

INTERNAL REVENUE SERVICE

REVENUE PROCEDURE (REV. PROC. 2000-46)

SUPERSEDED BY REV. PROC. 2001-3; SUPERSEDED BY REV. PROC. 2002-22

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26 CFR 601.201: Rulings and determination letters

This procedure provides that the Service will not rule on the question of whether an undivided fractional interest in real property is an interest in a partnership. Rev. Proc. 2000-3 amplified.

SECTION 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 2000-3, 2000-1 I.R.B. 103, which sets forth areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel in which the Internal Revenue Service will not issue advance rulings or determination letters.

SECTION 2. BACKGROUND

Section 5 of Rev. Proc. 2000-3 sets forth those areas under extensive study in which rulings or determination letters will not be issued until the Service resolves the issue through publication of a revenue ruling, revenue procedure, regulations, or otherwise.

Section 301.7701-1(a)(1) provides that whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the entity is recognized as an entity under local law.

Section 301.7701-1(a)(2) provides that a joint undertaking or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. If such an entity is a business entity (i.e., is not a trust) with two or more members, the entity is classified for federal tax purposes either as a partnership or a corporation.

Section 1031(a)(1) provides that no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment. Sections 1031(a)(2)(B) and 1031(a)(2)(D) provide exceptions from the application of section 1031(a)(1) for stock and interests in a partnership, respectively.

The Service recently has become aware, in part through several requests for advance rulings, that taxpayers are taking the position that certain arrangements where taxpayers acquire undivided fractional interests in real property do not constitute separate entities for federal tax purposes and therefore the fractional interests may be the subject of tax-free exchanges under section 1031(a)(1). The Service intends to study further the facts and circumstances

relevant to the determination of whether such arrangements are separate entities for federal tax purposes.

SECTION 3. PROCEDURE

Rev. Proc. 2000-3 is amplified by adding the following to section 5.10.

Section 1031. - Exceptions. - Whether an undivided fractional interest in real property is an interest in an entity that is not eligible for tax-free exchange under section 1031(a)(1).

Section 7701. - Definitions. - Whether arrangements where taxpayers acquire undivided fractional interests in real property constitute separate entities for federal tax purposes.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to all ruling requests, including any pending in the National Office and any submitted after the date of this publication.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000-3 is amplified.

SECTION 6. REQUEST FOR COMMENTS

The Service requests comments concerning this revenue procedure. In particular, comments are requested with respect to the relevance and impact of the following factors to the determination of whether arrangements where taxpayers acquire undivided fractional interests in real property constitute separate entities for federal tax purposes:

- (1) the terms of any leasing or management agreements entered into with respect to the property and the relationships between the parties to such agreements and the promoter or organizer of the arrangement;
- (2) the terms of any agreements between the promoter or organizer of the arrangement and the holders of the fractional interests or among the holders of the fractional interests, including any contractual restrictions to which the fractional interests are subject, such as waivers of the right to partition, rights of first refusal, and options to put and/or call the fractional interests; and
- (3) the overall economics of the arrangements, including the sharing of profits and losses from operating the property as well as of appreciation and depreciation in the value of the property.

An original and eight copies of written comments should be sent to:

Internal Revenue Service
Attn: CC:MSP:R (Rev. Proc. 2000-46)
Room 5228 (PSI:Br1)
P.O. Box 7604

Ben Franklin Station
Washington, D.C. 20044

or hand delivered between the hours of 8 a.m. and 5 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:MSP:R (Rev. Proc. 2000-46)
Room 5228 (PSI:Br1)
1111 Constitution Avenue, NW
Washington, DC

Alternatively, taxpayers may submit comments electronically at:

Joel.S.Rutstein@M1.IRSCounsel.treas.gov.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeanne Sullivan of the Office of the Associate Chief Counsel, Pass-throughs & Special Industries. However, other personnel from the IRS and Treasury participated in its development. For further information, contact Jeanne Sullivan at (202) 622- 3050 (not a toll-free number).