shared by the corporate and noncorporate partners.

Prior to the passage of ERISA, Revenue Ruling 68-370, 1968-2 C.B. 174, held that for purposes of determining whether a corporation's qualified retirement plan satisfied the participation tests for nondiscrimination, all employees of a partnership would be considered employees of a partner-corporation and that corporation was responsible for providing its allocable share of the cost of all pension benefits for its employees. The establishment of an employment relationship between a partnership and its employees was deemed to establish a simultaneous employment relationship between those employees and each of the partners participating in the partnership.

Revenue Ruling 68-370 subsequently was limited in scope by the Tax Court, however, which held in *Thomas Kiddie, M.D., Inc.* v. *Commissioner,* 69 T.C. 1055 (1978), that the attribution of partnership employees to a corporate partner does not occur unless such a partner has "control" of the partnership, and that *more than* a fifty percent partnership interest was required in order to supply the requisite "control". The corporate partner in *Kiddie* only had a fifty percent partnership interest so the employees of the partnership were held to have been properly excluded from the professional corporation's pension plan.

Section 414(b), as added to the Code by ERISA, provides that if an employer which is a member of a controlled group of corporations within the meaning of Section 1563(a) establishes a qualified retirement plan, employees for each member of the group must be taken into account for purposes of determining whether the plan satisfies the participation tests for qualification. Section 414(c) additionally provides a rule for employees of trades or businesses (whether or not incorporated) which are under "common control". Temporary Section 11.414(c)-2(c), *Income Tax Regs.*, provides that trades or businesses are under common control if:

(a) the same five or fewer persons own a controlling interest (at least eighty percent of the profits or capital interest) in each organization, *and*

(b) such persons are in effective control of each organization, taking into account the ownership of each such person only to the extent such ownership is identical. For purposes of determining whether "effective control" of a partnership exists, these regulations require that a partner own an aggregate of *more than* fifty percent of the profits, interests or capital interests of the partnership.

The Tax Court applied this provision in a post-ERISA case entitled *Lloyd M. Garland, M.D., F.A.C.S.,P.A.* v. *Commissioner,* 73 T.C. 1690 (1979). A professional corporation, whose only employee and shareholder was Dr. Lloyd M. Garland, formed a fifty percent partnership with an individual doctor. The corporation wanted to establish a pension plan for Dr. Garland, its sole employee, but IRS refused to issue a favorable determination letter for the plan unless the employees of the partnership were covered in accordance with Revenue Ruling 68-370 (the pre-ERISA standard) although, concededly, the participation tests under Section 414(c) would not require their inclusion.

Determining that Sections 414(b) and 414(c) were enacted to provide a definite and exclusive answer to the question whether employees of related entities should be aggregated for purposes of determining if a plan is discriminatory, the Tax Court ruled in favor of the taxpayer and refused to look beyond the mechanical rules set forth in Sections 414(b) and (c). A factor influencing the Court's decision was the existence of congressional committee reports pertaining to the promulgation of Section 414 illustrating that Congress had been cognizant of attempts to circumvent the anti-discrimination provisions by use of multiple businesses when it formulated objective tests to be applied in these situations. The Court indicated further that even if Section 414(c) were not intended to provide an exclusive test, its previous *Kiddie* precedent would dictate a decision in favor of the taxpayer on the facts presented.

The legislation proposed by Senator Bentsen and Congressman Ullman has been approved by both houses of Congress and signed into law by President Carter as part of the Miscellaneous Revenue Act of 1980. Subsection 414(m) was thereby added to the Code to curtail the use of *Garland*-type arrangements where 10% or more of the interests in a professional partnership (or corporation) are owned, directly or indirectly, by one or more of the officers, highly-compensated employees or owners of a related organization.

