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Tax Accounting

By James E. Salles

This month's column discusses Notice 2002-79,[1] which incorporates a proposed revenue procedure designed to supersede Revenue Procedure 71-21,[2] the long-standing procedure that allows a limited administrative deferral for income from advance payments for services.

Background

A series of government litigation victories, most prominently the Supreme Court's 1963 decision in *Schlude v. Commissioner*,[3] established the principle that accrual taxpayers had to report income from advance payments upon receipt, except perhaps in narrow circumstances when performance is bound to occur on a particular date.[4] This principle has been applied even where the advance payment is for inventory goods and the taxpayer has not yet incurred the associated costs.[5]

As often happens, the IRS's court victories left it with a dilemma. Literal enforcement of the "*Schlude* rule" would make businesses account for a great many routine transactions in a way that did not conform either to generally accepted accounting principles or to common tax practice. In 1970, the IRS opted for an administrative solution, issuing both proposed regulations addressing advance payments for goods[6] and Revenue Procedure 70-21,[7] providing corresponding rules for services. The following year, the regulations were finalized as Regs. § 1.451-5 and Revenue Procedure 70-21 was refined and reissued as Revenue Procedure 71-21.[8]

There matters stood until the IRS 2002-03 business plan served notice that advance payments were on the regulatory agenda.[9] Notice 2002-79,[10] issued December 2, includes a proposed revenue procedure superseding Revenue Procedure 71-21. This column outlines issues commonly arising under Revenue Procedure 71-21 and discusses the changes in the proposed new procedure. The new procedure would apply to a broader class of payments, eliminating a lot of issues that have arisen in the past about eligibility and allocating payments between different categories. Also, while both procedures permit a maximum of one year's deferral, the new procedure abandons the requirement that the agreement between the parties may span no more than two years in favor of simply requiring that all amounts must be taken into income no later than the year following receipt.

Types of Payments Covered

While Revenue Procedure 71-21 has been interpreted broadly enough to cover payments for utility services,[11] funeral services,[12] advertising,[13] and related "audience deficiency" payments representing entitlement to future advertising,[14] its restriction to payments for "services" significantly limits its application.

A variety of payments for licenses or other rights to intangible property have been held ineligible for deferral because they involve neither inventoriable "goods" nor services. For example, the IRS position has been that sports teams' income from the sale of rights to broadcast games cannot be deferred because "the contracts do not provide for the performance of any particular service,"[15] and the same applies to sponsors' payments for exclusivity rights.[16] The IRS has seemed uncertain about whether season tickets to games or performances represent eligible "services,"[17] although some taxpayers have successfully achieved deferral independently of the procedure under a case law exception for "certainty of performance." A private ruling refused to allow a discount club to defer its membership fees, reasoning that the fees were for "access" to discounted goods and services, which is not a service.[18]

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Other transactions may be difficult to classify. A notorious example is transactions involving computer software. There is an emerging consensus that shrinkwrapped software is a good,[19] and therefore upgrade subscriptions fall under Reg. § 1.451-5.[20] In other cases, the IRS may be inclined to look to the classification of the transaction under Reg. § 1.861-18,[21] although that provision does not seem to be technically controlling. However, significant potential for dispute remains.

Another chronic problem has been how to handle advance payments that are partially for services and partially for something else, especially when it is not clear which part of the payment is which. This type of allocation problem occurs in other contexts, and the resolutions are not consistent or neat. Determining "economic performance," for example, requires attributing payments to particular goods or services. The regulations provide that in so doing, no consideration need be allocated to "a service or item of property" that is "incidental" to other services or property provided for under the same contract. Property or services are "incidental" if no allocation is made to them on the taxpayer's books and their cost does not exceed 10 percent of the total contract price.[22] On the other hand, in enforcing the requirement that sellers of goods account on an accrual basis,[23] the IRS originally seems to have concluded that a taxpayer that sold *any* "merchandise" had to accrue *all* receipts unless the services qualified as a distinct business with separate books,[24] although the Tax Court held to the contrary when a taxpayer's costing systems made it "quite feasible to accurately segregate accounts."[25]

