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The Internal Revenue Service has published so far in 1966 over 340 Revenue Rulings in its weekly Internal Revenue Bulletin.

A determination of which of these rulings are "key" rulings would depend on the reader and his particular interest in the matter involved.

For purposes of this Conference, I have selected some of the Revenue Rulings that seemed to me to have created the most interest in our office where they were being considered.

One of these was Revenue Ruling 66-284 published in September. This ruling holds that a statutory merger of two corporations will qualify as a reorganization under section 368(a)(1)(F) of the Code even though some of the shareholders do not participate. Eight years ago in Revenue Ruling 58-422 the Service held that section 368(a)(1)(F) applies to all reorganizations where there is no change in existing shareholders or in the assets of the corporation involved.

In Revenue Ruling 66-284 we had a corporation that for good business reasons wanted to reincorporate in another State. It organized a new corporation in that State and then merged itself into the new corporation. However, shareholders of the old corporation owning less than one percent of the outstanding shares of the old corporation voted against the merger. These dissenting shareholders received payment equal to the fair value of their shares.

The question presented was whether the transaction, which qualified as a reorganization under section 368(a)(1)(A), also qualified as an (F) reorganization.

The result the taxpayer desired was that it not be required to file a partial year return under section 381(b) of the Code which it would have to do under an (A) reorganization.

Revenue Ruling 66-284 holds that the failure of shareholders owning less than one percent of the outstanding shares to participate in the merger was such a de minimis change that it did not serve to disqualify it as an (F) reorganization. Therefore, under section 381(b) the portions of the taxable year both prior to and after the reorganization constituted a single taxable year for the new corporation. Accordingly, the old corporation was spared the trouble of closing its books, taking inventories, and so forth, on the date of the merger.

Also in September, the Service's attention was called to a much advertised arrangement known as "leased life insurance". Here, the owner of a life insurance policy assigns the policy to a leasing company, retaining the right to designate the beneficiary. The company then leases the policy back to the assignor for a level annual charge and the company pays the annual insurance premium and promises to pay the face amount of the policy to the beneficiary if the insured dies during the term of the agreement.

The question was whether a portion of the annual charge was deductible by the lessee as interest.

Revenue Ruling 66-298 holds that no part of the payment is interest because actually no indebtedness existed.

We had some casualty loss questions presented which resulted in several Revenue Rulings during 1966.

In Revenue Ruling 66-303 it was held that where a prolonged drought causes damage or loss from progressive deteriorations, such as to trees or shrubs ultimately killed from lack of water, the loss is not deductible as a causualty loss under section 165(c)(3) of the Code. It was held that there was no *sudden* identifiable event fixing a point at which loss to the owner can be measured.

However, because there had been no published position by the Service on this question prior to Revenue Ruling 66-303 and there had been some confusion relating to the Service's position in connection with some old court decisions, the ruling was not applied to losses from an unusual and prolonged drought prior to January 1, 1966.

In another casualty loss question, the Service held, in Revenue Ruling 66-242, that a loss cannot be based on a hypothetical economic decline in value of the property based on an estimate of future buyer resistance, and in Revenue Ruling 66-9 it was held that where timber is destroyed by a hurricane, the casualty loss may not exceed the adjusted basis for determining loss from the sale or other disposition of the quantity of timber which is found unfit for use because of the hurricane.

In January of 1966, we published four Revenue Rulings setting forth the position of the Service regarding the qualification of employees' pension and profit-sharing plans under section 401 of the Code.

These rulings applied particularly to plans which by their terms are limited only to salaried employees.

As you know—our District offices issue determination letters under section 401—and the National Office had had many requests for advice from the Districts asking for some guidelines in this area.

As a result, we published Revenue Rulings 66-12; 66-13; 66-14; and 66-15 which set forth several examples of factual situations where the eligibility requirements of the plan resulted in either qualification or non-qualification.