The proposed legislation singled out service organizations in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, or any other service field which the Secretary might designate by regulation as a field in which separate organizations are used to avoid any employee benefit requirement. Note that the version adopted does not contain such limitations and applies to every "service organization", and defines that term as any "organization the principal business of which is the performance of services." Section 414(m)(3). A professional corporation or other entity becomes a "service organization" under the new section, while a combination of such entities is designated as an "affiliated service group".

The all-encompassing nature of this section, which aggregates related entities for the participation tests, should virtually eliminate the use of multiple entities to provide smaller fringe benefits to lower paid employees than to owners or highly-compensated employees. Many valid reasons remain for establishing multiple related entities to provide services to the public. New Section 414(m) simply eliminates the possibility of using such organizations to create the abusive situations perceived by Congress in *Kiddie* and *Garland*.

Interest-free loans.

Interest-free and low interest demand loans offer a wide range of income and gift tax planning opportunities in business and non-business contexts for owners of professional corporations. IRS and the judiciary have debated the validity of these arrangements since the Tax Court issued its opinion in *J. Simpson Dean* v. *Commissioner*, 35 T.C. 1083 (1961) (Government appeal to 3rd Cir. dismissed pursuant to agreement), N.A. 1973-2 C.B. 4, but the United States Court of Appeals for the Fourth Circuit resolved the issue for taxpayers in our jurisdiction on July 1, 1980, when it affirmed the Tax Court decision in *Suttle* v. *Commissioner*, 80-2 U.S.T.C. Par. 9534, aff'g. T.C. Memo. 1978-393.

Such loans confer tax-free benefits upon a corporation's shareholders, directors or officers in the form of foregone interest even though the individual recipient may own a controlling interest in the corporation. The loan must be bona fide, payable upon demand by the corporation, and the proceeds must not be used to purchase tax-exempt securities. There is no limit on the maximum amount of the loan, and except for the prohibition against investment in tax-exempt securities, the purpose of the loan currently is immaterial.

The facts in *Suttle* fairly illustrate the conflict. Albert Suttle owned a majority of the oustanding stock of Master Chevrolet Sales, Incorporated, was its President, served on the Board of Directors, and was a salaried employee of the corporation. Suttle borrowed money from the corporation for more than 35 years prior to the year in issue without paying interest. The loan balance during the years in issue averaged \$252,000. IRS computed the amount of interest which Suttle would have had to pay in order to borrow those sums from a third party at an assumed interest rate and determined an income tax deficiency of \$13,875.51 in one year and \$20,159.96 in the other. Both the Tax Court and Fourth Circuit Court of Appeals ruled in favor of the taxpayer by holding that interest-free loan cases were distinguishable from cases involving rent-free use of other corporate property (such as automobiles or residences). Cases involving interest-free use of money were accorded special treatment because the loan could have been arranged so that Suttle would have been charged with income and also entitled to an offsetting interest expense deduction—thereby creating a "washout".

The use to which loan proceeds are applied may determine whether an interest-free loan avoids income taxation. The Tax Court, beginning with Judge Opper's concurring opinion in *Dean*, repeatedly has expressed concern that the opinion of the majority in *Dean* "is much too broad a generalization" Recently in *Zager* v. *Commissioner*, 72 T.C. 1009 (1979), the Court stated in a published opinion that "we perhaps made too sweeping a statement in *Dean*" and further that "if the indebtedness were incurred . . to purchase or carry tax-exempt bonds, a different result might perhaps be reached in view of the provision of Section 265(2) of the Code which disallows a deduction for interest paid in respect of such indebtedness". IRS was precluded from asserting this argument in two recent cases only because it was not timely raised. *The Estate of Leichtung*, T.C. Memo. 1980-352, *Martin* v. *Commissioner*, T.C. Memo. 1979-469.