In the advance payments area, the presence of two similar but distinct deferral regimes for services and property compounds the problem. Reg. § 1.451-5 applies to agreements that call for performance of services "as an integral part" of the provision of eligible goods,[26] but payments for other services must be segregated unless they account for less than 5 percent of the total consideration.[27] Revenue Procedure 71-21 does not contain a *de minimis* rule at all. Where an allocation is impractical, some agreements may fall through the cracks. Further problems occur because Revenue Procedure 71-21 covers service contracts that provide for "incidental" replacement of parts and materials only if the service contracts are sold separately from the underlying goods,[28] while payments under "guaranty or warranty" contracts are not deferrable at all.[29]

Changes Under the New Procedure

In a key change, the proposed new procedure generally would apply to payments for goods, services, or the use of intellectual property; rentals "ancillary" to the provision of services, guaranties or warranties "ancillary" to any of the foregoing; subscriptions and memberships; or any combination thereof. Exceptions apply to items except for items accounted for under other guidance, including sales of goods accounted for under Reg. § 1.451-5 and subscription and membership fees accounted for under Code sections 455 or 456.

The inclusion of payments for goods and for the use of intellectual property will likely bring a lot of miscellaneous payments that were previously excluded within the scope of the new procedure. Indeed, one of the new procedure's examples specifically covers broadcasting rights, and another one membership fees in a "shopping club" offering discounted merchandise and services.

Moreover, the exclusions in the proposed procedure are drafted to cover amounts that *are actually accounted for* (not merely eligible for) other administrative deferral rules. Thus, for example, payments for goods can be accounted for under the new procedure, so long as the taxpayer has not elected Reg. § 1.451-5. (Consistently, the proposed procedure eliminates the rule in Revenue Procedure 71-21 that amounts paid for service contracts were only eligible for deferral if the contracts and the underlying goods were sold separately.[30]) Many allocation issues that have arisen in the past will likely be eliminated. Of course, when a taxpayer does elect to account for payments of goods under Reg. § 1.451-5, combined payments for goods and services will still

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have to be apportioned between the two regimes. Notice 2002-79 requests comments about how to do this.

The "One-Year" Limitation

Both Revenue Procedure 71-21 and the proposed new procedure contemplate a maximum deferral of one year, but enforce this limitation differently. Revenue Procedure 71-21 required that the agreement between the parties explicitly call for the services to be provided no later than the close of the taxable year following receipt.[31] Thus, for example, payments received by an insurance company under a seven-year contract could not be deferred at all, even though each annual payment covered only one year.[32] Although the IRS has occasionally hinted at a willingness to find multiple "agreements" under a single written contract,[33] or to find that an agreement meets this condition based upon an oral undertaking or the parties' course of dealings,[34] this restriction sharply limits the procedure's utility in common commercial settings.

The new procedure scraps the limitation on the *agreement* in favor of a simple requirement that any particular advance payment be included in income no later than the taxable year following the year of receipt, regardless of when performance occurs. The effects of this change are illustrated in similar examples in each procedure. A taxpayer gives dancing lessons under a two-year contract that spans three taxable years. Under Revenue Procedure 71-21, no deferral is possible.[35] The new procedure permits the payment to be reported partially in the year of receipt and partially in the following year.[36]

Some multi-year contracts may pose questions about the allocation of performance to particular payments. For example, suppose a customer makes payments in both 2003 and 2004 under a multi-year service contract. Services provided in 2004 will have to be allocated between the 2003 and 2004 payments. Those allocated to 2003 payments will not affect the taxpayer's income, because anything paid in 2003 must be reported no later than 2004. On the other hand, what services are attributable to the 2004 payments will determine the amount of those payments that must be reported in 2004 rather than 2005. The proposed procedure requires that the taxpayer have in place "a methodology for determining that advance payments are included in gross income by the end of the next succeeding taxable year." In the case of goods and services that are not traced to particular payments, the taxpayer may generally follow its books.[37]