One of the rulings holds that a plan under certain circumstances may qualify under section 401(a) even though it covers only salaried employees to the exclusion of hourly paid employees.

In another factual situation, a plan was held *not* to qualify where—by reason of limiting the coverage to only salaried and clerical employees—it resulted in benefitting only two highly compensated officers and shareholders.

In another factual situation where a profit-sharing plan was limited to salaried employees because its unionized employees chose not to participate—it was held that the plan failed of qualification because the limited coverage resulted in benefitting primarily employees who were highly paid officers and shareholders.

The fourth situation involved a plan which, although covering both salaried and wage earning employees, provided for higher comparable benefits for its salaried employees than it did for its hourly paid employees. Here, the salaried plan could not have qualified by itself as being non-discriminatory. The mere fact that it provided for *some* benefits for the hourly paid did not serve to qualify the salaried plan. The plan for the hourly paid—of course—was held to qualify.

However, if this salaried plan had had sufficient coverage to qualify alone—it would not have mattered if the plan for the wage earners had smaller benefits. Obviously, if it could qualify without providing *any* benefits at all for the hourly workers—it shouldn't be disqualified if it at least provided some benefits.

In October of this year we published two Revenue Rulings in connection with whether organizations are exempt from Federal income tax which borrow funds for the purpose of acquiring oil and gas production payments from properties in which there is no ownership of working interests. The question was whether or not this activity constituted the conduct of a trade or business for profit.

For example—an organization organized exclusively for charitable purposes obtained funds for its operations principally through the acquisition, with borrowed money, of oil and gas production payments. There was a spread of around one percent between the so-called interest equivalent factor paid in connection with each oil production payment—and the interest paid on the borrowed funds.

The Service has held in the past that this constituted a trade or business that served to cause the organization to be taxable—or an unrelated business activity. The issue, however, was litigated and the courts have uniformly held that—under the facts and circumstances—the purchase of oil production payments by an organization—otherwise qualified for exemption under section 501(a) of the Code—does not constitute the conduct of a trade or business for profit.

Therefore, Revenue Rulings 66-295 and 66-296 announced that the Service will follow these court decisions and held that engaging in this type of transaction does *not* effect the organization's exempt status.

We had quite a number of inquiries resulting from the Excise Tax Reduction Act of 1965.

One of these had to do with the manufacturers tax on Motor Vehicles.

Prior to the amendments made by this Act—automobiles, trucks, and other automobiles, were taxed at the same rate. So it was unnecessary to distinguish between them, for tax rate purposes.

The Excise Tax Reduction Act of 1965 amended section 4061(a) of the Code to impose lower rates of tax on automobiles than on automobile trucks and busses.

One of the questions asked was whether a "Jeep"; a "Bronco"; or a "Scout" was a truck or an automobile.

In Revenue Ruling 66-308 it was held that certain models of these vehicles were automobiles and therefore subject to the lower rate of tax.

It was recognized that the bodies of these vehicles have capabilities related to either classification.

For example—some of the chassis could be obtained with optional seating arrangements with various removable tops.

The Revenue Ruling describes these various models and—in general—says that if the top has side windows and a top covering the front and back seat area, it is designed primarily for passenger carrying and is an automobile—but—if the top covers only the front seat area—the area behind the front seat being available for cargo carrying—it is a truck.

There is a further complication because of the interchangeability of the various types of tops and enclosures—so that the classification of a particular vehicle can be changed by the retail dealer. So, if the dealer purchasees from the manufacturer a vehicle classed as an automobile and then installs a truck-type cab enclosure—he is considered to be the manufacturer of a truck taxable at the higher rate.

One of our publications during 1966 on which we received very favorable comments from tax practitioners was not a Revenue *Ruling,* but a Revenue *Procedure.*

This is in connection with certain operating rules that we follow in issuing rulings letters as to the tax consequences of corporate reorganizations—liquidations—stock dividends and redemptions—exchanges and distributions—and the like.