Another unanswered question concerns whether the mere simultaneous existence of interest-free loans and ownership of tax-exempt securities automatically creates taxable income for the recipient of an interest-free loan. In *Baker* v. *Commissioner*, 75 T.C. #11, (1980) (Appealable to 2d Cir.), the Tax Court determined that interest-free loans from a corporation to its stockholder who owned tax-exempt securities did not give rise to taxable income *solely* because the parties stipulated that the loan proceeds were not used to purchase tax-exempt securities. The Court did not express an opinion as to the use of loan proceeds to carry tax-exempt securities.

Economic benefits flowing in an interest-free or low-interest loan situation may generate taxable income for the recipient if a corporation must borrow the money which it lends to its controlling stockholder, and the stockholder must personally guarantee the repayment of the corporation's loan to a third party lender. Under these circumstances the corporation may be held to be the agent of its stockholder in obtaining the loan and all interest paid to the third party lender "on behalf of" the stockholder under such circumstances will constitute a taxable constructive dividend. *Creel* v. *Commissioner*, 72 T.C. 1173 (1979) (Appealed by government to 5th Cir. February 15, 1980, on other issue). *Creel* does not give guidance concerning the mere simultaneous existence of third party corporate loans and interest-free stockholder loans, but IRS can be expected to test this issue as it seeks to expand the scope of its agency principal victory.

Whenever the proceeds of an interest-free loan are used to purchase or carry a life insurance, endowment or annuity contract, the stockholder-borrower should be careful to pay four out of the first seven premiums with non-borrowed funds or comply with one of the other exceptions of Section 264(c). Taxable income similarly may be found to exist whenever the deduction portion of the "washout" is barred or limited.

Interest-free or low interest loans between non-related parties have received treatment similar to that accorded the parties in *Dean, Marsh* v. *Commissioner,* 73 T.C. 317 (1979) *Greenspun* v. *Commissioner,* 72 T.C. 931 (1979) (reviewed by the Court) (appealed to 9th Cir. by government on November 20, 1979), and interest-free loans between family members have escaped gift tax. *Johnson* v. *United States,* 254 F. Supp. 73 (N.D. Tex. 1966) (IRS announced it would not follow this decision in Rev. Rul. 73-61, 1973-1 C.B. 408); *Crown* v. *Commissioner,* 67 T.C. 1060 (1977) (reviewed by the Court), N.A. 78-1 C.B. 2, Aff'd. 585 F.2d 234 (7th Cir. 1978).

Courts which have addressed this issue uniformly have ruled in favor of the taxpayer where proceeds from bona fide demand loans were not used to purchase tax-exempt securities. One income tax case, *Suttle,* and one gift tax case, *Crown,* have been decided by the Courts of Appeal, while income tax cases are now pending in the Fifth and Ninth Circuits and could be appealed to the First and Second Circuits. The Treasury Department continues to press this issue and previous non-acquiescences have not been withdrawn, so the ultimate resolution of this issue perhaps rests with Congress or the Supreme Court. IRS has pressed its case to the point where the Senate Appropriations Committee, in a report on H. R. 7583, the current treasury appropriations bills, urged IRS to refrain from instituting additional cases concerning interest-free loans as taxable income, at least until it can explain to that Committee "a rationale for proceeding in a fashion contrary to the court rulings". Senate Appropriations Committee Rept. No. 96-955, p. 30, September 17, 1980.

Section 411 proposed regulations on discriminatory vesting

IRS launched a major effort on April 9, 1980, to accelerate vesting requirements for qualified retirement plans by issuing new regulations an action which, if successful, will decrease the period of time an employee must participate in a plan in order to obtain a nonforfeitable interest in his accrued benefit. These proposed regulations, as amended, may have serious adverse consequences for small professional corporation plans in particular.

