26 USCS § 7701

Current through Public Law 116-344, approved January 13, 2021, with a gap of Public Law 116-283.

United States Code Service > TITLE 26. INTERNAL REVENUE CODE (§§ 1 — 9834) > Subtitle F. Procedure and administration. (Chs. 61 — 80) > CHAPTER 79. Definitions. (§§ 7701 — 7800)

§ 7701. Definitions.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person. The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) Partnership and partner. The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) Corporation. The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) Domestic. The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

(5) Foreign. The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) Fiduciary. The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) Stock. The term "stock" includes shares in an association, joint-stock company, or insurance company.

(8) Shareholder. The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(9) United States. The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) State. The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) Secretary of the Treasury and Secretary.

(A) Secretary of the Treasury. The term "Secretary of the Treasury" means the Secretary of the Treasury, personally, and shall not include any delegate of his.

(B) Secretary. The term "Secretary" means the Secretary of the Treasury or his delegate.

(12) Delegate.

(A) In general. The term "or his delegate"—

(i)when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context; and

(ii)when used with reference to any other official of the United States, shall be similarly construed.

(B) Performance of certain functions in Guam or American Samoa. The term "delegate," in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 1, 2, and 21 [*26 USCS §§ 1* et seq., *1401* et seq., and *3101* et seq.], also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions.

(13) Commissioner. The term "Commissioner" means the Commissioner of Internal Revenue.

(14) Taxpayer. The term "taxpayer" means any person subject to any internal revenue tax.

(15) Military or naval forces and armed forces of the United States. The term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) Withholding agent. The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of sections 1441, 1442, 1443, or 1461 [*26 USCS § 1441*, *1442*, *1443*, or *1461*].

(17) Husband and wife. As used in section 2516 [*26 USCS § 2516*], if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such section, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such section are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such section, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

(18) International organization. The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (*22 U.S.C. 288*–*288f*).

(19) Domestic building and loan association. The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—

(A)which either is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B)the business of which consists principally of acquiring the savings of the public and investing in loans; and

(C)at least 60 percent of the amount of the total assets of which (at the close of the taxable year) consists of—

(i)cash,

(ii)obligations of the United States or of a State or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 103 [*26 USCS § 103*],

(iii)certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations,

(iv)loans secured by a deposit or share of a member,

(v)loans (including redeemable ground rents, as defined in section 1055 [*26 USCS § 1055*]) secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multifamily dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis,

(vi)loans secured by an interest in real property located within an urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949, as amended, or located within any area covered by a program eligible for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, and loans made for the improvement of any such real property,

(vii)loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities,

(viii)property acquired through the liquidation of defaulted loans described in clause (v), (vi), or (vii),

(ix)loans made for the payment of expenses of college or university education or vocational training, in accordance with such regulations as may be prescribed by the Secretary,

(x)property used by the association in the conduct of the business described in subparagraph (B), and

(xi)any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are assets described in clauses (i) through (x), the entire interest in the REMIC shall qualify.

At the election of the taxpayer, the percentage specified in this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary. For purposes of clause (v), if a multifamily structure securing a loan is used in part for nonresidential purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds 80 percent of the property's planned use (determined as of the time the loan is made). For purposes of clause (v), loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if, under regulations prescribed by the Secretary, there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such 3-year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).

(20) Employee. For the purpose of applying the provisions of section 79 [*26 USCS § 79*] with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 [*26 USCS §§ 104*, *105*, and *106*] with respect to accident and health

insurance or accident and health plans, and for the purpose of applying the provisions of subtitle A [*26 USCS §§ 1* et seq.] with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, and for purposes of applying section 125 [*26 USCS § 125*] with respect to cafeteria plans, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21 [*26 USCS §§ 3101* et seq.].

(21) Levy. The term "levy" includes the power of distraint and seizure by any means.

(22) Attorney General. The term "Attorney General" means the Attorney General of the United States.

(23) Taxable year. The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A [*26 USCS §§ 1* et seq.]. "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of subtitle A [*26 USCS §§ 1* et seq.] or under regulations prescribed by the Secretary, the period for which such return is made.

(24) Fiscal year. The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.

(25) Paid or incurred, paid or accrued. The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A [*26 USCS §§ 1* et seq.].

(26) Trade or business. The term "trade or business" includes the performance of the functions of a public office.

(27) Tax Court. The term "Tax Court" means the United States Tax Court.

(28) Other terms. Any term used in this subtitle [*26 USCS §§ 6001* et seq.] with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) Internal Revenue Code. The term "Internal Revenue Code of 1986" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(30) United States person. The term "United States person" means—

(A)a citizen or resident of the United States,

(B)a domestic partnership,

(C)a domestic corporation,

(D)any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E)any trust if—

(i)a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii)one or more United States persons have the authority to control all substantial decisions of the trust.

(31) Foreign estate or trust.

(A) Foreign estate. The term "foreign estate" means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A [*26 USCS §§ 1* et seq.].

(B) Foreign trust. The term "foreign trust" means any trust other than a trust described in subparagraph (E) of paragraph (30).

(32) Cooperative bank. The term “cooperative bank” means an institution without capital stock organized and operated for mutual purposes and without profit, which—

(A)is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and

(B)meets the requirements of subparagraphs (B) and (C) of paragraph (19) of this subsection (relating to definition of domestic building and loan association).

In determining whether an institution meets the requirements referred to in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution.

(33) Regulated public utility. The term “regulated public utility” means—

(A)A corporation engaged in the furnishing or sale of—

(i)electric energy, gas, water, or sewerage disposal services, or

(ii)transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii)transportation (not included in clause (ii)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B)A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission.

(C)A corporation engaged as a common carrier (i) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Surface Transportation Board, or (ii) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

(D)A corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E)A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Secretary of Transportation.

(F)A corporation engaged in the furnishing or sale of transportation by a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49 [*49 USCS §§ 13521* et seq.].

(G)A rail carrier subject to part A of subtitle IV of title 49 [*49 USCS §§ 10101* et seq.], if (i) substantially all of its railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954, (ii) each lease is for a term of more than 20 years, and (iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

(H)A common parent corporation which is a common carrier by railroad subject to part A of subtitle IV of title 49 [*49 USCS §§ 10101* et seq.] if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (G), received from a regulated public utility shall be considered as derived from sources described in subparagraphs (A) through (F), inclusive, if the regulated public utility is a member of an affiliated group (as defined in section 1504 [*26 USCS § 1504*]) which includes the common parent corporation.

The term "regulated public utility" does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary that (i) its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and (ii) the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

(34)[Repealed]

(35) Enrolled actuary. The term "enrolled actuary" means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974 [*29 USCS §§ 1241* et seq.].

(36) Tax return preparer.

(A) In general. The term "tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this title or any claim for refund of tax imposed by this title. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

(B) Exceptions. A person shall not be a "tax return preparer" merely because such person—

(i)furnishes typing, reproducing, or other mechanical assistance,

(ii)prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,

(iii)prepares as a fiduciary a return or claim for refund for any person, or

(iv)prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

(37) Individual retirement plan. The term "individual retirement plan" means—

(A)an individual retirement account described in section 408(a) [*26 USCS § 408(a)*], and

(B)an individual retirement annuity described in section 408(b) [*26 USCS § 408(b)*].

(38) Joint return. The term "joint return" means a single return made jointly under section 6013 [*26 USCS § 6013*] by a husband and wife.

(39) Persons residing outside United States. If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to—

(A)jurisdiction of courts, or

(B)enforcement of summons.

(40) Indian tribal government.

(A) In general. The term "Indian tribal government" means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

(B) Special rule for Alaska natives. No determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871 [*26 USCS § 7871*]. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

(41) TIN. The term "TIN" means the identifying number assigned to a person under section 6109 [*26 USCS § 6109*].

(42) Substituted basis property. The term "substituted basis property" means property which is—

(A)transferred basis property, or

(B)exchanged basis property.

(43) Transferred basis property. The term "transferred basis property" means property having a basis determined under any provision of subtitle A [*26 USCS §§ 1* et seq.] (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to the basis in the hands of the donor, grantor, or other transferor.

(44) Exchanged basis property. The term "exchanged basis property" means property having a basis determined under any provision of subtitle A [*26 USCS §§ 1* et seq.] (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to other property held at any time by the person for whom the basis is to be determined.

(45) Nonrecognition transaction. The term "nonrecognition transaction" means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A [*26 USCS §§ 1* et seq.].

(46) Determination of whether there is a collective bargaining agreement. In determining whether there is a collective bargaining agreement between employee representatives and 1 or more employers, the term "employee representatives" shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and 1 or more employers.

(47)[Repealed]

(48) Off-highway vehicles.

(A) Off-highway transportation vehicles.

(i) In general. A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired.

(ii) Determination of vehicle's design. For purposes of clause (i), a vehicle's design is determined solely on the basis of its physical characteristics.

(iii) Determination of substantial limitation or impairment. For purposes of clause (i), in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

(B) Nontransportation trailers and semitrailers. A trailer or semitrailer shall not be treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an off-highway function at an off-highway site.

(49) Qualified blood collector organization. The term "qualified blood collector organization" means an organization which is—

(A)described in section 501(c)(3) [*26 USCS § 501(c)(3)*] and exempt from tax under section 501(a) [*26 USCS § 501(a)*],

(B)primarily engaged in the activity of the collection of human blood,

(C)registered with the Secretary for purposes of excise tax exemptions, and

(D)registered by the Food and Drug Administration to collect blood.

(50) Termination of United States citizenship.

(A) In general. An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(g)(4) [*26 USCS § 877A(g)(4)*].

(B) Dual citizens. Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.

(b) Definition of resident alien and nonresident alien.

(1) In general. For purposes of this title (other than subtitle B [*26 USCS §§ 2001* et seq.])—

(A) Resident alien. An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) Lawfully admitted for permanent residence. Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence test. Such individual meets the substantial presence test of paragraph (3).

(iii) First year election. Such individual makes the election provided in paragraph (4).

(B) Nonresident alien. An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

(2) Special rules for first and last year of residency.

(A) First year of residency.

(i) In general. If an alien individual is a resident of the United States under paragraph (1)(A) with respect to any calendar year, but was not a resident of the United States at any time during the preceding calendar year, such alien individual shall be treated as a resident of the United States only for the portion of such calendar year which begins on the residency starting date.

(ii) Residency starting date for individuals lawfully admitted for permanent residence. In the case of an individual who is a lawfully permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the

residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

(iii) Residency starting date for individuals meeting substantial presence test. In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

(iv) Residency starting date for individuals making first year election. In the case of an individual who makes the election provided by paragraph (4) with respect to any calendar year, the residency starting date shall be the 1st day during such calendar year on which the individual is treated as a resident of the United States under that paragraph.

(B) Last year of residency. An alien individual shall not be treated as a resident of the United States during a portion of any calendar year if—

(i)such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

(ii)during such portion the individual has a closer connection to a foreign country than to the United States, and

(iii)the individual is not a resident of the United States at any time during the next calendar year.

(C) Certain nominal presence disregarded.

(i) In general. For purposes of subparagraphs (A)(iii) and (B), an individual shall not be treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

(ii) Not more than 10 days disregarded. Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

(3) Substantial presence test.

(A) In general. Except as otherwise provided in this paragraph, an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the “current year”) if—

(i)such individual was present in the United States on at least 31 days during the calendar year, and

(ii)the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days:

In the case of days in:	The applicable multiplier is:
Current year	1
1st preceding year	⅓
2nd preceding year	⅙

(B) Exception where individual is present in the United States during less than one-half of current year and closer connection to foreign country is established. An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if—

(i)such individual is present in the United States on fewer than 183 days during the current year, and

(ii)it is established that for the current year such individual has a tax home (as defined in section 911(d)(3) [*26 USCS § 911(d)(3)*] without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

(C) Subparagraph (B) not to apply in certain cases. Subparagraph (B) shall not apply to any individual with respect to any current year if at any time during such year—

(i)such individual had an application for adjustment of status pending, or

(ii)such individual took other steps to apply for status as a lawful permanent resident of the United States.

(D) Exception for exempt individuals or for certain medical conditions. An individual shall not be treated as being present in the United States on any day if—

(i)such individual is an exempt individual for such day, or

(ii)such individual was unable to leave the United States on such day because of a medical condition which arose while such individual was present in the United States.

(4) First-year election.

(A) An alien individual shall be deemed to meet the requirements of this subparagraph if such individual—

(i)is not a resident of the United States under clause (i) or (ii) of paragraph (1)(A) with respect to a calendar year (hereinafter referred to as the "election year"),

(ii)was not a resident of the United States under paragraph (1)(A) with respect to the calendar year immediately preceding the election year,

(iii)is a resident of the United States under clause (ii) of paragraph (1)(A) with respect to the calendar year immediately following the election year, and

(iv)is both—

(I)present in the United States for a period of at least 31 consecutive days in the election year, and

(II)present in the United States during the period beginning with the first day of such 31-day period and ending with the last day of the election year (hereinafter referred to as the "testing period") for a number of days equal to or exceeding 75 percent of the number of days in the testing period (provided that an individual shall be treated for purposes of this subclause as present in the United States for a number of days during the testing period not exceeding 5 days in the aggregate, notwithstanding his absence from the United States on such days).

(B) An alien individual who meets the requirements of subparagraph (A) shall, if he so elects, be treated as a resident of the United States with respect to the election year.

(C) An alien individual who makes the election provided by subparagraph (B) shall be treated as a resident of the United States for the portion of the election year which begins on the 1st day of the earliest testing period during such year with respect to which the individual meets the requirements of clause (iv) of subparagraph (A).

(D) The rules of subparagraph (D)(i) of paragraph (3) shall apply for purposes of determining an individual's presence in the United States under this paragraph.

(E) An election under subparagraph (B) shall be made on the individual's tax return for the election year, provided that such election may not be made before the individual has met the substantial presence test of paragraph (3) with respect to the calendar year immediately following the election year.

(F) An election once made under subparagraph (B) remains in effect for the election year, unless revoked with the consent of the Secretary.

(5) Exempt individual defined. For purposes of this subsection—

(A) In general. An individual is an exempt individual for any day if, for such day, such individual is—

(i)a foreign government-related individual,

(ii)a teacher or trainee,

(iii)a student, or

(iv)a professional athlete who is temporarily in the United States to compete in a sports event—

(I)which is organized for the primary purpose of benefiting an organization which is described in section 501(c)(3) [*26 USCS § 501(c)(3)*] and exempt from tax under section 501(a) [*26 USCS § 501(a)*],

(II)all of the net proceeds of which are contributed to such organization, and,

(III)which utilizes volunteers for substantially all of the work performed in carrying out such event.

(B) Foreign government-related individual. The term "foreign government-related individual" means any individual temporarily present in the United States by reason of—

(i)diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,

(ii)being a full-time employee of an international organization, or

(iii)being a member of the immediate family of an individual described in clause (i) or (ii).

(C) Teacher or trainee. The term "teacher or trainee" means any individual—

(i)who is temporarily present in the United States under subparagraph (J), (M), or (Q) of section 101(15) of the Immigration and Nationality Act (other than as a student), and

(ii)who substantially complies with the requirements for being so present.

(D) Student. The term "student" means any individual—

(i)who is temporarily present in the United States—

(I)under subparagraph (F) or (M) of section 101(15) of the Immigration and Nationality Act, or

(II)as a student under subparagraph (J), (M), or (Q) of such section 101(15), and

(ii)who substantially complies with the requirements for being so present.

(E) Special rules for teachers, trainees, and students.

(i) Limitation on teachers and trainees. An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A). In the case of an individual all of whose compensation is described in section 872(b)(3) [*26 USCS § 872(b)(3)*], the preceding sentence shall be applied by substituting "4 calendar years" for "2 calendar years".

(ii) Limitation on students. For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual does

not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (D)(ii).

(6) Lawful permanent resident. For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if—

(A)such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and

(B)such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

An individual shall cease to be treated as a lawful permanent resident of the United States if such individual commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country, does not waive the benefits of such treaty applicable to residents of the foreign country, and notifies the Secretary of the commencement of such treatment.

(7) Presence in the United States. For purposes of this subsection—

(A) In general. Except as provided in subparagraph (B), (C), or (D) an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

(B) Commuters from Canada or Mexico. If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

(C) Transit between 2 foreign points. If an individual, who is in transit between 2 points outside the United States, is physically present in the United States for less than 24 hours, such individual shall not be treated as present in the United States on any day during such transit.

(D) Crew members temporarily present. An individual who is temporarily present in the United States on any day as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States shall not be treated as present in the United States on such day unless such individual otherwise engages in any trade or business in the United States on such day.

(8) Annual statements. The Secretary may prescribe regulations under which an individual who (but for subparagraph (B) or (D) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B) or (D) of paragraph (3), as the case may be.

(9) Taxable year.

(A) In general. For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(B) Fiscal year taxpayer. If—

(i)an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

(ii)after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

(10) Coordination with section 877. If—

(A)an alien individual was treated as a resident of the United States during any period which includes at least 3 consecutive calendar years (hereinafter referred to as the "initial residency period"), and

(B)such individual ceases to be treated as a resident of the United States but subsequently becomes a resident of the United States before the close of the 3rd calendar year beginning after the close of the initial residency period,

such individual shall be taxable for the period after the close of the initial residency period and before the day on which he subsequently became a resident of the United States in the manner provided in section 877(b) [*26 USCS § 877(b)*]. The preceding sentence shall apply only if the tax imposed pursuant to section 877(b) [*26 USCS § 877(b)*] exceeds the tax which, without regard to this paragraph, is imposed pursuant to section 871 [*26 USCS § 871*].

(11) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Includes and including. The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(d) Commonwealth of Puerto Rico. Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(e) Treatment of certain contracts for providing services, etc. For purposes of chapter 1 [*26 USCS §§ 1* et seq.]—

(1) In general.A contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors including whether or not—

(A)the service recipient is in physical possession of the property,

(B)the service recipient controls the property,

(C)the service recipient has a significant economic or possessory interest in the property,

(D)the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

(E)the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and

(F)the total contract price does not substantially exceed the rental value of the property for the contract period.

(2) Other arrangements. An arrangement (including a partnership or other pass-thru entity) which is not described in paragraph (1) shall be treated as a lease if such arrangement is properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in paragraph (1).

(3) Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities.

(A) In general. Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (4), any contract or arrangement between a service provider and a service recipient—

(i)with respect to—

(I)the operation of a qualified solid waste disposal facility,

(II)the sale to the service recipient of electrical or thermal energy produced at a cogeneration or alternative energy facility, or

(III)the operation of a water treatment works facility, and

(ii)which purports to be a service contract, shall be treated as a service contract.

(B) Qualified solid waste disposal facility. For purposes of subparagraph (A), the term "qualified solid waste disposal facility" means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public.

(C) Cogeneration facility. For purposes of subparagraph (A), the term "cogeneration facility" means a facility which uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy.

(D) Alternative energy facility. For purposes of subparagraph (A), the term "alternative energy facility" means a facility for producing electrical or thermal energy if the primary energy source for the facility is not oil, natural gas, coal, or nuclear power.

(E) Water treatment works facility. For purposes of subparagraph (A), the term "water treatment works facility" means any treatment works within the meaning of section 212(2) of the Federal Water Pollution Control Act [*33 USCS § 1292(2)*].

(4) Paragraph (3) not to apply in certain cases.

(A) In general. Paragraph (3) shall not apply to any qualified solid waste disposal facility, cogeneration facility, alternative energy facility, or water treatment works facility used under a contract or arrangement if—

(i)the service recipient (or a related entity) operates such facility,

(ii)the service recipient (or a related entity) bears any significant financial burden if there is nonperformance under the contract or arrangement (other than for reasons beyond the control of the service provider),

(iii)the service recipient (or a related entity) receives any significant financial benefit if the operating costs of such facility are less than the standards of performance or operation under the contract or arrangement, or

(iv)the service recipient (or a related entity) has an option to purchase, or may be required to purchase, all or a part of such facility at a fixed and determinable price (other than for fair market value).

For purposes of this paragraph, the term "related entity" has the same meaning as when used in section 168(h) [*26 USCS § 168(h)*].

(B) Special rules for application of subparagraph (A) with respect to certain rights and allocations under the contract. For purposes of subparagraph (A), there shall not be taken into account—

(i)any right of a service recipient to inspect any facility, to exercise any sovereign power the service recipient may possess, or to act in the event of a breach of contract by the service provider, or

(ii)any allocation of any financial burden or benefits in the event of any change in any law.

(C) Special rules for application of subparagraph (A) in the case of certain events.

(i) Temporary shut-downs, etc. For purposes of clause (ii) of subparagraph (A), there shall not be taken into account any temporary shut-down of the facility for repairs, maintenance, or capital improvements, or any financial burden caused by the bankruptcy or similar financial difficulty of the service provider.

(ii) Reduced costs. For purposes of clause (iii) of subparagraph (A), there shall not be taken into account any significant financial benefit merely because payments by the service recipient under the contract or arrangement are decreased by reason of increased production or efficiency or the recovery of energy or other products.

(5) Exception for certain low-income housing. This subsection shall not apply to any property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) [*26 USCS § 1250(a)(1)(B)*] (relating to low-income housing) if—

(A)such property is operated by or for an organization described in paragraph (3) or (4) of section 501(c) [*26 USCS § 501(c)*], and

(B)at least 80 percent of the units in such property are leased to low-income tenants (within the meaning of section 167(k)(3)(B) [*26 USCS § 167(k)(3)(B)*] (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [enacted Nov. 5, 1990]).

(6) Regulations. The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection.

(f) Use of related persons or pass-thru entities. The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of those provisions of this title which deal with—

(1)the linking of borrowing to investment, or

(2)diminishing risks,

through the use of related persons, pass-thru entities, or other intermediaries.

(g) Clarification of fair market value in the case of nonrecourse indebtedness. For purposes of subtitle A [*26 USCS §§ 1* et seq.], in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, the fair market value of such property shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject.

(h) Motor vehicle operating leases.

(1) In general. For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause—

(A)such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and

(B)the lessee shall not be treated as the owner of the property subject to an agreement during any period such agreement is in effect.

(2) Qualified motor vehicle operating agreement defined. For purposes of this subsection—

(A) In general. The term “qualified motor vehicle operating agreement” means any agreement with respect to a motor vehicle (including a trailer) which meets the requirements of subparagraphs (B), (C), and (D) of this paragraph.

(B) Minimum liability of lessor. An agreement meets the requirements of this subparagraph if under such agreement the sum of—

(i)the amount the lessor is personally liable to repay, and

(ii)the net fair market value of the lessor’s interest in any property pledged as security for property subject to the agreement,

equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under clause (ii) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

(C) Certification by lessee; notice of tax ownership. An agreement meets the requirements of this subparagraph if such agreement contains a separate written statement separately signed by the lessee—

(i)under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to such agreement is to be in a trade or business of the lessee, and

(ii)which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

(D) Lessor must have no knowledge that certification is false. An agreement meets the requirements of this subparagraph if the lessor does not know that the certification described in subparagraph (C)(i) is false.

(3) Terminal rental adjustment clause defined.

(A) In general. For purposes of this subsection, the term "terminal rental adjustment clause" means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

(B) Special rule for lessee dealers. The term "terminal rental adjustment clause" also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in subparagraph (A).

(i) Taxable mortgage pools.

(1) Treated as separate corporations.A taxable mortgage pool shall be treated as a separate corporation which may not be treated as an includible corporation with any other corporation for purposes of section 1501 [*26 USCS § 1501*].

(2) Taxable mortgage pool defined. For purposes of this title—

(A) In general. Except as otherwise provided in this paragraph, a taxable mortgage pool is any entity (other than a REMIC) if—

(i)substantially all of the assets of such entity consists of debt obligations (or interests therein) and more than 50 percent of such debt obligations (or interests) consists of real estate mortgages (or interests therein),

(ii)such entity is the obligor under debt obligations with 2 or more maturities, and

(iii)under the terms of the debt obligations referred to in clause (ii) (or underlying arrangement), payments on such debt obligations bear a relationship to payments on the debt obligations (or interests) referred to in clause (i).

(B) Portion of entities treated as pools. Any portion of an entity which meets the definition of subparagraph (A) shall be treated as a taxable mortgage pool.

(C) Exception for domestic building and loan. Nothing in this subsection shall be construed to treat any domestic building and loan association (or portion thereof) as a taxable mortgage pool.

(D) Treatment of certain equity interests. To the extent provided in regulations, equity interest of varying classes which correspond to maturity classes of debt shall be treated as debt for purposes of this subsection.

(3) Treatment of certain REIT's. If —

(A)a real estate investment trust is a taxable mortgage pool, or

(B)a qualified REIT subsidiary (as defined in section 856(i)(2) [*26 USCS § 856(i)(2)*]) of a real estate investment trust is a taxable mortgage pool,

under regulations prescribed by the Secretary, adjustments similar to the adjustments provided in section 860E(d) [*26 USCS § 860E(d)*] shall apply to the shareholders of such real estate investment trust.

(j) Tax treatment of Federal Thrift Savings Fund

(1) In general. For purposes of this title—

(A)the Thrift Savings Fund shall be treated as a trust described in section 401(a) [*26 USCS § 401(a)*] which is exempt from taxation under section 501(a) [*26 USCS § 501(a)*];

(B)any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(C)subject to section 401(k)(4)(B) [*26 USCS § 401(k)(4)(B)*] and any dollar limitation on the application of section 402(e)(3) [*26 USCS § 402(e)(3)*], contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of subchapter III of chapter 84 of title 5, United States Code [*5 USCS §§ 8431* et seq.], and section 8351 of such title 5, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(2) Nondiscrimination requirements. Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the nondiscrimination requirements applicable to arrangements described in section 401(k) [*26 USCS § 401(k)*] or to matching contributions (as described in section 401(m) [*26 USCS § 401(m)*]), so long as it meets the requirements of this section.

(3) Coordination with Social Security Act. Paragraph (1) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term "wages" for the purposes of section 209 of the Social Security Act [*42 USCS § 409*] or section 3121(a) of this title.

(4) Definitions. For purposes of this subsection, the terms "Member", "employee", and "Thrift Savings Fund" shall have the same respective meanings as when used in subchapter III of chapter 84 of title 5, United States Code [*5 USCS §§ 8431* et seq.].

(5) Coordination with other provisions of law. No provision of law not contained in this title shall apply for purposes of determining the treatment under this title of the Thrift Savings Fund or any contribution to, or distribution from, such Fund.

(k) Treatment of certain amounts paid to charity. In the case of any payment which, except for 501(b) of the Ethics in Government Act of 1978 [5 USCS Appx § 501(b)], might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c) [*26 USCS § 170(c)*]—

(1)such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

(2)no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Senator, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government.

(l) Regulations relating to conduit arrangements. The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title.

(m) Designation of contract markets. Any designation by the Commodity Futures Trading Commission of a contract market which could not have been made under the law in effect on the day before the date of the enactment of the Commodity Futures Modernization Act of 2000 [enacted Dec. 21, 2000] shall apply for purposes of this title except to the extent provided in regulations prescribed by the Secretary.

(n) Convention or association of churches. For purposes of this title, any organization which is otherwise a convention or association of churches shall not fail to so qualify merely because the membership of such organization includes individuals as well as churches or because individuals have voting rights in such organization.

(o) Clarification of economic substance doctrine.

(1) Application of doctrine. In the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if—

(A)the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and

(B)the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.

(2) Special rule where taxpayer relies on profit potential.

(A) In general. The potential for profit of a transaction shall be taken into account in determining whether the requirements of subparagraphs (A) and (B) of paragraph (1) are met with respect to the transaction only if the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.

(B) Treatment of fees and foreign taxes. Fees and other transaction expenses shall be taken into account as expenses in determining pre-tax profit under subparagraph (A). The Secretary shall issue regulations requiring foreign taxes to be treated as expenses in determining pre-tax profit in appropriate cases.

(3) State and local tax benefits. For purposes of paragraph (1), any State or local income tax effect which is related to a Federal income tax effect shall be treated in the same manner as a Federal income tax effect.

(4) Financial accounting benefits. For purposes of paragraph (1)(B), achieving a financial accounting benefit shall not be taken into account as a purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of Federal income tax.

(5) Definitions and special rules. For purposes of this subsection—

(A) Economic substance doctrine. The term "economic substance doctrine" means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

(B) Exception for personal transactions of individuals. In the case of an individual, paragraph (1) shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

(C) Determination of application of doctrine not affected. The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted.

(D) Transaction. The term "transaction" includes a series of transactions.

(p) Cross references.

(1) Other definitions. For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1 [1 USCS § 1].

(2) Plural as including singular, section 1 [1 USCS § 1].

(3) Masculine as including feminine, section 1 [1 USCS § 1].

(4) Officer, section 1 [1 USCS § 1].

(5) Oath as including affirmation, section 1 [1 USCS § 1].

(6) County as including parish, section 2 [1 USCS § 2].

(7) Vessel as including all means of water transportation, section 3 [1 USCS § 3].

(8) Vehicle as including all means of land transportation, section 4 [1 USCS § 4].

(9) Company or association as including successors and assigns, section 5 [1 USCS § 5].

(2) Effect of cross references. For effect of cross references in this title, see section 7806(a) [26 USCS § 7806(a)].

History

HISTORY:

Act *Aug. 16, 1954, ch 736*, 68A Stat. 911; June 25, 1959, P. L. 86-70, § 22(g), (h), 73 Stat. 146; July 12, 1960, P. L. 86-624, § 18(i), (j), 74 Stat. 416; Sept. 13, 1960, P. L. 86-778, Title I, § 103(t), 74 Stat. 941; Oct. 16, 1962, P. L. 87-834, §§ 6(c), 7(h), *76 Stat. 982*, 988; Oct. 23, 1962, P. L. 87-870, § 5(a), *76 Stat. 1161*; Feb. 26, 1964, P. L. 88-272, Title II, §§ 204(a)(3), 234(b)(3), *78 Stat. 36*, 114; March 15, 1966, P. L. 89-368, Title I, § 102(b)(5), 80 Stat. 64; Nov. 13, 1966, P. L. 89-809, Title I, § 103(l)(1), *80 Stat. 1554*; June 28, 1968, P. L. 90-364, Title I, § 103(e)(6), *82 Stat. 264*; Dec. 30, 1969, P. L. 91-172, Title IV, § 432(c), (d), Title IX, § 960(j), *83 Stat. 622*, 623, 735; Oct. 31, 1972, P. L. 92-606, § 1(f)(4), 86 Stat. 1497; Sept. 2, 1974, P. L. 93-406, Title III, § 3043, *88 Stat. 1003*; Oct. 4, 1976, *P. L. 94-455*, Title XII, § 1203(a), Title XIX, § 1906(a)(57), (b)(13)(A), (c)(3), 90 Stat. 1688, 1832, 1834, 1835; Nov. 6, 1978, *P. L. 95-600*, Title I, § 157(k)(2), Title VII, § 701(cc)(2), *92 Stat. 2809*, 2923; Aug. 13, 1981, *P. L. 97-34*, Title VII, § 725(c)(4), *95 Stat. 346*; Sept. 3, 1982, P. L. 97-248, Title II, § 201(d)(10), [201(c)(10)], Title III, §§ 307(a)(17), 308(a), 336(a), *96 Stat. 421*, 590, 591, 628; Jan. 12, 1983, P. L. 97-448, Title III, § 306(a)(1)(A)(i), (b)(3), *96 Stat. 2400*, 2406; Jan. 12, 1983, P. L. 97-449, § 5(e), 96 Stat. 2442; Jan. 14, 1983, P. L. 97-473, Title II, § 203, *96 Stat. 2611*; Aug. 5, 1983, P. L. 98-67, Title I, §§ 102(a), 104(d)(1), 97 Stat. 369, 379; Feb. 14, 1984, P. L. 98-216, § 3(c)(2), 98 Stat. 6; July 18, 1984, P. L. 98-369, Div A, Title I, §§ 31(e), 43(a)(1), 53(c), 75(c), 138(a), Title IV, §§ 412(b)(11), 422(d)(3), 474(r)(29)(K), 491(d)(53), Title V, § 526(c)(1), *98 Stat. 518*, 558, 567, 595, 672, 792, 798, 845, 852, 874; Oct. 4, 1984, P. L. 98-443, § 9(q), *98 Stat. 1708*; Oct. 22, 1986, *P. L. 99-514*, Title II, § 201(c), (d)(14), Title VI, §§ 671(b)(3), 673, Title XI, §§ 1137, 1147(a), 1166(a), Title XVIII, §§ 1802(a)(9)(C), 1810(l)(1)–(5)(A), 1842(d), 1899A(63), (64), 100 Stat. 2138, 2142, 2317, 2319, 2486, 2493, 2511, 2790, 2830–2832, 2853, 2962; Dec. 22, 1987, P. L. 100-202, § 101(m) (Title VI, § 624(a)), 101 Stat. 1329-390, 1329-429; Nov. 10, 1988, *P. L. 100-647*, § 1(c), Title I, §§ 1001(d)(2)(D), 1002(a)(2), 1006(t)(12), (25)(A), 1011A(m)(1), 1011B(e), 1018(g)(3), *102 Stat. 3342*, 3351, 3352, 3422, 3426, 3483, 3489, 3583; Nov. 30, 1989, *P. L. 101-194*, Title VI, § 602, 103 Stat. 1762; Nov. 5, 1990, *P. L. 101-508*, Title XI, §§ 11704(a)(34), 11812(b)(13), *104 Stat. 1388*-519, 1388-536; Aug. 14, 1991, *P. L. 102-90*, Title III, § 314(e), *105 Stat. 470*; July 3, 1992, *P. L. 102-318*, Title V, § 521(b)(43), *106 Stat. 313*; Aug. 10, 1993, *P. L. 103-66*, Title XIII, § 13238, *107 Stat. 508*; Aug. 15, 1994, *P. L. 103-296*, Title III, § 320(a)(3), *108 Stat. 1535*; Dec. 29, 1995, *P. L. 104-88*, Title III, § 304(e), *109 Stat. 944*; Aug. 20, 1996, *P. L. 104-188*, Title I, §§ 1402(b)(3), 1621(b)(8), (9), 1907(a)(1), (2), *110 Stat. 1790*, 1867, 1916; Aug. 5, 1997, *P. L. 105-34*, Title XI, §§ 1151(a), 1174(b), Title XVI, § 1601(i)(3)(A), *111 Stat. 986*, 989, 1093; Dec. 21, 2000, *P. L. 106-554*, § 1(a)(7) (Title IV, § 401(i)), *114 Stat. 2763*, 2763A-650; June 7, 2001, *P. L. 107-16*, Title V, § 542(e)(3), *115 Stat. 85*; Oct. 4, 2004, *P. L. 108-311*, Title II, § 207(24), *118 Stat. 1178*; Oct. 22, 2004, *P. L. 108-357*, Title VIII, Subtitle A, § 804(b), Subtitle B, Part II, § 835(b)(10), (11), Subtitle C, § 852(a), *118 Stat. 1570*, 1594, 1609; Dec. 21, 2005, *P. L. 109-135*, Title IV, Subtitle A, § 403(v)(2), *119 Stat. 2628*; Aug. 17, 2006, *P. L. 109-280*, Title XII, Subtitle A, §

1207(f), Subtitle B, Part 1, § 1222, *120 Stat. 1071*, 1089; May 25, 2007, *P. L. 110-28*, Title VIII, Subtitle B, Part 2, § 8246(a)(1), *121 Stat. 200*; June 17, 2008, *P. L. 110-245*, Title III, § 301(c)(1), (2)(B), (C), *122 Stat. 1646*; March 30, 2010, *P. L. 111-152*, Title I, Subtitle E, § 1409(a), *124 Stat. 1067*; Dec. 17, 2010, *P. L. 111-312*, Title III, § 301(a), *124 Stat. 3300*; Dec. 19, 2014, *P. L. 113-295*, Div A, Title II, § 221(a)(119), *128 Stat. 4055*; Dec. 22, 2017, *P. L. 115-97*, Title I, Subtitle A, Part V, § 11051(b)(4), Subtitle C, Part VI, § 13304(a)(2)(F), *131 Stat. 2090*, 2125; March 23, 2018, *P. L. 115-141*, Div U, Title IV, § 401(a)(331), (332), (b)(54), (55), *132 Stat. 1200*, 1205.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

Amendment Notes

1959.

1960.

1962.

1964.

1966.

1968.

1969.

1972.

1974.

1976.

1978.

1981.

1982.

1983.

1984.

1986.

1987.

1988.

1989.

1990.

1991.

1992.

1993.

1994.

1995.

1996.

1997.

2000.

2001.

2004.

2005.

2006.

2007.

2008.

2010.

2014.

2017.

2018.

Other provisions:

References in text:

The “Internal Revenue Code of 1939”, referred to in this section, is Act Feb. 10, 1939, ch 2, *53 Stat. 1*, as amended. Prior to the enactment of the Internal Revenue Code of 1986 (formerly the Internal Revenue Code of 1954), the 1939 Code was classified to *26 USCS §§ 1* et seq.

The “Indian Tribal Governmental Tax Status Act of 1982”, referred to in this section, is Title II of Act Jan. 14, 1983, *P. L. 97-473*, which enacted *26 USCS § 7871* and *7871* note, and amended *26 USCS §§ 41*, *103*, *164*, *170*, *2055*, *2106*, *2522*, *4227*, *4484*, *6420*, *6421*, *6424*, *6427*, and *7701*.

Part A and part B of title I of the Housing Act of 1949, referred to in this section, were Parts A and B of Title I of Act July 15, 1949, ch 338, which formerly appeared as *42 USCS §§ 1450* et seq. and *1469* et seq. Such provisions were omitted from the Code pursuant to *42 USCS § 5316*, which terminated the authority to make new loans and grants under Title I of that Act after Jan. 1, 1975.

"Section 103 of the Demonstration Cities and Metropolitan Development Act of 1966", referred to in this section, formerly appeared as 42 USCS § 3303. Such section was omitted from the Code pursuant to *42 USCS § 5316*, which terminated authority to make new loans and grants under Title I of that Act after Jan. 1, 1975.

"Section 101(15) of the Immigration and Nationality Act", referred to in this section, probably means section 101(a)(15) of that Act, which appears as *8 USCS § 1101(a)(15)*.

