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Harold T. Swartz

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THE IRS PROGRAM TO UP-DATE PUBLISHED RULINGS

HAROLD T. SWARTZ*

On February 6, 1967, the Service announced in Revenue Procedure 67-6 a program to bring up to date all rulings that have been published in the Internal Revenue Bulletin prior to 1953. The primary objective of this program is to identify and publish lists of those rulings which, although not specifically revoked or superseded, are not considered determinative with respect to future transactions (that is, those transactions occurring after the date of the list unless otherwise specified).

The Service first began publishing rulings in the Bulletin in 1919. Since that time, many thousands of rulings, relating to the various categories of federal taxes, have been published in different series, such as Appeals and Review Memorandums (A.R.M.), Estate and Gift Tax (E.T.), General Counsel Memorandums (G.C.M.), Income Tax (I.T.), Pension Trust Service (P.S.), Sales Tax (S.T.), Solicitors Opinions (Sol. Op), Office Decisions (O.D.), etc. Beginning in 1953 all rulings published in the Bulletin have been designated as "Revenue Rulings" (Rev. Rul.) regardless of the type of federal tax involved.

Many of the rulings published prior to 1953 have been specifically revoked or superseded. Many others are not determinative of the tax consequences of future transactions for various reasons, such as:

- (1) the ruling may be unnecessary because the issue has now been covered by regulations;
- (2) the conclusion may not now be applicable because of a change in the law, a revision of the regulations, or the effect of a court decision, etc.; or
- (3) the ruling may not have precedent value because the factual situation no longer exists or is not sufficiently described to permit clear application of the current statute and regulations.

Illustrative of the first reason noted above is I.T. 3593, C.B. 1942-2, 90, relating to the deductibility, for federal income tax purposes, of expenses incurred by newspapers or radio broadcasting stations for the promotion of sales of United States war bonds and stamps. Section 1.162-20 of the Income Tax Regulations now covers expenditures for

* Assistant Commissioner (Technical), Internal Revenue Service.

institutional or "good will" advertising, including that which encourages the purchase of United States Savings Bonds. In view of this coverage by the regulations, I.T. 3593 is not itself determinative and is, therefore, unnecessary.

The second reason is illustrated by I.T. 3204, C.B. 1938-2, 126, relating to the treatment of income derived from the exercise of stock options granted to employees. That I.T. held that the difference between the option price and the fair market value of the stock was includible in taxable income. Special statutory rules for the taxation of certain stock options were subsequently enacted and are now contained in sections 421 through 425 of the Internal Revenue Code of 1954. Thus, I.T. 3204 is no longer determinative; it is obsolete.

The third reason is illustrated by I.T. 3148, C.B. 1938-1, 195, which held that the provisions of the reciprocal tax convention entered into between the United States and Canada were not applicable to non-resident alien residents of Newfoundland. That conclusion was based upon the factual situation that Newfoundland was not a Province of Canada. However, that situation no longer exists. Newfoundland has since become a Province of Canada, and I.T. 3148 is outdated.

Some of the old rulings were published for the sole purpose of announcing that, under the facts and law then existing, named organizations were entitled to exemptions from income tax and, in appropriate cases, that contributions to those organizations were deductible. Declaring those rulings obsolete does not necessarily have any effect upon the current exemption status of any named organizations that may still be in existence or upon the deductibility of contributions to them. Those rulings have been included in the obsolete list primarily because it no longer is the practice of the Service to publish a ruling merely to announce the status of a named organization; instead, if contributions to an organization are deductible, the name of the organization is included in the Cumulative List, Publication No. 78.

In some cases it may be relatively easy for a researcher to conclude with certainty that a particular published ruling is no longer applicable to a current tax question. In other cases it may be difficult, even for a competent researcher, to reach a conclusion with any degree of certainty concerning the current effect of an old published ruling.

The Service concluded that it would be to the interest of all concerned to:

- (1) officially declare obsolete any of those rulings that do not represent the current position of the Service; and
- (2) clearly identify for the benefit of taxpayers, tax practitioners and Service employees, all those rulings that are currently applicable.

It is anticipated that this action will help to eliminate unnecessary research and reduce the possibility of erroneous decisions.

It is not the purpose of the program to determine the applicability of any of the listed rulings to past transactions. Any issue that may arise concerning the possible application of any of those rulings to a prior transaction will be resolved on the basis of all the relevant facts and circumstances.

