

**MEMO# 3453**

January 17, 1992

# **IRS ISSUES PROPOSED REGULATIONS ON CERTAIN PUBLICLY TRADED PARTNERSHIPS TREATED AS CORPORATIONS**

January 17, 1992 TO: TAX COMMITTEE NO. 2-92 ACCOUNTING/TREASURERS COMMITTEE  
NO. 2-92 RE: IRS ISSUES PROPOSED REGULATIONS ON CERTAIN PUBLICLY TRADED  
PARTNERSHIPS TREATED AS CORPORATIONS

As you know, the Revenue Act of 1987 (the "1987 Act") amended the Internal Revenue Code to treat publicly traded partnerships as corporations for taxable years of the partnership beginning after December 31, 1987, unless the partnership was an "existing partnership". The legislation also provided that an existing partnership would lose its grandfathered status if it added a substantial new line of business. In addition, all publicly traded partnerships, other than those investing primarily in assets giving rise to passive income such as interest and dividends, will be treated as corporations beginning with the first partnership tax year beginning after December 31, 1997. The Internal Revenue Service has issued the attached proposed regulations defining when a publicly traded partnership becomes treated as a corporation because of the addition of a substantial new line of business. Among other things, the proposed regulations define the terms "existing partnership" and "new line of business". The proposed regulations use the definition of "existing partnership" found in section 10211(c) of the 1987 Act. Under these provisions, an existing partnership is one where (1) the partnership was a publicly traded partnership on December 17, 1987; (2) a registration statement indicating that the partnership would be a publicly traded partnership was filed with the Securities and Exchange Commission on or before December 17, 1987; or (3) an application was filed with a state regulatory commission on or before December 17, 1987, requesting permission to convert a portion of a corporation into a publicly traded partnership. A new line of business is any business not closely related to a pre-existing business, to the extent that the business generates income other than qualifying income. Qualifying income is defined in Internal Revenue Code section 7704(d)(4) to include any income which would qualify under Code section 851(b)(2), - 2 - which defines qualifying income for purposes of the requirement that 90 percent of a regulated investment company's ("RIC's") income be passive. Thus, a currently existing RIC which is a publicly traded partnership could add any line of business which generates income described in Code section 851(b)(2) and not terminate its status as an existing partnership. Such an existing RIC could be used until 1998 for any purpose for which the pass-through of character provided by a partnership would be useful. The regulations are proposed to be effective for taxable years beginning after December 31, 1991. However,

taxpayers may rely upon the regulations prior to their effective date. The Internal Revenue Service also announced that a public hearing on the proposed regulations will be held February 24, 1992. Requests to speak at the hearing and outlines of oral comments, as well as comments on the proposed regulations, are due February 10, 1992. If you would like the Institute to submit comments on the proposed regulations, please contact me at (202) 955-3521 no later than January 31, 1992. We will keep you informed of developments.  
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