Our Reorganization Branch has developed certain operating rules for determining whether a ruling will be issued in certain types of cases.

For example—section 354(b)(1)(A), 368(a)(1)(C), and 368(a) (2) (B) contain the phrases "substantially all of the assets" or "substantially all of the properties" and section 1.368-1(b) of the Regulations refers to "continuity of interest."

In issuing ruling letters on requests for advance rulings in these areas, the Branch had adopted what were termed "rules of thumb" for purposes of determining whether a ruling letter would be issued or whether it would decline to rule.

Tax practitioners—for some time—have been asking the Service to publish these "rules of thumb" so that they could be of some assistance to them in preparing ruling requests.

So, in August of 1966, we published Revenue Procedure 66-34 which announced some of the operating rules.

That Procedure says that the "substantially all" requirement is satisfied if there is a transfer of assets representing at least 90 percent of the fair market value of the net assets—and at least 70 percent of the fair market value of the gross assets—held by the corporation immediately prior to the transfer.

The Procedure says further that the "continuity of interest" requirement is satisfied if there is a continuing interest through stock ownership in the acquiring (or transferee corporation) on the part of the former shareholders of the acquired (or transferor corporation) which is equal in value—as of the effective date of the reorganization—to at least 50 percent of the value of all of the formerly outstanding stock of the acquired or transferor corporation as of the same date.

Two years ago in Revenue Procedure 64-31, the Service announced that it would not issue letter rulings under section 331 of the Code in connection with the tax effect of a liquidation of a corporation—preceded or followed by the reincorporation of all or a part of the business—where the shareholders of the liquidating corporation own more than a *nominal amount* of the stock of the new transferee corporation—nor would we issue rulings where a liquidation is followed by the sale of the corporate's assets by the shareholders to another corporation in which such shareholders own more than a *nominal amount* of the stock.

We had also announced that we would not issue ruling letters in connection with the application of section 337 to gains realized by a corporation upon the sale of property, in connection with its liquidation, to another corporation, where more than a *nominal amount* of the stock of both the selling corporation and the purchasing corporation are owned by the same persons.

It is obvious what question then arose in the minds of tax practitioners who desired rulings on those types of transactions. Just what does the Service mean by a *"nominal amount."*

So, we announced in Revenue Rrocedure 66-34 that for purposes of issuing ruling letters—the term *"nominal amount"* is deemed to be 20 percent in value.

The same Revenue Procedure announces a "rule of thumb" in connection with letter rulings on a distribution and redemption of "section 306 stock" as to whether such disposition or redemption is pursuant to a plan of tax avoidance.

The Procedure says that:

(1) if the stock is widely held, *and*

(2) the stock is not—by its terms—redeemable for at least five years from the date of issuance—*and*

(3) it is represented that there will be no redemption of the stock—by tender or otherwise—within the five-year period—then a ruling will usually be issued under section 306(b)(4) that the distribution is *not* pursuant to a plan of tax avoidance.

We have some other similar Revenue Procedures in the mill for publication which we expect to be of considerable assistance to taxpayers in preparing requests for rulings.

For example—we expect to publish a set of rules that the Service usually follows in connection with rulings under section 367.

Section 217 of the Code, relating to moving expenses, allows a deduction to an employee for reasonable expenses paid for moving his household goods and personal effects from his former residence to his new residence.

We had several inquiries as to whether this included the moving of a household pet that belonged to the employee or to a member of his household.

In Revenue Ruling 66-305 we held that it did.

It wasn't clear whether the pet was considered to be household goods—a personel effect—or a member of the household—but the Ruling made it clear that the cost of moving the pet was deductible.

Several days after the Ruling was published we received an envelope addressed to the Commissioner containing merely a copy of the Revenue Ruling and a picture of an elephant.

Since there was no return address—we haven't yet ruled whether an elephant is—or is not—a household pet.