The fact that a particular ruling has been announced as not determinative with respect to future transactions does not necessarily mean that the conclusion or the underlying rationale has no current applicability. For example, if a regulation now clearly covers the issue involved, the regulation is determinative and the published ruling is no longer the appropriate authority.

The Service has already published lists identifying more than 4,100 pre-1953 rulings that have been declared to be obsolete, as follows:

- in the Excise Tax area (Rev. Rul. 67-45)
- in the Exempt Organizations area (Rev. Rul. 67-46)
- in the Estate and Gift Tax area (Rev. Rul. 67-97)
- in the Income Tax area (Rev. Rul. 67-112)
- in the Engineering and Valuation area (Rev. Rul. 67-123)
- in the Employment Tax area (Rev. Rul. 67-140)
- in the Excise Tax area (Rev. Rul. 67-199)
- in the Income Tax area (Rev. Rul. 67-211)
- in the Engineering and Valuation area (Rev. Rul. 67-398)
- in the Income Tax area (Rev. Rul. 67-406)
- in the Employment Tax area (Rev. Rul. 67-440)
- in the Income Tax area (Rev. Rul. 67-466)
- in the Pension Trust area (Rev. Rul. 67-467)
- in the Income Tax area (Rev. Rul. 68-100)
- in the Exempt Organizations area (Rev. Rul. 68-207)

It will be noted from the foregoing that this program has been implemented in a segmental manner, with each of the type-of-tax organi-

zational units of the Technical Organization analyzing those pre-1953 rulings within its area of jurisdiction. Although this analysis of the many thousands of rulings—the accumulation of thirty-five years of publication effort—was recognized as a massive undertaking, no new organizational unit has been established to carry it out. Rather, the identification of obsolete rulings and the preparation of lists for publication has been handled merely as an additional work assignment by the organizational units that have continued to perform regularly assigned tasks, including the preparation of current rulings for publication as well as the issuance of letter rulings and technical advice memorandums.

One of the goals of the program is to eliminate for the future any need for taxpayers or Service personnel to research any published rulings other than those denoted as “Revenue Rulings” and published in the Bulletin after December 31, 1952. Thus, as a separate phase of the program, it is planned to republish under the current statute and regulations the conclusions of those “old” rulings which may be identified as having significant application to future transactions. These republished rulings will then be covered by the “Index-Digest Supplement,” which will facilitate research retrieval.

This separate phase of the program will not be undertaken generally until after substantial completion of the identification and public listing of the obsolete rulings. However, a couple of dozen Revenue Rulings already have been published to update and restate the conclusions set forth in pre-1953 rulings. An illustration is Revenue Ruling 67-230, I.R.B. 1967-29, 23, which holds that, for federal gift tax purposes, where a gift consists of a transfer of property in trust, the amount of the gift is the value of the property at the date of transfer undiminished by trustees' commissions for receiving and disbursing the trust property. This Revenue Ruling restates, under the provisions of the Internal Revenue Code of 1954 and the current Gift Tax Regulations, the same conclusion as that published in E.T. 7 under the Revenue Act of 1932.

This program seems to have been received with considerable enthusiasm by tax practitioners and Service personnel. Nevertheless, some comments have been received regarding certain procedural aspects. For example, several practitioners have asked why the specific reasons or rationale for declaring a ruling obsolete are not indicated in the published lists. This question was considered by the Service during the

planning state of the program, and it was decided in the negative. One of the most persuasive reasons was a recognition that some of the rulings have become nondeterminative, or obsolete, because of a series of events, no one of which properly could be cited as the entire reason.

It should be emphasized that the old rulings included in these lists are not being revoked. Publication of the lists merely means that the Service has found that they have become nondeterminative for future transactions. If there should be uncertainty about the current treatment of issues covered by any of the rulings listed as currently obsolete, consideration will be given to requests that published guidance be provided by the Service under the current statute and regulations.