"Section 401 of the National Housing Act", referred to in this section, appeared as *12 USCS § 1724* prior to repeal by § 407 of Act Aug. 9, 1989, *P. L. 101-73*.

Amendment Notes

1959.

P.L. 86-70, Sec. 22(g), substituted "the Territory of Hawaii" for "the Territories of Alaska and Hawaii" in para. (a)(9) . . . Sec. 22(h), substituted "Territory of Hawaii" for "Territories" in para. (a)(10), effective 1/3/59.

1960.

P.L. 86-624, Sec. 18(i), deleted ", the Territory of Hawaii," in para. (a)(9) . . . Sec. 18(j), deleted "the Territory of Hawaii and" in para. (a)(10), effective 8/21/59.

P.L. 86-778, Sec. 103(t), amended para. (a)(12), effective as provided by Sec. 103(v)(1) of this Act, which appears as a note to 42 USCS § 402.

Prior to amendment, para. (a)(12) read as follows:

> "(12) Delegate. The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed."

1962.

P.L. 87-834, Sec. 6(c), amended para. (a)(19), effective for tax. yrs. begin. after 10/16/62.

Prior to amendment, para. (a)(19) read as follows:

> "(19) Domestic building and loan association. The term 'domestic building and loan association' means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association, substantially all the business of which is confined to making loans to members."

P.L. 87-834, Sec. 7(h), added paras. (a)(30) and (31), effective 10/17/62.

P.L. 87-870, Sec. 5(a), added para. (a)(32), effective for tax. yrs. begin. after 10/16/62.

1964.

P.L. 88-272, Sec. 204(a)(3), substituted "For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104" for

“For the purpose of applying the provisions of sections 104” in para. (a)(20), effective for group-term life insurance provided after 12/31/63 in tax. yrs. end. after 12/31/63.

P.L. 88-272, Sec. 234(b)(3), added para. (a)(33), effective for tax. yrs. begin. after 12/31/63.

1966.

P.L. 89-368, Sec. 102(b)(5), added para. (a)(34), effective for tax. yrs. begin. after 12/31/66.

P.L. 89-809, Sec. 103(l)(1), substituted “, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States,” for “from sources without the United States” in para. (a)(31), effective for tax. yrs. begin. after 12/31/66.

1968.

P.L. 90-364, Sec. 103(e)(6), substituted “section 6154(c)” for “section 6016(b)” in subpara. (a)(34)(B), effective for tax. yrs. begin. after 12/31/67 except as provided in Sec. 104 of this Act, reproduced in note following Code Sec. 6425.

1969.

P.L. 91-172, Sec. 432(c), amended para. (a)(19) . . . Sec. 432(d)(1), amended subpara. (a)(32)(B) . . . Sec. 432(d)(2), deleted the third sentence of para. (a)(32) effective for tax. yrs. begin. after 7/11/69.

Prior to amendment, para. (a)(19) read as follows:

> “(19) Domestic building and loan association.
>
> “The term 'domestic building and loan association' means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—
>
> > “(A) which either (i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or (ii) is subject by law to supervision and examination by State or Federal authority having supervision over such associations;
> >
> > “(B) substantially all of the business of which consists of acquiring the savings of the public and investing in loans described in subparagraph (C);
> >
> > “(C) at least 90 percent of the amount of the total assets of which (as of the close of the taxable year) consists of (i) cash, (ii) obligations of the United States or of a State or political subdivision thereof, stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, and certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations, (iii) loans secured by an interest in real property and loans made for the improvement of real property, (iv) loans secured by a deposit or share of a member, (v) property acquired through the liquidation of defaulted loans described in clause (iii), and (vi) property used by the association in the conduct of the business described in subparagraph (B);
> >
> > “(D) of the assets of which taken into account under subparagraph (C) as assets constituting the 90 percent of total assets—
> > >
> > > “(i) at least 80 percent of the amount of such assets consists of assets described in clauses (i), (ii), (iv), and (vi) of such subparagraph and of loans secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property

used primarily for church purposes, or property acquired through the liquidation of defaulted loans described in this clause; and

"(ii) at least 60 percent of the amount of such assets consists of assets described in clauses (i), (ii), (iv), and (vi) of such subparagraph and of loans secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property containing 4 or fewer family units or real property used primarily for church purposes, loans made for the improvement of residential real property containing 4 or fewer family units or real property used primarily for church purposes, or property acquired through the liquidation of defaulted loans described in this clause;

"(E) not more than 18 percent of the amount of the total assets of which (as of the close of the taxable year) consists of assets other than those described in clause (i) of subparagraph (D), and not more than 36 percent of the amount of the total assets of which (as of the close of the taxable year) consists of assets other than those described in clause (ii) of subparagraph (D); and

"(F) except for property described in subparagraph (C), not more than 3 percent of the assets of which consists of stock of any corporation.

"The term 'domestic building and loan association' also includes any association which, for the taxable year, would satisfy the requirements of the first sentence of this subparagraph if "41 percent" were substituted for "36 percent" in subparagraph (E). Except in the case of the taxpayer's first taxable year beginning after the date of the enactment of the Revenue Act of 1962, the second sentence of this paragraph shall not apply to an association for the taxable year unless such association (i) was a domestic building and loan association within the meaning of the first sentence of this paragraph for the first taxable year preceding the taxable year, or (ii) was a domestic building and loan association solely by reason of the second sentence of this paragraph for the first taxable year preceding the taxable year (but not for the second preceding taxable year). At the election of the taxpayer, the percentages specified in this paragraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary or his delegate."

Prior to amendment, subpara. (a)(32)(B) read as follows:

"(B) meets the requirements of subparagraphs (B), (C), (D), (E), and (F) of paragraph (19) of this subsection (relating to definition of domestic building and loan association) determined with the application of the second, third, and fourth sentences of paragraph (19).

"In determining whether an institution meets the requirements referred to in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution. In the case of an institution which, for the taxable year, is a co-operative bank within the meaning of the first sentence of this paragraph by reason of the application of the second and third sentences of paragraph (19) of this subsection, the deduction otherwise allowable under section 166(c) for a reasonable addition to the reserve for bad debts shall, under regulations prescribed by the Secretary or his delegate, be reduced in a manner consistent with the reductions provided by the table contained in section 593(b)(5)."

P.L. 91-172, Sec. 960(j), substituted "United States Tax Court" for "Tax Court of the United States" in para. (a)(27), effective 12/30/69.

1972.

P.L. 92-606, Sec. 1(f)(4), substituted "chapters 1, 2," for "chapters 2" in subpara. (a)(12)(B), effective for tax. yrs. begin. after 12/31/72.

1974.

P.L. 93-406, Sec. 3043, added para. (a)(35), effective 9/2/74.

1976.

P.L. 94-455, Sec. 1203(a), added para. (a)(36), effective for documents prepared after 12/31/76.

P.L. 94-455, Sec. 1906(a)(57)(A), amended para. (a)(11) . . . Sec. 1906(a)(57)(B), amended subpara. (a)(12)(A) . . . Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in Code Sec. 7701 . . . Sec. 1906(c)(3), deleted "or Territory" after "of any State" in para. (a)(4), effective 2/1/77.

Prior to amendment, para. (a)(11) read as follows:

> "(11) Secretary. The term "Secretary" means the Secretary of the Treasury."

Prior to amendment, subpara. (a)(12)(A) read as follows:

> "(A) In general. The term Secretary or his delegate means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term or his delegate when used in connection with any other official of the United States shall be similarly construed."

1978.

P.L. 95-600, Sec. 701(cc)(2), amended clause (a)(36)(B)(iii), effective for documents prepared after 12/31/76.

Prior to amendment, clause (a)(36)(B)(iii) read as follows:

> "(iii) prepares a return or claim for refund for any trust or estate with respect to which he is a fiduciary, or".

P.L. 95-600, Sec. 157(k)(2), added para. (a)(37), effective for tax. yrs. begin. after 12/31/74.

1981.

P.L. 97-34, Sec. 725(c)(4), substituted "6015(d)" for "6015(c)" in subpara. (a)(34)(A), effective for estimated tax for tax. yrs. begin. after 12/31/80.

1982.

P.L. 97-248, Sec. 201(d)(10), [as redesignated by Sec. 306(a)(1)(A)(i) of P.L. 97-448, see above], added para. (a)(38), effective for tax. yrs. begin. after 12/31/82.

P.L. 97-248, Sec. 336(a), added para. (a)(39) [as redesignated by Sec. 306(b)(3) of P.L. 97-448, see above], effective 9/4/82.

1983.

P.L. 97-448, Sec. 306(a)(1)(A)(i), redesignated the second Sec. 201(c) of P.L. 97-248 as Sec. 201(d) of P.L. 97-248, see below.

P.L. 97-448, Sec. 306(b)(3), redesignated para. (a)(38) [as added by Sec. 336 of P.L. 97-248, see below] as para. (a)(39), effective 9/4/82.

P.L. 97-449, Sec. 5(e)(1), substituted “subchapter III of chapter 105 of title 49” for “part III of the Interstate Commerce Act” in subpara. (a)(33)(F) . . . Sec. 5(e)(2), substituted “subchapter I of chapter 105 of title 49” for “part I of the Interstate Commerce Act” in subpara. (a)(33)(H).

P.L. 97-473, Sec. 203, added para. (a)(40).

P.L. 98-67, Sec. 104(d)(1), added para. (a)(41), effective for payments made after 12/31/83.

1984.

P.L. 98-216, Sec. 3(c)(2), substituted “subchapter I of chapter 105 of title 49” for “part I of the Interstate Commerce Act” in subpara. (a)(33)(G), effective 2/14/84.

P.L. 98-369, Sec. 31(e), redesignated subsec. (e) as subsec. (f) and added new subsec. (e), effective for property placed in service by the taxpayer after 5/23/83, in tax. yrs. end. after 5/23/83, and to property placed in service by the taxpayer on or before 5/23/83, if the lease to the tax-exempt entity is entered into after 5/23/83, except for the special rule provided in Sec. 31(g)(19) of the Act and subject to the special provisions in Sec. 31(g) of this Act reproduced in the note following Code Sec. 168.

P.L. 98-369, Sec. 43(a)(1), added paras. (a)(42), (43), (44) and (45), effective for tax. yrs. end. after 7/18/84.

P.L. 98-369, Sec. 53(c), redesignated subsec. (f) [as redesignated by Sec. 31(e) of the Act, see above] as subsec. (g), and added new subsec. (f), effective 7/18/84 and applicable as provided by Sec. 53(e)(3) of this Act, which appears as a note to Code Sec. 1059.

P.L. 98-369, Sec. 75(c), redesignated subsec. (g) [as redesignated by Sec. 53(c) of this Act, see above] as subsec. (h), and added new subsec. (g), effective for distributions, sales, and exchanges made after 3/31/84 in tax. yrs. end. after 3/31/84.

P.L. 98-369, Sec. 138(a), redesignated subsecs. (b), (c) and (d) as subsecs. (c), (d) and (e), and added new subsec. (b), applicable as provided by Sec. 138(b) of such Act, which appears as a note to this section.

P.L. 98-369, Sec. 412(b)(11), deleted para. (a)(34), effective for tax. yrs. begin. after 12/31/84.

Prior to deletion, para. (a)(34) read as follows:

“(34) Estimated income tax. The term 'estimated income tax' means—

“(A) in the case of an individual, the estimated tax as defined in section 6015(d), or

“(B) in the case of a corporation, the estimated tax as defined in section 6154(c).”

P.L. 98-369, Sec. 422(d)(3), substituted “152(b)(4) and 682” for “71, 152(b)(4), 215, and 682” in para. (a)(17), applicable as provided by Sec. 422(e)(1), (2) of such Act, which appears as a note to Code Sec. 71.

P.L. 98-369, Sec. 474(r)(29)(K), deleted “1451,” from para. (a)(16), applicable as provided in Sec. 475(b) of this Act, which appears as a note to Code Sec. 33.

P.L. 98-369, Sec. 491(d)(53), deleted subpara. (a)(37)(C), substituted a period for “, and” at the end of subpara. (a)(37)(B) and added “and” at the end of subpara. (a)(37)(A), effective for obligations issued after 12/31/83.

Prior to deletion, subpara. (a)(37)(C) read as follows:

“(C) a retirement bond described in section 409.”

P.L. 98-369, Sec. 526(c)(1), added para. (a)(46), effective 4/1/84.

P.L. 98-443, Sec. 9(q), substituted “Secretary of Transportation” for “Civil Aeronautics Board” in subpara. (a)(33)(E), effective 1/1/85.

1986.

P.L. 99-514, Sec. 201(c), redesignated subsec. (h) as subsec. (i) and added new subsec. (h) . . . Sec. 201(d)(14)(A), substituted “section 168(h)” for “section 168(j)” in subpara. (e)(4)(A) [as amended by Sec. 1802(a)(9)(C) of this Act, see below] . . . Sec. 201(d)(14)(B), [as amended by Sec. 1002(a)(2) of P.L. 100-647, see above] substituted “property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing)” for “low-income housing (within the meaning of section 168(c)(2)(F))” in para. (e)(5) [as amended by Sec. 1899A (64) of this Act, see below], applicable as provided by Sec. 203 of such Act which appears as a note to Code Sec. 168.

P.L. 99-514, Sec. 671(b)(3), [as amended by P.L. 100-647, Sec. 1006(w)(1), see above] deleted “and” at the end of clause (a)(19)(C)(ix), substituted “and” for the period at the end of the clause (a)(19)(C)(x), and added clause (a)(19)(C)(xi), effective for tax. yrs. begin. after 12/31/86.

P.L. 99-514, Sec. 673, redesignated subsec. (i) [as redesignated by Sec. 201(c) of this Act, see above] as subsec. (j), and added new subsec. (i), effective 1/1/92 and applicable as provided by Sec. 675(c) of such Act, which appears as a note to Code Sec. 860A.

P.L. 99-514, Sec. 1137, added the sentence at the end of para. (a)(46), effective 10/22/86.

P.L. 99-514, Sec. 1147(a), redesignated subsec. (j) [as redesignated by Sec. 673 of this Act, see above] as subsec. (k), and added new subsec. (j), effective 10/22/86.

P.L. 99-514, Sec. 1166(a), substituted “106, and 125” for “and 106” in para. (a)(20), effective for tax. yrs. begin. after 12/31/85.

P.L. 99-514, Sec. 1802(a)(9)(C), added the sentence at the end of subpara. (e)(4)(A) . . . Sec. 1810(1)(1), added the sentence at the end of clause (b)(4)(E)(i) . . . Sec. 1810(1)(2)(A), substituted “the requirements of clause (i), (ii), or (iii)” for “the requirements of clause (i) or (ii)” in subpara. (b)(1)(A) . . . Sec. 1810(1)(2)(B), added clause (b)(1)(A)(iii) . . Sec. 1810(1)(3), added clause (b)(2)(A)(iv) . . . Sec. 1810(1)(4), redesignated paras. (b)(4) through (b)(10) as paras. (b)(5) through (b)(11) respectively, and added new para. (b)(4), effective for tax yrs. begin. after 12/31/84.

P.L. 99-514, Sec. 1810(1)(5)(A), deleted “or” at the end of clause (b)(4)(A)(ii), substituted “, or” for the period at the end of clause (b)(4)(A)(iii), and added clause (b)(4)(A)(iv), effective for periods after 10/22/86.

P.L. 99-514, Sec. 1842(d), substituted “, 682, and 2516” for “and 682” in para. (a)(17), effective for transfers after 7/18/84 and for transfers after 12/31/63, and on or before 7/18/84, if both parties elect.

P.L. 99-514, Sec. 1899A(63), substituted “preceding” for “preceeding” in clause (b)(4)(E)(i) [before redesignation as (b)(5)(E)(i) by Sec. 1810(l)(4) of this Act, see above] . . . Sec. 1899A(64), substituted “section 168(c)(2)(F))” for “section 168(C)(2)(F))” in para. (e)(5) [before amendment by Sec. 201(d)(14)(B) of this Act, see above], effective 10/22/86.

1987.

P.L. 100-202, Sec. 101(m)(1), deleted “the provisions of paragraph (2) and” following “subject to” in subpara. (j)(1)(C) . . . Sec. 101(m)(2), amended para. (j)(2) effective 12/22/87.

Prior to amendment, para. (j)(2) read as follows:

"(2) Nondiscrimination requirements. Paragraph (1)(C) shall not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements (other than any requirement relating to coverage) applicable to arrangements described in section 401(k) and to matching contributions. Rules similar to the rules of sections 401(k)(8) and 401(m)(8) (relating to no disqualification if excess contributions distributed) shall apply for purposes of the preceding sentence."

1988.

P.L. 100-647, Sec. 1(c), substituted "of 1986" for "of 1954" in para. (a)(29).

P.L. 100-647, Sec. 1001(d)(2)(D), substituted "subparagraph (F) or (M)" "for subparagraph (F)" in subclause (b)(5)(D)(i)(I), effective for tax. yrs. begin. after 12/31/86, but only in the case of scholarships and fellowships granted after 8/16/86.

P.L. 100-647, Sec. 1002(a)(2), amended Sec. 201(d)(14)(B) of P.L. 99-514, by substituting "within the meaning of section 168(c)(2)(F)" for "section 168(c)(2)(F)" see below.

P.L. 100-647, Sec. 1006(t)(12), substituted "are assets described" for "are loans described" in clause (a)(19)(C)(xi) . . . Sec. 1006(t)(25)(A), added the sentence at the end of para. (a)(19), effective for tax. yrs. begin. after 12/31/86.

P.L. 100-647, Sec. 1006(w)(1), amended Sec. 675(a) of P.L. 99-514, the effective date for changes made by Sec. 671(b)(3) of P.L. 99-514, by substituting "the amendments made by this subtitle shall take effect on January 1, 1987" for "the amendments made by this part shall apply to taxable years beginning after December 31, 1986," see below.

P.L. 100-647, Sec. 1011A(m)(1), added ", section 401(k)(4)(B)" after "paragraph (2)" in subpara. (j)(1)(C), effective 10/22/87.

P.L. 100-647, Sec. 1011B(e)(1), substituted "and 106" for "106, and 125," in para. (a)(20) . . . Sec. 1011B(e)(2), added "and for purposes of applying section 125 with respect to cafeteria plans," before "the term" in para. (a)(20), effective for tax. yrs. begin. after 12/31/85.

P.L. 100-647, Sec. 1018(g)(3), substituted "section 274(1)(1)(B)" for "section 274(k)(2)" in clause (b)(5)(A)(iv), effective for periods after 10/22/86.

1989.

P.L. 101-194, Sec. 602, redesignated subsec. (k) as subsec. (1), and added new subsec. (k), effective as provided in Sec. 603 of this Act, which appears as a note to this section.

1990.

P.L. 101-508, Sec. 11704(a)(34), substituted "(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(a)(8)," for "(C) subject to, section 401(k)(4)(B), [and] any dollar limitation on the application of section 402(a)(8)," in subpara. (j)(1)(C), effective 11/5/90.

P.L. 101-508, Sec. 11812(b)(13), added "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" before the period at the end of subpara. (e)(5)(B), effective for property placed in service after 11/5/90, except as provided in Sec. 11812(c)(2) of this Act reproduced in note following Code Sec. 42.

1991.

P.L. 102-90, Sec. 314(e), amended the sentence at the end of subsec. (k), effective 1/1/92.

Prior to amendment, the sentence at the end of subsec. (k) read as follows:

“For purposes of this subsection, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government and a Senator or officer (except the Vice President) or employee of the Senate shall not be treated as an officer or employee of the Federal Government.”

1992.

P.L. 102-318, Sec. 521(b)(43), substituted “section 402(e)(3)” for “section 402(a)(8)”, in subpara. (j)(1)(C), effective for distributions after 12/31/92. For special rule, see Sec. 521(e)(2) of this Act which appears as a note to Code Sec. 402.

1993.

P.L. 103-66, Sec. 13238, redesignated subsec. (l) as subsec. (m) and added new subsec. (l).

1994.

P.L. 103-296, Sec. 320(a)(3) (effective with the calendar quarter following enactment, as provided by Sec. 320(c) of such Act, which appears as 26 USCS § 871 note), amended subsec. (b)(5) by substituting “subparagraph (J), (M), or (Q)” for “subparagraph (J)”.

1995.

P.L. 104-88, Sec. 304(d) (effective 1/1/96, as provided by § 2 of such Act, which appears as 49 USCS § 701 note), amended subsec. (a)(33) by substituting “Federal Energy Regulatory Commission” for “Federal Power Commission” in subpara. (B), by substituting “Surface Transportation Board” for “Interstate Commerce Commission” in cl. (i) of subpara. (C), by substituting “Federal Energy Regulatory Commission” for “Interstate Commerce Commission” in cl. (ii) of subpara. (C), by substituting “a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49” for “common carrier by water, subject to the jurisdiction of the Interstate Commerce Commission under subchapter III of chapter 105 of title 49, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933” in subpara. (F), by substituting “rail carrier subject to part A of subtitle IV” for “railroad corporation subject to subchapter I of chapter 105” in subpara. (G), and by substituting “part A of subtitle IV” for “subchapter I of chapter 105” in subpara. (H).

1996.

P.L. 104-188, Sec. 1402(b)(3) (applicable with respect to decedents dying after 8/20/96, pursuant to Sec. 1402(c), which appears as 26 USCS Sec. 101 note), deleted “, for the purpose of applying the provisions of section 101(b) with respect to employees' death benefits” following “health plans” in subsec. (a)(20).

P.L. 104-188, Sec. 1621(b)(8), (9) (effective 9/1/97, as provided by Sec. 1621(d), which appears as 26 USCS § 26 note), amended subsec. (a)(19)(C) by substituting cl. (xi) for one which read: “(xi) any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are assets described in clauses (i) through (x), the entire interest in the REMIC shall qualify.”; and amended subsec. (i)(2) by inserting “or a FASIT”.

P.L. 104-188, Sec. 1907(a)(1), (2) (applicable as provided by Sec. 1907(a)(3) of P.L. 104-188, which appears as a note to this section), amended subsec. (a) by substituting subparas. (D) and (E) of para. (30) for former subpara. (D), which read: “(D) any estate or trust (other than a foreign estate or foreign trust, within the meaning of section 7701(a)(31)).”, and by substituting para. (31) for one which read: “(31) Foreign estate or trust. The terms 'foreign estate' and 'foreign trust' mean an estate or trust, as the case may be, the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.”.

1997.

P.L. 105-34, Sec. 1151(a) (applicable to partnerships created or organized after the date determined under Code Sec. 7805(b) (without regard to paragraph (2) thereof) with respect to such regulations, as provided by Sec. 1151(b), which appears as a note to this section), amended subsec. (a)(4) by inserting “unless, in the case of a partnership, the Secretary provides otherwise by regulations”.

P.L. 105-34, Sec. 1174(b)(1) (applicable as provided by Sec. 1174(c), which appears as a note to this section), amended subsec. (b)(7) by substituting “, (C), or (D)” for “or (C)” in subpara. (A), and adding subpara. (D).

P.L. 105-34, Sec. 1601(i)(3)(A) (effective as if included in the provisions of P.L. 104-188 to which it relates, as provided by Sec. 1601(j)(1), which appears as a note to Code Sec. 23), amended subsec. (a)(3)(E)(ii) by substituting “persons” for “fiduciaries”.

2000.

P.L. 106-554, Sec. 1(a)(7) (enacting into law Sec. 401(a) of Title IV of H.R. 5662, as introduced on Dec. 14, 2000 (effective on enactment, as provided by Sec. 401(j) of such H.R. 5662, which appears as a note to Code Sec. 1032)), redesignated subsec. (m) as subsec. (n), and inserted new subsec. (m).

2001.

P.L. 107-16, Sec. 542(e)(3) (applicable to estates of decedents dying after 12/31/2009, as provided by Sec. 542(f) of P.L. 107-16, which appears as a note to Code Sec. 121), repealed by P.L. 111-312, Sec. 301(a) (applicable to estates of decedents, dying, and transfers made, after 12/31/2009, as provided by Sec. 301(e) of P.L. 111-312, which appears as a note to Code Sec. 121), amended subsec. (a) by adding para. (47), which read: “(47) Executor. The term 'executor' means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.”.

2004.

P.L. 108-311, Sec. 207(24) (applicable to taxable years beginning after 12/31/2004, as provided by Sec. 208 of P.L. 108-311, which appears as a note to Code Sec. 2), amended subsec. (a)(17) by substituting “682” for “152(b)(4), 682,”.

P.L. 108-357, Sec. 804(b) (applicable to individuals who expatriate after 6/3/2004, as provided by Sec. 804(f) of P.L. 108-357, which appears as a note to Code Sec. 877), redesignated subsec. (n) as subsec. (o); and inserted new subsec. (n).

P.L. 108-357, Sec. 835(b)(10), (11) (effective 1/1/2005, subject to certain exceptions, as provided by Sec. 835(c) of P.L. 108-357, which appears as a note to Code Sec. 56), amended subsec. (a)(19)(C)(xi) by deleting “and any regular interest in a FASIT,” following “in a REMIC,”, deleting “or FASIT” following “such REMIC” in two places, and

deleting “or FASIT” following “the REMIC”; and amended subsec. (i)(2)(A) by deleting “or a FASIT” following “REMIC” in the introductory matter.

P.L. 108-357, Sec. 852(a) (effective as provided by Sec. 852(c), which appears as a note to this section), amended subsec. (a) by adding para. (48).

2005.

P.L. 109-135, Sec. 403(v)(2) (effective as if included in the provisions of P.L. 108-357 to which it relates, as provided by Sec. 403(nn) of P.L. 109-135, which appears as a note to Code Sec. 26), substituted subsec. (n) for one which read:

“(n) Special rules for determining when an individual is no longer a United States citizen or long-term resident. An individual who would (but for this subsection) cease to be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States, as the case may be, until such individual—

> “(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and
>
> “(2) provides a statement in accordance with section 6039G.”.

2006.

P.L. 109-280, Sec. 1207(f) (effective 1/1/2007, as provided by Sec. 1207(g)(1) of P.L. 109-280, which appears as a note to Code Sec. 4041), amended subsec. (a) by adding para. (49). Although the Act purported to amend “section 7701(a)” the amendments were executed to subsec. (a) of this section in order to effectuate the probable intent of Congress.

P.L. 109-280, Sec. 1222, redesignated subsec. (o) as subsec. (p); and inserted new subsec. (o). Although the Act purported to amend “section 7701 (relating to definitions)”, without further specification, the amendment was executed to this section, in order to effectuate the probable intent of Congress.

2007.

P.L. 110-28, Sec. 8246(a)(1) (applicable to returns prepared after 5/25/2007, as provided by Sec. 8246(c) of P.L. 110-28, which appears as a note to Code Sec. 6060), amended subsec. (a)(36) by substituting “tax return” for “income tax return” wherever appearing in heading and text, and by substituting “this title” for “subtitle A” in two places in subpara. (A).

2008.

P.L. 110-245, Sec. 301(c)(1), (2)(B), (C) (applicable to any individual whose expatriation date is on of after 6/17/2008, as provided by Sec. 301(g) of P.L. 110-245, which appears as a note to Code Sec. 2801), amended subsec. (a) by adding para. (50); amended subsec. (b)(6) by adding the concluding matter; deleted subsec. (n), which read:

“(n) Special rules for determining when an individual is no longer a United States citizen or long-term resident. For purposes of this chapter—

> “(1) United States citizens. An individual who would (but for this paragraph) cease to be treated as a citizen of the United States shall continue to be treated as a citizen of the United States until such individual—

"(A) gives notice of an expatriating act (with the requisite intent to relinquish citizenship) to the Secretary of State, and

"(B) provides a statement in accordance with section 6039G (if such a statement is otherwise required).

"(2) Long-term residents. A long-term resident (as defined in section 877(e)(2)) who would (but for this paragraph) be described in section 877(e)(1) shall be treated as a lawful permanent resident of the United States and as not described in section 877(e)(1) until such individual—

"(A) gives notice of termination of residency (with the requisite intent to terminate residency) to the Secretary of Homeland Security, and

"(B) provides a statement in accordance with section 6039G (if such a statement is otherwise required).";

and redesignated subsecs. (o) and (p) as subsecs. (n) and (o), respectively.

2010.

P.L. 111-152, Sec. 1409(a) (applicable to transactions entered into after 3/30/2010, as provided by Sec. 1409(e)(1) of P.L. 111-152, which appears as a note to Code Sec. 6662), redesignated subsec. (o) as subsec. (p), and added new subsec. (o).

2014.

P.L. 113-295, Sec. 221(a)(119) (effective on enactment and subject to savings provisions, as provided by Sec. 221(b) of P.L. 113-295, which appears as a note to Code Sec. 1), amended subsec. (a)(20) by substituting "chapter 21." for "chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.".

2017.

P.L. 115-97, Sec. 11051(b)(4) (applicable to taxable years beginning after 12/31/2017, as provided by Sec. 11051(c) of P.L. 115-97, which appears as a note to Code Section 61), amended subsec. (a)(17) by substituting "section 2516" for "sections 682 and 2516" and substituting "such section" for "such sections" in three places.

P.L. 115-97, Sec. 13304(a)(2)(F) (applicable to amounts incurred or paid after 12/31/2017, as provided by Sec. 13304(e) of P.L. 115-97, which appears as a note to Code Sec. 274), amended subsec. (b)(5)(A) by substituting cl. (iv) for one which read: "(iv) a professional athlete who is temporarily in the United States to compete in a charitable sports event described in section 274(l)(1)(B).".

2018.

P.L. 115-141, Sec. 401(a)(331), (332), amended subsec. (a)(36)(B), in the introductory matter, by substituting "a 'tax" for "an 'tax"; and amended subsec. (e)(5)(B) by substituting "Reconciliation" for "Reconcilation".

P.L. 115-141, Sec. 401(b)(54), (55) (subject to savings provisions, as provided by Sec. 401(e) of P.L. 115-141, which appears as a note to Code Sec. 23), amended subsec. (a), in para. (19)(A) by deleting "either (i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or (ii)" following "which", and, in para. (32) by substituting subpara. (A) for one which read:

"(A) either—

"(i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or

"(ii) is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and".

Other provisions:

Treatment of authors and artists as employees. Act Dec. 28, 1980, *P. L. 96-605*, Title IV, § 402, *94 Stat. 3352*, provides:

"(a) In general. An author or artist performing services under contract with a corporation shall be considered as an employee of the corporation for the purpose of applying the provisions specified in *section 7701(a)(20) of the Internal Revenue Code of 1954* [1986], if, on December 31, 1977, such author or artist was a participant in one or more of the pension, profit-sharing or annuity plans of such corporation which are described in subsection (b)(2).

"(b) Definitions. For purposes of this section—

"(1) Contract. The term 'contract' means a contract which during its term—

"(A) requires such author or artist to give the corporation first reading or first refusal on writings or drawings of specified types, and prohibits him from offering any such writing or drawing to any other publication unless it has been offered to and rejected by the corporation; or

"(B) requires such author or artist to use his best efforts to produce work of specified types for the corporation.

"(2) Corporation. The term 'corporation' means a corporation which for at least 15 years prior to January 1, 1978, had in effect one or more pension, profit-sharing and annuity plans, each of which—

"(A) had contained from its inception a definition of the term 'employee' that included the category of 'authors and artists under contract', and

"(B) had been determined by the Secretary of the Treasury (taking into account the definition described in subparagraph (A)) to be a qualified plan within part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1954 [1986] [*26 USCS §§ 401* et seq.] for all of such years.

"(c) Effective date. The provisions of this section shall apply to taxable years ending after December 31, 1980.".

Application of amendment made by § 138 of Act July 18, 1984. Act July 18, 1984, *P. L. 98-369*, Div A, Title I, Subtitle J, § 138(b), *98 Stat. 676*, provides:

"(1) In general. The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.

"(2) Transitional rule for applying substantial presence test.

"(A) If an alien individual was not a resident of the United States as of the close of calendar year 1984, the determination of whether such individual meets the substantial presence test of *section 7701(b)(3) of the Internal Revenue Code of 1954* [1986] (as added by this section) shall be made by only taking into account presence after 1984.

"(B) If an alien individual was a resident of the United States as of the close of calendar year 1984, but was not a resident of the United States as of the close of calendar year 1983, the determination of whether such individual meets such substantial presence test shall be made by only taking into account presence in the United States after 1983.

"(3) Transitional rule for applying lawful residence test. In the case of any individual who—

"(A) was a lawful permanent resident of the United States (within the meaning of *section 7701(b)(5) of the Internal Revenue Code of 1954* [1986], as added by this section) throughout calendar year 1984, or

"(B) was present in the United States at any time during 1984 while such individual was a lawful permanent resident of the United States (within the meaning of such section 7701(b)(5)),

for purposes of section 7701(b)(2)(A) of such Code (as so added), such individual shall be treated as a resident of the United States during 1984.".

Effective date of Nov. 30, 1989 amendments. Act Nov. 30, 1989, *P. L. 101-194*, Title VI, § 603, *103 Stat. 1763*, provides: "The amendments made by this title [for full classification, consult USCS Tables volumes] shall take effect on January 1, 1991. Such amendments shall cease to be effective if the provisions of section 703 [*5 USCS § 5318* note] are subsequently repealed, in which case the laws in effect before such amendments shall be deemed to be reenacted.".

Application of Aug. 20, 1996 amendments of subsec. (a)(30), (31). Act Aug. 20, 1996, *P. L. 104-188*, Title I, Subtitle I, § 1907(a)(3), *110 Stat. 1916*; Aug. 5, 1997, *P. L. 105-34*, Title XI, Subtitle G, § 1161(a), *111 Stat. 987* (effective as if included in the amendments made by section 1907(a) of Act Aug. 20, 1996, as provided by § 1161(b) of Act Aug. 5, 1997), provides:

"The amendments made by this subsection shall [amending subsec. (a)(30) and (31) of this section] apply—

"(A) to taxable years beginning after December 31, 1996, or

"(B) at the election of the trustee of a trust, to taxable years ending after the date of the enactment of this Act.

Such an election, once made, shall be irrevocable. To the extent prescribed in regulations by the Secretary of the Treasury or his delegate, a trust which was in existence on August 20, 1996 (other than a trust treated as owned by the grantor under subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986), and which was treated as a United States person on the day before the date of the enactment of this Act may elect to continue to be treated as a United States person notwithstanding section 7701(a)(30)(E) of such Code.".

Application of amendment made by § 1151 of Act Aug. 5, 1997. Act Aug. 5, 1997, *P. L. 105-34*, Title XI, Subtitle F, § 1151(b), *111 Stat. 986*, provides: "Any regulations issued with respect to the amendment made by subsection (a) [amending subsec. (a)(4) of this section] shall apply to partnerships created or organized after the date determined under *section 7805(b) of the Internal Revenue Code of 1986* (without regard to paragraph (2) thereof) with respect to such regulations.".

Application of amendments made by § 1174 of Act Aug. 5, 1997. Act Aug. 5, 1997, *P. L. 105-34*, Title XI, Subtitle H, § 1174(c), *111 Stat. 989*, provides:

"(1) In general. The amendments made by this section [amending *26 USCS §§ 861*, *863*, and *7701*] shall apply to remuneration for services performed in taxable years beginning after December 31, 1997.

"(2) Presence. The amendment made by subsection (b) [amending subsec. (b)(7) of this section] shall apply to taxable years beginning after December 31, 1997.".

Application of amendments made by § 1907(a) of Act Aug. 20, 1996. Act Aug. 5, 1997, *P. L. 105-34*, Title XVI, § 1601(i)(4), *111 Stat. 1093*, provides:

"The Secretary of the Treasury may by regulations or other administrative guidance provide that the amendments made by section 1907(a) of the Small Business Job Protection Act of 1996 [§ 1907(a) of Act Aug. 20, 1996, *P. L. 104-188*, amending subsec. (a)(30), (31) of this section] shall not apply to a trust with respect to a reasonable period beginning on the date of the enactment of such Act, if—

"(A) such trust is in existence on August 20, 1996, and is a United States person for purposes of the Internal Revenue Code of 1986 on such date (determined without regard to such amendments),

"(B) no election is in effect under section 1907(a)(3)(B) of such Act [note to this section] with respect to such trust,

"(C) before the expiration of such reasonable period, such trust makes the modifications necessary to be treated as a United States person for purposes of such Code (determined with regard to such amendments), and

"(D) such trust meets such other conditions as the Secretary may require.".

Effective date and application of amendment made by § 852 of Act Oct. 22, 2004. Act Oct. 22, 2004, *P. L. 108-357*, Title VIII, Subtitle C, § 852(c), *118 Stat. 1609*, provides:

"(1) In general. Except as provided in paragraph (2), the amendment made by this section [adding subsec. (a)(48) of this section] shall take effect on the date of the enactment of this Act.

"(2) Fuel taxes. With respect to taxes imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32 [*26 USCS §§ 4041* et seq. and *4081* et seq.], the amendment made by this section [adding subsec. (a)(48) of this section] shall apply to taxable periods beginning after the date of the enactment of this Act.".