There were—of course—many others of the Revenue Rulings published during 1966 that could be designated "key" rulings, but in the interest of time, I will go into my second topic which is:

Procedures Regarding Letter Rulings and Requests for Technical Advice

I am sure that many of you are familiar with these procedures so I will merely touch on some of the more important aspects.

There are three types of what might be called formal rulings. That is—rulings that may be considered as official holdings by the Commissioner of Internal Revenue.

First—Ruling letters—These are written statements issued by the National Office to taxpayers or their authorized representatives in answer to their questions relating to the effect of the tax laws on a specifically described transaction based on a specific set of facts.

Second—Closing Agreements—These are a more formal expression of the tax consequences of specific transactions. Closing Agreements are entered into pursuant to section 7121 of the Code and they are binding on both the taxpayer and the Commissioner, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact.

Third—Published Rulings—These are called Revenue Rulings and constitute an official interpretation by the Service which has been published in the Internal Revenue Bulletin.

In some instances a taxpayer is required by the law or regulations to obtain a ruling from the Commissioner before he can proceed with certain transactions or take certain actions without adverse tax effects. For example, a taxpayer in most instances is not permitted to change his accounting method or his accounting period without first obtaining permission from the Commissioner. Also, under section 367 of the Code, a taxpayer must establish to the satisfaction of the Commissioner that certain transfers or exchanges relating to foreign corporations are not in pursuance of a plan having one of its principal purposes the avoidance of Federal income taxes—and I point out—that under section 367, a taxpayer must get a ruling *before* he makes the transfer in order to obtain the benefits of that section.

Requests by taxpayers for rulings may apply to transactions already consummated, but prior to the filing of a return. In such cases, the taxpayer wants to know how to treat the transaction on his tax return. However, he may be only *contemplating* a transaction and he desires to know what will happen taxwise if he consummates the transaction. A ruling to the taxpayer with adverse tax results might, of course, cause him to refrain from completing the transaction.

The bulk of the rulings issued to taxpayers by the National Office of the Internal Revenue Service are those under which a taxpayer desires an advance opinion of the tax effect of a transaction before he proceeds to consummate the transaction.

A good example of this would be in connection with a corporate merger, liquidation, or distribution.

Or he may want to know whether a sale of certain property will result in a capital gain or ordinary income before he proceeds with the sale. If the answer is "ordinary income," he may not sell.

Or before an employer establishes a pension or profit-sharing plan for his employees, he usually seeks the approval of the Service in advance of final adoption of the plan as to whether it meets the requirements of the Code as a qualified plan. The reason for this is obvious. The tax penalties resulting from such a plan not qualifying under the Code are too severe for him to take the chance of putting it into effect without advance approval.

Rulings on contemplated transactions are, in general, issued only by the National Office. However, the local District offices have authority to issue what are called "determination letters."

Perhaps I should discuss briefly the jurisdictions of the National Office and the District Directors' Offices in issuing "rulings" and "determination letters."

The National Office issues rulings on prospective transactions and on completed transactions where the tax return involving the transaction is not yet due or filed. However, rulings will not ordinarily be issued where the same issue is pending before an Appellate Division or if the issue is involved in a prior year's return.

District Directors issue determination letters to taxpayers located in their Districts on consummated transactions but only if the answer to the question is specifically covered by the law, regulations, court decisions or published rulings. They also issue determination letters on the qualification of plans under section 401 of the Code and on the exempt status of certain organizations under section 501 of the Code.

There are, however, certain areas where—because of the inherently factual nature of the problems involved—or for other reasons—the Service will not issue advance rulings or determination letters.

For example—we will not answer hypothetical questions. Nor will we rule in advance on transactions which lack bona fide business purpose and have as their principal purpose the reduction of Federal taxes. We do not ordinarily rule where the determination is primarily one of fact such as the fair market value of property or transfers in contemplation of death.