Another question presented was why the Service picked January 1, 1953, as the cut-off point. One of the reasons that date was selected is that beginning in 1953 all rulings published in the Bulletin are designated as "Revenue Rulings," rather than the many series used in prior Bulletins, and the conclusions of these Revenue Rulings are covered by the Index-Digest Supplement. Another reason is that prior to 1953, published rulings were not given as much precedent dignity as are those published subsequently. The pertinent material contained in the Cumulative Bulletins published prior to 1953 stated:

The rulings reported in the Internal Revenue Bulletin are for the information of taxpayers and their counsel as showing the trend of official opinion in the administration of the Bureau of Internal Revenue; the rulings other than Treasury Decisions have none of the force or effect of Treasury Decisions and do not commit the Department to any interpretation of the law which has not been formally approved and promulgated by the Secretary of the Treasury. Each ruling embodies the administrative application of the law and Treasury Decisions to the entire state of facts upon which a particular case rests. It is especially to be noted that the same result will not necessarily be reached in another case unless all the material facts are identical with those of the reported case. As it is not always feasible to publish a complete statement of the facts underlying each ruling, there can be no assurance that any new case is identical with the reported case.

Compare that statement with the Introduction beginning with the January-June 1953 Cumulative Bulletin (1953-1) which reads (and with minor changes still reads):

Revenue Rulings reported in the Bulletin do not have the force and effect of Treasury Department Regulations (including Treasury Decisions) but are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for this purpose. However, since each published ruling represents the conclusion of the Service as to the application of the law to the entire state of facts involved, Revenue officers and others concerned are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same.

It is interesting to note that the pre-1953 version stated that published rulings "do not commit the Department to any interpretation of the law which has not been formally approved and promulgated by the Secretary" while the 1953 and subsequent version states that they "provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose." It seems apparent that beginning with the rulings published after December 31, 1952, the administrative policy of the Service was changed to indicate that taxpayers could rely on these rulings with more assurance than they could have on those published in the past. Irrespective of any difference in degree of reliance, however, it seems clear that purging the "deadwood" from the research record of published rulings will be of considerable benefit to all persons who are significantly concerned with the technical aspects of the federal tax laws.

It should be emphasized that this extensive program for updating the older published rulings is merely one part of the total effort of the Service to provide technical guidance to taxpayers, tax practitioners and Service personnel. Voluntary compliance, which is recognized as the heart of our self-assessment tax system, rests in large measure upon an adequately informed taxpaying public.

Uniform application of the tax laws has an inherent value that surely is recognized by all. The administrative burden of enforcement is reduced by the ability of taxpayers generally to properly apply the law in filing their tax returns. Since many provisions of the revenue statutes are complex, the timely availability of technical interpretations to the taxpaying public becomes a key factor in the effectiveness of our tax system.

Within the framework of the relevant provisions of the statute and the regulations, Revenue Rulings provide guidance, both directly and

indirectly, to many similarly situated taxpayers in planning transactions and in filing returns. Those interpretations also promote uniform treatment of issues in the examination of returns, and this uniformity sustains and strengthens public confidence in tax administration.

The weekly Bulletin is readily available to Service personnel in the National Office and in the field offices. It is distributed on a subscription basis by the Superintendent of Documents and is the official source document for more extensive dissemination by the commercial tax services, trade journals, etc. Published rulings also serve as the foundation for further guidance such as that provided in *Your Federal Income Tax* and the various other "plain language" publications of the Service. The effect of these rulings is extended still further through the taxpayer assistance program in the Service field offices.

During the last ten years, a total of 3,674 Revenue Rulings were published (in addition to 385 Revenue Procedures). The 468 Revenue Rulings published during calendar year 1967 represents an increase of 22% over the number published in 1966 and an increase of 47% over those published in 1965.

In view of the broad applicability of Revenue Rulings and the extent of reliance thereon, it is necessary that each one be reviewed very carefully to assure not only that it adequately reflects the position of the Service on the technical issue involved but also that the facts and the rationale are carefully presented in such a manner as to avoid misunderstanding of just what has been decided.

Identification of a significant need for published guidance on any particular technical issue may come from various sources, including suggestions from practitioner groups, articles in professional journals or other publications, conferences with Service field officials or studies conducted in the National Office, as well as from private letter rulings to taxpayers or technical advice memorandums to field offices.

The Service is currently considering various means for effecting further improvements in the publication of rulings, including the allocation of a greater portion of the available manpower. The first—and surely the most important—reason for this effort is a recognition of the importance of the publication program in encouraging the highest possible degree of compliance under our self-assessment tax system.