NOTES TO DECISIONS

I.PERSON

1.Generally

2.Parties deemed to be persons

3.States

II.PARTNERSHIP AND PARTNER

A.Partnership

4.Generally

5.Factors determining partnership status

6.Law governing nature of status

7.Requirement for written agreement

8.Particular firms constituting partnerships

9.Particular firms not recognized as partnerships

10.Limited partnership

11.—Factors determining status

12.Syndicate

13.Joint venture

B.Partner

14.Generally

15.Family members as partners

16.—Husband and wife

17.Subsidiary corporations as partners

18.Trusts as partners

III.CORPORATION

A.In General

1.General Considerations

19.Generally

20.Effect of state law

2.Characteristics of Corporations

21.Generally

22.Existence under state law

23.Business activity

24.Business purpose

25.—Avoidance of state usury limitations

26.Limitation of liability

27.Continuity of life

28.Observance of corporate formalities

3.Particular Organizations

29.Professional service corporation

30.Joint stock company

31.Insurance company

32.Corporate shells and alter egos

33.Political organizations

34.Others

B.Associations

1.In General

35.Generally

36.Congressional intent

37.State law

38.Intent of parties

2.Characteristics of Association

39.Generally

40.Joint enterprise or obligation

41.Income or profit

42.Corporate organization

43.Formal organization under statute

44.Immunity from personal liability

3.Particular Organizations Recognized as Associations

45.Employees' organizations

46.Oil and gas producing organizations

47.Miscellaneous

C.Trusts

1.In General

48.Generally

49.Law governing status for tax purposes

50.Department regulations

2.Factors Determining Status For Tax Purposes

51.Generally

52.Use of corporate form or formalities

53.Centralized management

54.Business test

55.Intent or purpose

56.—Liquidation, preservation or distribution of property

57.Transferability of interest

58.Limitation of liability

59.Continuity

60.Beneficiary protection or control

61.Number of beneficiaries

62.Powers of trustees

63.Number or identity of trustees

64.Size

65.Associates

66.Terms of trust instrument

67.Charity as beneficiary

3.Investment Trusts

68.Generally

69.Factors determining status for tax purposes

70.Extent of managerial powers

71.—Powers of substitution

72.—Fixed investment trusts

4.Real Estate Trusts

73.Generally

74.Corporate attributes

75.—Transferability of interests

76.Trust powers

77.—Holding title

78.—Receipt of rental income

79.—Operation of business enterprise

80.— —Real estate subdivision

81.— —Collection of land sale contracts

82.Testamentary trust

83.Liquidating trust

5.Other Trusts

84.Massachusetts trusts

85.Successors to business enterprises

86.Trusts controlling petroleum or mineral rights

87.Mortgage pools

88.Cemetery company

89.Family trusts

6.Practice and Procedural Matters

90.Res judicata

91.Appeal

IV.FIDUCIARY

92.Generally

93.Particular persons

V.TAXPAYER

94.Generally

95.Taxpayer for refund purposes

96.Payer of tax imposed on another

97.Subsidiary corporation

98.Transferees

99.Withholding agent

VI.“PAID OR INCURRED” AND “PAID OR ACCRUED”

100.Generally

101.Applicability

VII.TRADE OR BUSINESS

102.Public office

103.Particular parties

104.—Congress members

105.—Judges

106.—Municipal employees

VIII.OTHER TERMS

107.Stock

108.United States

109.State

110.Delegate

111.Military or Naval Forces

112.Withholding agent

113.Domestic building and loan association

114.—Obligations of United States

115.Foreign estate or trust

116.Income tax return preparer

117.Resident and nonresident alien

118.Service contract treated as lease

119.Miscellaneous

I. PERSON

1. Generally

In resolving ambiguity as to what is meant by "person" in predecessor to *26 USCS § 2503*, it was appropriate that recourse be had to pertinent congressional sources. *McBrier v Commissioner, 108 F.2d 967, 24 A.F.T.R. (P-H) 124 (CA3 1939)*.

Early distribution from *IRC § 401(k)* account, which was qualified retirement plan, was not from individual retirement account under *IRC § 408* or *IRC § 7701(a)(37)* and, thus, did not qualify for exception to 10-percent additional tax under *IRC § 72(t)(2)(E)* for higher education expenses, even if it were used for higher education expenses *Uscinski v. Comm'r, T.C. Memo 2005-124, 89 T.C.M. (CCH) 1337, 2005 Tax Ct. Memo LEXIS 123 (T.C. May 25, 2005)*.

Unpublished decision: Under plain language of *26 USCS § 7701(a)(1)*, individual qualifies as "person" under *26 USCS § 7206(1)* unless definition set forth at *26 USCS § 7343* is deemed distinct expression otherwise or it would be manifestly incompatible with intent of § 7343 and § 7206(1) to treat individual as "person." United States v Hendrickson (ED Mich 2009).

2. Parties deemed to be persons

In case in which defendant appealed his conviction for violating *18 USCS § 371*, he unsuccessfully argued that New York was not subject to legislative or territorial jurisdiction of United States, and therefore, since he was native-born in New York, he was under no obligation to pay income taxes unless and until United States had conquered or subsumed New York; since defendant was individual, who received income, requirement to file return and pay taxes plainly applied to him regardless of his purported citizenship. *United States v Drachenberg, 623 F.3d 122, 106 A.F.T.R.2d (RIA) 6868 (CA2 NY 2010)*.

Taxpayer's residence in American Samoa was immaterial to statutory definition of United States person, which would have included him as citizen even if he lived in foreign country. *Francisco v Comm'r, 370 F.3d 1228, 361 U.S. App. D.C. 504, 93 A.F.T.R.2d (RIA) 2767 (App DC 2004)*.

Surety who was in absolute control of funds of its principal and was in charge of making payments to creditors and determining priority of such payments was person liable for tax within meaning of *26 USCS § 7701*. *Pacific Nat'l Ins. Co. v United States, 270 F. Supp. 165, 20 A.F.T.R.2d (RIA) 5189 (ND Cal 1967)*.

Defendant's claim, following his conviction for tax evasion under *26 USCS § 7201*, that his status as federal employee removed him from definition of "person," who may be guilty of felony under § 7201, was without merit, because term "person" as used in tax code had been consistently and plainly defined as any individual, under *26 USCS § 7701(a)(1)*. *United States v. Maggi, 83 A.F.T.R.2d (RIA) 1999-877, 83 A.F.T.R.2d (RIA) 99-877, 1999 U.S. App. LEXIS 2015 (6th Cir. Feb. 5, 1999)*.

Stay pending appeal of denial of petitioner Tribe's motions to quash IRS summonses to 3rd parties for records on Tribal accounts was not warranted due to no substantial likelihood of success on merits: tribal sovereign immunity did not bar suits by respondent United States, and "person" in *I.R.C. § 7701* included Indian tribes. *Miccosukee Tribe of Indians v United States, 108 A.F.T.R.2d (RIA) 7072 (SD Fla 2011)*.

Unpublished decision: Taxpayer's argument that penalty assessments did not receive written supervisory approval failed because (1) argument was belied by record, and (2) taxpayer qualified as "person" for purposes of *26 USCS § 6702*, *26 USCS §§ 6671(b)*, *7701(a)*. Fennel v Comm'r, 114 A.F.T.R.2d (RIA) 5779 (CA11 2014).

Commissioner of Internal Revenue properly sustained levy to collect *26 USCS § 6702(a)* penalty, as taxpayer's amended return was "return" and she was "person" subject to penalty; although *26 USCS § 6671(b)* stated that definition of "person" subject to penalty included officer or employee of corporation or member or employee of partnership, definition did not exclude all others; moreover IRC defined "person" in *26 USCS § 7701(a)(1)* to include individual, and § 7701(c) stated that word "includes" was not deemed to exclude other things otherwise within meaning of term defined. *Crites v. Comm'r, T.C. Memo 2012-267, 104 T.C.M. (CCH) 316, 2012 Tax Ct. Memo LEXIS 265 (T.C. Sept. 17, 2012)*.

Word "person" so includes corporations existing under state laws that such corporation engaged in manufacture of distilled spirits may give bond and otherwise transact its business with United States in internal revenue matters in its corporate capacity. *15 Op. Att'y Gen. 230 (1877)*.

Resident of Puerto Rico who organized corporation in Germany and who had acquired United States citizenship at birth by virtue of Immigration and Nationality Act (which conferred citizenship on all persons born in Puerto Rico on or after Jan. 13, 1941) is United States person. *1974-2 C.B. 215, Rev. Rul. 74-375 (1974)*.

S corporation election might have terminated because alien might have been ineligible shareholder due to residency requirements of § 7701(b)(1)(A) for purposes of § 1361(b)(1)(C); because termination was inadvertent under § 1362(f), entity would be treated as continuing to be S corporation provided that its election was not otherwise terminated. Private Letter Ruling 200751010, *2007 PLR LEXIS 1932*.

3. States

Commonwealth of Pennsylvania is "person." *Pennsylvania ex rel. Schnader v Fix, 9 F. Supp. 272, 14 A.F.T.R. (P-H) 1148 (MD Pa 1934)*.

For purposes of bringing appeal pursuant to *26 USCS § 6330(d)(1)* regarding determination of income tax deficiency, taxpayer resided in federal area despite being resident of Vermont because *26 USCS § 7701(a)(9)* defined U.S. as States and District of Columbia; accordingly, Tax Court had jurisdiction over taxpayer. *Muller v Comm'r, 97 A.F.T.R.2d (RIA) 2239 (DC Vt 2006)*.

Word "person" does not include state. *12 Op. Att'y Gen. 176 (1867)*.

II. PARTNERSHIP AND PARTNER

A. Partnership

4. Generally

Partnership which serves no purpose other than create tax benefits for its partners is disregarded for tax purposes even where underlying transaction is entered for profit; partnership lacks economic substance and is disregarded where it acts merely as instrument of related, closely-held corporation through which one of partners maintained control while simultaneously passing on tax advantages to others. *Merryman v Commissioner, 873 F.2d 879, 64 A.F.T.R.2d (RIA) 5009, 102 Oil & Gas Rep. 593 (CA5 1989)*.

Where business entity resembles corporation in some respects and partnership in others, in determining which it is, features of similarity should be compared and marks of dissimilarity contrasted. *Bert v Helvering, 92 F.2d 491, 67 App. D.C. 340, 20 A.F.T.R. (P-H) 271 (App DC 1937)*.

Partnership comes into being when first parties to venture acquire their respective capital interests; limited partnership comes into being on date on which final limited partnership units are issued and date stated as effective date on each copy of certificate of limited partnership; preoperating activities, such as subscriptions for partnership units and entering into contracts for which services were not performed, do not constitute beginning of operations. *Countess Heart Watch Partnership v. Commissioner, T.C. Memo 1989-236, 57 T.C.M. (CCH) 403, T.C.M. (RIA) ¶89236, 1989 Tax Ct. Memo LEXIS 236 (T.C. May 15, 1989)*.

Entities organized under foreign law will be classified for federal tax purpose on basis of characteristics set forth in regulations under *26 USCS § 7701*, and no foreign organization or entity is classified as association unless it has more corporate than noncorporate characteristics. *Rev Rul 88-8 (1988) 1988-1 CB 403*, obsoleted (1998) *1998-32 I.R.B. 5*.

5. Factors determining partnership status

Joint venture was not bona fide partnership because taxpayers were contractually obligated to provide guaranties, thus separate commitment to provide those guaranties to joint venture contributed nothing of value; entity providing guaranties had no partnership interest entitling it to declare share of profits as income, nor did its income include proceeds from noncompetition agreement incident to sale of other entity's assets, and evidence did not show bona fide agreement to share profits. *DJB Holding Corp. v Comm'r, 803 F.3d 1014, 116 A.F.T.R.2d (RIA) 6390 (CA9 2015)*.

Partnership under federal income tax provisions must not only meet common-law concept of partnership as to factual element, but must also comply with legal concept of common-law partnership. *Hanson v Birmingham, 92 F. Supp. 33, 39 A.F.T.R. (P-H) 904 (ND Iowa 1950)*.

Unpublished decision: Taxpayer was liable to IRS for self-employment tax on income he received from his interest in certain oil and gas ventures, as his participation therein constituted partnership based on his relationship with operator, his rights and duties, and facts. *Methvin v Comm'r, 653 Fed. Appx. 616, 117 A.F.T.R.2d (RIA) 2231 (CA10 2016)*.

Estate was entitled to refund for taxes paid, pursuant to *26 USCS §§ 2033* and *7701(a)(2)*, because executors showed that decedent intended to transfer community property bonds to partnership when she signed partnership agreement, partnership was valid Texas limited partnership before decedent's death, and assets were considered partnership property before her passing. Keller v United States, 104 A.F.T.R.2d (RIA) 6015 (SD Tex 2009).

Fact that taxpayer who operated gas stations kept detailed calculations regarding distributions to son (who managed business) and to bookkeeper of stations' profits, which were treated as wages, and fact that taxpayer's distribution was adjusted to compensate for payroll taxes paid for his son and bookkeeper, together with taxpayer's

assertion that he could not have entered into venture without participation of his son and bookkeeper, were sufficient to overcome fact that no formal partnership agreement existed and no partnership returns were filed. *Strickland v. Commissioner, T.C. Memo 1986-85, 51 T.C.M. (CCH) 534, T.C.M. (RIA) ¶86085, 1986 Tax Ct. Memo LEXIS 520 (T.C. Mar. 4, 1986)*.

Accomplice in illegal drug transactions is not taxable as partner, but is mere part-time employee or consultant where accomplice performed various jobs for which he was paid each time and did not control activity in question but merely assisted. *Govednik v. Commissioner, T.C. Memo 1988-578, 56 T.C.M. (CCH) 910, T.C.M. (RIA) ¶88578, 1988 Tax Ct. Memo LEXIS 607 (T.C. Dec. 27, 1988)*.

Where two taxpayers were found to have operated their business as de facto partnership under *26 USCS §§ 702*, *704*, and *7701*, they were required, in absence of any contrary agreement, to allocate business expenses equally rather than to shelter one taxpayer's income; negligence penalty under *26 USCS § 6662* was also imposed. *Holdner v. Comm'r, T.C. Memo 2010-175, 100 T.C.M. (CCH) 108, 2010 Tax Ct. Memo LEXIS 211 (T.C. Aug. 4, 2010)*, aff'd, *483 Fed. Appx. 383, 110 A.F.T.R.2d (RIA) 2012-6324, 2012-2 U.S. Tax Cas. (CCH) ¶50626, 2012 U.S. App. LEXIS 21182 (9th Cir. 2012)*.

IRS checklist outlining required information to be submitted with request for ruling on whether organization qualifies as partnership focuses on: partnership agreement and state partnership act; partnership certificate; registration statement or documents to be filed with any federal or state agency engaged in regulation of securities; net worth of general partner(s); promotional material used to sell interests in organization; description of creditors' interest in organization or its assets; capital contribution to organization by general and limited partner(s); extent of participation of general and limited partner(s) in profits and losses; negative capital accounts; and manner and method of intended distribution of assets to partners. *Rev Proc 75-16 (1975) 1975-1 CB 676*, mod, superseded (1989) *1989-1 CB 798*, amplified (1991) *1991-1 CB 477* and supplemented (1992) *1992-1 CB 782* and mod (1992) *1992-2 CB 496*, superseded (1993) *1993-1 CB 381* and amplified, in part (1994) *1994-2 CB 688*, 94 TNT 127-6 and mod (1995) *1995-1 C.B. 501*, 94 TNT 254-2.

State LLC with more than one member won ruling that it was properly treated as partnership for FIT purposes and that each member was properly treated as a partner based on definitions of "partnership" in *IRC § 761* and in *IRC § 7701(a)(2)*, with further consequence that expense incurred in related lawsuit was properly treated as partnership expense. Private Letter Ruling 200817004, *2008 PLR LEXIS 214*.

6. Law governing nature of status

In action by sole owner of several limited liability companies (LLC) who challenged finding of individual tax liability based on "check-the-box" regulations under 26 CFR §§ 301.7701-1 to *301.7701-3* after owner failed to make election under "check-the-box" regulation and failed to pay federal employment taxes, U.S. Department of Treasury was entitled to summary judgment because regulations did not exceed authority of Treasury to issue regulatory interpretations of Internal Revenue Code since *26 USCS § 7701(a)(2)* and (3) was ambiguous when applied to emerging hybrid business entities such as LLCs; additionally, regulations were valid under Morrissey, and they did not impermissibly alter legal status of state-law-created LLCs. *Littriello v. United States, 484 F.3d 372, 2007 FED App. 0136P, 99 A.F.T.R.2d (RIA) 2007-2210, 2007-1 U.S. Tax Cas. (CCH) ¶50426, 2007 U.S. App. LEXIS 8471 (6th Cir. 2007)*, reh'g denied, *2007 U.S. App. LEXIS 23640 (6th Cir. Sept. 25, 2007)*, cert. denied, *552 U.S. 1186, 128 S. Ct. 1290, 170 L. Ed. 2d 70, 2008 U.S. LEXIS 1263 (2008)*.

Taxpayer's contention that his partnership status was question of federal and not state law is invalid where Regs § 301.7701-1(c) (pertaining to classification of organizations for tax purposes, i.e., as partnerships, corporations, etc.) make local law determinative of legal relations established between members of organization. *Baily v United States, 350 F. Supp. 1205, 31 A.F.T.R.2d (RIA) 301 (ED Pa 1972)*.

Court rejected pension fund's theory that because IRC did not recognize limited liability companies (LLCs), *26 USCS § 7701*, and because LLC elected to be treated as partnership for tax purposes, then it should be treated as partnership for purposes of holding two investment companies liable as its partners for LLC's withdrawal liability under *29 USCS § 1392(c)*. *26 CFR § 301.7701-3* specifically limited its application to federal tax purposes; further, state law, not federal law, governed bounds of corporate liability, and under *Del. Code Ann. tit. 6, § 18-303(a)*, members of LLC were not obligated personally for any debtor, obligation, or liability of LLC solely by reason of being member. *Sun Capital Partners III, LP v. New Eng. Teamsters, 903 F. Supp. 2d 107, 54 Employee Benefits Cas. (BNA) 1161, 2012 U.S. Dist. LEXIS 150018 (D. Mass. 2012)*, aff'd in part and rev'd in part, remanded, vacated, in part, *724 F.3d 129, 56 Employee Benefits Cas. (BNA) 1139, 2013 U.S. App. LEXIS 15190 (1st Cir. 2013)*.

Applying Chevron analysis to issue, court concluded that Treasury's "check-the-box" regulations, *Treas. Reg. 301.7701-1* thru 3, were reasonable interpretation of ambiguous statutory provision, namely *I.R.C. § 7701(a)*, and IRS could treat LLC that had not elected to be treated as corporation, as disregarded entity, and hold owner personally liable for LLC's taxes as sole proprietor. *Littriello v United States, 95 A.F.T.R.2d (RIA) 2581 (WD Ky 2005)*.

States of Delaware, Illinois, and Missouri are added to list of states that have enacted legislation that corresponds to Uniform Limited Partnership Act for purposes of § 301.7701-2 of Regulations; *Rev Rul 84-80* and its amplifications are superseded. *Rev Rul 89-123 (1989) 1989-2 CB 261*, amplified (1990) *1990-1 CB 193*, superseded (1993) *1993-1 CB 226*, amplified (1993) *1993-2 CB 308* and superseded (1994) *1994-1 CB 311*, 94 TNT 4-5, superseded (1995) *1995-1 CB 221*, 95 TNT 4-12 and amplified (1990) *1990-2 CB 269* and amplified (1991) *1991-2 CB 434* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-2 C.B. 323*.

Organization formed in Great Britain by 25 United States citizens under British equivalent of corporation statute is treated as partnership for U. S. federal income tax purposes where members had unlimited liability and could not transfer their interests without prior unanimous approval of other members. *Rev Rul 88-8 (1988) 1988-1 CB 403*, obsoleted (1998) *1998-32 I.R.B. 5*.

Texas is added to list of states that have enacted legislation that corresponds to Uniform Limited Partnership Act for purposes of § 301.7701-2 of Regulations (*Rev Rul 84-80* amplified). *Rev Rul 88-23 (1988) 1988-1 CB 404*, superseded (1989) *1989-2 CB 261*, amplified (1990) *1990-1 CB 193*, superseded (1993) *1993-1 CB 226*, amplified (1993) *1993-2 CB 308* and superseded (1994) *1994-1 CB 311*, 94 TNT 4-5, superseded (1995) *1995-1 CB 221*, 95 TNT 4-12 and amplified (1990) *1990-2 CB 269* and amplified (1991) *1991-2 CB 434* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-2 C.B. 323*.

State of Florida is added to list of states that have enacted legislation that corresponds to Uniform Limited Partnership Act for purposes of § 301.7701-2 of Regulations; *Rev Rul 84-80* amplified. *Rev Rul 88-43 (1988) 1988-1 CB 404*, superseded (1989) *1989-2 CB 261*, amplified (1990) *1990-1 CB 193*, superseded (1993) *1993-1 CB 226*, amplified (1993) *1993-2 CB 308* and superseded (1994) *1994-1 CB 311*, 94 TNT 4-5, superseded (1995) *1995-1 CB 221*, 95 TNT 4-12 and amplified (1990) *1990-2 CB 269* and amplified (1991) *1991-2 CB 434* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-2 C.B. 323*.

State of Virginia is added to list of states that have enacted legislation that corresponds to Uniform Limited Partnership Act for purposes of § 301.7701-2 of regulations; *Rev Rul 84-80* amplified. *Rev Rul 89-38 (1989) 1989-1 CB 319*, superseded (1989) *1989-2 CB 261*, amplified (1990) *1990-1 CB 193*, superseded (1993) *1993-1 CB 226*, amplified (1993) *1993-2 CB 308* and superseded (1994) *1994-1 CB 311*, 94 TNT 4-5, superseded (1995) *1995-1 CB 221*, 95 TNT 4-12 and amplified (1990) *1990-2 CB 269* and amplified (1991) *1991-2 CB 434* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-1 CB 433* and amplified (1992) *1992-2 C.B. 323*.

State of Mississippi is added to list of states that have enacted legislation that corresponds to Uniform Limited Partnership Act for purposes of § 301.7701-2 of Regulations (*Rev Rul 89-123* amplified). *Rev Rul 90-18 (1990) 1990-1 CB 193*, superseded (1993) *1993-1 CB 226*, amplified (1993) *1993-2 CB 308* and superseded (1994) *1994-1 CB 311*, 94 TNT 4-5, superseded (1995) *1995-1 C.B. 221*, 95 TNT 4-12.

Where U.S. citizen contributes assets and becomes member of unincorporated foreign business organization, tests and standards which will be applied in classifying organization as trust, or some other taxable entity, will be determined pursuant to definitions found in *26 USCS § 7701*; however, local law of foreign jurisdiction must be applied in determining legal relationship of members of organizations among themselves, and with public at large, as well as interests of members of organization in its assets. *1973-1 C.B. 613, Rev. Rul. 73-254 (1973)*.

7. Requirement for written agreement

Bona fide partnership does not have to be reduced to written agreement as far as income tax law is concerned if requisite elements of partnership are present. *Johns v Commissioner, 180 F.2d 469, 39 A.F.T.R. (P-H) 21 (CA5 Fla 1950)*.

8. Particular firms constituting partnerships

Where taxpayer and two other persons operated not as individuals, but as business unit, using their joint capital, joint credit, and joint efforts in developing and operating oil properties, and taxpayer drilled for firm as any outsider might have done, they were operating within definition of "partnership" under predecessor to *26 USCS § 7701* and all taxpayer's net profit on such drillings were properly included in his income. *Wegener v Commissioner, 119 F.2d 49, 27 A.F.T.R. (P-H) 28 (CA5 Tex 1941)*.

Although agreements between taxpayer and corporation provided that they did not intend to enter into partnership or joint adventure, viewing agreements and conduct of parties in light of broad statutory definition of partnership contained in predecessor to *26 USCS § 7701*, and purpose of its adoption, partnership for tax purposes existed, and taxpayer was entitled to deduct his one-half distributive share of losses sustained. *Haley v Commissioner, 203 F.2d 815, 43 A.F.T.R. (P-H) 853 (CA5 1953)*.

Trust was business trust taxable as partnership under following circumstances: association of 1 individual with 4 other individuals entered into "Joint Venture Agreement" to build 18-unit condominium, title to which was placed in trust for benefit of 5 individuals and their wives; venture lacked characteristics of ordinary trust; purpose of arrangement was not to vest in trustees responsibility for protection and conservation of property for beneficiaries who cannot share in discharge of this responsibility; therefore individuals were associated in conduct of business for profit; moreover, there was no centralized management for construction and sales function, nor free transferability of interests; fact that any organization is technically cast in trust form by conveying title to trustees for benefit of persons designated as beneficiaries does not change real character of organization if trust does not meet tests set forth in Regs §§ 301, 7701-4(a). *Grove v. Commissioner, 54 T.C. 799, 1970 U.S. Tax Ct. LEXIS 160 (T.C. Apr. 21, 1970)*.

Unincorporated organization operating under Wyoming Limited Liability Company Act is classified as partnership for federal tax purposes under § 301.7701-2 of Regulations. *Rev Rul 88-76 (1988) 1988-2 CB 360*, obsoleted (1998) *1998-32 I.R.B. 5*.

Organization formed as business trust under Missouri law which has associates and business objective, but lacks at least 2 of remaining 4 corporate characteristics, is classified as partnership for federal tax purposes. *Rev Rul 88-79 (1988) 1988-2 CB 361*, obsoleted (1998) *1998-32 I.R.B. 5*.

Florida limited liability company is classified as partnership where articles of organization require dissolution of business on death, retirement, or resignation of member unless remaining members consent to continuance of business and transferees of interest are prevented from becoming members or participating in management unless there is unanimous written consent from all other members. *PLR 9030013*.

Business trust formed to make investments, under which investors are personally liable for trust liabilities, and which is to terminate upon investor's death or insanity, constitutes partnership. *PLR 9116007*.

Nevada limited liability companies qualify as partnerships for federal income tax purposes. *Rev Rul 93-30 (1993) 1993-1 CB 231*, obsoleted (1998) *1998-32 I.R.B. 5*.

Limited liability company is taxable as partnership where it does not possess continuity of life and free transferability of interests; limited liability company does not possess continuity of life where, upon occurrence of event that terminates continued membership of member, company is terminated unless all of remaining members agree to continue. *Rev Rul 93-53 (1993) 1993-2 CB 312*, 93 TNT 160-13, obsoleted (1998) *1998-32 I.R.B. 5*.

West Virginia limited liability company lacks free transferability of interests where assignee or transferee of member's interest can become member only with approval of all remaining members. *Rev Rul 93-50 (1993) 1993-2 CB 310*, 93 TNT 152-13, obsoleted (1998) *1998-32 I.R.B. 5*.

Illinois limited liability company is treated as partnership for federal income tax purposes and lacks continuity of life since statute provides that company dissolves upon any event which terminates membership of any member unless all remaining members elect to continue business. *Rev Rul 93-49 (1993) 1993-2 CB 308*, 93 TNT 152-12, obsoleted (1998) *1998-32 I.R.B. 5*.

Rhode Island limited liability company lacks continuity of life in that articles provide for dissolution upon loss of any member unless all remaining members agree to continue within 90 days; Rhode Island limited liability company lacks free transferability of interests where, under agreement, unanimous consent of members is required for admission of a new member; due to flexibility of Rhode Island Limited Liability Company Act, classification for federal income tax purposes depends upon provisions adopted in articles of organization or operating agreement. *Rev Rul 93-81 (1993) 1993-2 CB 314*, 93 TNT 242-5, obsoleted (1998) *1998-32 I.R.B. 5*.

Louisiana limited liability company which dissolves upon the termination of the membership of any member unless, within 90 days, all of remaining members elect to continue lacks corporate characteristic of continuity of life; Louisiana limited liability company lacks free transferability of interests where assignee of transferor member does not become member and does not acquire right to participate in management unless other members unanimously consent in writing. *Rev Rul 94-5 (1994) 1994-1 CB 312*, 93 TNT 6-6, obsoleted (1998) *1998-32 I.R.B. 5*.

Kansas limited liability company which terminates upon occurrence of certain events unless majority in interest of remaining members consent to continuing in business lacks continuity of life; Kansas limited liability company in which additional members cannot be admitted unless remaining members unanimously consent lacks free transferability of interests. *Rev Rul 94-30 (1994) 1994-1 CB 316*, 94 TNT 89-18, obsoleted (1998) *1998-32 I.R.B. 5*.

Connecticut limited liability company may be classified as a partnership or as an association, depending upon the provisions adopted in the articles of organization and the operating agreement. *Rev Rul 94-79 (1994) 1994-2 CB 409*, 94 TNT 247-10, obsoleted (1998) *1998-32 I.R.B. 5*.

South Dakota limited liability company lacks continuity of life since, if any member ceases to be a member, all remaining members must agree to continue; South Dakota limited liability company lacks free transferability of interests where assignee does not become substitute member unless all remaining members approve of transfer or assignment. *Rev Rul 95-9 (1995) 1995-1 CB 222*, 95 TNT 10-5, obsoleted (1998) *1998-32 I.R.B. 5*.

New Jersey limited liability company which is dissolved on occurrence of an event which terminates the continued membership of any member unless all remaining members agree to continue lacks continuity of life. *Rev Rul 94-51 (1994) 1994-2 CB 407*, 94 TNT 154-18, obsoleted (1998) *1998-32 I.R.B. 5*.

General partnership that becomes registered limited liability partnership remains partnership for federal tax purposes; conversion into registered limited liability partnership does not result in termination of partnership. *1995-2 C.B. 313, Rev. Rul. 95-55 (1995)*, 95 TNT 152-8.

When Taxpayer formed new entities to reinvest condemnation proceeds, IRS found that new entities would be partnerships under *I.R.C. § 7701*; because they were subject to preexisting *I.R.C. § 1033* election made by Taxpayer, they were entitled to nonrecognition of gain by making timely reinvestment. Private Letter Ruling 200921009, *2009 PLR LEXIS 6078*.

9. Particular firms not recognized as partnerships

No partnership was found to exist despite written partnership agreement and maintenance of partnership bank account, where although property was allegedly contributed to partnership for development, ownership thereof was taken by 2 brothers individually after they had obtained, in their individual capacities, mortgage loan; without use of or title to property to be developed by family partnership there was no showing of intent to have partnership operate in fulfillment of its business purpose. *Swanson v Commissioner, 518 F.2d 59, 36 A.F.T.R.2d (RIA) 5159 (CA8 1975)*.

Where partnership arrangement was merely a reallocation of income within family group, family partnership was not entered into in good faith for tax purposes, and all earned income was taxable to parents, not to children. *Parker v Westover, 144 F. Supp. 933, 50 A.F.T.R. (P-H) 453 (SD Cal 1956)*.

Entity does not exist as partnership for tax purposes at time it originally is formed as “shell” partnership without assets or liabilities; partnership does not exist where those who established entity did not have good faith intention to conduct enterprise with business purpose until actually entering into sale and leaseback transaction for which entity was created. *Torres v. Commissioner, 88 T.C. 702, 1987 U.S. Tax Ct. LEXIS 40 (T.C. Mar. 30, 1987)*.

“Shell” partnership which had no assets or liabilities and conducted no business until date when it was activated by addition of specified limited partners and filing of amended and restated certificate of limited partnership constitutes partnership for tax purposes on date when limited partners are admitted and amended and restated certificates of limited partnership are filed. *Peters v. Commissioner, 89 T.C. 423, 1987 U.S. Tax Ct. LEXIS 124 (T.C. Sept. 9, 1987)*.

No partnership relationship existed between limited partnership and limited liability company where management agreement between parties explicitly disclaimed existence of partnership relationship, and other indices of partnership, including responsibilities of parties, their right to and control over income and capital, and their representations to IRS, and others, did not indicate partnership relationship. *Rigas v United States, 107 A.F.T.R.2d (RIA) 2046 (SD Tex 2011)*.

Service agreement and guarantee agreement between individual cattle owner and corporate feed operation did not constitute partnership since individual owner alone owned cattle being fattened for market, he had complete control over termination of agreement, and percentage of net profits corporate feed operator received from owner was payment for its services and use of its facilities; further, although feed lot operator would receive percentage of net profits and was obligated to make good losses on cattle feeding operation that exceeded 10 percent of owner’s commitment, such profit and loss sharing arose under guarantee agreement and not because feed lot operator had proprietor’s interest in net profits or proprietor’s obligation to share losses. *1975-1 C.B. 383, Rev. Rul. 75-43 (1975)*.

Life insurance company and real estate investment trust which were equal co-owners of apartment project were not partnership where they engaged unrelated corporation to manage project, collect rents, pay taxes, assessments

and insurance, perform all other services customarily performed in connection with maintenance and repairs and in addition corporation performed additional services for tenants beyond those customarily associated with maintenance and repair which were provided to tenants for separate charge that corporation retained for its own use after having paid costs incurred in providing additional services; additional services were not furnished by co-owners directly or indirectly to render co-ownership partnership since agent (corporation) furnished them itself determining time and manner of furnishing services, paying for services and retaining income, and no part of profits from such services went to co-owners. *1975-2 C.B. 261, Rev. Rul. 75-374 (1975)*.

Delaware limited liability company which provides for management by annually elected managers, permits transferees to participate in management, and which provides for continuation upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member is not treated as partnership but instead is treated as association taxable as corporation. *Rev Rul 93-38 (1993) 1993-1 CB 233*, obsoleted (1998) *1998-32 I.R.B. 5*.

10. Limited partnership

Limited real estate partnership that had as sole general partner California corporation with small capital of $21,000 where general partner had invested no funds in syndicate and its participation in cash flow and profits was contingent on repayment first to limited partners of their after-tax investment; limited partnership agreements provided for dissolution by vote of limited partners and for removal or election of new general partner; and partnership interests were sold in California as securities and were transferable without affecting continuity of enterprise was taxable as partnership and not as corporation; partnership had limited life and limited liability (partnership attributes) and free transferability of interests and centralized management (corporation attributes); since Treasury regulations provide that 2-2 tie calls for partnership tax treatment, limited partnership was partnership; however, if case had been controlled by *Morrissey v Commissioner (1935) 296 US 344, 80 L Ed 263, 56 S Ct 289*, instead of by Treasury regulations IRS would have clearly won; that decision would have allowed Tax Court to weigh relative importance of each of four main factors instead of having to give them equal weight. *Larson v. Commissioner, 66 T.C. 159, 1976 U.S. Tax Ct. LEXIS 118 (T.C. Apr. 27, 1976)*, acq., 1979-2 C.B. 1 (I.R.S. 1979), acq., 1979-2 C.B. 2 (I.R.S. 1979).

Corporation will be disregarded where it was originally organized to be holding company for automobile companies to be acquired by stockholders of taxpayer corporation, but its only activity during tax year was to hold interest in limited partnership which had been paid for by taxpayer because taxpayer had wanted to acquire limited partnership because of its need for tax shelter but did not want to hold interest in his own name because Ford Motor Company disapproved of such investment; since corporation made no contribution to partnership and engaged in no activity with respect to it corporation was mere nominee and taxpayer was beneficial owner of partnership interest. *Red Carpet Car Wash, Inc. v. Commissioner, 73 T.C. 676, 1980 U.S. Tax Ct. LEXIS 205 (T.C. Jan. 10, 1980)*, acq., 1980-2 C.B. 1 (I.R.S. 1980), acq. in part, acq. in result in part, 1980-2 C.B. 2 (I.R.S. 1980).

Investors were partners in limited partnerships for federal tax purposes; partnerships had valid business purpose of supporting historic rehabilitation and obtaining tax credits under Virginia law; partnerships' allocations of state tax credits to investors were not sales of tax credits. *Va. Historic Tax Credit Fund 2001 LP v. Comm'r, T.C. Memo 2009-295, 98 T.C.M. (CCH) 630, 2009 Tax Ct. Memo LEXIS 303 (T.C. Dec. 21, 2009)*, rev'd, remanded, *639 F.3d 129, 107 A.F.T.R.2d (RIA) 2011-1523, 2011-1 U.S. Tax Cas. (CCH) ¶50308, 2011 U.S. App. LEXIS 6364 (4th Cir. 2011)*.

Limited partnerships formed under California Uniform Limited Partnership Act, as amended by § 15520.5, on October 1, 1973, and those formed before amendment which elect to be governed by amendment, are not taxed as corporations, because they will lack "continuity of life" from date they were formed (if under amended act), or date they elected, if formed before amendment; this lack will continue as long as amendment remains effective (until December 31, 1975). *1974-2 C.B. 404, Rev. Rul. 74-320 (1974)*.

For purposes of classification of a limited partnership as a partnership under safe harbor afforded by *Rev Proc 92-88*, limited partnership must be formed in jurisdiction in which state limited partnership act corresponds with Uniform Limited Partnership Act; IRS has released listing of states whose adoption of the Revised Uniform Limited Partnership Act corresponds with the Uniform Limited Partnership Act. *Rev Rul 94-2 (1994) 1994-1 CB 311*, 94 TNT 4-5, superseded (1995) *1995-1 C.B. 221*, 95 TNT 4-12.

11. —Factors determining status

Limited partnership in real estate development that consisted of corporate sole general partner (owned by individual) which owned 62 percent of partnership, 10 persons who owned 16 percent as limited partners (most limited partners had been subcontractors on development), and individual (same individual that owned corporate general partner) owned 22 percent as limited partner was partnership and not association taxable as corporation since it had none of four regulation (Regs § 301.7701-2) characteristics which would have caused it to be treated as corporation; partnership was organized under local (Mo) law which adopted Uniform Partnership and Limited Partnership Acts and according to these regulations partnerships organized under such acts are considered to have no continuity of life; there was no centralization of management since under these regulations there is corporate-type centralization of management if substantially all interests are owned by limited partners and here general partner owned substantial interest; under these regulations limited partnership cannot have limited liability where general partner of limited partnership has no assets; and there was no free transferability of interests since under these regulations corporate characteristic of free transferability exists when members owning “substantially all” interests in organization can without consent of other members substitute person who is not member and to meet this test here at least individual’s and his corporation’s interests had to be freely transferable, corporation’s interest could not be freely transferable because, unless specifically provided for, transfer would result in dissolution of partnership and therefore substitute general partner would need consent of limited partners. *Zuckman v United States, 524 F.2d 729, 207 Ct. Cl. 712, 36 A.F.T.R.2d (RIA) 6193 (1975)*.

Where same corporation is sole general partner in 2 or more partnerships, net worth non-limited liability safe harbor test under *Rev Proc 89-12* is applied by first determining whether net worth of corporation is equal to at least 10 percent of total contributions to all limited partnerships and second, with respect to each partnership, whether corporate general partner’s net worth less the value of its interests in that partnership is 10 percent of total contributions to that partnership. (1989) *GCM 39798*.

In determining classification of arrangement formed as limited partnership, for purposes of *26 USCS § 7701*, Internal Revenue Service will not consider presence or absence of: division of limited partnership interests into units or shares and promotion and marketing of such interests in manner similar to corporate securities, managing partner’s right to retain or distribute profits according to needs of business, limited partner’s right to vote on removal and election of general partners and right to vote on sale of all assets of partnership, limited partnership interests being represented by certificates, limited partnership’s observance or lack of observance of corporate formalities and procedures, requirement that limited partners sign partnership agreement, and limited partnership providing means of pooling investments while limiting liability of some participants. *Rev Rul 79-106 (1979) 1979-1 CB 448*, obsoleted (1998) *1998-32 I.R.B. 5*.