We do not rule on the prospective application of the Federal estate tax to the estate—or the property of a *living* person. This is because we cannot know *when* there will be a taxpayer—that is—an estate—nor do we know what the law in effect will be at that time there is an estate. So—the I.R.S. does *not* examine wills or trust instruments for the purpose of giving specific legal advice on the possible future estate tax consequences.

However, in response to inquiries as to the application of the Federal estate tax, we try to be helpful in pointing out pertinent provisions of the statute and regulations and any relevant court decisions, together with a general statement of the position of the Service.

However, with respect to Federal *gift* taxes—we will generally rule as to the prospective effect of prospective gifts to be completed within the current year.

In such cases—we require a full statement of all of the facts involved —including a complete copy of any trust instrument or other document by which the proposed transfer by gift is to be affected—and the date it is expected that the gift will be completed.

If the request involves an actuarial valuation question we will need to know the exact ages of all parties involved.

Procedures and instructions regarding requests for rulings or determination letters have been published officially as Revenue Procedure No. 62-28, C.B. 1962-2,496. (NOTE: Since this paper was delivered, these procedures have been republished as Revenue Procedure No. 67-1, I.R.B. 1967-1, January 3, 1967.)

It would be well for those who are not familiar with this procedure to read it before preparing a request for a ruling.

Section 6 of the Procedure sets forth what a taxpayer should submit with his request for a ruling.

For example—the request must contain a complete statement of facts relating to the transaction such as names and addresses of all interested parties, the district office where each files its return, a full and precise statement of the business reasons for the transaction, and true copies of all documents involved in the transaction.

If the taxpayer is contending for a particular determination, he must furnish an explanation of the grounds for his contensions, together with a statement of the relevant law, regulations, or court cases in support of his views. Even if he is urging no particular determination, he must state his views of the tax results and the authorities therefor.

The request must be signed by the taxpayer or his authorized representative.

A request for a ruling by the National Office should be addressed to the Commissioner of Internal Revenue, Washington, D.C., 20224. A request for a determination letter should be addressed to the District Director for the district in which the taxpayer files his return.

It is important for you to follow these procedures and instructions.

It will expedite the consideration of your request for your ruling.

Now—what is the effect of a ruling letter?

Can the taxpayer rely on it?

Is it binding on the Revenue Agent?

Well—of course—no ruling is legally binding unless it is issued under the statutory closing agreement procedures. Rulings other than closing agreements can be revoked by the Service.

However, the Service has stated in its published rules of procedure, that, except in rare and unusual circumstances, a ruling issued to a particular taxpayer will not be revoked retroactively provided—

—there has been no misstatement or omission of material facts,

—there has been no change in the applicable law, and

—the taxpayer who received the ruling acted in good faith in reliance upon the ruling and a retroactive revocation would be to his detriment.

I would like to emphasize, however, that a letter ruling and this reliance policy is good only to the taxpayer to whom the ruling was issued. A taxpayer looking over the shoulder of another taxpayer cannot rely on that ruling in consummating a similar transaction.

So now we have a taxpayer who has requested a ruling—has received a favorable answer—has proceeded to consummate the transaction—and has reported the tax result in his tax return. Now—what does the Revenue Agent do when he audits the return?

First of all—the taxpayer should attach a copy of the ruling to his tax return for the year in which the transaction was reported.

The agent is nevertheless instructed to see if the facts are correct as they were presented in the request for the ruling.

If he finds the facts are substantially the same as those described in the request for the ruling and that the transaction was carried out substantially as proposed, he will usually accept the ruling on its face.

However, if he finds the facts are substantially different and feels the answer might have been different on the basis of the actual facts, he refers it back to the National Office for reconsideration.

However, if he does this, it is considered as a request for Technical Advice which means, among other things, that the taxpayer is entitled to a conference on the issue in the National Office.

I see that my time is up, so I will save the story on procedures relating to requests for technical advice from our field offices to some later occasion.