Prior to ERISA vesting rules lacked substantial uniformity because the Code did not specify any particular vesting requirement and such decisions were made by each District Director when processing applications for advance determination letters. Congress attempted to inject a degree of uniformity into the system by establishing four statutory vesting schedules in Section 411(a) when ERISA was enacted:

(a) Ten-year cliff vesting (no vesting until the tenth year of service when a participant becomes 100% vested),

(b) Five to fifteen-year vesting (vesting begins in the fifth year of service and gradually increases until 100% vesting is achieved in the fifteenth year of service),

(c) "Rule of Forty-Five" vesting (vesting begins when the combination of age and years of service totals forty-five and attains 100% vesting within five years), and

(d) Class year vesting (each class must attain 100% vesting within five years).

Under Section 411(d)(1) the vesting requirements of a plan which satisfies any of the above minimum schedules will not be deemed to discriminate in favor of the "prohibited group" of officers, shareholders or highly compensated employees unless a "pattern of abuse" evidences discrimination or there has been, or there is reason to believe that there will be "discriminatory vesting" resulting in an accrual of benefits or forfeitures favoring the prohibited group over rank and file employees.

Revenue Procedures 75-49 and 76-11 subsequently provided two factual tests by which a plan administrator could determine whether "discriminatory vesting" exists in favor of its prohibited group" for the purposes of obtaining a favorable advance determination letter. A plan intending to vest more slowly than the "4-40" vesting contained in the Conference Report to ERISA, H.R. Rep. No. 93-1280, 93d Cong., 2d Sess. 276 (1974), could project the "key employee" or "turnover" tests to ascertain the probability of obtaining a favorable advance determination letter. Most practitioners assumed that 4-40 vesting constituted an absolute safe harbor except in cases of actual misuse of the plan in operation.

Proposed Treasury Regulation Sec. 1.411(d)-1 drastically altered this system on April 9, 1980, by eliminating the former "4-40" vesting safe harbor and replacing it with an "all facts and circumstances" test applicable to all determination requests. Much more restrictive safe harbors in this Proposed Regulation require 100% vesting after three years of service or class year vesting requiring 20% vesting after one year's service, grading up to 100% vesting after five years of service. Moreover, years of service for the purposes of these computations were required to be calculated without the benefit of the statutory exclusions contained in the Sections 411(a)(4)(A) through (C) of the Code. This Proposed Regulation would vitiate Revenue Procedures 75-49 and 76-11 and would apply with equal effect to new and existing plans. The preamble to the original proposed regulation indicated that plans having determination letters based on 4-40 vesting need not apply for a new determination letter, but Plan Administrators should be aware that the new tests will be applicable to their vesting schedules and should review their plans accordingly.

Public criticism mounted swiftly against the proposed regulations when practitioners viewed them as thinly disguised coercion into adopting the more rapid vesting schedules contained in the proposed safe harbors. Many felt that the new system of guidelines would significantly increase their burden of establishing nondiscrimination. Some justification can be seen for this position in the requirement that the following factors be computed and compared between the prohibited group and rank and file employees:

(a) Employment turn-over rate,

(b) Average percentage of vesting of each employee currently employed by the employer,

(c) Average percentage of vesting of each employee whose employment is terminated,

(d) Average number of years remaining for each employee until 100% vesting, and

(e) In the case of a plan amendment increasing the length of service required for vesting, the percentage of employees satisfying the new service requirement at the time it becomes effective.

The Treasury Department responded to that public outcry on June 9, 1980, by deleting all safe harbor provisions from the proposed regulations. Thus, a determination of discrimination would be based entirely on the facts and circumstances of each case. Although the examples and rules for computing years of service in the original proposed regulations were deleted, IRS warned that the deletion of safe harbor provisions from the proposed regulations should not be interpreted as meaning that 4-40 vesting remains a safe harbor.

Several days later, on June 12, 1980, the Treasury Department agreed to modify again the proposed regulations. Pursuant to this agreement:

(a) Final regulations would not be issued unless Congress was in session,

(b) Existing plans which had received favorable determination letters would not be retroactively disqualified unless discrimination in operation is egregious (Ex. a 4-40 plan under which only a sole shareholder was vested after ten years of plan operation or when employees were fired in order to prevent vesting), and

(c) Final regulations would provide examples illustrating how 4-40 and ten-year graded vesting would be applied to smaller plans.