For ruling purposes, IRS will rule that partnership lacks free transferability of interests if, throughout life of partnership, partnership agreement expressly restricts transferability of partnership interests representing more than 20 percent of interest in partnership capital, income, gain, loss, deduction and credit. *1992-1 C.B. 782, Rev. Proc. 92-33 (1992)*.

For ruling purposes, limited partnership lacks corporate characteristic of continuity of life where, under local law, bankruptcy or removal of general partner causes dissolution unless remaining general partners or majority in interest of all remaining partners agree to continue partnership. *Rev Proc 92-35 (1992) 1992-1 CB 790*, amplified, in part (1994) *1994-2 C.B. 688*, 94 TNT 127-6.

Limited partnership does not have continuity of life if less than majority of interest of partnership may cause continuation upon expulsion of general partner; majority in interest requires both majority of profits interest and majority of capital interest, each determined as of date of dissolution. *1994-2 C.B. 688, Rev. Proc. 94-46 (1994)*, 94 TNT 127-6.

12. Syndicate

Syndicate formed to purchase real estate in order to realize profits from expected increase in value was not association, but was joint adventure members of which were taxable as individuals and had right to deduct each year their proportionate share of operating losses of syndicate. *Commissioner v Gerstle, 95 F.2d 587, 20 A.F.T.R. (P-H) 1136 (CA9 1938)*.

Members of syndicate may be partners, joint contractors, or any other relation agreed upon, and relationships, for income tax purposes, must be ascertained by examining agreement. *Commissioner v N. B. Whitcomb Coca-Cola Syndicate, 95 F.2d 596, 20 A.F.T.R. (P-H) 1140 (CA5 Ga 1938)*.

Syndicate of individual owners of fractional interests in oil lease operated by agents designated by each of such owners more resembled partnership than corporation, and was not such association as was taxable as corporation. *Commissioner v Rector & Davidson, 111 F.2d 332, 24 A.F.T.R. (P-H) 919 (CA5 Tex 1940)*.

Syndicate formed to deal in securities of railroad company was partnership, so that cost basis of securities was actual cost to syndicate, and not association taxable as corporation so that cost basis was fair market value at time securities were received by it. *Commissioner v United States & Foreign Sec. Corp., 148 F.2d 743, 33 A.F.T.R. (P-H) 1168 (CA3 1945)*.

Subscriptions given by stockholders to syndicate for benefit of their corporation, engaged in lending money, under declaration of trust by which such corporation guaranteed fixed earnings in exchange for all profits above such earnings constituted business enterprise and its profits are taxable, and it is not mere security device; where guaranty runs directly to certificate holders and not to syndicate itself it is part of entire provision relating to profits and its meaning must be determined from that provision as whole, and payments under such guaranty are not taxable as income of syndicate. *Fidelity-Bankers Trust Co. v Helvering, 113 F.2d 14, 72 App. D.C. 1, 25 A.F.T.R. (P-H) 317 (App DC 1940)*.

13. Joint venture

Where corporate taxpayer entered into agreement by which its two stockholders and third party should form partnership to carry on ore milling operation, and under which corporation would pay to creditor of partnership deficit which might grow out of operations, “joint adventure” did not exist under California law, and corporate taxpayer could not deduct as bad debt amount of note it gave to said creditor. *Joe Balestrieri & Co. v Commissioner, 177 F.2d 867, 38 A.F.T.R. (P-H) 989 (CA9 1949)*.

Joint venture is not partnership where sole motive in its organization is reduction of taxes, since reduction of taxes in itself is not business. *Slifka v Commissioner, 182 F.2d 345, 39 A.F.T.R. (P-H) 527 (CA2 1950)*.

Issue concerning existence of asserted joint venture is question of fact for decision by trial court. *Parr v Scofield, 185 F.2d 535, 39 A.F.T.R. (P-H) 1306 (CA5 Tex 1950)*.

Generally, taxability of principal amount of recovery in law suit depends upon nature of claim and basis of recovery; thus, if it is for lost profits, recovery is taxable gain, but if it is for loss of, or damage to, capital, recovery is nontaxable, being return of capital; however, income of joint venture or partnership is taxable to members when received by firm, regardless of whether it was distributed to individual members in that year; therefore, decedent’s

share of profits realized by joint venture in 1933 were deemed as received by him and taxable in that year, though he was ignorant of gain and did not receive his share during his lifetime, and principal amount of 1944 judgment obtained by his executor for concealed profits was not income taxable to his estate or his widow-beneficiary. *Commissioner v Goldberger's Estate, 213 F.2d 78, 45 A.F.T.R. (P-H) 1537 (CA3 1954)*.

Joint venture in which 3 public utilities construct and operate nuclear power plant is tax partnership as defined by *26 USCS § 7701(a)(2)* where profits realized after electricity produced has been channeled through individual facilities of each participant are divided in direct proportion to participant's ownership interest in plant. *Madison Gas & Electric Co. v Commissioner, 633 F.2d 512, 46 A.F.T.R.2d (RIA) 5955 (CA7 1980)*.

Joint ventures, like partnerships, in order to be entitled to recognition, must be real and genuine within meaning of the tax laws; where taxpayer's wife provided capital with which he purchased one-third interest in egg company partnership, each had tax liability with respect to one half of one third of egg company net income, although joint venture of husband and wife was new and was established coincidentally with very inception of egg company. *Rupple v. Kuhl, 81 F. Supp. 318, 37 A.F.T.R. (P-H) 781, 1948-1 U.S. Tax Cas. (CCH) ¶ 9302, 48-1 U.S. Tax Cas. (CCH) ¶9302, 1948 U.S. Dist. LEXIS 1878 (E.D. Wis. 1948)*, aff'd, *177 F.2d 823, 38 A.F.T.R. (P-H) 845, 1949-2 U.S. Tax Cas. (CCH) ¶ 9465, 1949 U.S. App. LEXIS 4293 (7th Cir. 1949)*.

Plaintiff attorney who sought to apportion amount received upon completion of litigation in which he participated with another attorney was required to prove agreement to enter into joint venture. *Van Hook v. United States, 108 F. Supp. 32, 42 A.F.T.R. (P-H) 828, 1951 U.S. Dist. LEXIS 2379 (N.D. Ill. 1951)*, rev'd, *204 F.2d 25, 43 A.F.T.R. (P-H) 897, 1953-1 U.S. Tax Cas. (CCH) ¶ 9389, 1953 U.S. App. LEXIS 4256 (7th Cir. 1953)*.

Manufacturer, purchaser-lessor, and end user of leased computer equipment, together with investors who enter into management agreement with manager who would collect equipment rentals and use them to pay off financing for equipment, are taxable as joint venturers since financing was joint enterprise and not have been undertaken on same terms unless there were sufficient participants who as group could finance purchase and each participant required the other participants to act in concert. *Alhouse v. Commissioner, T.C. Memo 1991-652, 62 T.C.M. (CCH) 1678, T.C.M. (RIA) ¶91652, 1991 Tax Ct. Memo LEXIS 694 (T.C. Dec. 30, 1991)*, aff'd sub. nom., *Bergford v. Commissioner, 12 F.3d 166, 93 Cal. Daily Op. Service 9416, 93 D.A.R. 16195, 73 A.F.T.R.2d (RIA) 94-498, 93 TNT 264-10, 1994-1 U.S. Tax Cas. (CCH) ¶ 50004, 1993 U.S. App. LEXIS 33073 (9th Cir. 1993)*.

B. Partner

14. Generally

Where issue before Tax Court was whether associate engaged by engineering partnership on only one project was partner, finding by Tax Court that associate was not joint adventurer though not erroneous was not decisive, hence case was remanded for determination as to whether associate was partner. *Bartholomew v Commissioner, 186 F.2d 315, 40 A.F.T.R. (P-H) 63 (CA8 1951)*.

Taxpayer who transfers his entire interest in partnership to corporation of which he is sole stockholder, is no longer regarded as a partner under *26 USCS § 7701*, although he may have exercised sufficient indicia of ownership so as to make him partner under state law. *Evans v Commissioner, 447 F.2d 547, 28 A.F.T.R.2d (RIA) 5465 (CA7 1971)*.

Taxpayers who were members of de facto partnerships that orchestrated evasion of over $6 million in federal gasoline excise taxes were jointly and severally liable to pay taxes. *United States ex rel. Perler v Papandon, 331 F.3d 52, 91 A.F.T.R.2d (RIA) 2454 (CA2 NY 2003)*.

Limited partnership's failure to timely file certificate of limited partnership required under state law is not sufficient justification for treatment of limited partners as general partners for purpose of assessing tax deficiency where

certificate is properly filed at time that tax deficiency is discovered and assessed. *Gamma Farms v. United States, 1992 U.S. App. LEXIS 4252 (9th Cir. Mar. 9, 1992)*.

Inclusion of taxpayer in partnership should be disregarded where there was no business reason for joining of partner, and he did not contribute to partnership with capital and management. *Sheerr v Smith, 148 F. Supp. 536, 50 A.F.T.R. (P-H) 1829 (ED Pa 1957)*.

15. Family members as partners

Members of family are as much entitled to jointly own stocks and bonds, or to become partners as result of joint venture as strangers in blood, provided of course ownership is in good faith and not merely fanciful. *Beazley v Allen, 61 F. Supp. 929, 34 A.F.T.R. (P-H) 208 (MD Ga 1945)*.

Unpublished decision: Where taxpayer's single-member limited liability company (LLC) was validly formed under *N.Y. Ltd. Liab. Co. Law § 601*, neither check-the-box regulations, *26 CFR § 301.7701-1* through *301.7701-3*, nor caselaw supported or compelled conclusion that entity should be ignored for Federal gift tax purposes. *Pierre v. Comm'r, 133 T.C. 24, 2009 U.S. Tax Ct. LEXIS 21 (T.C. Aug. 24, 2009)*.

16. —Husband and wife

In reforming partnership, where partners transferred varying interests to their wives, and wives invested no new capital and made no substantial contribution of time or services, wives, although partners under Florida law, could not be considered as such for income tax purposes; after partners had given parts of their fractional interests in plant to their wives, plant was destroyed by fire; partnership having continued its existence after fire, plant was represented by proceeds of insurance, and use thereof in building of new plant could not be considered as independent capital placed therein by wives, and husbands were liable to tax on partnership income. *Simmons v Commissioner, 164 F.2d 220, 36 A.F.T.R. (P-H) 245 (CA5 Ga 1947)*.

Wife and husband may, under certain circumstances, become partners for tax, as for other purposes; if she either invests capital originating with her or substantially contributes to control and management of business, or otherwise performs vital additional services, or does all of these things she may be partner as contemplated by predecessor to *26 USCS §§ 701*, *702*. *Canfield v Commissioner, 168 F.2d 907, 36 A.F.T.R. (P-H) 1140 (CA6 1948)* ; *Rupple v. Kuhl, 81 F. Supp. 318, 37 A.F.T.R. (P-H) 781, 1948-1 U.S. Tax Cas. (CCH) ¶ 9302, 48-1 U.S. Tax Cas. (CCH) ¶9302, 1948 U.S. Dist. LEXIS 1878 (E.D. Wis. 1948)*, aff'd, *177 F.2d 823, 38 A.F.T.R. (P-H) 845, 1949-2 U.S. Tax Cas. (CCH) ¶ 9465, 1949 U.S. App. LEXIS 4293 (7th Cir. 1949)*.

Where husband and wife started used car business by pooling their financial resources in 1933 and both wife and husband contributed services, and thereafter wife handled financial matters and husband managed business, and they held themselves out as partnership, used car business was operated as partnership, since there was bona fide intention of parties to conduct their business as partnership. *Johns v Commissioner, 180 F.2d 469, 39 A.F.T.R. (P-H) 21 (CA5 Fla 1950)*.

Husband and wife were engaged in partnership or joint enterprise where, despite lack of express oral or written agreement with respect to such enterprise, wife contributed $3000 in capital, husband contributed $1000 in capital, both worked in business of dyeing and cleaning, and title to real estate and equipment used in business was held as "joint tenants." *Stoffield v Commissioner, 203 F.2d 667, 43 A.F.T.R. (P-H) 737 (CA7 1953)*.

17. Subsidiary corporations as partners

Partnership agreement between four subsidiaries of same parent to purchase crude oil storage barge and charter it to unrelated corporation was partnership because it was subject to statute corresponding to the Uniform Partnership

Act; also, each of subsidiaries had business reasons for existence independent of barge venture and agreement was not entered into for purpose of avoiding or evading Federal income tax. *Rev Rul 75-19 (1975) 1975-1 CB 382*, obsoleted (1998) *1998-32 I.R.B. 5*.

18. Trusts as partners

Term "partnership" includes both subpartnership and joint venture; however, where partners, who had purportedly created subpartnership with trusts which partners had set up for their children, retained beneficial ownership of trust res, which were percentage interests in partners' holdings in partnership, and trusts did not contribute anything to partnership enterprise, trusts did not constitute partners, subpartners, or joint venturers in partnership enterprise for income tax purposes, even though valid subpartnership or joint venture may have been created under Iowa law; and, therefore, partners were properly taxed on income to such trusts. *Boyt v Commissioner, 209 F.2d 839, 45 A.F.T.R. (P-H) 240 (CA8 1954)*.

Where trustee of two separate trusts and beneficiaries thereof and person required by terms of trust to approve all purchases and sales of securities by trust agreed that 5,000 shares of stock held by trusts should be sold by each trust and that equal division of proceeds of such sales should be made between two trusts and thus neither benefit nor loss would attach to either trust by reason of possibility of variation in price of securities sold at different times, transfer from one trust to other of sum in pursuance to such agreement to equalize variations in amount received by reason of sales at different times was valid for tax purposes since trusts may enter into partnership agreements. *Fidelity Trust Co. v United States, 49 F. Supp. 240, 30 A.F.T.R. (P-H) 1236 (WD Pa 1943)*.

Trust cannot qualify as partner in partnership for income tax purposes. *Hanson v Birmingham, 92 F. Supp. 33, 39 A.F.T.R. (P-H) 904 (ND Iowa 1950)*.

Where stockholders of corporation having maritime contracts set up partnership to handle certain of corporation's contracts on logical grouping and subsequently partners set up irrevocable trusts for wives and children corpus of which were interests in partnership and trusts were admitted to partnership, income derived from contracts assigned to partnership was not income to donors as trusts were "real" and partnership entitled to recognition for income tax purposes. *Drechsler v United States, 161 F. Supp. 319, 1 A.F.T.R.2d (RIA) 1568 (SD NY 1958)*.

III. CORPORATION

A. In General

1. General Considerations

19. Generally

Separate existence of corporation is disregarded where it acts simply as agent; it is not necessary to show evidence of arms length dealing with corporate agent and its principal and payment of agency fee; genuineness of agency relationship is adequately assured and tax avoidance is adequately prevented when fact that corporation is acting as agent for its shareholders with respect to asset is set forth in written agreement at time asset is required, corporation functions as agent and not principal with respect to asset for all purposes, and corporation is held out as agent and not principal in all dealings with third parties. *Commissioner v Bollinger, 485 U.S. 340, 108 S. Ct. 1173, 99 L. Ed. 2d 357, 61 A.F.T.R.2d (RIA) 793 (1988)*.

Separate existence of corporation from commonly owned joint venture is respected where corporation does not act in name of or for account of venture, corporation did not have authority to bind venture, sales by venture to corporation were at fair market value at time of sale, and corporation realized profit that was larger than typical of agency fee. *Bramblett v Commissioner, 960 F.2d 526, 69 A.F.T.R.2d (RIA) 1344 (CA5 1992)*.

26 USCS § 7701 is ambiguous when applied to recently emerging hybrid business entities such as limited liability companies, and Treasury regulations developed to fill in statutory gaps when dealing with such entities are eminently reasonable; thus, "check-the-box" regulations, 26 CFR §§ 301.7701-1 to *301.7701-3*, are valid exercise of agency's authority in that respect, and taxpayer's failure to make election under "check-the-box" provision dictates that his companies be treated as disregarded entities under those regulations, thereby preventing them from being taxed as corporations under Internal Revenue Code. *Littriello v. United States, 484 F.3d 372, 2007 FED App. 0136P, 99 A.F.T.R.2d (RIA) 2007-2210, 2007-1 U.S. Tax Cas. (CCH) ¶50426, 2007 U.S. App. LEXIS 8471 (6th Cir. 2007)*, reh'g denied, *2007 U.S. App. LEXIS 23640 (6th Cir. Sept. 25, 2007)*, cert. denied, *552 U.S. 1186, 128 S. Ct. 1290, 170 L. Ed. 2d 70, 2008 U.S. LEXIS 1263 (2008)*.

Fact that corporation which was formed under local law with issuance of certificate of incorporation failed to receive capital required by its articles before commencing business operations and failed to comply with later formalities, such as issuance of stock and adoption of by-laws, did not affect its legal existence; failures merely gave state right to proceed to forfeit charter. *Betson v. Commissioner, T.C. Memo 1984-264, 48 T.C.M. (CCH) 113, T.C.M. (RIA) ¶84264, 1984 Tax Ct. Memo LEXIS 411 (T.C. May 15, 1984)*, aff'd, *800 F.2d 921, 58 A.F.T.R.2d (RIA) 5870, 1986-2 U.S. Tax Cas. (CCH) ¶ 9712, 1986 U.S. App. LEXIS 31224 (9th Cir. 1986)*.

Entities organized under foreign law will be classified for federal tax purpose on basis of characteristics set forth in regulations under *26 USCS § 7701*, and no foreign organization or entity is classified as association unless it has more corporate then noncorporate characteristics. *Rev Rul 88-8 (1988) 1988-1 CB 403*, obsoleted (1998) *1998-32 I.R.B. 5*.

Entity organized under foreign law is classified for federal tax purposes on basis of characteristics set forth in § 301.7701-2 of Regulations. *Rev Rul 88-8 (1988) 1988-1 CB 403*, obsoleted (1998) *1998-32 I.R.B. 5*.

20. Effect of state law

For purpose of federal taxation Congress is not limited by conception of business enterprises entertained under state laws; and within its powers, Congress may determine for itself what taxes to levy, and how and when they shall fall. *Sherman v Commissioner, 146 F.2d 219, 33 A.F.T.R. (P-H) 365 (CA6 1944)*.

Status of particular entity under state law is not controlling in determining whether it is subject to federal tax. *Poplar Bluff Printing Co. v Commissioner, 149 F.2d 1016, 33 A.F.T.R. (P-H) 1483 (CA8 1945)*.

Once corporation is determined to exist under state law, question of whether corporation should be disregarded for federal tax purposes is question of federal law; for federal tax purposes, entity remains treated as corporation despite suspension of corporate charter by state for failure to comply with state franchise tax act where state statute does not provide for automatic revocation of corporate charters for failure to pay franchise taxes. *United States v Young, 604 F. Supp. 164, 56 A.F.T.R.2d (RIA) 5196 (ND Okla 1984)*.

Cancellation of corporate charter by state for failure to pay franchise taxes does not transform corporation into partnership for income tax purposes. *Eleanore Builders v United States, 826 F. Supp. 1111, 71 A.F.T.R.2d (RIA) 1903, 93 TNT 107-24 (ND Ohio 1993)*.

2. Characteristics of Corporations

21. Generally

Salient features of "corporation" as distinguished from "partnership," for income tax purposes, are title to property held by entity, centralized management, continuity uninterrupted by deaths among the beneficial owners, transfer of interest affecting continuity of enterprise, and limitation of personal liability of participants. *Commissioner v Rector & Davidson, 111 F.2d 332, 24 A.F.T.R. (P-H) 919 (CA5 Tex 1940)*.

Corporation is not disregarded and shareholder is accordingly not entitled to deduct interest on notes of corporation where there are valid business purposes for corporation to be used to facilitate proportional ownership among shareholders, avoid potential liability on part of shareholders, and to avoid potential transaction difficulties resulting from shareholder's history of mental illness. *Munroe v. Commissioner, 1992 U.S. App. LEXIS 6850 (10th Cir. Apr. 9, 1992)*.

Business purpose or business activity are alternate requirements for recognizing validity of corporation, and meeting either one is sufficient. *Rogers v. Commissioner, T.C. Memo 1975-289, 34 T.C.M. (CCH) 1254, T.C.M. (RIA) ¶750289, T.C.M. (RIA) ¶75289, 1975 Tax Ct. Memo LEXIS 85 (T.C. Sept. 17, 1975)*.

22. Existence under state law

Corporation which continues to do business after expiration of its charter is not corporation for federal tax purposes; mere filing of corporate returns is not sufficient to confer corporate status. *F. R. Johnson Products Co. v. Commissioner, T.C. Memo 1982-110, 43 T.C.M. (CCH) 705, T.C.M. (RIA) ¶82110, 1982 Tax Ct. Memo LEXIS 631 (T.C. Mar. 8, 1982)*.

23. Business activity

Although business activity is prerequisite to reorganizing corporations from partnerships, necessary business activity may be minimal. *Britt v United States, 431 F.2d 227, 25 A.F.T.R.2d (RIA) 1212 (CA5 Fla 1970)*.

Although shareholder never formally transferred assets to corporation and no stock was ever issued, separate corporate existence is recognized where corporation executes note, security agreement, and financing statement in order to borrow from bank, corporation files statements and returns with local, state and federal tax authorities, is involved in litigation in corporation name, and orders supplies and operates business using corporate name. *In re Frazier, 82 B.R. 114, 61 A.F.T.R.2d (RIA) 868 (ND Cal 1987)*.

24. Business purpose

"Joint enterprise," taxable as corporation, must be for transaction of business or with respect to carrying on or doing business. *United States v Davidson, 115 F.2d 799, 25 A.F.T.R. (P-H) 1073 (CA6 Mich 1940)*.

Because plaintiff partnership's option transactions were designed to cancel each other out and were merely reported to generate paper losses for partners, they lacked economic substance and were properly adjusted and disallowed on adjusted basis of zero under *I.R.C. §§ 704(d)*, *7701(o)*, and, *I.R.C. § 6662(a)*, (b), (e), (h), accuracy-related penalty applied because figures were misstatements as transactions lacked any economic purpose for partnership other than to generate purported losses to reduce partner's taxes. *Fid. Int'l Currency Advisor Fund, LLC v United States, 661 F.3d 667, 108 A.F.T.R.2d (RIA) 6869 (CA1 Mass 2011)*.

Corporation does not meet business purpose test and is therefore properly disregarded, where corporate charter was obtained by individual for his motel so that he could protect its tradename, but motel assets were not transferred to corporation, corporation had no stock, officers, or directors, and no leases or other contracts

regarding motel were granted to or by corporation. *In re Barry, 48 B.R. 600, 56 A.F.T.R.2d (RIA) 5169 (BC MD Tenn 1985)*.

Where individual created corporation for purpose of avoiding taxes, corporation was viable; test is not personal purpose of taxpayer in creating corporation, but rather, whether purpose is intended to be accomplished through corporation carrying out substantive business functions; if purpose of corporation is to carry out substantive business functions, or if it in fact engages in substantive business activity, it will not be disregarded for federal tax purposes. *Bass v. Commissioner, 50 T.C. 595, 30 Oil & Gas Rep. 421, 1968 U.S. Tax Ct. LEXIS 98 (T.C. July 22, 1968)*.

Relief from personal liability on sizeable financial obligations together with long-range plans of future stock acquisitions by corporation is not overwhelmingly convincing of required business purpose; however, when coupled with desire of individual organizers for continuity in operation of insurance business, making of financial commitments replacing those of individual organizers, and making of regular payments in satisfying those obligations, there could be no doubt that corporation was not sham or mere “dummy” corporation. *American Sav. Bank v. Commissioner, 56 T.C. 828, 1971 U.S. Tax Ct. LEXIS 96 (T.C. July 20, 1971)*, acq., 1972-2 C.B. 1 (I.R.S. 1972), acq., 1972-2 C.B. 2 (I.R.S. 1972).

Four corporations formed by taxpayers in which they had same stock interest as they did in another corporation were sham corporations since these four corporations were engaged in same operations in same area as taxpayers' other corporation and four corporations had no business purpose apart from their other corporation. *Greenberg v. Commissioner, 36 A.F.T.R.2d (RIA) 5479, 1975-2 U.S. Tax Cas. (CCH) ¶ 9624, 75-2 U.S. Tax Cas. (CCH) ¶9624, 1975 U.S. App. LEXIS 13447 (4th Cir. July 28, 1975)*.

Corporation met business purpose test where it was formed in order to limit liability of taxpayer-principal stockholder, was recognized under local law, regularly paid wages to employees, filed payroll tax returns, maintained bank account in corporate name, and was specifically referred to in financial statements filed with taxpayer’s personal income tax return. *Kessler v. Commissioner, T.C. Memo 1977-117, 36 T.C.M. (CCH) 514, T.C.M. (RIA) ¶770117, T.C.M. (RIA) ¶77117, 1977 Tax Ct. Memo LEXIS 323 (T.C. Apr. 25, 1977)*.

Service corporation which holds title to tangible assets of professional corporation is recognized for tax purposes despite IRS claim that corporation had no business purpose other then to divert income expenses from professional corporation where service corporation served business purpose of providing wife of professional with ownership interest in his professional practice, and wife, as nonprofessional, was prohibited by state law from owning direct interest in professional corporation. *Plante v. Commissioner, T.C. Memo 1987-355, 53 T.C.M. (CCH) 1390, T.C.M. (RIA) ¶87355, 1987 Tax Ct. Memo LEXIS 356 (T.C. July 21, 1987)*.

Controlling shareholder’s personal estate planning purposes constitute valid business purpose supporting recognition of entity as corporation. *Sparks Farm, Inc. v. Commissioner, T.C. Memo 1988-492, 56 T.C.M. (CCH) 464, T.C.M. (RIA) ¶88492, 1988 Tax Ct. Memo LEXIS 518 (T.C. Oct. 12, 1988)*.

25. —Avoidance of state usury limitations

Corporate nominee and titleholder of real estate is disregarded, and accordingly partnership which holds all the corporate stock is treated as entitled to depreciation deductions where corporation functions as true agent of partnership in that corporate form is used to avoid usury ceilings; genuineness of agency relationship is adequately assured and tax avoidance manipulation adequately prevented where agency status of corporation is set forth in written agreement at time asset is acquired, corporation functions as agent and not principal with respect to asset for all purposes, and corporation is held out as agent in all dealings with third parties relating to asset. *Commissioner v Bollinger, 485 U.S. 340, 108 S. Ct. 1173, 99 L. Ed. 2d 357, 61 A.F.T.R.2d (RIA) 793 (1988)*.

Corporation formed by tenants-in-common of unimproved land for sole purpose of securing construction loan at interest rate which would have been usurious had loan been made to cotenants individually was not disregarded

even though it existed as little more than name; it was business necessity that performed function intended of it until loan was paid off. *Collins v United States, 386 F. Supp. 17, 35 A.F.T.R.2d (RIA) 496 (SD Ga 1974)*.

Corporate entity was not disregarded since substantial business activities were conducted where debtor-corporation was formed to allow creditor to take advantage of higher interest rates chargeable to corporations under state law and debtor used loan proceeds to buy plane which it leased. *Evans v. Commissioner, T.C. Memo 1974-267, 33 T.C.M. (CCH) 1192, T.C.M. (RIA) ¶740267, T.C.M. (RIA) ¶74267, 1974 Tax Ct. Memo LEXIS 52 (T.C. Oct. 15, 1974)*, acq., Action on Decision (I.R.S. Sept. 26, 1975), aff'd, *557 F.2d 1095, 40 A.F.T.R.2d (RIA) 5602, 1977-2 U.S. Tax Cas. (CCH) ¶ 9596, 1977 U.S. App. LEXIS 11949 (5th Cir. 1977)*.

Corporation will not be disregarded for tax purposes where corporation was used by partnership to avoid usury laws, and partners transferred land to inactive corporation they controlled and had corporation borrow construction funds and as buildings were completed, leases were executed showing partnership as landlord; although partnership received rent and paid expenses, rents were not income to it and excess of payments from its own funds, if any, over rents constituted contribution to capital of corporation. *Ogiony v. Commissioner, T.C. Memo 1979-32, 38 T.C.M. (CCH) 125, T.C.M. (RIA) ¶79032, 1979 Tax Ct. Memo LEXIS 495 (T.C. Jan. 23, 1979)*, aff'd, *617 F.2d 14, 45 A.F.T.R.2d (RIA) 884, 1980-1 U.S. Tax Cas. (CCH) ¶ 9265, 1980 U.S. App. LEXIS 20233 (2d Cir. 1980)*.

Business purpose or business activity are alternate requirements for recognizing validity of corporation and meeting either one is sufficient; corporation formed by taxpayer solely for purpose of getting loan at interest rate which would be usurious had it been made to him individually was valid corporation since it served business purpose of obtaining funds to reloan to brother corporation; corporation also engaged in business activity, small as it was, of obtaining and renegotiating loans, lending money, maintaining bank accounts, filing reports, and paying state franchise taxes. *Rogers v. Commissioner, T.C. Memo 1975-289, 34 T.C.M. (CCH) 1254, T.C.M. (RIA) ¶750289, T.C.M. (RIA) ¶75289, 1975 Tax Ct. Memo LEXIS 85 (T.C. Sept. 17, 1975)*.

Corporation formed solely for purpose of avoiding New York usury laws, which issues no stock, holds no directors' meetings, has no bank accounts and keeps no books or records must nevertheless be treated as corporation for tax purposes. *Sarkisian v. Commissioner, T.C. Memo 1982-199, 43 T.C.M. (CCH) 1074, T.C.M. (RIA) ¶82199, 1982 Tax Ct. Memo LEXIS 549 (T.C. Apr. 14, 1982)*.

Corporation formed to purchase helicopter and to finance it without regard to state usury laws is not treated as mere corporate agent where there was no written agreement establishing agency relationship, none of documents regarding acquisition of helicopter contained any indication that corporation was acting as agent, corporation maintained its own bank accounts recording receipts, deposits, payments, and expenses associated with asset, and borrowed money, held property, and mortgaged property in its own name. *Greenberg v. Commissioner, T.C. Memo 1989-12, 56 T.C.M. (CCH) 1030, T.C.M. (RIA) ¶89012, 1989 Tax Ct. Memo LEXIS 12 (T.C. Jan. 10, 1989)*.

26. Limitation of liability

Limitation of beneficiary's liability is not sina qua non of corporate analogy. *Helm & Smith Syndicate v Commissioner, 136 F.2d 440, 31 A.F.T.R. (P-H) 177 (CA9 1943)*.

27. Continuity of life

For all of relevant periods, Japanese organization exhibited at least three (and after 1992, all four) of attributes of corporation identified in Kintner regulations, including: centralized management, limited liability, modified form free transferability of interests, and continuity of life, and thus, organization more closely resembled corporation than partnership, and was therefore properly taxed as corporation during years at issue. *Yamagata v United States, 114 Fed. Cl. 159, 113 A.F.T.R.2d (RIA) 415 (2014)*.

Limited partnerships formed under California Uniform Limited Partnership Act, as amended by § 15520.5, on October 1, 1973, and those formed before amendment which elect to be governed by amendment, are not taxed as corporations, because they will lack “continuity of life” from date they were formed (if under amended act), or date they elected, if formed before amendment; this lack will continue as long as amendment remains effective (until December 31, 1975). *1974-2 C.B. 404, Rev. Rul. 74-320 (1974)*.

28. Observance of corporate formalities

Corporate entity was not disregarded so that owners could take loss deduction on their own returns for unsuccessful venture even though corporation was never capitalized or managed according to its charter, but rather was run and financed by partnership in name of corporation, since corporation was not sham or dummy corporation where partnership to engage in farming in Mexico without violating Mexican law had to organize Mexican corporation and use its name in carrying on farming operations; corporation was viable and commercially active operation giving its owners complete protection from personal liability, leasing land on which it conducted farming operations, receiving and paying out funds, contracting for goods and services, buying machinery, creating line of credit, negotiating loans, and being sued in Mexican courts. *Elot H. Raffety Farms, Inc. v United States, 511 F.2d 1234, 35 A.F.T.R.2d (RIA) 811 (CA8 Mo 1975)*.

Corporate entity was not recognized since corporation was formed only to spread income and create another surtax exemption where its sole income was commissions on sales of real estate for corporation controlled by its principal shareholder and actual selling activities were performed by shareholder; formal corporate records (e.g., books, bank account, payment of rent) were disregarded. *Harbour Properties, Inc. v. Commissioner, T.C. Memo 1973-134, 32 T.C.M. (CCH) 580, T.C.M. (RIA) ¶73134, 1973 Tax Ct. Memo LEXIS 149 (T.C. June 25, 1973)*.

Corporation formed by two labor lawyers and another person who was not attorney for purpose of representing management in labor matters in which corporation’s clients could be represented by non-lawyer was recognized; corporation, which did not engage in practice of law, used law firm’s premises and facilities but paid fair rent for such use; it observed all formalities of corporation including separate stationery, records, accounts, and payment of dividends; corporate income was produced from services performed by corporate employees even though law firm represented some of corporation’s clients. *Gettler v. Commissioner, T.C. Memo 1975-87, 34 T.C.M. (CCH) 442, T.C.M. (RIA) ¶750087, T.C.M. (RIA) ¶75087, 1975 Tax Ct. Memo LEXIS 288 (T.C. Mar. 31, 1975)*, acq., Action on Decision (I.R.S. July 17, 1975).

Wholly owned corporation which took title to taxpayer’s rental properties, operated properties, kept books and records for them and had its own bank account must be treated as corporation for tax purposes despite fact that in some sense it served as agent of taxpayer who formed it. *Blair v. Commissioner, T.C. Memo 1981-634, 42 T.C.M. (CCH) 1576, T.C.M. (RIA) ¶81634, 1981 Tax Ct. Memo LEXIS 112 (T.C. Oct. 27, 1981)*.

Corporation is recognized for tax purposes despite fact that no stockholders’ meetings have been held, corporate assets were intermingled with those of taxpayers, and taxpayers never notified business creditors about incorporation or kept corporate minutes where necessary incorporation papers were filed with state court, business filed corporate tax returns, issued W-2 forms showing taxpayers were corporate employees and taxpayer signed contracts for corporation as officers and guaranteed its debts as shareholders. *Reid v. Commissioner, T.C. Memo 1981-677, 42 T.C.M. (CCH) 1741, T.C.M. (RIA) ¶81677, 1981 Tax Ct. Memo LEXIS 68 (T.C. Nov. 24, 1981)*.

3. Particular Organizations

29. Professional service corporation

Corporation organized under state corporation code to carry on practice of law was entitled to be treated as corporation for purposes of federal income tax. *United States v Empey, 406 F.2d 157, 23 A.F.T.R.2d (RIA) 425 (CA10 Colo 1969)*.

Professional business organization which is corporation under state law is corporation for federal tax purposes within meaning of *26 USCS § 7701*. *O'Neill v United States, 410 F.2d 888, 22 Ohio Misc. 212, 23 A.F.T.R.2d (RIA) 1247 (CA6 Ohio 1969)*.

Preclusion of professional service corporations from corporate status is wholly arbitrary and discriminatory. *Kurzner v United States, 413 F.2d 97, 23 A.F.T.R.2d (RIA) 1482 (CA5 Fla 1969)*.

Where professional service organization is organized and operated as corporation, it is considered corporation for federal income tax purposes, and detailed classification criteria in regulations under *26 USCS § 7701* need not be applied to determine its classification. *1977-1 C.B. 409, Rev. Rul. 77-31 (1977)*.

30. Joint stock company

Unincorporated joint stock associations are taxed as corporations and not partnerships. *Burk-Waggoner Oil Ass'n v Hopkins, 269 U.S. 110, 46 S. Ct. 48, 70 L. Ed. 183, 5 A.F.T.R. (P-H) 5663 (1925)*.

Joint-stock associations are classified as corporations for purpose of determining profits, allowing deductions and assessing taxes, and it is immaterial that such companies are classed as partnerships under state law. *Johnson v. Commissioner, 56 F.2d 58, 10 A.F.T.R. (P-H) 1264, 1932 U.S. Tax Cas. (CCH) ¶9098, 1932 U.S. App. LEXIS 2702 (5th Cir.)*, cert. denied, *286 U.S. 551, 52 S. Ct. 502, 76 L. Ed. 1287, 1932 U.S. LEXIS 707 (1932)*.

Joint-stock company or partnership conducting its business after form and manner of corporation may be taxed as association regardless of its status under laws of state in which it operates but fact that group of persons unite in business does not necessarily mean they must be taxed as association. *Commissioner v. Brouillard, 70 F.2d 154, 13 A.F.T.R. (P-H) 939, 1934 U.S. Tax Cas. (CCH) ¶9219, 1934 U.S. App. LEXIS 4089 (10th Cir.)*, cert. denied, *293 U.S. 574, 55 S. Ct. 85, 79 L. Ed. 672, 1934 U.S. LEXIS 224 (1934)*.

31. Insurance company

Manufacturers' and tradesmen's society, specially incorporated without stock, for mutual insurance of its members on assessment plan without profit, was insurance company. *Jewelers' Safety Fund Soc. v. Lowe, 274 F. 93, 2 A.F.T.R. (P-H) 1455, 1921 U.S. App. LEXIS 1315 (2d Cir. 1921)*.

32. Corporate shells and alter egos

Separate existence of corporation is disregarded where it acts simply as agent; it is not necessary to show evidence of arms length dealing with corporate agent and its principal and payment of agency fee; genuineness of agency relationship is adequately assured and tax avoidance is adequately prevented when fact that corporation is acting as agent for its shareholders with respect to asset is set forth in written agreement at time asset is required, corporation functions as agent and not principal with respect to asset for all purposes, and corporation is held out as agent and not principal in all dealings with third parties. *Commissioner v Bollinger, 485 U.S. 340, 108 S. Ct. 1173, 99 L. Ed. 2d 357, 61 A.F.T.R.2d (RIA) 793 (1988)*.

Taxpayer may not ignore corporate entity for tax advantage where Subchapter S corporation had losses which reduced basis of stock of sole shareholder to zero; argument of shareholder that because of recurring operating losses, his salary (more than twice net operating loss) should be disregarded in determining taxable income of

shareholder and of corporation, is invalid; avoidance of double tax is to be accomplished in specified manner which does not involve ignoring corporate entity, notwithstanding argument that business was more like sole proprietorship than corporation. *Byrne v Commissioner, 361 F.2d 939, 17 A.F.T.R.2d (RIA) 1272 (CA7 1966)*.

Corporation acting as nominee is treated as agent where there is written agency agreement, corporation functions as agent with respect to asset for all purposes, and corporation is held out as agent in all dealings with third parties relating to assets; arms-length relationship between corporate agent and shareholder principal is not required. *George v. Commissioner, 844 F.2d 225, 61 A.F.T.R.2d (RIA) 1988-1151, 61 A.F.T.R.2d (RIA) 88-1151, 1988-1 U.S. Tax Cas. (CCH) ¶ 9329, 88-1 U.S. Tax Cas. (CCH) ¶9329, 1988 U.S. App. LEXIS 5977 (5th Cir. 1988)*.

Corporation formed to operate dairy farm business is properly ignored for tax purposes where no assets were transferred to it, and it did not hold itself out as operating dairy; while corporate tax return was filed, this did not establish what persons or entities conducted dairy farm operation. *Bystry v United States, 596 F. Supp. 574, 54 A.F.T.R.2d (RIA) 6362 (WD Wis 1984)*.

It is appropriate for IRS to look to taxpayer's personal assets to satisfy tax liability of corporation which, along with proprietorship, is operated as single instrumentality under taxpayer's sole control, where taxpayer is sole shareholder and president of corporation, and where corporation's banking transactions are done through proprietorship, it has no separate offices or telephone, its employees are paid by proprietorship, and its purchases are paid for by proprietorship. *Wolfe v United States, 612 F. Supp. 605, 56 A.F.T.R.2d (RIA) 5226 (DC Mont 1985)*.

Separate corporate identity of parent and subsidiary corporations was disregarded where: subsidiary, which had unused NOL from prior business, merely took orders and turned them over to parent manufacturer of sheet metal products; subsidiary was mere corporate shell, even though it took orders and issued invoices; parent, alone, had necessary personnel and assets to earn income. *Griffin & Co. v United States, 389 F.2d 802, 182 Ct. Cl. 436, 21 A.F.T.R.2d (RIA) 460 (1968)*.

Stockholders, and not corporation, are properly deemed owners of property for tax purposes, where corporation purchased realty but subsequently conveyed land to stockholders through unrecorded quitclaim deed, applicable state law did not require deed to be recorded, stockholders' course of conduct with respect to land indicated intention to pass title, each stockholder was liable on property's mortgage note, all income of property was deposited into joint account of stockholders which was used to pay realty-related expenses, and corporation performed no managerial or other routine activities with respect to property. *Milbrew, Inc. v. Commissioner, T.C. Memo 1984-573, 48 T.C.M. (CCH) 1485, T.C.M. (RIA) ¶84573, 1984 Tax Ct. Memo LEXIS 101 (T.C. Oct. 29, 1984)*.

Corporation, and not shareholder, is taxable on gain from sale from rental property, notwithstanding shareholder's contention that he transferred property to corporation only to shield it from claim of potential creditor, where corporation has been existence for 30 years, reports rental income on its income tax return which states that it is engaged in business of renting real estate, has corporate officers, maintains checking account, and employs accountants to keep financial records and prepare its Federal income tax returns; rents paid directly to shareholder following transfer are likewise taxable to corporation. *Paoli v. Commissioner, T.C. Memo 1985-196, 49 T.C.M. (CCH) 1292, T.C.M. (RIA) ¶85196, 1985 Tax Ct. Memo LEXIS 437 (T.C. Apr. 23, 1985)*.

Corporation ostensibly established to carry on consulting and business promotion by second corporation through its president lacks economic substance and is sham corporation where corporation did not pay salaries or compensation, had no employees, had same address as second corporation, had no telephone listing, was unknown to its president's business associates and personal friends, had identical client name and billing accounts and was according found to have been established as means to funnel second corporation's income to taxpayer who was president of both corporations. *Visnapuu v. Commissioner, T.C. Memo 1987-354, 53 T.C.M. (CCH) 1381, T.C.M. (RIA) ¶87354, 1987 Tax Ct. Memo LEXIS 354 (T.C. July 21, 1987)*.

Firm which had filed articles of incorporation constitutes corporation for federal income tax purposes even though it fails to comply with corporate formalities such as issuing stock and holding directors meetings; accordingly, founder of corporation is not entitled to treat it as proprietorship and deduct its expenses on his personal return. *Whitaker v. Commissioner, T.C. Memo 1988-418, 56 T.C.M. (CCH) 47, T.C.M. (RIA) ¶88418, 1988 Tax Ct. Memo LEXIS 446 (T.C. Sept. 6, 1988)*.

33. Political organizations

Political committees and parties are generally treated as corporations for tax purposes and required to file return on Form 1120. *Rev Rul 74-21 (1974) 1974-1 CB 14*, mod, clarified (1974) *1974-2 C.B. 22* ; *1973-1 C.B. 429, Rev. Rul. 73-84 (1973)*.

34. Others

Corporation organized to comply with foreign law requirement that actual operations be conducted by domestic corporation is not disregarded even though shareholder actively participated in managing mining operations undertaken by corporation and corporation merely served as agent in order to satisfy requirements of local law. *Cannon v. Commissioner, T.C. Memo 1990-148, 59 T.C.M. (CCH) 164, T.C.M. (RIA) ¶90148, 1990 Tax Ct. Memo LEXIS 172 (T.C. Mar. 20, 1990)*, aff'd, *949 F.2d 345, 68 A.F.T.R.2d (RIA) 91-5845, 1991-2 U.S. Tax Cas. (CCH) ¶ 50559, 1991 U.S. App. LEXIS 26988 (10th Cir. 1991)*.

Taxpayers, non-profit health care entities, were not entitled to higher interest rate applicable to tax refunds for non-corporations under I.R.C. § 6621(a) because entities were incorporated under state law and were thus "corporations" for purposes of § 6621(a)(1); statutory definition of "corporation" under this section did not exclude taxpayers from being "corporations" and, in absence of express statutory definition to contrary, it could be assumed that Congress adopted customary meaning of term, which would include non-profit corporations. *Charleston Area Med. Ctr., Inc. v. United States, 940 F.3d 1362, 2019 U.S. App. LEXIS 30894 (Fed. Cir. 2019)*.

Loan made for purchase of stock in cooperative housing corporation, and secured by such stock, qualifies as loan described in *26 USCS § 7701(a)(19)(C)(v)* if house or apartment that stock entitles stockholder to occupy is to be used as residence. *1989-1 C.B. 83, Rev. Rul. 89-56 (1989)*, 101 Oil & Gas Rep. 668.

Gesellschaft mit berschrankter Haftung (GmbH) owned by two wholly-owned domestic subs of domestic corporate parent is taxable as corporation even though GmbH's memorandum of association provides that GmbH be dissolved by death, insanity or bankruptcy of quota holder, and quotas are transferable only with prior written approval of all quota holders; where only one shareholder, domestic parent, could alone effectively control either GmbH's continuity of life or transferability of its quotas, two limitations in memorandum of association do not realistically limit or destroy these corporate characteristics. *Rev Rul 77-214 (1977) 1977-1 CB 408*, mod, superseded (1993) *1993-1 CB 225*, obsoleted (1998) *1998-32 I.R.B. 5*.

Corporations and trusts that ran and financed parent's motor vehicle fleet leasing business were held to be domestic eligible entities that were disregarded with activities and assets being treated as belonging to parent, who also won ruling that motor vehicle lease agreements were qualified motor vehicle operating agreements per *IRC § 7701(h)(2)*. Private Letter Ruling 200744004, *2007 PLR LEXIS 1654*.

B. Associations

1. In General

35. Generally

Term “association” embraces business trusts, but not pure trusts. *Pennsylvania Co. for Ins. etc. v United States, 138 F.2d 869, 31 A.F.T.R. (P-H) 853 (CA3 Pa 1943)* ; *Pennsylvania Co. etc. v United States, 146 F.2d 392, 33 A.F.T.R. (P-H) 391 (CA3 Pa 1944)* ; *Commissioner v United States & Foreign Sec. Corp., 148 F.2d 743, 33 A.F.T.R. (P-H) 1168 (CA3 1945)*.

Statutory definition of “corporation” as inclusive of association applies to entire Revenue Act. *Sherman v Commissioner, 146 F.2d 219, 33 A.F.T.R. (P-H) 365 (CA6 1944)*.

Inclusion of associations with corporations for tax purposes implies resemblance and not identity. *Titus v United States, 150 F.2d 508, 34 A.F.T.R. (P-H) 38 (CA10 Okla 1945)*.

Whether enterprise was association of individuals for purpose of carrying on business or whether they were joint venturers and tenants in common of real property with common agent for sale thereof is question which must be decided according to particular facts of case, and more particularly, pursuant to agreement executed by parties. *Bloomfield Ranch v Commissioner, 167 F.2d 586, 36 A.F.T.R. (P-H) 959 (CA9 1948)*.

Obvious reason for including association in category of corporation for income and capital stock taxation is to impose fair share of whole burden of taxation upon business organizations or associations which, although not operating under corporate form, nevertheless are engaged in making or creating profits in much same way that corporations carry on business activities. *Equitable Trust Co. v Magruder, 37 F. Supp. 711, 26 A.F.T.R. (P-H) 853 (DC Md 1941)*.

36. Congressional intent

When treasury regulations promulgated under Revenue Act of 1934 which indicate that word “associations,” as applied to enterprises taxable as corporations, includes any organization created for transaction of business, are not dissimilar to those published under Revenue Act of 1924, it must be presumed that Congress in making use of word “associations” viewed with approval pertinent regulations published under 1924 Act. *Marshall's Heirs v Commissioner, 111 F.2d 935, 25 A.F.T.R. (P-H) 7 (CA3 1940)*.

It is not every instance of one or more persons associating themselves together for purpose of engaging in business for profit that Congress intended to tax as corporation. *Commissioner v Gibbs-Preyer Trusts Nos. 1 & 2, 117 F.2d 619, 26 A.F.T.R. (P-H) 453 (CA6 1941)*.

37. State law

Instrument under which persons were engaged showed that their relationship was “association,” not copartnership, though it might have been considered partnership for many purposes under state law or common law as construed by federal courts. *Wholesalers Adjustment Co. v Commissioner, 88 F.2d 156, 19 A.F.T.R. (P-H) 96 (CA8 1937)*.

38. Intent of parties

Controlling question in determining whether association is taxable or not is not its similarity to corporate organizations but its purpose. *Helvering v Washburn, 99 F.2d 478, 21 A.F.T.R. (P-H) 1140 (CA8 1938)*.

2. Characteristics of Association

39. Generally

Characteristics of "association" are that it is made up of persons associating together in joint enterprise for transaction of business under terms which give to arrangement resemblance to corporate organization, with centralized management, continuity of interests, transferability of interests, and limitations of liability. *Wellston Hills Syndicate Fund v Commissioner, 101 F.2d 924, 22 A.F.T.R. (P-H) 606 (CA8 1939)*.

Test of "association" within revenue statutes is not to be found in mere formal evidence of interests or any particular method of transfer, but it is character of activity at time tax liability is asserted that controls. *Nashville Trust Co. v Cotros, 120 F.2d 157, 27 A.F.T.R. (P-H) 393 (CA6 Tenn 1941)*.

Where question was whether or not groups of assignees of oil leases were associations within predecessor to *26 USCS § 7701*, and subject to income tax as corporations, contracts by which parties endeavored to exclude any relationship of partnership and to fix status of operation as venture by tenants in common of leasehold estate could not control status. *Commissioner v Fortney Oil Co., 125 F.2d 995, 28 A.F.T.R. (P-H) 1207 (CA6 1942)*.

Fact that petitioner had no office, telephone, or office furniture, and had no seal and held no meetings as corporations ordinarily do, does not establish that it was not "association" taxable as corporation. *Keating-Snyder Trust v Commissioner, 126 F.2d 860, 28 A.F.T.R. (P-H) 1529 (CA5 Tex 1942)*.

It is impossible to translate statutory concept of "association" into particularity of detail that would fix status of every sort of enterprise or organization which ingenuity may create; absence of one or more of indicia which have been held to determine that certain status is that of "association" within meaning of revenue acts does not determine that particular enterprise is not such "association"; in last analysis question in any instance is as to scope of legislative intent. *Pennsylvania Co. for Ins. etc. v United States, 138 F.2d 869, 31 A.F.T.R. (P-H) 853 (CA3 Pa 1943)*.

Salient features of association subject to tax on same basis as that of corporations are, in general, undertaking for promotion of business purpose, continuity throughout trust period, centralized management and control, noninterruption by death of owners of beneficial interests, means of transfer of beneficial interests, and limitation of personal liability of participants to property embarked in enterprise; but these indices are not unyielding rule of thumb, and each case must be decided by references to its own peculiar facts, particularly whether undertaking bears fair resemblance to corporations. *Fletcher v Clark, 150 F.2d 239, 33 A.F.T.R. (P-H) 1520 (CA10 Wyo 1945)*.

40. Joint enterprise or obligation

To constitute association it is necessary not only that there be associates, but also that associates enter into joint enterprise for transaction of business. *Kilgallon v Commissioner, 96 F.2d 337, 21 A.F.T.R. (P-H) 110 (CA7 1938)*.

"Association," taxable as corporation, implies associates and entering into joint obligation. *United States v Davidson, 115 F.2d 799, 25 A.F.T.R. (P-H) 1073 (CA6 Mich 1940)*.

41. Income or profit

Where husband and wife, owners of liquor company, who assembled capital therefor, contracted with third party to operate business on percentage basis, it was association for profit in conduct of business in which neither of contributors to capital performed any personal service, and income from business growing out of use of assembled capital by third party, such third party became liable for tax or liability accrued against association behaving as corporation. *Herman v United States, 81 F. Supp. 963, 37 A.F.T.R. (P-H) 1025 (WD Mo 1949)*.

42. Corporate organization

Use of corporate forms may furnish evidence of existence of association taxable as corporation, but this is not conclusive test. *United States v Davidson, 115 F.2d 799, 25 A.F.T.R. (P-H) 1073 (CA6 Mich 1940)*.

Where associates in copartnership so organize themselves that no representative action may normally be taken except by elected officials, association has taken on qualities of corporation, as distinguished from copartnership. *Poplar Bluff Printing Co. v Commissioner, 149 F.2d 1016, 33 A.F.T.R. (P-H) 1483 (CA8 1945)*.

43. Formal organization under statute

Term “association” embraces associations as they existed at common law and does not require organization under statute or with statutory privileges. *Commissioner v Gibbs-Preyer Trusts Nos. 1 & 2, 117 F.2d 619, 26 A.F.T.R. (P-H) 453 (CA6 1941)*.

Although corporation’s charter had expired and no extension of charter had ever been granted, entity carrying corporate name was in fact association taxable as corporation; fact that state law provided for neither de facto nor de jure existence of corporation had no significance. *Coast Carton Co. v Commissioner, 149 F.2d 739, 33 A.F.T.R. (P-H) 1468 (CA9 1945)*.

44. Immunity from personal liability

Absolute immunity from personal liability is not necessary prerequisite to existence of association. *Poplar Bluff Printing Co. v Commissioner, 149 F.2d 1016, 33 A.F.T.R. (P-H) 1483 (CA8 1945)*.

3. Particular Organizations Recognized as Associations

45. Employees' organizations

Employees’ saving and profit sharing fund was not “trust,” but taxable as “association.” *Sears, Roebuck & Co. Employees' Sav. & Profit-Sharing Pension Fund v Commissioner, 45 F.2d 506, 9 A.F.T.R. (P-H) 651 (CA7 1930)*.

Unincorporated employees association for exclusive benefit of employees of title and trust company, which association invested its funds principally in real estate, including real estate development, was not exempt from taxation as mutual savings bank, but neither was it association taxable as corporation. *Guaranty Employees Asso. v United States, 241 F.2d 565, 50 A.F.T.R. (P-H) 1701 (CA5 Tex 1957)*.

Association formed by employees of corporation to provide investment fund for mutual benefit of employees contributing thereto was not taxable as association. *A-C Inv. Ass'n v Helvering, 68 F.2d 386, 62 App. D.C. 339, 13 A.F.T.R. (P-H) 507 (App DC 1933)*.

46. Oil and gas producing organizations

Oil syndicate organized under declaration of trust is treated as corporation for tax purposes. *Helvering v Twin Bell Oil Syndicate, 293 U.S. 312, 55 S. Ct. 174, 79 L. Ed. 383, 14 A.F.T.R. (P-H) 712 (1934)*.

Oil and gas syndicate was association taxable as corporation, and not as trust. *Commissioner v. Duckwitz, 68 F.2d 629, 13 A.F.T.R. (P-H) 557, 1934 U.S. Tax Cas. (CCH) ¶9083, 1934 U.S. App. LEXIS 4925 (7th Cir. 1934)*.

Oil well operated by lessor under agreement whereby persons held units entitling them to portion of profits and imposing upon them proportion of expenses, is association taxable as corporation. *Commissioner v Gerard, 75 F.2d 542, 15 A.F.T.R. (P-H) 243 (CA9 1935)*.

Where rights and liabilities of assignees under assignment contracts of oil leases were for all practicable purposes same as if assignees had formed association or corporation to hold and operate leases, they were association within predecessor to *26 USCS § 7701*, and therefore were subject to income tax as corporation, although no formal certificates of ownership were issued and under state law organizations are not legal entities and do not hold title to property. *Commissioner v Fortney Oil Co., 125 F.2d 995, 28 A.F.T.R. (P-H) 1207 (CA6 1942)*.

Unincorporated association, formed to operate oil and gas leases, where medium chosen for carrying on enterprise resembled corporation in its organization, in that articles of agreement secured central management, title to property embarked in undertaking, as to lease, was vested in individual with provision for his succession, and, as to equipment, in board of managers with provision for their succession, there was security from termination of enterprise by reason of death of any beneficial owner, and provision was made for facility of transfer of beneficial interests without affecting continuity of enterprise and for limitation of liability of subscribers, is taxable as corporation although no formal certificates of ownership were issued to subscribers. *Wabash Oil & Gas Ass'n v Commissioner, 160 F.2d 658, 35 A.F.T.R. (P-H) 1018 (CA1 1947)*.

Business arrangement formed by seventy individuals owning undivided shares of their interest under oil and gas leases, with management conferred by their powers of attorney upon several individuals, was taxable as corporation. *United States v Stierwalt, 287 F.2d 855, 7 A.F.T.R.2d (RIA) 1013, 14 Oil & Gas Rep. 175 (CA10 Wyo 1961)*.

Agreed business arrangement for production and marketing of natural gas from well, in which number of persons held fractional working interests, was such as to make enterprise association taxable as corporation. *John Province #1 Well v Commissioner, 321 F.2d 840, 12 A.F.T.R.2d (RIA) 5059, 18 Oil & Gas Rep. 1101 (CA3 1963)*.

47. Miscellaneous

“Association” includes voluntary unincorporated charitable association. *Bok v McCaughn, 42 F.2d 616, 8 A.F.T.R. (P-H) 11205 (CA3 Pa 1930)*.

A Lloyd’s agency existing under Texas law is association. *Harris v. United States, 51 F.2d 382, 10 A.F.T.R. (P-H) 245, 1931 U.S. Dist. LEXIS 1507 (S.D. Tex. 1931)*.

Clinic is taxable as association. *Pelton v Commissioner, 82 F.2d 473, 17 A.F.T.R. (P-H) 660 (CA7 1936)*.

Where corporation was not organized to wind up affairs of corporation but to carry on that business, which it did without any apparent substantial change from prior corporate organization, it was taxable as association. *Poplar Bluff Printing Co. v Commissioner, 149 F.2d 1016, 33 A.F.T.R. (P-H) 1483 (CA8 1945)*.

When bondholders’ protective committee purchased and operated property by which bonds were secured, it became taxable as association, and not as liquidating trust. *Jackson v United States, 25 F. Supp. 613, 22 A.F.T.R. (P-H) 216 (SD Cal 1938)*.

Venture organized by taxpayer and 40 other persons for purpose of holding title to realty and engaging primarily in farming in Georgia and fresh produce marketing on eastern seaboard, is association taxable as a corporation under *26 USCS § 7701(a)(3)*, where it has following characteristics: 1. Associates; 2. Objective to carry on business and divide gains therefrom; 3. Continuity of life; 4. Centralization of management; 5. Liability for corporate debts limited to corporate property; and 6. Free transferability of interests; 7. It was authorized and able to acquire, sell, exchange and otherwise deal in real and personal property as a corporation would do; and 8. Trust was promoted

by prospectus prepared by securities firm which is method often used by corporations to obtain initial capital. *Outlaw v United States, 494 F.2d 1376, 204 Ct. Cl. 152, 33 A.F.T.R.2d (RIA) 1111 (1974)*.

Group of persons associated together for purpose of speculating in stock of corporation was association within meaning of predecessor to *26 USCS § 7701*, where there was absent mutual agency of partnership, and there was present advantages of centralized control, continuity of existence as organization, and transferability of durable shares of beneficial interest—all characteristics of corporate organization. *Bert v Helvering, 92 F.2d 491, 67 App. D.C. 340, 20 A.F.T.R. (P-H) 271 (App DC 1937)*.

Partnership formed under uniform limited partnership law as enacted in one of U.S. states, and which was engaged in manufacture and sale of machinery in U.S., was classified as association taxable as corporation because of preponderance of corporate characteristics where sole general partner was U.S. corporation, and two limited partners who held majority interest in partnership were both non-resident aliens who owned all of corporation's outstanding stock. *1976-2 C.B. 490, Rev. Rul. 76-435 (1976)*.

Conversion of S corporation to state law limited partnership, which elects to be treated as association taxable as corporation, does not terminate S election; where general and limited partners have equal allocations of profits and distributions, general and limited interests are not treated as different classes of stock for S corporation purposes. *PLR 199942009*.

C. Trusts

1. In General

48. Generally

Under United States tax laws (*26 USCS §§ 641*, *7701(a)(1)*, (14)) trust is created as separate taxable entity apart from its beneficiaries; trust income neither distributed nor otherwise taxable directly to beneficiaries is taxable to trust entity. *Maximov v United States, 373 U.S. 49, 83 S. Ct. 1054, 10 L. Ed. 2d 184, 11 A.F.T.R.2d (RIA) 1355 (1963)*.

Non-grantor trust in existence and treated as US person on August 19, 1996 can elect to continue to be treated as US person upon making of election. *1998-1 C.B. 979, 1998-18 I.R.B. 11, Notice 98-25 (1998)*.

49. Law governing status for tax purposes

American trust whose beneficiaries were British subjects and residents and which retained capital gains income realized in United States was not exempt from federal income tax on such gains by virtue of provision of Income Tax Convention between United States and United Kingdom, April 16, 1945, *60 Stat. 1377*, *1384*, which exempts capital gains of "resident of the United Kingdom." *Maximov v United States, 373 U.S. 49, 83 S. Ct. 1054, 10 L. Ed. 2d 184, 11 A.F.T.R.2d (RIA) 1355 (1963)*.

Where U.S. citizen contributes assets and becomes member of unincorporated foreign business organization, tests and standards which will be applied in classifying organization as trust, or some other taxable entity, will be determined pursuant to definitions found in *26 USCS § 7701*; however, local law of foreign jurisdiction must be applied in determining legal relationship of members of organizations among themselves, and with public at large, as well as interests of members of organization in its assets. *1973-1 C.B. 613, Rev. Rul. 73-254 (1973)*.

Income of trust established to invest property tax revenues designated for payment to teachers who opted into alternative compensation system was excludable from gross income under section 115(1); if trust were classified under section 7701(a)(1), then it would have no obligation to file information returns under section 7701(a)(1). Private Letter Ruling 200702022, *2006 PLR LEXIS 2212*.

50. Department regulations

Treasury regulations defining "associations" and differentiating between ordinary trusts for conservation of property and trust formed with view to income or profit to beneficiaries harmonize with purpose of statute and should be applied with forceful effect. *Sherman v Commissioner, 146 F.2d 219, 33 A.F.T.R. (P-H) 365 (CA6 1944)*.

2. Factors Determining Status For Tax Purposes

51. Generally

Purpose and actual operation of trust control in determining whether or not it is association for tax purposes. *Commissioner v Vandegrift Realty & Inv. Co., 82 F.2d 387, 17 A.F.T.R. (P-H) 646 (CA9 1936)*.

Whether trust is association taxable as corporation must in last analysis be determined by facts peculiar to case under consideration, and in determining taxable status court will take into consideration purposes set out in instrument creating trust and activities of trustee and also of cestuis que trustent. *Commissioner v Gibbs-Preyer Trusts Nos. 1 & 2, 117 F.2d 619, 26 A.F.T.R. (P-H) 453 (CA6 1941)*.

Test of whether or not trust was association, rather than pure trust, and therefore taxable as corporation, is resemblance to, and not identity with, corporate organizations. *Commissioner v Nebo Oil Co., Trust, 126 F.2d 148, 28 A.F.T.R. (P-H) 1295 (CA10 1942)*.

In determining whether particular trust is business trust and hence "association," fact that in its powers and purposes it resembles pure trust is of course relevant, but that does not mean that trust which presents one or more of elements usually attending pure trust is ipso facto not business trust; test primarily is similarity of benefits and privileges enjoyed by virtue of trust when compared with those afforded by use of corporate forms. *Pennsylvania Co. for Ins. etc. v United States, 138 F.2d 869, 31 A.F.T.R. (P-H) 853 (CA3 Pa 1943)* ; *Commissioner v United States & Foreign Sec. Corp., 148 F.2d 743, 33 A.F.T.R. (P-H) 1168 (CA3 1945)*.

Attributes of corporate organization which when found in trust are sufficient to characterize it as "association" are (1) continuing entity as holder of legal title to trust res, (2) centralized management through trustee, (3) security from termination or interruption by reason of death of owners of beneficial interests, (4) facilitation of transfer of beneficial interests and introduction of large numbers of participants without affecting continuity of enterprise, and (5) limitation of liability of participants to property embraced in undertaking. *Pennsylvania Co. for Ins. etc. v United States, 138 F.2d 869, 31 A.F.T.R. (P-H) 853 (CA3 Pa 1943)*.

In determining whether or not trust is "association," sole decisive factor is whether trust is orthodox or pure trust as distinguished from business trust or association; it does not follow that every trust established for purpose of conducting business enterprise is association; neither is it essential to bring trust within definition that organization be identical in its structure and functionings to corporation; business trusts are associations within meaning of revenue acts when they have certain identifiable indices which make them analogous to corporations and when they have continuing entity throughout trust period, centralized management, continuity of trust uninterrupted by death among beneficial owners, means for transfer of beneficial interests, and limitation of personal liabilities of participants to property embarked in undertaking. *Commissioner v City Nat'l Bank & Trust Co., 142 F.2d 771, 32 A.F.T.R. (P-H) 737 (CA10 1944)*.

Characteristics which distinguish organization in form of trust as taxable as corporation rather than as trust are: persons associated in carrying out on business enterprise, title in a continuing body, both opportunity and exercise of centralized management, continuity of existence, with ability to transfer interest without affecting continuity, and limited liability. *Second Carey Trust v Helvering, 126 F.2d 526, 75 U.S. App. D.C. 263, 28 A.F.T.R. (P-H) 1371 (App DC 1942)*.

Substance of distinction between nontaxable trust and so-called business trust which is taxable as association lies in intrinsic nature of enterprise and relation of several associates thereto, rather than in mere form of association or in technical distinctions between legally constituted corporations, joint-stock companies, partnerships and the like; test is not dependent upon mere formal or procedural matters, nor upon number of respective trustees or beneficiaries nor extent of actual or potential control by beneficiaries, nor is size of business necessarily controlling; what is more important is to ascertain whether parties have joined in common enterprise for transaction of business, and whether beneficiaries who contribute money or property for that purpose have become associated in common enterprise; generally, trustee acting under ordinary trust is not subject to taxation as corporation, but rather as individual, although with some necessary differences. *Equitable Trust Co. v Magruder, 37 F. Supp. 711, 26 A.F.T.R. (P-H) 853 (DC Md 1941)*.

Sale of assets immediately following their deemed receipt by foreign holding company (pursuant to check-the-box regulations) from disregarded foreign entity did not give rise to foreign personal holding company income to U.S. parent corporation pursuant to *26 USCS § 954(c)(1)(B)(iii)*. *Dover Corp. v. Comm'r, 122 T.C. 324, 2004 U.S. Tax Ct. LEXIS 19 (T.C. May 5, 2004)*.

Taxability as association or corporation no longer turns on technical differences in organizational structure nor on degree of control given to beneficiaries in management of trust affairs. *Fidelity-Bankers Trust Co. v Helvering, 113 F.2d 14, 72 App. D.C. 1, 25 A.F.T.R. (P-H) 317 (App DC 1940)*.

Business trust formed to engage in business involving mortgage loans on residential premises is corporation for tax purposes where trust instrument prohibits dissolution on death or insanity of beneficiary, has limited liability to share as beneficial interest, and permits free transferability of interest without consent of trustee. *PLR 9116011*.

52. Use of corporate form or formalities

Fact that analogy between particular trust, in respect of its creation and organization, and corporation is not complete does not determine that trust is not taxable as corporation, since question of taxability of trust as association does not turn merely upon technical differences between trust and corporation in respect of their organizational structures, and determinant is rather approximation of corporate advantages by use of trust instead of corporation. *Pennsylvania Co. for Ins. etc. v United States, 138 F.2d 869, 31 A.F.T.R. (P-H) 853 (CA3 Pa 1943)*.

Purpose and actual operation of trust should control in determination of whether trust should be classified as association for tax purposes, and slight consideration should be given to form of organization under which trust is operated. *Sherman v Commissioner, 146 F.2d 219, 33 A.F.T.R. (P-H) 365 (CA6 1944)*.

53. Centralized management

Spendthrift trust operating real estate under central management was taxable as association. *Commissioner v Vandegrift Realty & Inv. Co., 82 F.2d 387, 17 A.F.T.R. (P-H) 646 (CA9 1936)*.

54. Business test

“Business” test is paramount. *Morrissey v Commissioner, 74 F.2d 803, 14 A.F.T.R. (P-H) 919 (CA9 1935)*.

In determining whether trust is association taxable as corporation during 1934, test to be applied is whether trust is association employed to carry on business enterprise and to share its gains and not whether beneficiaries exercised substantial measure of control. *Marshall's Heirs v Commissioner, 111 F.2d 935, 25 A.F.T.R. (P-H) 7 (CA3 1940)*.

Whether trust form was employed for doing business is one of tests to be considered. *Sherman v Commissioner, 146 F.2d 219, 33 A.F.T.R. (P-H) 365 (CA6 1944)*.

Basic to pertinency of corporate attributes in connection with trust is requirement that trust was organized, or is capable of being utilized, to enable participants to carry on business and divide gains which accrue from their common undertaking. *Pennsylvania Co. etc. v United States, 146 F.2d 392, 33 A.F.T.R. (P-H) 391 (CA3 Pa 1944)*.

Distinctive feature of "business trust," income of which is subject to tax as association or corporation, as distinguished from traditional type of trust, is that it is created to enable participants to carry on business and divide gains. *Continental Bank & Trust Co. v United States, 19 F. Supp. 15, 19 A.F.T.R. (P-H) 663 (SD NY 1937)*.

Test to be applied in determining whether trust is association within meaning of revenue acts is whether it is organization with advantages analogous to corporation and carrying on business enterprise. *Codman v United States, 30 F. Supp. 732, 24 A.F.T.R. (P-H) 315 (DC Mass 1939)*.

Ultimate question is whether trust performs some nonbusiness function exclusively to service security for loan or operates business enterprise as going concern in determining whether it is taxable as corporation. *Fidelity-Bankers Trust Co. v Helvering, 113 F.2d 14, 72 App. D.C. 1, 25 A.F.T.R. (P-H) 317 (App DC 1940)*.

55. Intent or purpose

Where object of trust is "acquisition, management, improvement and disposition of said property" and of such other property as might be acquired, it has such comprehensive object as to meet requirements for enterprise for transaction of business, and is taxable. *Kilgallon v Commissioner, 96 F.2d 337, 21 A.F.T.R. (P-H) 110 (CA7 1938)*.

Where under trust agreement power to substitute for purchase by trustee securities other than trust shares specifically designated for investment in trust agreement was primarily in distributor who was vendor of shares to be made subject to trust, and if distributor failed to provide trustee with shares for purchase, then trustee could exercise power of substitution and, in so doing, had right to be influenced in its choice of securities by price at which specified trust shares were then procurable, there was sufficient business purpose to constitute trusts taxable as corporation. *Pennsylvania Co. for Ins. etc. v United States, 138 F.2d 869, 31 A.F.T.R. (P-H) 853 (CA3 Pa 1943)*.

In business trusts object is not to hold and conserve particular property, with incidental powers, as in traditional type of trusts, but to provide medium for conduct of business and sharing its gains. *United States v Hill, 142 F.2d 622, 32 A.F.T.R. (P-H) 699 (CA10 Kan 1944)*.

Purpose of trust is found in instrument which created it, and parties are not at liberty to say that it had different or narrower purpose. *Sherman v Commissioner, 146 F.2d 219, 33 A.F.T.R. (P-H) 365 (CA6 1944)* ; *Fletcher v Clark, 150 F.2d 239, 33 A.F.T.R. (P-H) 1520 (CA10 Wyo 1945)*.

Where petitioner by written instrument had set up trust which met all tests of association taxable as corporation, he had carried on business thereby, and had filed corporate income tax returns for years, he would not now at his behest be heard to say that association was other than what he said it was in written instrument. *Titus v United States, 150 F.2d 508, 34 A.F.T.R. (P-H) 38 (CA10 Okla 1945)*.

Determination of what is or is not association for purposes of determining whether association is taxable as corporation must be made in accordance with declared intentions of persons setting up trust in trust instrument

rather than by favorable or unfavorable business opportunities or results which follow. *Abraham v United States, 406 F.2d 1259, 23 A.F.T.R.2d (RIA) 657 (CA6 Tenn 1969)*.

One of prime factors, if not controlling one, to be considered in determining whether trust is association taxable as corporation is purpose for which trust was created; if trust arrangement is designed to afford medium whereby income or profit seeking activity may be carried on, it is association taxable as corporation, but where trust form is used for purpose of liquidation, trustees do not constitute association taxable as corporation; they are taxable as fiduciaries. *Cebrian v United States, 181 F. Supp. 412, 149 Ct. Cl. 357, 5 A.F.T.R.2d (RIA) 904 (1960)*.

When expressed objectives and powers are appropriate to conducting business enterprise, and all or most of them actually are carried out and exercised, existence of intention not to engage in business cannot counteract their effect and avoid taxation. *Fidelity-Bankers Trust Co. v Helvering, 113 F.2d 14, 72 App. D.C. 1, 25 A.F.T.R. (P-H) 317 (App DC 1940)*.

Voting trust established for purpose of maintaining control over family's assets is classified as trust and not association since it lacked corporate characteristics of objective to carry on business and defied gains therefrom. *PLR 9032040*.

56. —Liquidation, preservation or distribution of property

Trust for management and distribution to heirs was not "association" taxable as corporation. *Blair v. Wilson Syndicate Trust, 39 F.2d 43, 8 A.F.T.R. (P-H) 10475, 1930 U.S. Tax Cas. (CCH) ¶9243, 1930 U.S. App. LEXIS 4018 (5th Cir. 1930)*.

That trust discontinued operating shoe business did not change its character. *Commissioner v Vandegrift Realty & Inv. Co., 82 F.2d 387, 17 A.F.T.R. (P-H) 646 (CA9 1936)*.

Where trust is formed for purpose of immediate liquidation as soon as circumstances will permit and to get title in condition to make sale, and carrying on of business is only incidental and necessary for preservation of property, no taxable association has resulted. *Helvering v Washburn, 99 F.2d 478, 21 A.F.T.R. (P-H) 1140 (CA8 1938)*.

Trust, primary purpose of which was conversion of trust property into money and distribution of net proceeds among beneficiaries holding certificates of shares, and whose trustee, in order to protect its holdings, made loans to its debtors, stock in some of which it owned, was not business venture or engaged in business for profit. *United States v Davidson, 115 F.2d 799, 25 A.F.T.R. (P-H) 1073 (CA6 Mich 1940)*.

Where trustee has done no more than hold legal title to properties in corpus of trusts, and upon orders of cestuis que trustent has paid taxes, insurance, and maintenance expenses, signed leases, collected and distributed rents, kept records and received one per cent of the gross receipts for its services, trusts were not "associations" taxable as corporations. *Commissioner v Gibbs-Preyer Trusts Nos. 1 & 2, 117 F.2d 619, 26 A.F.T.R. (P-H) 453 (CA6 1941)*.

Trust does not engage in business, for purposes of tax, if its sole or principal object and activities are preservation of specified property, liquidation of trust estate, and distribution of income derived from another source. *Commissioner v City Nat'l Bank & Trust Co., 142 F.2d 771, 32 A.F.T.R. (P-H) 737 (CA10 1944)*.

Trust, activities of which included ranching, oil and gas operations and investing in securities of corporations, and taxable as corporation, continued so taxable during period of liquidation and distribution of assets after date of expiration provided for in trust agreement. *Mullendore Trust Co. v United States, 271 F.2d 748, 4 A.F.T.R.2d (RIA) 5751, 11 Oil & Gas Rep. 733 (CA10 Okla 1959)*.

Trust does not engage in business for purposes of taxation if its sole or principal object and activities are preservation of specified property, liquidation of trust estate, or distribution of income derived from another source; transactions of business incidental to preservation, liquidation, and securing of loans which do not establish

business enterprises as independent entities are not taxable as business corporations. *Fidelity-Bankers Trust Co. v Helvering, 113 F.2d 14, 72 App. D.C. 1, 25 A.F.T.R. (P-H) 317 (App DC 1940)*.

Trust established under state law for purpose of liquidating and distributing assets including land, heating plant located thereon, right of way to land, and mining claims that were transferred by liquidating corporation and that could not be sold other than under distress conditions within 12 month period following corporation's adoption of plan of liquidation is classified as liquidating trust under Treasury Regulation § 301.7701-4(d); shareholders of liquidating corporation are considered owners of trust and are taxable on trust income. *1980-1 C.B. 316, Rev. Rul. 80-150 (1980)*.