IRS Release 80-85 next provided examples of discrimination rules that might be included in final regulations on vesting. One example was included of 4-40 vesting, and each example set forth a test which applies to all facts and circumstances independently of the other examples. Example 5 sets forth a situation which could have severe consequences for small professional corporation plans which experience rapid employee turnover. In Example 5 a non-contributory plan covers five employees and satisfied the minimum participation requirements of Section 410. The plan provides for 4-40 vesting but after six years of operation only one employee, the sole shareholder of the company, has any vested employer derived benefits. Absent a showing of "other facts and circumstances" the vesting schedule of this plan is held to be discriminatory.

Congressman Erlenborn responded to IRS by introducing an amendment to the Treasury-Postal Appropriations Bill, H.R. 7583, which, because it was enacted, cuts off funds needed by IRS to enforce the proposed regulations. The relief offered by this legislation is temporary in nature, however, because the Act will expire approximately October 1, 1981.

Knowledgeable practitioners working in and around Washington expect future legislation to dramatically accelerate vesting requirements—perhaps to a requirement of full vesting after five years of service. Indeed, Congressman Claude Pepper told a September 17, 1980, hearing of the House Select Committee on Aging that legislative proposals would be introduced shortly calling for more rapid vesting and increased portability. More rapid vesting appears inevitable, but current concern among administrators of small professional corporation plans is focused on the unknown degree of change that will be required once IRS is free to disregard the former 4-40 safe-harbor. Wise administrators will calculate the schedule required for minimum compliance and await further developments.

Incorporating the cash basis sole proprietor.

Section 351 of the Code provides that transfers of assets to a new or controlled cash basis corporation can be accomplished under certain circumstances without realization of gain on the assets transferred. Accounts receivable transferred to a controlled corporation have created income tax problems in the past because, although the corporation will be taxed fully upon collection of the receivables due to their zero basis, assignment of income principals threaten to tax the transferor on the accounts receivable when transferred. The Court of Appeals for the Third Circuit resolved this problem in *Hempt Bros., Inc.* v. *United States*, 490 F.2d 1172 (3rd Cir. 1974), *cert. denied*, 419 U.S. 826 (1974), which holds that accounts receivable transferred to a controlled corporation as a part of a tax-free Section 351 exchange will not generate tax to the transferor on assignment of income principals *if* the receivables represent goods and services sold in the transferor's regular course of business and the incorporation has a business purpose.

IRS issued Revenue Ruling 80-198, 1980-30 I.R.B. 10, which formally accepts the *Hempt Bros.* principle with two limitations; (1) Transfers to a controlled corporation of accounts receivable generated by services rendered will continue to be subject to the assignment of income principles where the transfer is motivated by tax avoidance purposes (which might be evidenced by the corporation not conducting an ongoing business after the transfer or the transfer becoming an integral part of a step transaction), and (2) income, deductions, credits or allowances may be freely allocated by IRS between the transferor or transferee under Section 482 of the Code whenever the timing of the incorporation improperly separates income from related expenses and the income of the transferor, transferee or both is not clearly reflected.

Simultaneously with the issuance of Revenue Ruling 80-198, IRS issued a related ruling concerning incorporation transfers under Section 351 in which the liabilities accepted by the corporation exceed the basis of all assets received. Section 357(c)(3), added by the 1978 Revenue Act, provides that when liabilities pass from one taxpayer to another in the course of a tax-free incorporation under Section 351, the amount of liabilities which would give rise to a deduction to the transferor if paid by the transferor shall not be taken into account when determining the amount of liability assumed or to which the property transferred is subject. Revenue Ruling 80-199, 1980-30 I.R.B. 11, was issued to extend retroactively the same treatment to pre-November 6, 1978 transactions by expressly revoking Revenue Ruling 69-442, which had assumed a contrary position, and followed the Tax Court's decision in *Focht* v. *Commissioner,* 68 T.C. 223 (1977), acq., 1980-30 I.R.B. 5.