57. Transferability of interest

Where in making up new units of investment trust depositor was not confined to same securities that he had selected for prior units, and securities in all units of trust constituted single pool in which each certificate holder shared according to his proportion of all certificates issued, and any certificate holder could sell out and substitute another in his place, depositor had such managerial powers as to constitute trust association taxable as corporation under predecessor to *26 USCS § 7701*. *Commissioner v North American Bond Trust, 122 F.2d 545, 27 A.F.T.R. (P-H) 892 (CA2 1941)*.

Where trust issued certificates of beneficial interest not knowing who would buy them, and trustees as individuals had transferred property rights represented thereby to the trust, and as trustees retained all beneficial interest in all unsold shares, fact that they received these benefits as trustees rather than as owners does not change true nature of transaction with respect to whether or not trust was association taxable as corporation, all other elements of business organization being present. *Second Carey Trust v Helvering, 126 F.2d 526, 75 U.S. App. D.C. 263, 28 A.F.T.R. (P-H) 1371 (App DC 1942)*.

Where sponsor creates investment trust by transferring pool of debt securities to trustee in exchange for 2 classes of pass-through certificates, senior and subordinated, sponsor's sale of subordinated certificates to investors does not alter classification of investment trust as trust for income tax purposes; sponsor's transfer of subordinated certificates to investors transfers burden of limited recourse guaranteed to those investors but does not alter trust's purpose of facilitating direct investment in assets. *1992-1 C.B. 434, Rev. Rul. 92-32 (1992)*.

58. Limitation of liability

Limitation of beneficiary's liability is not sina qua non of corporate analogy. *Helm & Smith Syndicate v Commissioner, 136 F.2d 440, 31 A.F.T.R. (P-H) 177 (CA9 1943)*.

Failure of trust to provide for limitation of personal liability of participants to property embarked in undertaking, standing alone, is not conclusive factor in determining whether or not trust was taxable as corporation. *Fletcher v Clark, 150 F.2d 239, 33 A.F.T.R. (P-H) 1520 (CA10 Wyo 1945)*.

Purported business trust to which medical partnership transferred supplies, equipment, and some cash, and which agreed to provide space, equipment, personnel, and various services to partnership in exchange for its gross income, was not trust at all for Federal tax purposes, since arrangement failed to alter any cognizable economic relationship between physician-partners and property transferred, purported trust had no contacts with unrelated third parties and thus carried on no business after its creation, and although physician-partners contended that trust was set up for valid business purpose of protecting partnership's assets from medical malpractice claims, record fails to show that trust actually provided any such protection. *Aagaard v. Commissioner, T.C. Memo 1985-194, 49 T.C.M. (CCH) 1278, T.C.M. (RIA) ¶85194, 1985 Tax Ct. Memo LEXIS 435 (T.C. Apr. 23, 1985)*.

59. Continuity

Temporary common-law trust created by partners was not association subject to tax as corporation in view of form and manner in which the business of trust was conducted. *Commissioner v. Kelley, 74 F.2d 71, 14 A.F.T.R. (P-H) 806, 1934 U.S. Tax Cas. (CCH) ¶9573, 1934 U.S. App. LEXIS 3874 (1st Cir. 1934)*.

Salient features of association subject to tax on same basis as that of corporations are, in general, undertaking for promotion of business purpose, continuity throughout trust period, centralized management and control, noninterruption by death of owners of beneficial interests, means of transfer of beneficial interests, and limitation of personal liability of participants to property embarked in enterprise; but these indices are not unyielding rule of thumb, and each case must be decided by references to its own peculiar facts, particularly whether undertaking bears fair resemblance to corporations. *Fletcher v Clark, 150 F.2d 239, 33 A.F.T.R. (P-H) 1520 (CA10 Wyo 1945)*.

Trust established for ten-year period was properly taxed as association where, inter alia, it provided for: continuing entity throughout trust period; centralized management; continuity of trust, uninterrupted by death among beneficial owners; means for transfer of beneficial interests; and limitation of personal liability of participants to property embarked in undertaking. *Cooper v Commissioner, 262 F.2d 530, 3 A.F.T.R.2d (RIA) 354, 10 Oil & Gas Rep. 123 (CA10 1958)*.

60. Beneficiary protection or control

Trust under which trustees managed property for profit was taxable as association though there was no provision for control by beneficiaries, and though procedure adopted by trustees did not resemble that of directors of corporation. *Helvering v Coleman-Gilbert Associates, 296 U.S. 369, 56 S. Ct. 285, 80 L. Ed. 278, 16 A.F.T.R. (P-H) 1270 (1935)*.

Beneficiary control of trust is not prerequisite to holding it corporation. *Morrissey v Commissioner, 74 F.2d 803, 14 A.F.T.R. (P-H) 919 (CA9 1935)* ; *Commissioner v Vandegrift Realty & Inv. Co., 82 F.2d 387, 17 A.F.T.R. (P-H) 646 (CA9 1936)*.

Legal life tenant was taxable on capital gain from sale of growing timber as individual, and not as fiduciary, since local (Georgia) law didn't impose fiduciary relationship between legal life tenant and remainderman; under local law, life tenant had almost absolute control over growing timber and acted in his individual capacity and not as trustee in sale of timber. *West v United States, 310 F. Supp. 1289, 25 A.F.T.R.2d (RIA) 547 (ND Ga 1970)*.

Security arrangement rather than trust existed where domestic insurance company having Canadian policyholders is required to maintain assets in Canada of amount at least equal to its liabilities to policyholders there; all rights of ownership in securities are retained by corporation, such as receipt of income, as well as right to sell, transfer, or exchange them; fact that right of ownership may be forfeited if value of assets falls below certain amount, does not change results. *1973-1 C.B. 613, Rev. Rul. 73-100 (1973)*.

61. Number of beneficiaries

Use of "beneficiaries" in treasury regulation distinguishing between ordinary trusts and associations taxable as corporations is inclusive of singular. *Lombard Trustees, Ltd. v Commissioner, 136 F.2d 22, 31 A.F.T.R. (P-H) 90 (CA9 1943)*.

Trust was association taxable as corporation where trust instrument met all requirements to make it so taxable, as against contention that it was nullity because, of 300,000 trust shares, all but two were owned by one person. *Titus v United States, 150 F.2d 508, 34 A.F.T.R. (P-H) 38 (CA10 Okla 1945)*.

62. Powers of trustees

Trustees appointed by devisees named in will handled business as active business enterprise and not merely with purpose of disposing of property and dividing proceeds among beneficiaries, and hence were subject to payment of income tax as "association" under predecessor to *26 USCS § 7701*. *Willis v. Commissioner, 58 F.2d 121, 11 A.F.T.R. (P-H) 149, 1932 U.S. Tax Cas. (CCH) ¶9268, 1932 U.S. App. LEXIS 4651 (9th Cir. 1932)*.

Trust vesting broad powers in trustees is not association. *Dunbar v. Commissioner, 65 F.2d 447, 12 A.F.T.R. (P-H) 801, 1933 U.S. Tax Cas. (CCH) ¶9340, 1933 U.S. App. LEXIS 3035 (1st Cir. 1933)*.

Crucial test in determining whether trust is association, taxable as corporation, must be found in what trustees actually do and not in existence of long unused powers. *Commissioner v Gibbs-Preyer Trusts Nos. 1 & 2, 117 F.2d 619, 26 A.F.T.R. (P-H) 453 (CA6 1941)*.

Character of organization as to whether or not it is business trust is determined by what instruments creating trusts empower trustee to perform, and not by what powers trustee actually exercised. *Commissioner v Security-First Nat'l Bank, 148 F.2d 937, 33 A.F.T.R. (P-H) 1215 (CA9 1945)*.

Extent of powers vested in trustee may be factor that distinguishes whether relationship is that of trust or association; where property involved is operated for profit, and trust which holds it is carrying on business, trust is taxable as association; if trust merely receives and distributes proceeds of investment, it is not so taxable. *Estate of Scofield v Commissioner, 266 F.2d 154, 3 A.F.T.R.2d (RIA) 1054 (CA6 1959)*.

In determining whether particular trust agreement shall be construed as trust or as association, it is fundamental that the courts examine what powers and duties are lodged with trust. *Pennsylvania Co. for Ins. on Lives etc. v. United States, 48 F. Supp. 969, 30 A.F.T.R. (P-H) 1070, 1942-2 U.S. Tax Cas. (CCH) ¶ 9833, 42-2 U.S. Tax Cas. (CCH) ¶9833, 1942 U.S. Dist. LEXIS 2003 (E.D. Pa. 1942)*, aff'd, *146 F.2d 392, 33 A.F.T.R. (P-H) 391, 1945-1 U.S. Tax Cas. (CCH) ¶ 9119, 1944 U.S. App. LEXIS 4201 (3d Cir. 1944)*.

Valid trusts were created since trustee was vested with responsibility for protection and conservation of properties for beneficiaries who could not share in discharge of responsibility where one trust provided that certain property was to be paid to grantor's son for life and at son's death to be distributed to son's children living at his death, but if any portion of such property should vest in minor then such portion should be retained by trustee for support and maintenance of minor during minority; second trust gave grantor's daughter fee simple in real estate with certain limitations on her use and disposition of property (she could not collect rental income herself) and during her minority it was grantor's intent to have trustee control income from real estate. *1975-1 C.B. 180, Rev. Rul. 75-61 (1975)*.

63. Number or identity of trustees

Trust was not less taxable as corporation because its single beneficiary was also trustee. *Lombard Trustees, Ltd. v Commissioner, 136 F.2d 22, 31 A.F.T.R. (P-H) 90 (CA9 1943)*.

64. Size

Lack of size and complexity of business does not necessarily prevent trust from being taxable as association. *United States v Trust No. B. I. 35, etc., 107 F.2d 22, 23 A.F.T.R. (P-H) 850 (CA9 Cal 1939)*.

65. Associates

To constitute association it is necessary not only that there be associates, but also that associates enter into joint enterprise for transaction of business. *Kilgallon v Commissioner, 96 F.2d 337, 21 A.F.T.R. (P-H) 110 (CA7 1938)*.

"Association," taxable as corporation, implies associates and entering into joint obligation. *United States v Davidson, 115 F.2d 799, 25 A.F.T.R. (P-H) 1073 (CA6 Mich 1940)*.

"Association" implies associates, entering into joint enterprise for transaction of business, differing from ordinary trust, wherein beneficiaries do not ordinarily plan common effort to conduct business enterprise. *Continental Bank & Trust Co. v United States, 19 F. Supp. 15, 19 A.F.T.R. (P-H) 663 (SD NY 1937)*.

66. Terms of trust instrument

Character of trust as association is determined from trust instrument. *United States v Hill, 142 F.2d 622, 32 A.F.T.R. (P-H) 699 (CA10 Kan 1944)*.

Character of trust as association taxable under predecessor to *26 USCS § 7701* cannot be determined from single sentence, paragraph, or declaration in trust instrument, but must be gleaned from consideration of entire instrument. *Commissioner v City Nat'l Bank & Trust Co., 142 F.2d 771, 32 A.F.T.R. (P-H) 737 (CA10 1944)*.

Trust is characterized as association, not by actual exercise of, but by existence of powers under trust instrument. *Commissioner v City Nat'l Bank & Trust Co., 142 F.2d 771, 32 A.F.T.R. (P-H) 737 (CA10 1944)*.

Trust cannot escape from taxation as association by showing that all powers granted by trust instrument were not exercised in full measure. *Fletcher v Clark, 150 F.2d 239, 33 A.F.T.R. (P-H) 1520 (CA10 Wyo 1945)*.

Taxpayers will not be judged by what they say, but by what they have done; whether trust in question is association is to be determined from four corners of instrument itself. *Titus v United States, 150 F.2d 508, 34 A.F.T.R. (P-H) 38 (CA10 Okla 1945)*.

Where parents purportedly set up family subpartnerships between themselves and their children through creation of certain trusts, in determining whether valid gift had been effected for income tax purposes, provisions of trust instruments, through which parents retained many of incidents of ownership over trust property, were factors for consideration by Tax Court. *Boyt v Commissioner, 209 F.2d 839, 45 A.F.T.R. (P-H) 240 (CA8 1954)*.

Trust with characteristics and powers of business organization cannot escape taxation as such by declining to exercise powers which instrument of its creation permits. *Second Carey Trust v Helvering, 126 F.2d 526, 75 U.S. App. D.C. 263, 28 A.F.T.R. (P-H) 1371 (App DC 1942)*.

67. Charity as beneficiary

Where trust income is to provide for care and ornamentation of family mausoleum and two other designated graves, and only surplus may be donated to cemetery in general, income is not exempt; even surplus would seem indirectly to benefit family crypt; furthermore, payments are not deductible as distributions since they are not made to beneficiary. *Provident Nat'l Bank v United States, 325 F. Supp. 1187, 27 A.F.T.R.2d (RIA) 1163 (ED Pa 1971)*.

3. Investment Trusts

68. Generally

In determining the method of taxing income of investment trusts, decisive issue is whether they were organized and administered in such way as to be associations taxable as corporations under predecessor to *26 USCS § 7701* and applicable regulations; mere size is not important but essential nature of arrangement, whatever its form, as shown by objects attained and manner of their attainment, is what controls, for statute does away with merely technical

distinctions. *Commissioner v. Chase Nat'l Bank, 122 F.2d 540, 27 A.F.T.R. (P-H) 887, 1941-2 U.S. Tax Cas. (CCH) ¶ 9643, 41-1 U.S. Tax Cas. (CCH) ¶9643, 41-2 U.S. Tax Cas. (CCH) ¶9643, 1941 U.S. App. LEXIS 3019 (2d Cir. 1941)*.

Classification of fixed investment trust as trust for federal income tax purposes is not terminated by adoption of automatic reinvestment plan. *1981-2 C.B. 248, Rev. Rul. 81-238 (1981)*.

69. Factors determining status for tax purposes

Whether trust property was to be held for investment or was to be used as capital in transaction of business for profit like corporation organized for such purpose is distinction that makes difference taxwise under predecessor to *26 USCS § 7701*; in determining character of investment trusts powers and duties of trustee should be added to those of depositor in order to arrive at full amount of permitted managerial activity and its object. *Commissioner v. Chase Nat'l Bank, 122 F.2d 540, 27 A.F.T.R. (P-H) 887, 1941-2 U.S. Tax Cas. (CCH) ¶ 9643, 41-1 U.S. Tax Cas. (CCH) ¶9643, 41-2 U.S. Tax Cas. (CCH) ¶9643, 1941 U.S. App. LEXIS 3019 (2d Cir. 1941)*.

Fact that it is always possible in investment trusts for beneficiary to sell out and substitute another in his place makes them in some sense "associations," but that alone does not bring them within predecessor to *26 USCS § 7701*. *Commissioner v North American Bond Trust, 122 F.2d 545, 27 A.F.T.R. (P-H) 892 (CA2 1941)*.

Where trust agreement provided that corporation which was party thereto would issue certificates of beneficial interests to investors, in determining character of trust as taxable association, court must add to powers of trustees those of corporation. *Commissioner v City Nat'l Bank & Trust Co., 142 F.2d 771, 32 A.F.T.R. (P-H) 737 (CA10 1944)*.

70. Extent of managerial powers

Trust, which controlled affairs of 10 corporations, and managed their investments for which trust was paid $48,000 annually, was business organization subject to payment of income tax. *Reynolds v Hill, 184 F.2d 294, 39 A.F.T.R. (P-H) 1055 (CA8 Minn 1950)*.

Investment trust was "business trust," and was taxable on its income as association and not as trust. *Continental Bank & Trust Co. v United States, 19 F. Supp. 15, 19 A.F.T.R. (P-H) 663 (SD NY 1937)*.

Trustee's power to consent to changes to credit support of municipal bonds held in investment trust is not power to vary investment when power is exercisable only when trustee believes that change is advisable to maintain value of trust property; although it is possible that change credits support would result in increase in value of bonds, increase would be incidental to maintaining value of trust property, and would therefore not be the result of trustee's taking advantage of market fluctuations in order to improve investment of trust beneficiaries that would make investment trust taxable as business trust. *1990-2 C.B. 270, Rev. Rul. 90-63 (1990)*.

State investment fund organized as trust was association taxable as corporation; this meant that trust, though its income was exempt, had to file corporate tax return. *1977-2 C.B. 45, Rev. Rul. 77-261 (1977)*.

71. —Powers of substitution

Where permitted activities of managers of investment trust could, and their actual activities did, affect property held in trust only by weeding out whatever became unsound for investment and retaining remainder, trust was nothing more than strict investment trust, with respect to taxability of its income under predecessor to *26 USCS § 7701*. *Commissioner v. Chase Nat'l Bank, 122 F.2d 540, 27 A.F.T.R. (P-H) 887, 1941-2 U.S. Tax Cas. (CCH) ¶ 9643, 41-1 U.S. Tax Cas. (CCH) ¶9643, 41-2 U.S. Tax Cas. (CCH) ¶9643, 1941 U.S. App. LEXIS 3019 (2d Cir. 1941)*.

Investment trust in which there was no power exercised by either trustee or depositor or their combination beyond those which are necessary incidents to preservation of trust property, collection of income therefrom, and its distribution to holders of trust shares was not association taxable as corporation. *Pennsylvania Co. for Ins. on Lives etc. v. United States, 48 F. Supp. 969, 30 A.F.T.R. (P-H) 1070, 1942-2 U.S. Tax Cas. (CCH) ¶ 9833, 42-2 U.S. Tax Cas. (CCH) ¶9833, 1942 U.S. Dist. LEXIS 2003 (E.D. Pa. 1942)*, aff'd, *146 F.2d 392, 33 A.F.T.R. (P-H) 391, 1945-1 U.S. Tax Cas. (CCH) ¶ 9119, 1944 U.S. App. LEXIS 4201 (3d Cir. 1944)*.

Trust instrument which permitted depositor during 90-day period after trust inception to deposit additional securities substantially similar to securities initially deposited in exchange for additional trust certificates does not create power to vary investment since provision was intended solely to facilitate organization of trust and limited to short period at trust inception; limited time for exercising power is not offensive since it restricts ability of depositor to take advantage of market fluctuations and conduct a business for profit using the trust corpus. *1989-2 C.B. 262, Rev. Rul. 89-124 (1989)*.

72. —Fixed investment trusts

Where trust investments became fixed upon deposit of specified share units with trustee prior to issuance of trust certificates against them, and never thereafter could trust investments be changed or varied except that in certain events deposited shares could be eliminated from trusts power that was essential to preservation of trust corpus), trustees received and held deposited shares for ordinary trust purposes of preserving and safeguarding corpus and of paying to certificate holders according to their respective participating interest net income of trusts, and corpus itself upon termination of trusts, trusts were not taxable as association within term “corporation.” *Pennsylvania Co. etc. v United States, 146 F.2d 392, 33 A.F.T.R. (P-H) 391 (CA3 Pa 1944)*.

Fixed investment trust is trust and not association where certificates representing ownership of trust were sold by underwriter to investor clients; under terms of trust agreement, underwriter and trustee (bank) do not have power to reinvest moneys in additional obligations or to vary investment of certificate holders; and semi-annually each certificate holder is to receive his pro rata share of balances in interest account (consisting of income received) and principal account (consisting of proceeds received on redemption or sale of bonds). *1973-2 C.B. 424, Rev. Rul. 73-460 (1973)*.

Investment groups formed to invest in Federal Housing Administration (FHA) and Veterans Administration (VA) mortgages were taxable as trusts, and not as corporations, because they were fixed investment trusts since once mortgages were purchased neither trustee to whom funds were turned over nor corporation trustee retained to service mortgages had managerial power over trusteed funds to vary investment by taking advantage of variations in market to improve investment of all beneficiaries; requirement that trustee between quarterly distributions of interest and principal invest cash on hand in short-term obligations that mature prior to next distribution date and hold such obligations until maturity limited him to fixed return. *1975-1 C.B. 384, Rev. Rul. 75-192 (1975)*.

Fixed investment trust consisting of municipal obligations, which will terminate on specified date, upon disposition of last obligation held, or upon specified decrease in value of trust assets and whose trustees have limited power to reinvest certain funds under specified conditions during first 20 years of trust’s existence, is association taxable as corporation under *26 USCS § 7701*. *1978-1 C.B. 448, Rev. Rul. 78-149 (1978)*.

4. Real Estate Trusts

73. Generally

In determining whether real estate trust is taxable as corporation it is necessary to determine whether petitioners associate together for purpose of carrying on business enterprise or are merely holding property for collection of

income and its distribution among beneficiaries of the trust. *Tyson v. Commissioner, 68 F.2d 584, 13 A.F.T.R. (P-H) 545, 1933 U.S. App. LEXIS 4987 (7th Cir. 1933)*, cert. denied, *292 U.S. 657, 54 S. Ct. 865, 78 L. Ed. 1505, 13 A.F.T.R. (P-H) ¶1198, 1934 U.S. LEXIS 955 (1934)*.

Trust which gives title of leased realty to trustee, provides for centralized management and uninterrupted continuity except by death of last surviving beneficiary or termination of lease, contemplates transfer of beneficial interests to minor children of beneficiaries, limits trustee's liability to property in its hands, and authorizes trustee with consent of majority in interest of beneficiaries to borrow money to construct building on premises and to sell all or any part of realty is business trust and association taxable as corporation during 1934, although trustee does not exercise powers conferred. *Marshall's Heirs v Commissioner, 111 F.2d 935, 25 A.F.T.R. (P-H) 7 (CA3 1940)*.

Fact that there was only one piece of property held by trust, and that in taxable year trustee's activities were confined to collection and distribution of rents, payment of taxes, bookkeeping, and other incidental duties was immaterial in determining whether trust was taxable as association within term "corporation." *Sherman v Commissioner, 146 F.2d 219, 33 A.F.T.R. (P-H) 365 (CA6 1944)*.

74. Corporate attributes

Trusts which were set up to hold real estate, and which over years made profit for beneficiaries, were corporations, as they possessed most of attributes of corporations. *Mid-Ridge Inv. Co. v United States, 324 F.2d 945, 12 A.F.T.R.2d (RIA) 5969 (CA7 Wis 1963)*.

Five trusts, having as principal assets apartment buildings, were associations taxable as corporations within meaning of *26 USCS § 7701*; title to properties was held in trust by plaintiff corporation; management of properties was centralized and had been continuous since creation of trusts; trusts had been in existence for over twenty years and were not terminable by death of any of beneficiaries; beneficial interests represented by certificates of contingent or beneficial interest were transferable; trust instrument limited liability of participants, and undertaking was created and was maintained as medium for carrying on of business enterprise and sharing of gains. *Mid-Ridge Inv. Co. v United States, 214 F. Supp. 8, 11 A.F.T.R.2d (RIA) 557 (ED Wis 1962)*.

Real estate trust had more corporate characteristics than those of trust and consequently it was taxed as corporation; among factors present which were controlling were: continuity of existence even though original term of existence was 30 years which was renewed for another like period; centralized management by trustees elected by bondholders, who were authorized to manage properties, to collect rents and profits and to rent, sell, lease and mortgage; transferability of bondholder's interest; vesting of title to properties in trustees, subject only to bondholders' lien; and limited liability. *National Sav. & Trust Co. v United States, 285 F. Supp. 325, 22 A.F.T.R.2d (RIA) 5548 (DC Dist Col 1968)*.

Unincorporated trust can qualify as real-estate investment trust even though trust instrument provides (1) that trust may be amended, altered, or terminated by affirmative action of holders of three-fourths of outstanding shares of trust, (2) that any or all of trustees may be removed, and new trustees elected, by affirmative vote of holders of three-fourths of outstanding shares of trust, and (3) that holders of one-fourth of shares of trust may require trustee or other officer of trust to call shareholders' meeting for purpose of considering amendment, alteration, or termination of trust, or removal of trustees. *1964-2 C.B. 180, Rev. Rul. 64-259 (1964)*.

75. —Transferability of interests

Trust created for purpose of managing and selling valuable parcel of real estate, which provided for issuance of shares with right of transfer by sale, which had been in continuous existence nearly 40 years and had recently been extended for 20 more years, and which had general characteristics of corporation engaged in business, was

association within meaning of revenue acts. *Codman v United States, 30 F. Supp. 732, 24 A.F.T.R. (P-H) 315 (DC Mass 1939)*.

76. Trust powers

Where trustee was given full power of management of leased property for benefit of certificate holders, and intent underlying creation of trust was obviously corporate-minded, trust was taxable as association includible within term "corporation." *Sherman v Commissioner, 146 F.2d 219, 33 A.F.T.R. (P-H) 365 (CA6 1944)*.

Trust whose purpose was to centralize title to realty in trustees who would have entire ownership with power to purchase, hire, or lease additional real estate and absolute control over and power to dispose of all trust property, to pay dividends, set up contingent or sinking fund, and to determine method of distribution of property or cash left in trust at time of its termination was taxable as association and not trust, although trustees merely collected and distributed income to beneficiaries because duties and detail work were delegated to agent or assumed by lessee. *Sears v Hassett, 31 F. Supp. 179, 24 A.F.T.R. (P-H) 404 (DC Mass 1940)*.

77. —Holding title

Trust agreement for holding real estate title created corporation. *Swanson v Commissioner, 76 F.2d 651, 15 A.F.T.R. (P-H) 1203 (CA7 1935)*.

78. —Receipt of rental income

Mere receipt of income from leased property and its distribution to cestuis que trustent amounts to no more than receiving ordinary fruits that arise from ownership of property and does not constitute doing business for purposes of taxation, and land trust so acting was not carrying on business for profit but was conceived for investment purposes and is taxable as fiduciary only and not as corporation. *Cleveland Trust Co. v Commissioner, 115 F.2d 481, 25 A.F.T.R. (P-H) 1020 (CA6 1940)*.

Real estate trust was not taxable as association, where trustees held but one parcel of real estate which they had leased for term of years with option for extended period, trust instrument limited trust to holding of that one parcel and to receipt and disbursement of income and proceeds from it, trust was to terminate upon sale of property or termination of lease, trustees were given no specific power to develop real estate, and there was no provision purporting to exempt trustees and beneficiaries from personal liability, although beneficiaries agreed to indemnify trustees for liability they might incur as holders of legal title. *Sears v Hassett, 45 F. Supp. 772, 29 A.F.T.R. (P-H) 1113 (DC Mass 1942)*.

79. —Operation of business enterprise

Real estate trust engaged in operating golf course was doing business and taxable as association. *Morrissey v Commissioner, 74 F.2d 803, 14 A.F.T.R. (P-H) 919 (CA9 1935)*.

Spendthrift trust operating real estate under central management was taxable as association. *Commissioner v Vandegrift Realty & Inv. Co., 82 F.2d 387, 17 A.F.T.R. (P-H) 646 (CA9 1936)*.

Trust created for purpose of carrying on business of owning, managing, leasing, and selling real property and sharing gains therefrom, which had all salient features found by Supreme Court to constitute a trust an association, was taxable as association. *Title Ins. & Trust Co. v Commissioner, 100 F.2d 482, 22 A.F.T.R. (P-H) 132 (CA9 1938)*.

Operation of ranch and rental properties under trust constituted business enterprise subject to income tax as corporation. *Ross Lewis Trust v Commissioner, 110 F.2d 937, 24 A.F.T.R. (P-H) 821 (CA10 1940)*.

Where (1) meat packing corporation leased out its plant and liquidated, transferring lease and incidental real estate to trust set up by shareholders, (2) trust agreement gave trustees entire control of properties, subject to lease, (3) trustees could convey title, borrow money, purchase and sell land, and reinvest rental income, (4) trust collected and distributed lease rentals, sold several small parcels of land and obtained one loan, trust was association taxable as corporation; where trust instrument reflected profit objective this was determinative, without regard to actual activities; circumstance that only one major piece of land was involved was not material. *Abraham v United States, 406 F.2d 1259, 23 A.F.T.R.2d (RIA) 657 (CA6 Tenn 1969)*.

80. — —Real estate subdivision

Business concern designed as trust, but engaged in real estate subdivision business, was "association," and subject to income tax at corporate rate. *Trust No. 5833, Security-First Nat'l Bank v. Welch, 54 F.2d 323, 10 A.F.T.R. (P-H) 901, 1931 U.S. Tax Cas. (CCH) ¶9684, 1931 U.S. App. LEXIS 3907 (9th Cir. 1931)*, cert. denied, *286 U.S. 544, 52 S. Ct. 496, 76 L. Ed. 1281, 1932 U.S. LEXIS 678 (1932)*.

Real estate trust organized to take over and liquidate portion of property of original subdivision trust was association taxable as corporation. *Merchants' Trust Co. v. Welch, 59 F.2d 630, 11 A.F.T.R. (P-H) 556, 1932 U.S. Tax Cas. (CCH) ¶9362, 1932 U.S. App. LEXIS 3428 (9th Cir. 1932)*.

Where trustee and beneficiaries were actively engaged in acquiring and developing real estate subdivision, trust was taxable as "association." *Commissioner v Highlands Evanston-Lincolnwood Subdivision, etc., 88 F.2d 355, 19 A.F.T.R. (P-H) 131 (CA7 1937)*.

Where trust deed provided all powers needed to develop real estate subdivision in any manner that might prove profitable and trust possessed salient features of business trust analogous to corporation which was utilized for carrying on business enterprise for profit, such trust comes within the meaning of corporation in predecessor to *26 USCS § 7701*. *United States v Homecrest Tract, 160 F.2d 150, 35 A.F.T.R. (P-H) 970 (CA9 Cal 1947)*.

81. — —Collection of land sale contracts

Real estate trust was taxable as corporation, though all land had been sold and it was engaged in collecting and distributing installments accruing on contracts. *Sloan v. Commissioner, 63 F.2d 666, 12 A.F.T.R. (P-H) 268, 1933 U.S. Tax Cas. (CCH) ¶9157, 1933 U.S. App. LEXIS 3525 (9th Cir. 1933)*.

Real estate trust reciting that trustee held property for purpose of securing balance of purchase price, and for selling and renting property, and which also relieved trustee of management duties, was not taxable as association. *Rohman v United States, 275 F.2d 120, 5 A.F.T.R.2d (RIA) 871 (CA9 Cal 1960)*.

82. Testamentary trust

Trust used for estate plan purposes to hold rental real estate is not association taxable as corporation despite fact that trust instrument provides trustee with powers going beyond those needed to protect and conserve property where beneficiaries were not associates, played no active role in trust, could not be said to have planned or entered into joint effort for conduct of common enterprise. *Elm Street Realty Trust v. Commissioner, 76 T.C. 803, 1981 U.S. Tax Ct. LEXIS 127 (T.C. May 18, 1981)*, acq., 1981-2 C.B. 1 (I.R.S. 1981).

Where trust was formed to hold title to land and building situated thereon and to proceeds and income of property, to act as signatory of leasing and management agreements, to distribute all trust income, and to protect and

conserve property, trust is classified as trust for federal income tax purposes. *1979-1 C.B. 448, Rev. Rul. 79-77 (1979)*.

83. Liquidating trust

Real estate trust formed for sole purpose of liquidating and distributing among shareholders real estate which had been devised to them was not association taxable as corporation. *Fisk v. United States, 60 F.2d 665, 11 A.F.T.R. (P-H) 809, 1932 U.S. Tax Cas. (CCH) ¶9464, 1932 U.S. Dist. LEXIS 1387 (D. Mass. 1932)*.

Trust formed for purpose of holding and conserving particular piece of real estate until distribution could be made of it to beneficiaries is liquidating trust and not association. *Paine v United States, 32 F. Supp. 672, 25 A.F.T.R. (P-H) 112 (DC Mass 1940)*.

To be classified as liquidating trust, trust instruments must set forth purpose as liquidating trust, plan and disclosure statement must explain how bankruptcy estate will treat assets for tax purposes, trust must contain termination date not more than 5 years from date of creation, and trustee must make continuing efforts to dispose of assets, make timely distributions, and not unduly prolong life of trust. *1994-2 C.B. 685, Rev. Proc. 94-45 (1994)*, 94 TNT 133-13.

5. Other Trusts

84. Massachusetts trusts

"Massachusetts trust" is "association." *Hecht v Malley, 265 U.S. 144, 44 S. Ct. 462, 68 L. Ed. 949, 4 A.F.T.R. (P-H) 3976 (1924)*.

Whether Massachusetts trust is "association" depends upon whether it is conducting its business for profit. *White v Hornblower, 27 F.2d 777, 6 A.F.T.R. (P-H) 7938 (CA1 Mass 1928)*.

Massachusetts trust was liable for tax as corporation. *Little Four Oil & Gas Co. v Lewellyn, 35 F.2d 149, 8 A.F.T.R. (P-H) 9675 (CA3 Pa 1929)* ; *Rice v. Commissioner, 47 F.2d 99, 9 A.F.T.R. (P-H) 880, 1931 U.S. Tax Cas. (CCH) ¶9154, 1931 U.S. App. LEXIS 3397 (1st Cir. 1931)*.

85. Successors to business enterprises

Trust which had been created to hold land of failed corporation whose charter was about to be cancelled, trust being authorized to collect rents and profits, to sell when favorable prices might be realized, and to distribute profits derived from such operation to former corporation's stockholders, was "business enterprise" rather than trust for liquidation or its equivalent, and consequently such trust was taxable as "association," since purposes of trust were identical with purposes of corporation, even though lands constituting assets of trust were not to be improved before sale. *United States v Rayburn, 91 F.2d 162, 19 A.F.T.R. (P-H) 1086 (CA8 Iowa 1937)*.

Trust was "association" where its corpus was property formerly owned by beneficiaries' liquidated corporation; where owners of property convey it to trustees to be administered for them, particularly where trustees are also beneficiaries, trustees and beneficiaries are "associates." *Abraham v United States, 406 F.2d 1259, 23 A.F.T.R.2d (RIA) 657 (CA6 Tenn 1969)*.

Rejuvenated trust for dissolved corporation was not liquidating trust but association taxable as corporation, where it had throughout years carried on business enterprises (farming, stock raising, oil and gas leases). *Anderson v Lamb, 120 F. Supp. 99, 45 A.F.T.R. (P-H) 1947, 3 Oil & Gas Rep. 699 (DC ND 1954)*.

86. Trusts controlling petroleum or mineral rights

Trust organized to operate one oil well was taxable as association though beneficiaries had no control and trustees did not follow procedure of corporate directors. *Helvering v Combs, 296 U.S. 365, 56 S. Ct. 287, 80 L. Ed. 275, 16 A.F.T.R. (P-H) 1272 (1935)*.

Owners of oil and gasoline, organizing trust or issuing "units" to raise money to sink wells, and to sell same, were not association. *Lucas v. Extension Oil Co., 47 F.2d 65, 9 A.F.T.R. (P-H) 877, 1931 U.S. Tax Cas. (CCH) ¶9143, 1931 U.S. App. LEXIS 3387 (5th Cir. 1931)*.

Common-law trust operating oil lease, under independent management of trustees, capital of which consisted of equal beneficial interests of particular par value each, was taxable as association. *Monrovia Oil Co. v Commissioner, 83 F.2d 417, 17 A.F.T.R. (P-H) 978 (CA9 1936)*.

Trust in oil lands, organized in corporate form and for taking care of leases and leasing of oil lands, collection, care, and disposal of oil, and paying of dividends to certificate holders, was business enterprise for profit, and taxable as association, or business trust, and not as "traditional type of trust." *United States v Trust No. B. I. 35, etc., 107 F.2d 22, 23 A.F.T.R. (P-H) 850 (CA9 Cal 1939)*.

Unincorporated group having interest in real property with petroleum producing prospects which it transferred to trustee who was under control of committee of which he was member, organization to continue for 25 years with provision for prior dissolution on vote of two thirds of beneficiaries, was association taxable as corporation. *Helm & Smith Syndicate v Commissioner, 136 F.2d 440, 31 A.F.T.R. (P-H) 177 (CA9 1943)*.

Trust created by owners of one-third interest in oil leases for management of business in connection with operation of lease was taxable as association, although, because it covered only one-third interest, trustee could not control it but could only collect income and distribute it. *Adkins Properties v Commissioner, 143 F.2d 380, 32 A.F.T.R. (P-H) 968 (CA5 Tex 1944)*.

Where trustees were empowered to receive royalties from oil and gas leases in kind, to engage in business of renting and leasing property for other than oil or gas purposes, and to sell or convey property outright, trust was business trust taxable as association. *Commissioner v Security-First Nat'l Bank, 148 F.2d 937, 33 A.F.T.R. (P-H) 1215 (CA9 1945)*.

Members of family having undivided interest in realty and oil and mineral leases, who conveyed realty in trust for term of 25 years, empowering trustees to carry on any business on behalf of trust and sell and lease trust property and make oil and mineral leases and pay over income to beneficiaries which they proceeded to do, was association taxable as corporation. *Bordages Estate Trust v Commissioner, 159 F.2d 62, 35 A.F.T.R. (P-H) 628 (CA5 Tex 1947)*.

Finding that trust was not association was clearly erroneous where it was originally constituted to liquidate land but later reconstituted at time when oil potentialities were recognized and trustees were given power in reconstruction to lease mineral rights, collect and distribute royalties, but not to sell. *Nee v Main Street Bank, 174 F.2d 425, 37 A.F.T.R. (P-H) 1464 (CA8 Mo 1949)*.

Trust agreement under which number of persons who were interested in and owners by location or purchase of certain placer mining claims quitclaimed their interests therein to trustees to operate, develop, or otherwise handle or dispose of property as trustees might think best created business trust or association taxable as corporation, as distinguished from orthodox or pure trust. *Fletcher v Clark, 57 F. Supp. 479, 32 A.F.T.R. (P-H) 1554 (DC Wyo 1944)*.

87. Mortgage pools

Mortgage pools created by savings and loan associations by selling participating certificates are not associations taxable as corporations but are ordinary trusts; pool certificate holders are taxwise treated as owners of trust. *Rev Rul 70-544 (1970) 1970-2 CB 6*, mod (1974) *1974-1 CB 147* ; *Rev Rul 70-545 (1970) 1970-2 CB 7*, mod (1974) *1974-1 C.B. 147*.

Closed pools of FHA insured mortgages are treated for tax purposes as ordinary trusts where Federal Home Loan Mortgage Corporation buys mortgage participation certificate in group of mortgages owned by insured S & L association and sells corresponding certificates to other S & L associations and exempt employees' trusts. *Rev Rul 71-399 (1971) 1971-2 CB 433*, amplified (1972) *1972-2 CB 647* and amplified (1974) *1974-1 CB 365* and amplified (1974) *1974-1 CB 169* and amplified (1981) *1981-2 C.B. 137* ; *1972-2 C.B. 647, Rev. Rul. 72-376 (1972)* ; *1974-1 C.B. 365, Rev. Rul. 74-221 (1974)*.

Closed pool of residential mortgage loans formed by commercial bank, assigned without recourse to unrelated trustee bank possessing no power of reinvestment or substitution, and insured by unrelated private insurance company, is not association taxable as corporation but is treated as ordinary trust. *1977-2 C.B. 20, Rev. Rul. 77-349 (1977)*.

Neither partnership nor group of assets held by partnership will be treated as taxable mortgage pool, taxable as corporation under *26 USCS § 7701(i)* simply because it issues 4 classes of notes for purchase of pool of real estate loans. *PLR 9339022*.

88. Cemetery company

Cemetery company which cancelled its stock and substituted trust declaration in favor of former stockholders was "association" taxable as corporation. *Smith v. Commissioner, 69 F.2d 911, 13 A.F.T.R. (P-H) 899, 1934 U.S. Tax Cas. (CCH) ¶9165, 1934 U.S. App. LEXIS 3707 (3d Cir.)*, cert. denied, *293 U.S. 561, 55 S. Ct. 73, 79 L. Ed. 662, 1934 U.S. LEXIS 174 (1934)*.

89. Family trusts

Family trust was association taxable as corporation since it possessed more corporate than noncorporate characteristics where husband transferred to trust, which was to continue for 20 years unless trustees (husband, his wife and son) unanimously determined to terminate it at earlier date, all of his real and personal property in exchange for all "units of beneficial interest" which were divided between husband, his wife and son (associates in activities and operations of trust) and trust instrument provided that trustees have power to use family trust assets in any manner and in any business they see fit (objective to carry on business); death, insanity, bankruptcy, retirement, resignation of any member would not cause trust to dissolve (corporate characteristic of continuity of life); trustees were authorized to manage business of trust on behalf of certificate holders, associates (corporate characteristic of centralization of management); and certificate holder might, without consent of other certificate holders or trustees, substitute another in his place and confer on such other person all attributes of transferor's interest in trust (corporate characteristic of free transferability of interests). *1975-2 C.B. 503, Rev. Rul. 75-258 (1975)*.

6. Practice and Procedural Matters

90. Res judicata

Decision that organization was not business trust in prior years would not be res judicata as to later years, in view of change in treasury regulations governing matter. *Commissioner v Security-First Nat'l Bank, 148 F.2d 937, 33 A.F.T.R. (P-H) 1215 (CA9 1945)*.

91. Appeal

Where question was whether or not groups of assignees of oil leases were associations within predecessor to *26 USCS § 7701*, and subject to income tax as corporations, federal courts are not bound by state court decisions. *Commissioner v Fortney Oil Co., 125 F.2d 995, 28 A.F.T.R. (P-H) 1207 (CA6 1942)*.

Decision of Tax Court is entitled to due weight on question of whether or not trust is taxable as corporation. *National Metropolitan Bank v Commissioner, 145 F.2d 649, 33 A.F.T.R. (P-H) 106 (CA4 1944)*.

IV. FIDUCIARY

92. Generally

Term "fiduciary" is derived from civil law and connotes idea of trust or confidence; relation arises whenever property of one person is placed in charge of another. *Commissioner v Owens, 78 F.2d 768, 16 A.F.T.R. (P-H) 464 (CA10 1935)*.

Power to transfer additional securities into investment trust in exchange for interests in trust is not power to vary investment within meaning of § 301.7701-4(c) of Regulations, if power is exercisable for only limited period at inception of trust and if additional securities are substantially similar to those initially deposited in trust. *Rev Rul 89-24 (1989) 1989-1 CB 24*, mod, superseded (1994) *1994-2 C.B. 5*, 94 TNT 167-5.

93. Particular persons

Corporation withholding dividends pending suit involving determination of ownership of stock was "fiduciary." *Ferguson v Forstmann, 25 F.2d 47, 6 A.F.T.R. (P-H) 7516 (CA3 NJ 1928)*.

Taxpayer, as life tenant under will of her deceased husband, was taxable as fiduciary on capital gains realized from sale of securities held by her as life tenant. *Weil v United States, 180 F. Supp. 407, 148 Ct. Cl. 681, 5 A.F.T.R.2d (RIA) 497 (1960)*.

Commissioner of Internal Revenue was entitled to continuance of taxpayer's challenge to denial of innocent-spouse relief under *I.R.C. § 6015* because right of husband, nonrequesting spouse, to intervene under *Fed. R. Civ. P. 24(a)(1)* survived his death and Commissioner was obliged to try appropriate means to notify his heirs, executors, or administrators. *Fain v. Comm'r, 129 T.C. 89, 2007 U.S. Tax Ct. LEXIS 30 (T.C. Oct. 2, 2007)*.

Tax return preparers were not fiduciaries for purposes of *26 USCS § 7701(a)(36)(B)(iii)* because Internal Revenue Service Form 56, titled "Notice Concerning Fiduciary Relationship," merely gave notice of pre-existing fiduciary relationship and did not, by itself, create relationship. United States v Hill, 97 A.F.T.R.2d (RIA) 548 (DC Ariz 2005).

Special master who administers settlement fund deposited with U.S. District Court is not fiduciary required to file return. *Rev Rul 71-119 (1971) 1971-1 CB 163*, obsoleted (1992) *1992-2 C.B. 102*.

V. TAXPAYER

94. Generally

Internal Revenue Service's timely assessment against partnership was sufficient to extend statute of limitations for collection of tax from general partners who were liable for payment of partnership's debts; partnership was only relevant "taxpayer." *United States v. Galletti, 541 U.S. 114, 124 S. Ct. 1548, 158 L. Ed. 2d 279, 17 Fla. L. Weekly Fed. S. 199, 93 A.F.T.R.2d (RIA) 1425, 93 A.F.T.R.2d (RIA) 2004-1425, 42 Bankr. Ct. Dec. (LRP) 221, Bankr. L. Rep. (CCH) ¶80069, Unemployment Ins. Rep. (CCH) ¶ 17179, Unemployment Ins. Rep. (CCH) ¶17179B, 51 Collier Bankr. Cas. 2d (MB) 121, 2004-1 U.S. Tax Cas. (CCH) ¶50204, 2004 U.S. LEXIS 2375 (2004)*.

"Taxpayer" as referred to in taxing statutes does not have narrow or restricted meaning. *Commissioner v New York Trust Co., 54 F.2d 463, 10 A.F.T.R. (P-H) 928 (CA2 1931)* ; *New York Trust Co. v. Commissioner, 68 F.2d 19, 13 A.F.T.R. (P-H) 448, 1933 U.S. App. LEXIS 4873 (2d Cir. 1933)*, aff'd, *292 U.S. 455, 54 S. Ct. 806, 78 L. Ed. 1361, 1934-1 C.B. 188, 13 A.F.T.R. (P-H) 1184, 4 U.S. Tax Cas. (CCH) ¶1293, 1934 U.S. LEXIS 724 (1934)*.

Unpublished decision: Plaintiff taxpayer could have been liable for taxes as taxpayer under *I.R.C. § 7701(a)(14)* because he admitted to working but filed no tax returns for four years, thus, defendant U.S.'s *I.R.C. § 7602* summons, issued by agent of IRS to defendant credit union for taxpayer's account statements was relevant to investigation under *I.R.C. § 7601* and taxpayer's petition to quash summons was properly denied. *Anderson v. United States, 236 Fed. Appx. 491, 99 A.F.T.R.2d (RIA) 2007-3027, 2007-2 U.S. Tax Cas. (CCH) ¶50542, 2007 U.S. App. LEXIS 12789 (11th Cir. 2007)*.

Internal Revenue Code (I.R.C.) construes term "taxpayer" in strict or narrow sense; meaning person who pays, overpays, or is subject to pay his own personal income tax; third-parties who pay tax liabilities of others are thus not permitted to bring suit under *26 USCS § 7422*. *Robinson v United States, 95 Fed. Cl. 480, 107 A.F.T.R.2d (RIA) 373 (2011)*.

Where petitioners' motions to quash various summonses issued by IRS agent had been denied, their motion to reconsider was also denied given that petitioners had merely reargued their claims that they were not liable for payment of any federal income taxes because they were not "Subject-Citizens" of "Federal - Republic's Central Government," that had been found long ago by numerous courts to have been stale, frivolous, and long-settled. Sochia v United States, 94 A.F.T.R.2d (RIA) 5502 (WD Tex 2004).

Although *26 USCS §§ 3121(e)* and *7701(a)(9)* do not specifically identify Commonwealth of Pennsylvania when they define "state" and "United States," taxpayer who is citizen of Commonwealth of Pennsylvania is citizen of United States under Internal Revenue Code because term "includes" does not exclude other things that are otherwise within meaning of "state" and "United States." *Lanier v Wachovia Bank, 105 A.F.T.R.2d (RIA) 1669 (ED Pa 2010)*.

Government presented sufficient forecast of evidence to establish taxpayer's tax liability for years at issue because it presented certificates of assessments and payments as proof that assessments of income tax, penalties, and interest were made against taxpayer; taxpayer received income as compensation for services rendered as orthodontist, and thus, he was "taxpayer" with "taxable income" subject to imposition of income tax. United States v MacAlpine, 113 A.F.T.R.2d (RIA) 1717 (WD NC 2014).

Being person subject to income tax, defendant was "taxpayer" under Internal Revenue Code. United States v Hockensmith, 104 A.F.T.R.2d (RIA) 5133 (MD Pa 2009).

Unpublished decision: United States Tax Court had jurisdiction over cases begun by "taxpayers" which was defined to include any person subject to any internal revenue tax, and since appellant was subject to income tax, Tax Court had had jurisdiction. Fowlke v Comm'r (CA10 2013).

95. Taxpayer for refund purposes

Stockholder of taxpayer corporation who paid tax on threat to levy distraint on corporate property was "taxpayer" entitled to recover back money paid if illegally exacted. *White v. Hopkins, 51 F.2d 159, 10 A.F.T.R. (P-H) 214, 1931 U.S. App. LEXIS 2877 (5th Cir. 1931)*.

Purchasers of estate property who sought refund of estate tax exacted from them are not taxpayers. *Bladine v. Chicago Joint Stock Land Bank, 63 F.2d 317, 12 A.F.T.R. (P-H) 178, 1933 U.S. Tax Cas. (CCH) ¶9097, 1933 U.S. App. LEXIS 3411 (8th Cir. 1933)*.

Disbursing agent for corporation was not entitled to refund of 10% tax it had withheld from nonresident stockholders to whom dividends were payable, since right to return of overpayment is exclusively in taxpayers whose dividends have been decreased by amount of tax withheld and not in agent who withheld and paid tax. *Bank of America, Nat'l Trust & Sav. Ass'n v Anglim, 138 F.2d 7, 31 A.F.T.R. (P-H) 616 (CA9 Cal 1943)*.

Operator of restaurant, who reported restaurant income in name of another, though he himself paid tax, was entitled to sue for refund, since he was one "subject to the tax." *Bailey v United States, 104 F. Supp. 997, 122 Ct. Cl. 552, 42 A.F.T.R. (P-H) 78 (1952)*.

Plaintiff corporation, which, upon retransfer to it of assets of another corporation, agreed to and did pay latter's taxes, had right to file claim for refund and standing to maintain action to recover such taxes. *Campbell Farming Corp. v United States, 132 F. Supp. 216, 132 Ct. Cl. 341, 47 A.F.T.R. (P-H) 1675 (1955)*.

Business that suffered property loss through Internal Revenue Service seizure based upon claim of Internal Revenue Service that business taxpayer was responsible for tax obligations of prior tenant of taxpayer's building subsequent to payment of taxes claimed by Internal Revenue Service is not entitled to maintain suit for refund of taxes despite definition of "taxpayer" found in *26 USCS § 7701(a)(14)* as person subject to any internal revenue tax since one who owns or has interest in property which is levied upon to satisfy tax assessment of another is not taxpayer and there is no reason to distinguish between person whose property is seized to pay another person's taxes and person who pays tax to eliminate threat of such seizure. *Spa World International, Inc. v United States, 51 A.F.T.R.2d (RIA) 495 (MD Fla 1982)*.

96. Payer of tax imposed on another

One who becomes liable to pay tax of another because of liability at law or in equity is not "taxpayer." *Michael v. Commissioner, 75 F.2d 966, 15 A.F.T.R. (P-H) 346, 1935 U.S. App. LEXIS 3115 (2d Cir.)*, cert. denied, *296 U.S. 579, 56 S. Ct. 89, 80 L. Ed. 409, 1935 U.S. LEXIS 743 (1935)*.

When taxpayer claimed taxpayer's separate bank account was levied for taxpayer's husband's tax liability, taxpayer had standing to seek Taxpayer Assistance Order (TAO) because (1) definition of "taxpayer" in *26 USCS § 7701(a)(14)* applied, (2) that definition included person who paid tax assessed against another, and (3) *26 USCS §§ 7811* and *7803* did not provide different definition. *Rothkamm v United States, 802 F.3d 699, 116 A.F.T.R.2d (RIA) 6198 (CA5 La 2015)*.

Home health care limited liability company (LLC) was "employer" under employment tax statutes in Internal Revenue Code and thus responsible for employment taxes; however, it was LLC, type of entity that was not defined in *26 USCS § 7701*, so only way to determine how to tax it was to refer to regulations, specifically Check-the-Box regulations, *Treas. Reg. §§ 301.7701-1* through 301.7701-3; it was undisputed that it was single-member LLC throughout relevant periods and had not made election under Check-the-Box regulations to be treated as corporation; consequently, it had to be treated under Check-the-Box regulations as disregarded entity, so that IRS had to look to successive sole owners for recovery of employment taxes. *L & L Holding Co., L.L.C. v United States, 101 A.F.T.R.2d (RIA) 2081 (WD La 2008)*.

97. Subsidiary corporation

Though parent corporation and its subsidiary elected to file consolidated income tax returns, subsidiary corporation remained "taxpayer" in respect to its taxable income, within meaning of statutory definition of "taxpayer." *United States v Donaldson Realty Co., 106 F.2d 509, 23 A.F.T.R. (P-H) 389 (CA8 Minn 1939)*.

98. Transferees

Transferee is "taxpayer" and entitled to pursue remedy as such. *Routzahn v. Tyroler, 36 F.2d 208, 8 A.F.T.R. (P-H) 9837, 1930 U.S. Tax Cas. (CCH) ¶9006, 1929 U.S. App. LEXIS 2136 (6th Cir. 1929)*, cert. denied, *281 U.S. 734, 50 S. Ct. 248, 74 L. Ed. 1149, 1930 U.S. LEXIS 558 (1930)*.

99. Withholding agent

One required to withhold taxes for another was "taxpayer." *Houston Street Corp. v Commissioner, 84 F.2d 821, 18 A.F.T.R. (P-H) 224 (CA5 Tex 1936)*.

VI. "PAID OR INCURRED" AND "PAID OR ACCRUED"

100. Generally

As to domestic corporations words "arising or accruing," as applied to income, do not differ in meaning from word "received" in Corporation Excise Tax Law of 1909. *Maryland Casualty Co. v United States, 251 U.S. 342, 40 S. Ct. 155, 64 L. Ed. 297, 3 A.F.T.R. (P-H) 3010 (1920)*.

Word "incur" means to become liable. *Seabright Woven Felt Co. v. Ham, 38 F.2d 114, 8 A.F.T.R. (P-H) 10119, 1930 U.S. Dist. LEXIS 2223 (D. Me. 1930)*.

101. Applicability

Statutory definition of "paid or accrued" was intended to apply to method of computing net income, and has no reference or relevancy to subject matter of what, for purposes of §§ 351 and 356 of Revenue Act of 1936, is taxable as undistributed income of personal holding companies. *Commissioner v Clarion Oil Co., 148 F.2d 671, 80 U.S. App. D.C. 41, 33 A.F.T.R. (P-H) 1141 (App DC 1945)*.

VII. TRADE OR BUSINESS

102. Public office

Definition of true "public office" includes as prerequisite delegation of sovereign power of government, or investment in individual with some portion of sovereign function to be exercised by him for benefit of public; *26 USCS § 7701(a)(26)* cannot be construed as automatically converting into trade or business functions of every so-called "public office" performed by volunteer, and functions of public office which are in nature of trade or business should be treated as such, even though incumbent may serve without compensation. *Green v Bookwalter, 207 F. Supp. 866, 10 A.F.T.R.2d (RIA) 5537 (WD Mo 1962)*.

Contrary to taxpayer's claim that he was not "trade or business" and that he had no self-employment income as his income did not derive from performance of functions of public office, under *26 USCS § 7701(c)*, terms "includes" and "including," as used in definition of "trade or business," expanded reach of § 7701(a)(26) to include public office, rather than to exclude private business operations from definition. *United States v Bennett, 105 A.F.T.R.2d (RIA) 2799 (MD Fla 2010)*.

Taxpayer's compensation for work as judicial officer for Oneida Tribe of Indians of Wisconsin was not exempt from self-employment tax under *26 USCS § 1402(c)(1)* because *26 USCS § 1402(c)(1)* was not one of instances that was listed in *26 USCS § 7871* where "Indian tribal governments" were treated as states for various Internal Revenue Code purposes; accordingly, judicial officer position that was held by taxpayer was not "public office" within meaning of *26 USCS § 1402(c)(1)*; moreover, compensation was not exempt from taxation because she was "an elected officer of sovereign" where taxpayer failed to show that either treaty or statute specifically exempted compensation from taxation. *Doxtator v. Comm'r, T.C. Memo 2005-113, 89 T.C.M. (CCH) 1259, 2005 Tax Ct. Memo LEXIS 112 (T.C. May 18, 2005)*.

103. Particular parties

Taxpayer, as administrative assistant to United States Senator, was public employee within meaning of *26 USCS § 7701(a)(26)* since he had definite work assignment and functioned as member of staff for extended period of time, and since there was no indication that taxpayer accepted public employment as tax dodge, or acted other than in good faith, in accepting employment as member of Senator's staff; as public employee, taxpayer was therefore entitled to deduct all ordinary and necessary expenses incurred by him while he was away from home, and in pursuit of his business or trade. *Frank v United States, 577 F.2d 93, 42 A.F.T.R.2d (RIA) 5309 (CA9 Or 1978)*.

Performance of functions as Public Service Commissioner is public office which constitutes trade or business within meaning of *26 USCS § 7701(a)(26)*; since taxpayer is required to reside in his home district from which he was elected both by law of state and by reason of his duties, and since exigencies of his employment require frequent on ground investigations which are incidental and essential to regulation of public utility, he is entitled to deduction from gross income for taxable year for traveling expenses while away from home in pursuit of his trade or business in amount claimed. *Moss v United States, 145 F. Supp. 10, 50 A.F.T.R. (P-H) 467 (DC SC 1956)*.

Government's motion to dismiss taxpayer's action alleging that IRS made false assessment could be granted because there was no explicit waiver of sovereign immunity communicated in *26 USCS §§ 408(d)(3)*, *3401*, *6201*, *6203*, *6331(a)*, *6702*, *6751(b)(1)*, *7491*, and *7701(a)(26)*. *Meuli v United States, 108 A.F.T.R.2d (RIA) 5180 (DC Kan 2011)*.

Where member of reserve unit of Armed Forces who attended prescribed drills performed services which were ordinarily compensated and had rights, duties, and obligations which were in nature of a trade or business, reservist was public employee engaged in trade or business pursuant to predecessor to *26 USCS § 7701(a)(26)*, and could have incurred ordinary and necessary expenses which were deductible, even though he was not reimbursed therefor. *Rev Rul 55-109 (1955) 1955-1 CB 261*, mod (1976) *1976-2 CB 86* and mod (1990) *1990-1 CB 28*, CCH Unemployment Ins Rep ¶ 15262A, amplified, clarified (1994) *1994-2 CB 18*, 94 TNT 128-6, mod, superseded (1999) *1999-5 I.R.B. 4*.

104. —Congress members

Whether activity constitutes performance of functions of public office depends on whether it furthers taxpayer's personal political ends or is connected with representation of taxpayer's constituents; congressman's expenses incurred while attending Democratic National Convention were not deductible, but expenses incurred attending various meetings of National Black Political Conference were deductible, since by attending latter meetings,

congressman ascertained problems faced by his constituents, most of whom were black. *Diggs v Commissioner, 715 F.2d 245, 52 A.F.T.R.2d (RIA) 5842 (CA6 1983)*.

Performance of functions of public office of United States Congressman constitutes trade or business, although legal expenses incurred in connection with presentation to courts concerning matter of redistricting in state represented by taxpayer are nondeductible expenses not directly connected with carrying on of taxpayer's trade or business. *1967-2 C.B. 81, Rev. Rul. 67-457 (1967)*.

Performance of official duties of Congressman to keep his constituents informed with respect to affairs of federal government and his official actions, and to seek opinions from them on pertinent issues is trade or business within meaning of *26 USCS § 7701(a)(26)*. *1973-2 C.B. 31, Rev. Rul. 73-356 (1973)*.

105. —Judges

Performance by taxpayer of his state judicial office constitutes carrying on trade or business within terms of predecessor to *26 USCS § 7701(a)(26)*, and he is therefore entitled to deduct from his gross income all ordinary and necessary expenses paid during taxable year in discharging his functions as judge; 1942 amendment to Internal Revenue Code, permitting deductions of expenses for production of income or management of property, merely enlarged category of incomes with reference to which expenses were deductible; it did not enlarge range of allowable deductions of "business expenses" so as to include amount spent by state court judge to secure his reelection. *McDonald v Commissioner, 323 U.S. 57, 65 S. Ct. 96, 89 L. Ed. 68, 32 A.F.T.R. (P-H) 1404 (1944)*.

Taxpayer's expenditures incurred in travel while away from home, and rental of apartment occupied by him and his wife during time he was in attendance as Justice on State Supreme Court are exigencies of public office of judge within purview of predecessor to *26 USCS § 7701(a)(26)*, and are deductible as ordinary and necessary expenses paid in carrying on trade or business. *United States v Le Blanc, 278 F.2d 571, 5 A.F.T.R.2d (RIA) 1460 (CA5 La 1960)*.

Taxpayers who have been elected judges of state Supreme Court are entitled to deduct reasonable and necessary traveling expenses incurred in pursuit of business of judging. *Emmert v United States, 146 F. Supp. 322, 48 A.F.T.R. (P-H) 1898, 50 A.F.T.R. (P-H) 910 (SD Ind 1955)*.

106. —Municipal employees

Taxpayer, who was appointed by mayor, pursuant to resolution of city council, as commissioner of municipal international relations and trade board, was not performing functions of "public office" within meaning of *26 USCS § 7701(a)(26)*, and was therefore not entitled to deduct his traveling expenses incurred on trip to Latin America as ordinary and necessary expenses paid during taxable year in carrying on trade or business; sort of office created by resolution was not sort of public office contemplated by Congress when it enacted statute, since municipality's resolution made no real delegation of its power to transact public's business nor did it empower commissioner with any real authority to exercise sovereign power of municipality. *Green v Bookwalter, 319 F.2d 631, 12 A.F.T.R.2d (RIA) 5062 (CA8 Mo 1963)*.

Commissioner of Park Department created by city charter to manage and control that department, is sort of public office intended by Congress when it enacted *26 USCS § 7701(a)(26)*, and as such, unreimbursed travel expenses of taxpayer as member of department were deductible as ordinary and necessary expenses paid by taxpayer while away from home in performance of functions of public office. *Green v Bookwalter, 207 F. Supp. 866, 10 A.F.T.R.2d (RIA) 5537 (WD Mo 1962)*.

VIII. OTHER TERMS

107. Stock

Term “stock” is to be given its ordinary meaning; in case of federal savings and loan association, controlling factor is not label of depositor-shareholder’s interest but quality of rights and privileges relating to the interest; while such shares have some of indicia of creditor-debtor relationship, at same time such shares also possess many of attributes of proprietary type interest, such as right to vote and to share in liquidation proceeds. *Everett v United States, 448 F.2d 357, 28 A.F.T.R.2d (RIA) 5591 (CA10 Kan 1971)*.

108. United States

Even though *26 USCS § 7701(a)(9)* defines “United States” as including only United States and District of Columbia, Puerto Rico is considered as being within United States for purposes of 6-year statute of limitations on tax crimes; tolling statutes should be liberally interpreted in favor of repose; *26 USCS § 7651* deals with assessment and collection of taxes and provides that U.S. law is applicable in any possession of United States as if possession were state; § 7651(3) provides that § 7651 is applicable notwithstanding any other provision of law relating to any U.S. *United States v Bardina, 365 F. Supp. 459, 32 A.F.T.R.2d (RIA) 6017 (SD NY 1973)*.

Taxpayer’s argument that *48 USCS § 1612(a)* granted exclusive jurisdiction to U.S. District Court of District for Virgin Islands was rejected; if taxpayer did not satisfy all three requirements of *26 USCS § 932(c)(4)* as alleged by IRS in notice of deficiency, then he was required to file federal income tax return even if he filed Virgin Islands tax return. *Huff v. Comm'r, 135 T.C. 222, 2010 U.S. Tax Ct. LEXIS 26 (T.C. Aug. 17, 2010)*.

Where taxpayer claimed that order requiring him to provide testimony and documents that were requested in two IRS summonses was void, though he claimed that federal district court lacked personal jurisdiction over him, citing *26 USCS § 7701(a)(9)*, (10), he was, as New Mexico resident, subject to district court’s jurisdiction and to U.S. tax code; cited sections only defined terms “United States” and “State.” *United States v Ford, 100 A.F.T.R.2d (RIA) 6281 (DC NM 2007)*.

Unpublished decision: I.R.C. § 932(c) was clear that United States Virgin Islands (USVI) residents (defendant’s clients) would pay taxes to USVI, and nothing allowed electing country of preference in which to pay; thus, district court’s jury instruction, stating USVI residents could not claim Earned Income Credits on United States tax return correctly used *I.R.C. § 7701(a)(9)*’s definition of “United States” to include only States and District of Columbia for *I.R.C. § 32(c)(1)(A)(ii)(I)*’s residency requirement; defendant’s convictions under *18 USCS § 371* and *I.R.C. § 7206(2)*, were proper. United States v Roberts (CA11 Ga 2012).

109. State

Collection due process hearing satisfied *26 USCS § 6330(c)(1)* and was not defective where (1) appeals officer referred to I.R.S. Form 4340 at hearing and verified whether legal and administrative procedures had been followed, and (2) appeals officer acted as delegate of Secretary of Treasury, under *26 USCS § 7701(11)*-(12). *Jones v Comm'r, 338 F.3d 463, 92 A.F.T.R.2d (RIA) 5508 (CA5 2003)*.

Secretary of Treasury has power to collect taxes, and that power can be delegated to local Internal Revenue Service (IRS) agents; *26 USCS § 6301* provides that Secretary shall collect taxes imposed by internal revenue laws but actual task of collecting taxes is delegated to local IRS directors, *26 C.F.R. § 301.6301-1*, and delegation of authority down chain of command, from Secretary to Commissioner of Internal Revenue to local IRS employees constitutes valid delegation by Secretary to Commissioner and re-delegation by Commissioner to delegated officers and employees. *Wahl v United States, 93 A.F.T.R.2d (RIA) 1227 (DC Nev 2003)*.

Court dismissed taxpayer's challenge to imposition of civil penalty based on filing of frivolous tax return, holding that Secretary of Treasury did have power to collect taxes under *26 USCS § 6301*, and that such power could be delegated to Commissioner of Internal Revenue, and redelegated to local IRS agents. *Samlaska v United States, 90 A.F.T.R.2d (RIA) 6723 (DC Nev 2002)*.

Parties who signed documents taxpayer received, including notices of failure to pay taxes and taxpayer's liability under *26 USCS § 6702*, amount of penalty and right to collection due process hearing were appropriate delegates of secretary with authority to impose penalty pursuant to *26 USCS §§ 7401* and *§ 7701*; taxpayer's notice of levy was signed by chief of automation branch, IRS employee, which satisfied requirements of *26 USCS § 6330(a)(1)*. *Cole v United States, 90 A.F.T.R.2d (RIA) 6987 (WD Mich 2002)*.

Territorial act prohibiting sale of liquor in counties by local option was not in conflict with federal revenue laws licensing sale of liquor since federal statute provided that no license should be construed to authorize any business prohibited by laws of any state, and word "state" is defined to include "territory." *Territory ex rel. McMahon v. O'Connor, 41 N.W. 746 (Dakota 1889)*.

110. Delegate

26 USCS § 7701 defining delegate of Treasury Secretary to include any Treasury Department employee duly authorized by Secretary by 1 or more redelegations of authority, in no way restricts number of redelegations nor provides that all of such delegations must have taken place or have been reaffirmed following enactment of its provisions. *United States v Bacheler, 611 F.2d 443, 45 A.F.T.R.2d (RIA) 400 (CA3 Pa 1979)*.

Agents of Department of Treasury (Alcohol, Tobacco & Firearms Division) who enter premises of business operating as bar and restaurant, for purpose of determining whether business possesses any liquor bottles that have been refilled or altered, which would constitute violation of *26 USCS § 5301(c)*, are "delegates" of Secretary as that term is defined in *26 USCS § 7701(a)(12)(A)*, and thus have statutory authority to make inspection. *United States v. Hofbrauhaus of Hartford, Inc., 313 F. Supp. 544, 1970 U.S. Dist. LEXIS 11912 (D. Conn. 1970)*.

IRS was entitled to summary judgment on taxpayer's claims concerning imposed "frivolous return" penalties because IRS was authorized to impose penalties under *26 USCS § 6702* and agency provided sufficient notice of penalties, as required under *26 USCS § 6303(a)*, where it notified taxpayer of amount and nature of levied penalties; Secretary of Treasury's delegates were not required under *26 USCS § 6212(a)* and *26 USCS § 7701(a)* to provide taxpayer with proof of their authority in order to collect penalties. Pomeranz v United States, 96 A.F.T.R.2d (RIA) 6767 (SD Fla 2005).

Taxpayer's challenge of IRS agent's issuance of levies on funds from taxpayer's bank and stock accounts due to lack of authorization failed because defendant, as IRS agent, was authorized to issue notices of levy. *Corpening v Leder, 97 A.F.T.R.2d (RIA) 1265 (WD NC 2006)*.

There was no merit to taxpayer's assertion that person who issued notice of deficiency for two tax years lacked proper authority because Secretary of Treasury or his delegate were authorized to issue such notices under *26 USCS §§ 6212(a)*, *7701(a)(11)(B)* and *7701(a)(12)(A)(i)*, and taxpayer failed to provide any authority to contrary. *McManus v. Comm'r, T.C. Memo 2006-68, RIA TM 56474, 91 T.C.M. (CCH) 979, 2006 Tax Ct. Memo LEXIS 69 (T.C. Apr. 10, 2006)*.

Court rejected taxpayers' frivolous allegation that person who issue deficiency notices lacked authority, as it was well established that Secretary of Treasury or his delegate could issue notices pursuant to *26 USCS §§ 6212(a)*, *7701(a)(11)(B)*, (12)(A)(i). *DeVries v. Comm'r, T.C. Memo 2011-185, 102 T.C.M. (CCH) 125, 2011 Tax Ct. Memo LEXIS 184 (T.C. Aug. 4, 2011)*.

Taxpayer's argument that New York office of IRS lacked authority to issue notice of deficiency to him because he resided in Oklahoma was frivolous and without merit; it was well established that Secretary of Treasury or his

delegate was authorized by *26 USCS §§ 6212(a)* and *7701(a)(11)(B)* and (12)(A)(i) to issue notice of deficiency and that director of IRS compliance center was authorized delegate; further, there was no provision in Internal Revenue Code or regulations that limited their authority to send deficiency notices to taxpayers within particular district. *Palmer v. Comm'r, T.C. Memo 2012-34, 103 T.C.M. (CCH) 1183, 2012 Tax Ct. Memo LEXIS 33 (T.C. Feb. 6, 2012)*.

111. Military or Naval Forces

Taxpayer employed as civilian noncombatant with Armed Forces in Vietnam from September 1963 to September 1965 was not member of military forces. *Prusia v. Commissioner, T.C. Memo 1969-148, 28 T.C.M. (CCH) 753, T.C.M. (RIA) ¶69148, 1969 Tax Ct. Memo LEXIS 148 (T.C. July 8, 1969)*.

Taxpayer, civilian noncombatant airline pilot employed by Pan American, was not member of military forces. *Fagerland v. Commissioner, T.C. Memo 1971-134, 30 T.C.M. (CCH) 583, T.C.M. (RIA) ¶71134, 1971 Tax Ct. Memo LEXIS 198 (T.C. June 9, 1971)*.

Taxpayer, civilian noncombat airline navigator employed by Flying Tiger Line, Inc., was not entitled to combat pay exclusion, since he was not member of any active or reserve unit of U.S. armed forces, nor did he wear military uniform or receive compensation from armed forces; his entire salary was paid by Flying Tiger. *Smith v. Commissioner, T.C. Memo 1972-147, 31 T.C.M. (CCH) 736, T.C.M. (RIA) ¶72147, 1972 Tax Ct. Memo LEXIS 110 (T.C. July 5, 1972)*.

Personnel of Public Health Service were not part of military forces of United States within definition of "military and naval forces of the United States" in predecessor to *26 USCS § 7701*, and hence not entitled to exemption. *33 Op. Att'y Gen. 56 (1921)*.

112. Withholding agent

Corporation paying 2% tax on interest paid on bonds required by § 221(b) of Revenue Act of 1921 was withholding agent and not taxpayer and therefore not entitled to credit of 25% of tax so paid permitted by § 1200(a) of the Revenue Act of 1924. *Union P. R. Co. v. Bowers, 28 F.2d 370, 7 A.F.T.R. (P-H) 8188, 1928 U.S. Dist. LEXIS 1486 (S.D.N.Y. 1928)*, aff'd, *33 F.2d 102, 7 A.F.T.R. (P-H) 8788, 1929 U.S. App. LEXIS 2672 (2d Cir. 1929)*.

113. Domestic building and loan association

Taxpayer did not qualify for year in question as domestic building and loan association for purposes of computing deduction for additions to bad debt reserve under *26 USCS § 593* where over half of its income arose out of transactions that did not constitute loans or sales of loans; taxpayer's arrangement with certain mortgage investment companies to make and close in its name loans actually negotiated and agreed upon between those mortgage loan companies and their customers, in which taxpayer was paid fee by companies involved, did not constitute loans or sales of loans since taxpayer was acting as agent, not principal. *Permanent Sav & Loan Asso. v United States, 439 F. Supp. 917, 40 A.F.T.R.2d (RIA) 5751 (SD Ohio 1977)*.

Unpublished decision: *26 USCS § 7701(a)(19)* imposes, as threshold requirement, that institution attain state or federal building or savings and loan association charter to qualify for preferential tax treatment granted to domestic building and loan associations under *26 USCS § 593(a)*. *Barnett Banks, Inc. v Comm'r, 143 Fed. Appx. 206, 96 A.F.T.R.2d (RIA) 5595 (CA11 2005)*.

Unpublished decision: In 1990 Revenue Ruling, Internal Revenue Service (IRS) concluded that institution chartered as bank could not qualify as domestic building and loan association (DBLA) under 28 USCS § 7701. Rev. Rule 90-

54, 1990-2, C.B. 270; rejecting functional test, IRS explained that introductory language of 26 USCS § 7701(a)(19) set forth threshold requirement: institution must be one of three types listed; it is not enough that substantially all of business of association is confined to making loans to members; it must still be DBLA, domestic savings and loan association, or federal savings and loan association to qualify as DBLA. Barnett Banks, Inc. v Comm'r, 143 Fed. Appx. 206, 96 A.F.T.R.2d (RIA) 5595 (CA11 2005).

Loans for purchase of stock in co-operative housing corporations, secured by such stock, constitutes loan secured by interest in residential real property since ownership of stock in co-operative housing corporation entitles stockholder to dwell in house or apartment, and house or apartment underlying each loan is used as residence. 1989-1 C.B. 317, Rev. Rul. 89-59 (1989).

To come within definition of "domestic building and loan association" institution must be building and loan association, savings and loan association, or federal saving and loan association; accordingly bank previously chartered as federal savings and loan association which later becomes chartered as federal bank does not qualify as domestic building and loan association despite fact that its business consists primarily of acquiring savings of public and investing in loans and more than 60 percent of assets are assets described in § 7701(a)(19)(C). *1990-2 C.B. 270, Rev. Rul. 90-54 (1990)*.

Pledged account mortgage loan (residential mortgage loans in which borrower's savings account is pledged as additional collateral for loan) that is included in Federal Home Loan Mortgage Corporation mortgage pool constitutes loan secured by interest in real property within meaning of 26 USCS § 7701(a)(19)(C)(d); full amount of such loans that are included in mortgage pools underlying Federal Home Loan Mortgage Corporation participation certificates will be treated as qualifying real property loans for purposes of 25 USCS § 593(d)(1) so long as pledged account mortgage loans included in pool constitute no more than 5 percent of total value of pool and none of pledged accounts exceed 20 percent of total principle amount of loan. *1981-2 C.B. 137, Rev. Rul. 81-203 (1981)*.

114. —Obligations of United States

Student Loan Marketing Association (Sallie Mae) stock and obligations constitute obligations of U.S. for purposes of 60% test under 26 USCS § 7701(a)(19)(C). 1973-2 C.B. 14, Rev. Rul. 73-548 (1973).

115. Foreign estate or trust

Trust established and administered under laws of foreign country, whose trustee is foreign entity and whose corpus is located in foreign country, is like nonresident alien individual and is thus foreign trust even if trust is granted for trust and income is taxable to grantor who is United States citizen. *1987-2 C.B. 219, Rev. Rul. 87-61 (1987)*.

Where United States citizen has been resident of foreign country for 20 years before dying, his foreign citizen spouse is primary beneficiary of his estate, administrators and executors are entities of foreign country, and all estate's assets are located in and administered under laws of foreign country, estate is foreign estate for purposes of 26 USCS § 7701(a)(31). 1981-1 C.B. 598, Rev. Rul. 81-112 (1981).