Miscellaneous issues.

Several items of note occurred during the past year which affect professional corporations. Public Law 96-167, passed on December 7, 1979, extends until June 1, 1981, the Congressional prohibition against administrative changes in fringe benefit law which began during 1978 with the passage of Public Law 95-427.

A National Office technical advice memorandum, published as Private Letter Ruling 8003010, recognized again late last year that a properly established one-man professional corporation may act as a general partner in a partnership of professional corporations, and further that the professional corporation, as any other new taxpayer, may adopt a fiscal year distinct from the taxable year of its sole stockholder even though the election might result in a material distortion of income. This result obtained in a jurisdiction permitted professional corporations to act as general partners in a partnership.

Private letter Ruling 8031028 illustrates the importance of maintaining the trappings of corporate life as all corporate income was held taxable to the sole stockholder rather than his professional corporation because the evidence indicated that the corporation was formed primarily for tax avoidance rather than for legitimate business purposes. The formalities of conducting business in corporate fashion were not respected by the taxpayer. Among the factors considered by IRS were: (1) the individual and not his corporation remained a partner in his prior medical partnership; (2) the individual's interest in the medical partnership was not assigned to the corporation; (3) the individual did not enter into an employment contract with or covenant not to compete with his corporation; (4) insurance policies were not assigned to the corporation; (5) the corporation did not hire any other professional or nonprofessional employees; (6) the corporation did not incur any significant indebtedness other than for employee plan costs for the individual. It is interesting to note that a Tax Court case upon which the decision was made, *Foglesong* v. *Commissioner,* T.C. Memo. 1976-294, was reversed on appeal by the Court of Appeals for the Seventh Circuit four days after the private letter ruling was issued. This ruling indicates that IRS is not reluctant to press an assignment of income attack on any professional corporation that is not properly established and which does not maintain the appropriate trappings of a corporate enterprise.

A recent Court of Claims case, *Petro-Chem Marketing Co., Inc.* v. *United States,* 602 F.2d 959 (Ct. Cl. 1979), carries significant import for the "reasonable compensation—dividend" controversies which have troubled professional corporations. The Court listed several factors which affected its decision in favor of IRS: (1) No history of dividend payments, (2) bonus and payments were in proportion to stockholdings, (3) bonuses were paid only to share-holder employees, (4) evidence indicated the existence of a pre-set bonus formula, (5) no significant capital investment in the business, (6) bonuses were set late in the year when corporate surplus was evident, (7) the corporation was closely held so that all principals were constantly aware of financial conditions and exercised control over the type of payments made and the recipients of these payments, (8) officer salaries were higher than salaries paid to comparable businessmen in the field (9) bonuses were paid only when cash was available to pay them, and (10) the vast fluctuation in earnings (and salaries) was not demonstrated to be related to greater expertise or effort on the part of the corporation's officers in good years.

The last factor injects a new approach into this debate which could trouble small professional corporations in prosperous years if salaries are not declared in advance. Moreover, highly-paid professionals subject to the maximum tax on earned income could suffer higher taxes on deemed dividends during periods of wide income fluctuation. An example of this might be an incorporated attorney who receives a large contingent fee in one year as a result of a personal injury settlement.

And finally, proposed final regulations have been issued under Section 415 that do not deviate significantly from Revenue Ruling 75-481, which has governed this area since its issuance after ERISA.

Conclusion.

Professional corporations remain a viable format for practicing numerous professions and continue to offer significant tax-saving benefits to professionals. IRS has launched several new attacks on these benefits which must be monitored carefully in order to preserve the intended benefits. Major tax legislation is not anticipated during 1981 so most of this activity may take place in the courts.