116. Income tax return preparer

Tax preparer's relationship to partnership is necessarily dual in that he is dealing with partnership both as entity and as aggregate of partners and although preparer's work results in one entry being carried over on to each partner's return, work represents complicated analysis of partnership earnings upon which limited partners rely Goulding v United States, 957 F.2d 1420, 69 A.F.T.R.2d (RIA) 984 (CA7 Ill 1992).

Under substantiality test of Treas Reg § 301.7701-15(b)(1), in determining whether firm is "income tax preparer," court must examine partnership return underlying loss deduction entries for partners in tax shelter to determine

complexity and tax impact. *Adler & Drobny v United States, 9 F.3d 627, 72 A.F.T.R.2d (RIA) 6506, 93 TNT 230-11 (CA7 Ill 1993)*.

Definition of tax return preparer requires preparation of "substantial portion" of return, requiring comparison of length, complexity, and tax liability or refund of portion prepared by preparer to length, complexity, and tax liability for return as whole; preparer of K-1 partnership tax schedule is preparation of "substantial portion" of individual return, and hence preparer of schedule is tax return preparer for that taxpayer. *Mindell v United States, 693 F. Supp. 847, 62 A.F.T.R.2d (RIA) 5125 (CD Cal 1988)*.

Attorney who prepares Schedules K-1 for limited partnerships and is compensated by partnership constitutes tax return preparer with respect to each of limited partners' individual tax returns; argument that attorney is return preparer only with respect to partnership return is rejected where attorney was in reality paid by partners since partnerships were capitalized entirely with funds provided by limited partners and all business decisions were made exclusively for their benefit. *Goulding v United States, 717 F. Supp. 545, 63 A.F.T.R.2d (RIA) 1292 (ND Ill 1989)*.

Accountant is not preparer of individual tax returns filed by London partner in investment partnership where accountant only prepared Schedule K-1 forms which were not "substantial portion" of limited partners' individual returns. *Adler & Drobny, Ltd. v United States, 792 F. Supp. 579, 70 A.F.T.R.2d (RIA) 5179 (ND Ill 1992)*.

District court found that income tax return preparer intentionally prepared inaccurate returns in order to obtain higher refunds for his clients, and that he obtained higher fees by engaging in that conduct, and issued order enjoining tax preparer and his business from acting as "income tax return preparers" as defined in *26 USCS § 7701(a)(36)(A)*, preparing any part of return or claim for refund including unrealistic position, in violation of *26 USCS § 6694*, failing to exercise due diligence in preparing federal income tax returns seeking refunds under earned income tax credit, in violation of *26 USCS § 6695*, and engaging in conduct subject to penalty under *26 USCS § 6701*. *United States v Baxter, 372 F. Supp. 2d 1326, 95 A.F.T.R.2d (RIA) 2795 (MD Ala 2005)*.

Tax preparers prepared fraudulent tax returns at issue, and one of them admitted to being compensated for preparing fraudulent returns, so *I.R.C. §§ 6694*, *6695*, and *7407* applied to him; other preparer's conclusory denial of receiving compensation was insufficient to create disputed issue of material fact as to whether he was tax return preparer within meaning of *I.R.C. § 7701(a)(36)*. *United States v Pugh, 717 F. Supp. 2d 271, 105 A.F.T.R.2d (RIA) 2662 (ED NY 2010)*.

Individual who loans money based on amount of refund shown on return is not income tax preparer where lender neither physically prepares returns nor renders advice to borrowers, but merely reviews return. *Brown v. United States, 1990 U.S. Dist. LEXIS 9333 (N.D. Ohio July 3, 1990)*.

Defendants were tax return preparers as defined by tax code, and were thus subject to court's injunctive authority because they received compensation for their services, which included preparing, signing, and advising taxpayers. United States v Elsass, 112 A.F.T.R.2d (RIA) 6544 (SD Ohio 2013).

Where department store licenses corporation to prepare returns in its stores and corporation sublicenses this privilege to second corporation, individual employees of sublicensee, sublicensee itself, and licensee may be considered income tax return preparers; department store is not preparer; individual with primary responsibility for accuracy of return must sign return and show his or her social security number and name and employer identification number of original licensee must also be shown on return as person who employed or engaged preparer. *1981-2 C.B. 249, Rev. Rul. 81-246 (1981)*.

General partner who prepares partnership return is considered return preparer for purposes of imposing penalty for negligence for intentional disregard of rules and regulations where understatement of liability on individual income tax return of limited partner is due to negligent or intentional disregard of rules or regulations by general partner in preparing Schedule K-1 of partnership return and entries on that schedule constitute substantial portion of limited partner's return. *1981-2 C.B. 250, Rev. Rul. 81-270 (1981)*.

Firm that furnishes computerized tax return preparation service to tax practitioners is income tax return preparer for purposes of *26 USCS § 7701(a)(36)* when program used goes beyond mere mechanical assistance. *1985-2 C.B. 338, Rev. Rul. 85-187 (1985)*.

Farmers cooperative credit association that prepares Schedule F of Form 1040 as part of computerized data processing system provided to members is income tax return preparer for purposes of *26 USCS § 7701(a)(36)* if Schedule F is substantial portion of member's return. *1985-2 C.B. 339, Rev. Rul. 85-188 (1985)*.

Person who prepares computer program and sells it to taxpayer to use in preparing taxpayer's income tax return may be income tax return preparer for purposes of *26 USCS § 7701(a)(36)*. *1985-2 C.B. 341, Rev. Rul. 85-189 (1985)*.

Person in business other than tax return preparation who fills out or reviews income tax returns for its customers may be income tax return preparer as defined in § 7701. *1986-1 C.B. 373, Rev. Rul. 86-55 (1986)*.

117. Resident and nonresident alien

In 1989, when plaintiff taxpayer won lottery, winnings had to be paid in annual payments through annuity purchased by state lottery office, and thus, full amount of annual payment received by taxpayer in 1996 was taxable by Commissioner of Internal Revenue Service and taxpayer's physical absence from U.S. in 1996 was irrelevant to determination of his gross income because he maintained his status as permanent resident that year under *26 C.F.R. § 1.1-1(b)*, 26 USCS § 7701(b)(1)(A)(I), (b)(6). *Jombo v Comm'r, 398 F.3d 661, 95 A.F.T.R.2d (RIA) 1141 (App DC 2005)*.

Nonresident alien taxpayer's wage income was not exempt from taxation under *26 USCS § 871(b)*, as she did not meet requirement of Convention with Respect to Taxes on Income, U.S.-Phil., art. *21, Oct. 1, 1976, 34 U.S.T. 1277*, that invitation she accepted to teach in U.S. was for period not expected to exceed two years; in making this determination, court was required to consider all of relevant facts and circumstances and then to make objective determination without focusing exclusively or primarily on expectation of any single party or on particular factor; applying this standard, court considered not only taxpayer's expectations, but also those of hiring school district, program operator, and recruiters. *Santos v. Comm'r, 135 T.C. 447, 2010 U.S. Tax Ct. LEXIS 38 (T.C. Oct. 18, 2010)*.

Petitioner was legal permanent resident of United States (i.e., resident alien subject to U.S. taxation of his worldwide income) during years in issue and, therefore "resident" of United States as defined by Convention for Avoidance of Double Taxation and Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital and to Certain Other Taxes, art. 4, para. 1, U.S.-Ger., Aug. 29, 1989, 1708 U.N.T.S. 3 (entered into force Aug. 21, 1991); alien who comes to U.S; so infrequently that, on scrutiny, he or she is no longer legally entitled to permanent resident status, but who has not officially lost or abandoned that status, will be resident for tax purposes. *Topsnik v. Comm'r, 143 T.C. 240, 2014 U.S. Tax Ct. LEXIS 42 (T.C. Sept. 23, 2014)*, aff'd, *2017 U.S. App. LEXIS 22847 (D.C. Cir. Nov. 14, 2017)*.

Former official of foreign government that was overthrown while he was in United States under diplomatic passport is resident alien and does not qualify for exception for foreign government-related individual where he has been replaced as official of government but had remained continuously in United States due to fear of execution or imprisonment if he returned to his native land. *Anderson v. Commissioner, T.C. Memo 1989-381, 57 T.C.M. (CCH) 1101, T.C.M. (RIA) ¶89381, 1989 Tax Ct. Memo LEXIS 380 (T.C. July 26, 1989)*.

US citizen who obtains US passport before moving to foreign country and subsequently obtains foreign passport, foreign automobile registration, and votes in foreign elections does not renounce US citizenship for purposes of becoming nonresident alien where certificate sent to State Department allegedly renouncing US citizenship is legally insufficient for such purpose and taxpayer later obtains US passport. *Dacey v. Commissioner, T.C. Memo*

1992-187, Unemployment Ins. Rep. (CCH) ¶ 16539, Unemployment Ins. Rep. (CCH) ¶16539A, 63 T.C.M. (CCH) 2584, T.C.M. (RIA) ¶92187, 1992 Tax Ct. Memo LEXIS 212 (T.C. Mar. 30, 1992).

Status of trust as foreign trust turns upon whether trust is comparable to nonresident alien individual; trust established and administered under laws of foreign country whose trustee is a foreign entity and whose corpus is located in a foreign country is nonforeign trust even though trust is grantor trust and its income is taxable to grantor who is United States citizen. *1987-2 C.B. 219, Rev. Rul. 87-61 (1987)*.

Election to be treated as resident aliens under *26 USCS § 7701(b)* for period starting with residency does not permit spouses to share US earned income under community property rules if election under § 6013(g) is made; if taxpayers are not residents for entire year, year is not separated into 2 separate short years, one of residency and one of nonresidency, and dual status year is still single tax year for which election to be treated as United States citizen or resident cannot be made. *PLR 9104001*.

Expatriated United States citizen who, upon request, has United States citizenship restored on grounds of lack of intent to relinquish United States citizenship is treated as United States citizen for income and gift tax purposes since birth or naturalization; individuals who have United States citizenship retroactively restored before 1993 are not liable for income taxes as residents after date of loss of citizenship and before date of restoration of citizenship; if United States citizenship is restored in absence of application by taxpayer, taxpayer will not be regarded as citizen for income tax purposes for period prior to restoration of citizenship, but will be subject to income taxation as nonresident or resident alien. *1992-2 C.B. 3, Rev. Rul. 92-109 (1992)*.

118. Service contract treated as lease

Fleet owner properly took foreign sales corporation deductions from its federal income taxes for amounts it paid its subsidiary as commissions for arranging time charters with offshore energy industry customers because lease aspects of time charters allowed vessels to be classified as export property under former *26 USCS § 927(a)(1)*, repealed, and met criteria for lease rather than service agreement under *26 USCS § 7701(e)*. *Tidewater Inc. v United States, 565 F.3d 299, 103 A.F.T.R.2d (RIA) 1682 (CA5 La 2009)*.

In determining whether lease is operating lease, under which payments are deductible as rent, or capital lease, treated as purchase, lease must be analyzed as if terminal rental adjustment clause providing for refund to lessee if lessor was able to dispose of leased asset for amount greater than terminal value and correlative charge to lessee if terminal value was less than set amount; terminal rental adjustment clause cannot be considered in determining whether transaction structured as lease is in substance purchase. *Peaden v. Commissioner, 113 T.C. 116, 1999 U.S. Tax Ct. LEXIS 32 (T.C. Aug. 9, 1999)*.

Agreement between limited partnership and tax exempt hospital for use of xeroxographic equipment is lease not service contract where hospital-recipient retained physical possession of equipment, hospital controlled equipment, term was for 4 years with option to purchase showing significant economic interest in equipment, hospital does not bear any risk of diminished receipts or substantially increased expenses such as nonperformance and limited partnership seller did not use equipment to provide concurrent services to other entities unrelated to hospital. *Smith v. Commissioner, T.C. Memo 1989-318, 57 T.C.M. (CCH) 826, T.C.M. (RIA) ¶89318, 1989 Tax Ct. Memo LEXIS 318 (T.C. June 28, 1989)*.

119. Miscellaneous

With regard to 2001 currency option trades, *Horn v. Commissioner, 968 F.2d 1229 (D.C. Cir. 1992)*, provided legal principles, requiring that to treat transaction as sham IRS must show that it possessed neither (1) any objectively reasonable potential for profit nor (2) any other legitimate nontax business purposes; Congress has now

established its own test in 2010 amendment to this section, to be applied prospectively only. *Endeavor Partners Fund, LLC v. Comm'r, 943 F.3d 464, 2019 U.S. App. LEXIS 35351 (D.C. Cir. 2019)*.

Trucks that were not specially designed for off-highway use, even if they predominantly were used off-highway within meaning of *26 USCS § 6421(e)*, were not within scope of "special-design" and "substantial impairment" exceptions in *26 USCS § 7701(a)(48)(A)(i)* and *Treas. Reg. § 48.4061(a)-1(d)(2)(ii)* with result that fuel used off-highway was not creditable per *26 USCS § 34* and *26 USCS § 6427(l)(1)* and tax imposed under *26 USCS § 4081(a)(2)* applied. *Myles Lorentz, Inc. v. Comm'r, 138 T.C. 40, 2012 U.S. Tax Ct. LEXIS 3 (T.C. Jan. 25, 2012)*.

Taxpayer's *28 USCS § 2410* claims against United States, which alleged that notices of federal income tax lien were invalid on ground that only officers of Bureau of Alcohol, Tobacco and Firearms (ATF) were authorized to file them, failed to state claim upon which relief could be granted because Secretary of Treasury had authority to file notices of federal tax liens, pursuant to *26 USCS §§ 6323(a)*, *7701(a)(11)(B)*, and such authority fell within ambit of IRS, not ATF. *Acevedo v United States, 101 A.F.T.R.2d (RIA) 2270 (ED Mo 2008)*.

Taxpayer who had not attained age of 55 and who was relieved of her civil service position after she was discharged from National Guard because of medical disqualification was subject to 10 percent additional tax on early distributions from her federal employees' thrift savings plan (TSP) account, which was qualified retirement plan under *26 USCS §§ 4974(c)(1)* and *7701(j)(1)*, as she was not subject to exception in *26 USCS § 72(t)(2)(A)(iii)* pertaining to distributions attributable to employee being disabled; taxpayer admitted that she was not disabled, and neither advice she received from National Guard's personnel department nor document she was given, which actually pertained to Civil Service Retirement Act, afforded her any relief. *Hemrick v. Comm'r, T.C. Memo 2009-272, 98 T.C.M. (CCH) 499, 2009 Tax Ct. Memo LEXIS 274 (T.C. Nov. 25, 2009)*.

Unpublished decision: Federal income tax was legal obligation extending to all individuals who performed services for compensation, regardless of whether their employment was public or private, thus, plaintiff tax protester's claim that defendant former employer wrongfully withheld taxes from his wages failed; as set forth in *I.R.C. § 7701*, word "includes" as used in *26 USCS § 3401(c)* was not deemed to have excluded employees whose employment was private. *Bell v J.B. Hunt Transp., Inc., 107 A.F.T.R.2d (RIA) 2293 (CA11 Ga 2011)*.

Unpublished decision: Appellant's argument to avoid income tax deficiencies imposed under substitute returns, that he was not "U.S. person" because that phrase also referred to foreign corporations, was frivolous because "U.S. person" was defined to include U.S. citizens or residents, and he did not deny being U.S. citizen or resident. Fowlke v Comm'r (CA10 2013).

Activity of leasing trucks through leveraged net leases by qualified subchapter S subsidiary was rental activity under § 469; fact that leases might be treated as finance leases for book purposes did not control tax treatment, and section 7701(h) stated that leases containing terminal rental adjustment clauses would be treated as leases. Private Letter Ruling 200747018, *2007 PLR LEXIS 1760*.

Research References & Practice Aids

Cross References:

"Dependent" defined for purposes of deductions for personal exemptions, *26 USCS § 152*.

Definitions and rules with respect to grantors and others treated as substantial owners, *26 USCS § 672*.

Definitions with respect to partners and partnerships, *26 USCS § 761*.

Definition of “determination” “taxpayer” and “related taxpayer,” *26 USCS § 1313*.

Employment taxes, definitions, *26 USCS § 3121*.

Railroad Retirement Tax Act, definitions, *26 USCS § 3231*.

Federal Unemployment Tax Act, definitions, *26 USCS § 3306*.

Collection of income tax at source on wages, definitions, *26 USCS § 3401*.

Manufacturers excise taxes on automotive and related items, definitions, *26 USCS §§ 4072*, *4082*.

Manufacturers excise taxes, definition of price, *26 USCS § 4216*.

Communications tax, definitions, *26 USCS § 4252*.

Air transportation tax, definition of taxable transportation, *26 USCS § 4262*.

Policies issued by foreign insurers, definitions, *26 USCS § 4372*.

Wagering taxes, definitions, *26 USCS § 4421*.

Vehicle use taxes, definitions, *26 USCS § 4482*.

Private foundation taxes, definitions, *26 USCS § 4946*.

Alcohol excise taxes, definitions, *26 USCS §§ 5002*, *5052*, *5092*, *5102*, *5112*, *5122*, *5311*, *5392*, *5402*, *5690*.

Tobacco and tobacco products excise taxes, definitions, *26 USCS § 5702*.

Excise taxes on firearms, definitions, *26 USCS § 5845*.

Deficiency defined, *26 USCS § 6211*.

Person defined, *26 USCS § 7343*.

Construction of title, effect of cross references, *26 USCS § 7806*.

Presidential election campaign fund, definitions, *26 USCS § 9002*.

Presidential primary matching payment account, definitions, *26 USCS § 9032*.

This section is referred to in *4 USCS § 114*; *6 USCS § 395*; *12 USCS §§ 1464*, *1467a*, *1823*; *22 USCS §§ 2314*, *2661a*, *2755*; *26 USCS §§ 56*, *118*, *153*, *168*, *246A*, *269B*, *312*, *357*, *362*, *401*, *408*, *408A*, *542*, *593*, *597*, *679*, *682*, *853*, *856*, *860F*, *865*, *877*, *881*, *884*, *904*, *937*, *957*, *958*, *988*, *993*, *1249*, *1313*, *1341*, *3405*, *4975*, *6038*, *6038A*, *6039G*, *6046*, *6059*, *6694*, *7213*, *7874*; *29 USCS §§ 1108*, *1023*; *42 USCS § 1320a-7e*.

Code of Federal Regulations:

Internal Revenue Service, Department of the Treasury—Income taxes, 26 CFR 1.1 et seq.

Internal Revenue Service, Department of the Treasury—Employment taxes and collection of income tax at source, *26 CFR 31.0-1* et seq.

Internal Revenue Service, Department of the Treasury—Procedure and administration, 26 CFR 301.269b-1 et seq.

This section is referred to in 26 CFR 1.11-1, 1.23-2, 1.28-1, 1.41-4, 1.41-4A, 1.46-2, 1.48-1, 1.50A-2, 1.50B-1, 1.56A-5, 1.71-1, 1.79-0, 1.101-5, 1.103(n)-2T, 1.108-2, 1.108-6, 1.112-1, 1.118-2, 1.125-4, 1.132-8T, 1.152-2, 1.163-5, 1.163-12, 1.166-3, 1.168(j)-1T, 1.171-1, 1.172-4, 1.172-8, 1.174-1, 1.177-1, 1.179C-1T, 1.215-1, 1.267(a)-3, 1.279-3, 1.280G-1, 1.337(d)-3, 1.338-2, 1.338-4, 1.351-1, 1.355-6, 1.367(a)-1T, 1.367(a)-8, 1.401-1, 1.401-10, 1.401(a)-20, 1.401(a)(26)-6, 1.401(k)-1, 1.401(l)-6, 1.403(a)-1, 4.404(a)-1, 1.408-2, 1.409A-1, 1.410(b)-6, 1.410(b)-10, 1.414(c)-2, 1.414(c)-3, 1.414(q)-1T, 1.414(r)-5, 1.415(b)-1, 1.415(c)-2, 1.415(j)-1, 1.416-1, 1.419A-2T, 1.421-1, 1.441-1, 1.448-2, 1.457-2, 1.460-6, 1.461-1, 1.461-4, 1.467-1, 1.469-2, 1.469-4T, 1.501(c)(14)-1, 1.501(c)(21)-1, 1.507-6, 1.511-3, 1.527-8, 1.591-1, 1.593-1, 1.593-4, 1.593-6, 1.593-6A, 1.593-10, 1.593-11, 1.595-1, 1.597-4, 1.613-2, 1.642(c)-1, 1.642(c)-5, 1.642(i)-2, 1.643(a)-6, 1.643(d)-1, 1.669(a)-1, 1.671-5, 1.679-1, 1.679-5, 1.679-6, 1.682(a)-1, 1.682(c)-1, 1.684-1, 1.684-4, 1.692-1, 1.701-1, 1.701-2, 1.704-1, 1.704-2, 1.704-3, 1.706-1, 1.751-1, 1.755-1, 1.809-4, 1.809-5, 1.812-4, 1.817-5, 1.825-2, 1.848-2, 1.851-1, 1.851-7, 1.853-1, 1.856-1, 1.856-3, 1.860F-4, 1.861-2, 1.861-4, 1.861-8T through 1.861-16, 1.863-1, 1.864-2, 1.864-5, 1.871-1, 1.871-2, 1.871-7, 1.871-9, 1.875-1, 1.881-1 through 1.881-5, 1.882-5, 1.883-1, 1.883-4, 1.884-0, 1.892-2T, 1.892-6T, 1.893-1, 1.894-1, 1.897-1, 1.897-9T, 1.904-2, 1.911-2, 1.911-4, 1.922-1, 1.932-1, 1.934-1, 1.935-1, 1.936-4, 1.936-10, 1.937-1, 1.935-2, 1.954-1, 1.954-2, 1.954-3, 1.955-5, 1.956-3T, 1.957-1, 1.957-3, 1.958-1, 1.961-1, 1.961-2, 1.964-1, 1.988-4, 1.992-1, 1.993-4, 1.994-1, 1.995-5, 1.1032-3, 1.1034-1, 1.1244(c)-1, 1.1244(c)-2, 1.1247-3, 1.1247-4, 1.1248-1, 1.1248-8, 1.1249-1, 1.1291-9, 1.1341-1, 1.1348-2, 1.1348-3, 1.1361-1, 1.1362-2, 1.1363-2, 1.1397E-1, 1.1441-1, 1.1441-3, 1.1441-5, 1.1441-7, 1.1441-8, 1.1446-1, 1.1493-1, 1.1502-13, 1.1502-42, 1.1503-2, 1.1503(d)-1, 1.1503(d)-3, 1.1503(d)-4, 1.6011-4, 1.6012-2, 1.6012-3, 1.6013-6, 1.6031(a)-1, 1.6031(b)-1T, 1.6038-2, 1.6038-3, 1.6038A-1 through 1.6038A-3, 1.6038B-2, 1.6045-1, 1.6045-4, 1.6045-5, 1.6046-1, 1.6046A-1, 1.6049-4, 1.6049-5, 1.6049-7, 1.6050H-1, 1.6050H-1T, 1.6050H-2, 1.6050I-1, 1.6050J-1T, 1.6050M-1, 1.6050P-1, 1.6050S-1, 1.6050S-3, 1.6081-5, 1.6109-2, 1.6109-2A, 1.6694-1, 1.6696-1, 1.7701(l)-1, 1.7701(l)-3, 4.954-1, 16.3-1, 20.0-1, 20.2056A-1, 20.2104-1, 20.2105-1, 25.2501-1, 25.2511-3, 25.2701-5, 31.3121(b)(15)-1, 31.3121(b)(19)-1, 31.3121(g)-1, 31.3306(c)(16)-1, 31.3306(c)(18)-1, 31.3401(a)(5)-1, 31.3401(a)(12)-1, 31.3406(g)-1, 31.6053-3, 35.3405-1T, 36.3121(l)(1)-1, 36.3121(l)(8)-1, 48.6420-4, 48.6421-4, 49.4253-3, 49.4263-3, 53.4948-1, 53.4975-6, 53.4981A-1T, 301.6011-3, 301.6011-5, 301.6037-2, 301.6059-1, 301.6111-3, 301.6114-1, 301.6231(a)(7)-1, 301.6311-1, 301.6684-1, 301.6903-1, 301.7216-1, 301.7654-1, 301.7701-2, 301.7701-7, 301.7701-16, 301.7701-17T, 301.7701(b)-0 through 301.7701(b)-9, 301.7701(i)-1 through 301.7701(i)-4, 301.9100-1, 301.9100-7T, 305.7701-1, 305.7871-1.

Am Jur:

9 Am Jur 2d, Bankruptcy § 359.

10 Am Jur 2d, Banks and Financial Institutions § 579.

13 Am Jur 2d, Business Trusts § 87.

35 Am Jur 2d, Federal Tax Enforcement §§ 98, 116, 384, 457, 947.

60A Am Jur 2d, Pensions and Retirement Funds § 460.

70A Am Jur 2d, Social Security and Medicare §§ 47, 92.

Law Review Articles:

Aprill. Tribal bonds: Indian sovereignty and the tax legislative process. 46 Admin L Rev 333, Summer 1994.

Moore. An Overview of the U.S. Retirement Income Security System and the Principles and Values it Reflects. 33 Comp Lab L & Pol'y J 5, Fall 2011.

Whelan. "Church" in the Internal Revenue Code: the Definitional Problems. 45 Fordham L Rev 885, March, 1977.

Kirsch. The Tax Code As Nationality Law. 43 Harv J Legis, Summer 2006.

Curtis. U.S.-West Germany Tax Treaty and the Section 7701(b) Definition of “Resident Alien”. 13 Int'l Tax J 53, Winter, 1987.

McKenna and Chudy. Tax-Leveraged Investments: Section 246A, Section 7701(f), and Other Recent Developments. 13 J Corp Tax’n 3, Spring, 1986.

Lipton. IRS, in New Procedure, Eases the Rules to Allow REITs to Make Subordinated Loans. *99 J Tax’n 240, October 2003*.

Westin. Shareholders’ Liquidating Trusts After *Revenue Procedure 80-54*.9 Journal of Corporate Taxation 63, Spring, 1982.

Rands. Organizations Classified as Corporations for Federal Tax Purposes. 59 St John’s L Rev 657, Summer, 1985.

Benjamin. Definition of a preparer—Who is he? 10 The Tax Adviser 516, Sept., 1979.

Commercial Law:

4 *Debtor-Creditor Law (Matthew Bender), ch 40*, Asset Protection Trusts § 40.05.

Criminal Law and Practice:

5 *Business Crime (Matthew Bender), ch 27*, Tax Fraud ¶¶ 27.10, 27.11.

Immigration:

1 *Immigration Law and Procedure (rev. ed.), ch 1*, General Scheme of Immigration Law § 1.02.

1 *Immigration Law and Procedure (rev. ed.), ch 6*, Aliens’ Rights, Privileges and Liabilities § 6.13.

2 *Immigration Law and Procedure (rev. ed.), ch 12*, Nonimmigrants: Classification, Terms of Admission and Procedures § 12.07.

2 *Immigration Law and Procedure (rev. ed.), ch 29*, Choosing the Proper Nonimmigrant Classification § 29.04.

8 *Immigration Law and Procedure (rev. ed.), ch 105*, Taxation §§ 105.02, 105.03.

Labor and Employment:

10 *Labor and Employment Law (Matthew Bender), ch 261*, Terms, Conditions, Privileges of Employment, and Independent Contractor Status § 261.06.

Federal Taxation:

2 *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 2*, The Corporation §§ 2.10, 2.16–2.18.

2 *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 3*, Deductions: Expenses §§ 3.01, 3.02.

2A *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 7*, Aliens and Foreign Income §§ 7.02, 7.09, 7.11, 7.13, 7.17.

2A *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 8*, Foreign Corporations and Foreign Trade §§ 8.07, 8.09, 8.11, 8.19.

3 *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 15*, Pensions and Profit-Sharing Plans §§ 15.06, 15.08, 15.14, 15.26.

3 *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 16*, Partnerships §§ 16.01, 16.03, 16.12.

3A *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 23*, Complete Liquidation § 23.06.

3A *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 31*, Exchanges for Securities § 31.02.

3B *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 42*, Acquisition of Real Estate § 42.02.

3B *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 45*, Depreciation and Credits on Real Estate § 45.05.

3B *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 47*, Installment Sales § 47.06.

3B *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 48*, Tax-Deferred Like-Kind Exchanges § 48.20.

3B *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 50*, Personal Residences § 50.04.

3B *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 50H*, Foreign Investment in U.S. Real Estate §§ 50H.00, 50H.03.

3B *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 50G*, Special Forms of Holding Real Estate §§ 50G.02, 50G.03.

3B *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 50F*, Corporate Ownership of Real Estate § 50F.03.

3B *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 50C*, Mortgages in Real Estate Transactions § 50C.09.

3B *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 50E*, Partnerships and Limited Liability Companies § 50E.13.

4 *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 51*, Gift Tax Pattern § 51.01.

4 *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 52*, Estate Taxes § 52.03.

4 *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 54*, Trusts § 54.01.

5 *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 75*, Tax Returns and Elections § 75.01.

5 *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 76*, Examinations § 76.01.

5 *Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 86*, Civil Penalties Other Than Fraud § 86.05.

1 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 1, Introduction § 1.05.

1 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 11, The Affiliated Group §§ 11.02, 11.03.

1 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 23, Other Consolidated Computations and Special Rules § 23.02.

1 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 31, Intercompany Transactions §§ 31.03, 31.05, 31.06.

1 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 31, Intercompany Transactions § 31.09.

1 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 32, Stock of Members §§ 32.04, 32.08, 32.09.

1 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 33, Obligations of Members §§ 33.01, 33.03, 33.04.

1 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 34, Prior Period Intercompany Transactions § 34.08.

2 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 41, Net Operating Losses and Capital Gains and Losses § 41.03.

2 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 42, Special Limitations on Losses §§ 42.02, 42.05.

2 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 51, Stock Basis Adjustments § 51.03.

2 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 52, Excess Loss Accounts § 52.06.

2 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 61, Consolidated Tax Liability Before Credits § 61.03.

3 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 72, The Consolidated Return Loss Disallowance Rule § 72.03.

3 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 74, Consolidated Return Treatment of Financially Troubled Members § 74.04.

3 Federal Income Taxation of Corporations Filing Consolidated Returns (Matthew Bender 2nd ed.), ch 82, Banks and Other Financial Institutions §§ 82.01, 82.02, 82.04.

1 Federal Income Taxation of Retirement Plans (Matthew Bender), ch 11, Controlled Groups and Affiliated Service Groups § 11.02.

2 Federal Income Taxation of Retirement Plans (Matthew Bender), ch 14, Statutory Standards for Deferral Under IRC Section 409A § 14.02.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 1*, Fundamental Concepts §§ 1.03, 1.04.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 2*, U.S. Citizens Abroad— *IRC Section 911* §§ 2.02–2.04.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 3*, Controlled Foreign Corporations (CFCs): Operations §§ 3.01, 3.02.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 5*, Controlled Foreign Corporations (CFCs): Sales or Reorganizations § 5.02.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 6*, Personal Holding Companies § 6.03.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 7*, Investment Companies § 7.01.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 8*, U.S. Possessions §§ 8.03, 8.05.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 9*, Foreign Financial Asset Reporting §§ 9.02, 9.03.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 10*, Domestic International Sales Corporations and Foreign Sales Corporations §§ 10.06, 10.08.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 11*, International Boycotts § 11.02.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 12*, Foreign Tax Credit: Direct Credit § 12.02.

1 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 13*, Foreign Tax Credit: Deemed-Paid Credit § 13.01.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 17*, Reorganizations Involving Foreign Corporations (*IRC Section 367*) §§ 17.01, 17.02.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 18*, Transfer Pricing and Reallocation of Income (*IRC Section 482*) § 18.09.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 23*, Residency §§ 23.01–23.14.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 24*, Classification of Entities §§ 24.01, 24.02.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 25*, Rules on the Source of Income § 25.16.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 26*, Passive Income Rules §§ 26.02, 26.03.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 27*, Withholding on Passive Income §§ 27.02, 27.05.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 29*, Miscellaneous Issues Concerning Foreign Persons §§ 29.01, 29.02.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 31*, U.S. Real Estate Owned by Foreign Persons §§ 31.02–31.04.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 32*, Foreign Trusts §§ 32.02, 32.04.

2 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 33*, Estate and Gift Taxation of Foreign Persons §§ 33.01, 33.02.

3 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Council of Europe/OECD Multilateral, CYPR § 1.07.

3 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Commonwealth of Independent States/CIS/Former USSR, COMM § 1.10.

3 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Belgium, BELG §§ 1.21, 1.24.

3 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Australia, AUSL § 1.23.

3 Rhoades & Langer, U.S. International Taxation & Tax Treaties, China, CHIN § 1.23.

3 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Canada, CANA § 1.25.

3 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Denmark, DENM § 3.16.

3 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Austria, AUST § 3.18.

3 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 42*, Treaty Coverage and Definitions §§ 42.04, 42.08, 42.14.

3 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 54*, Limitations on Treaty Shopping §§ 54.03, 54.05.

3 *Rhoades & Langer, U.S. International Taxation & Tax Treaties, ch 58*, Nondiscrimination § 58.04.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Greece, GREC § 1.02, 1.12–1.14, 1.16.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Finland, FINL §§ 1.04, 1.24.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Iceland, ICEL § 1.07.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Hungary, HUNG § 1.21.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Germany, GERM §§ 1.24, 1.34.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Indonesia, INDO § 1.24.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Italy, ITAL § 1.24.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Egypt, EGPT § 1.26.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, India, INDI § 1.26.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Israel, ISRL § 1.27.

4 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Ireland, IREL § 3.21.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Korea, KORE § 1.07.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Pakistan, PAKS § 1.17.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Poland, POLN § 1.21.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Morocco, MORC § 1.22.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Romania, ROMN § 1.22.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, New Zealand, NEWZ § 1.23.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Philippines, PHIL § 1.24.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Jamaica, JAMA § 1.25.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Norway, NORW § 1.25.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Malta, MALT § 3.00.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Japan, JAPN § 3.07.

5 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Luxembourg, LUXM § 3.20.

6 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Tunisia, TUNS § 1.04.

6 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Trinidad and Tobago, TRIN § 1.06.

6 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Tunisia, TUNS § 1.24.

6 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Spain, SPAN § 1.25.

6 Rhoades & Langer, U.S. International Taxation & Tax Treaties, United Kingdom, UNIK §§ 1.33, 3.24.

6 Rhoades & Langer, U.S. International Taxation & Tax Treaties, Switzerland, SWTZ § 3.18.

1 Tax Controversies: Audits, Investigations, Trials (Matthew Bender), ch 4, Tax Preparers and Practitioners § 4.01.

1 Tax Controversies: Audits, Investigations, Trials (Matthew Bender), ch 7, Summons Power §§ 7.02, 7.06.

1 Tax Controversies: Audits, Investigations, Trials (Matthew Bender), ch 15, Civil Penalties § 15.03.

1 Tax Controversies: Audits, Investigations, Trials (Matthew Bender), ch 17, The Bank Secrecy Act and the Foreign Account Tax Compliance Act (FATCA) § 17.03.

1 Tax Controversies: Audits, Investigations, Trials (Matthew Bender), ch 20, Defenses § 20.04.

Forms:

1 *Rabkin & Johnson, Current Legal Forms, § 1.03*, Partnerships.

2 *Rabkin & Johnson, Current Legal Forms, § 3.18*, Patents, Copyrights and Trademarks.

6 *Rabkin & Johnson, Current Legal Forms, §§ 4A.24*, 4A.57, 4A.59, Equipment Leasing.

15 *Rabkin & Johnson, Current Legal Forms, § 13.08*, Pension Plans and Other Exempt Employees' Plans.

19 *Rabkin & Johnson, Current Legal Forms, § 15A.02*, Not-for-Profit Corporations.

21 *Rabkin & Johnson, Current Legal Forms, § 16A.02*, Professional Corporations.

22 *Rabkin & Johnson, Current Legal Forms, § 17.05*, Corporate Organization.

24 *Rabkin & Johnson, Current Legal Forms, §§ 20.04*, 20.07, Real Estate Entities.

28 *Rabkin & Johnson, Current Legal Forms, § 22A.05*, Real Estate Securities.

28 *Rabkin & Johnson, Current Legal Forms, Forms 22A.05*, 22A.06, Real Estate Securities.

Annotations:

State Income Tax Treatment of Partnerships and Partners. *2 ALR6th 1*.

Determination of employer-employee relationship for social security contribution and unemployment tax purposes under § 3121(d)(2) of Federal Insurance Contributions Act (*26 USCS § 3121(d)(2)*), § 3306(i) of Federal Unemployment Tax Act (*26 USCS § 3306(i)*), and implementing regulations. *37 ALR Fed 95*.

Who is public employee under *§ 7701(a)(26) of Internal Revenue Code of 1954* (*26 USCS § 7701(a)(26)*), providing that term “trade or business” includes performance of functions of public office. *52 ALR Fed 395*.

Who is an “income tax return preparer” under *26 USCS § 7701(a)(36)*. *132 ALR Fed 265*.

Other Treatises:

3 *Banking Law (Matthew Bender), ch 61*, Taxation of Banks in General and Tax Accounting Methods § 61.02.

3 *Banking Law (Matthew Bender), ch 62*, Tax Treatment of Bank Income § 62.14.

3 *Banking Law (Matthew Bender), ch 63*, Tax Treatment of Bank Expenses §§ 63.08, 63.14.

3 *Banking Law (Matthew Bender), ch 64*, Leasing §§ 64.01, 64.05, 64.08, 64.10.

3 *Banking Law (Matthew Bender), ch 65*, Transitional Corporate Entities § 65.02.

3 *Banking Law (Matthew Bender), ch 67*, Foreign Banks Engaged in Business in the United States and Foreign Income of United States Banks §§ 67.02, 67.03.

3 *Banking Law (Matthew Bender), ch 70*, Information Returns, Backup Withholding, and Payment of Estimated Tax § 70.03.

Cohen’s Handbook of Federal Indian Law (Matthew Bender), ch 8, Taxation § 8.02.

Hierarchy Notes:

26 USCS, Subtit. F

26 USCS, Subtit. F, Ch. 79

End of Document