Mechanics of Deferral

Apart from the changes to the one-year limitation, the basic mechanics of deferral remain much the same. The taxpayer reports income in the year of receipt that is attributable to performance that occurs in that year, and reports any remaining income in the following year, regardless of when (or if) performance occurs. The taxpayer must report any deferred income immediately if it goes out of existence in a transaction other than one to which section 381(a) applies, or to the extent that its obligation to perform otherwise ceases for any reason.[38] The amounts attributable to the current year are determined on a book basis.[39]

Accrual taxpayers generally report income when an amount is received, becomes currently due, or upon performance, whichever happens first,[40] and, as under Reg. § 1.451-5 and Rev. Proc. 71-21,[41] amounts are treated as "received"—that is, as advance payments—when they become due and payable.[42]

Some of the language in the new procedure is not as clear as it might be, particularly the description of an eligible advance payment as a payment that "is included by the taxpayer . . . in gross receipts for financial reporting purposes for a taxable year later than that in which it is received." The intent seems to be to "build in" a book conformity requirement and possibly also to make clear the procedure does not apply to cash basis taxpayers. However, the definition is cumbersome and possibly ambiguous, such as in the case of a small taxpayer that reports on an accrual basis for tax purposes without any "financial reporting" beyond basic books.

A more straightforward approach could be to follow the regulation's language, modified

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appropriately to reflect the one-year limitation on deferral. The procedure could define an advance payment as an amount either paid or due for performance in a later year, and then permit deferring the reporting of such payments by one year so long as the same practice is followed in any reporting "to shareholders, partners, beneficiaries, other proprietors, and for credit purposes."[43] Any relief granted could be explicitly confined to accrual taxpayers, as it is under Revenue Procedure 71-21.[44]

From Tickets to Gambling Tokens?

Revenue Procedure 71-21 contained special rules for "bus and streetcar tokens or transportation tickets with open dates" and prepaid photographic mailers.[45] Essentially these provisions allowed one year's deferral for receipts if the corresponding services were not performed in the year of receipt, without the requirement that redemption must occur within one year. The new procedure provide essentially the same treatment without a special rule,[46] but potentially applies to many more types of prepaid entitlements.

A new and interesting example allows a video arcade operator to defer income from tokens the operator expects to be redeemed after year-end, so long as they cannot be redeemed for cash. The drafters obviously assumed that payments for the opportunity to play a game fell under the procedure, perhaps either as payments for services or for "the occupancy of space or the use of property . . . ancillary to the provision of services." The same would also seem to apply to season tickets to sports events and other performances.

The same logic might even extend further. *Zarin v. Commissioner*[47] involved a taxpayer who gambled on credit, lost ruinously, and wound up compromising a $3,435,000 debt for $500,000. The IRS argued that he had borrowed $3,435,000, purchased that amount of chips ("property"), and then proceeded to lose them; therefore, when he compromised his debt, he had income from the discharge of indebtedness. (The gambling losses, of course, were not deductible.) The Third Circuit, reversing a sharply split Tax Court, held for the taxpayer. As a practical matter, the only way he could redeem or utilize the chips was to gamble. The court reasoned that the chips were merely an "accounting mechanism," and Zarin had merely lost $500,000 gambling. Complementary casino tokens could be viewed as a kind of gift certificate, making payments for a typical gambling "package" (hotel rooms, food and drink, tickets to shows, and "free" chips) deferrable under the new procedure.

It is not entirely clear how Revenue Procedure 71-21 interacts with Reg. § 1.451-4, which governs "trading stamps or premium coupons" redeemable in "merchandise, cash, or other property." These regulations, which provide for the establishment of a reserve based upon estimated future redemptions, date from the glory days of S&H Green Stamps and their ilk and are now somewhat obscure. They are, however, not elective, so an overlap in coverage could pose problems. The regulations cover stamps and coupons redeemable for cash, which the procedure does not, but it does not seem that a stamp or coupon that is *not* redeemable for cash will *not* fall under Reg. § 1.451-4. The IRS may want to address this interplay in the final procedure, or even revisit Reg. § 1.451-4.

Interest and Rent Excluded

Neither Revenue Procedure 71-21 nor the proposed new procedure apply to prepaid rent or interest.[48] That prepaid interest is immediately includable[49] is now of limited importance. With minor exceptions, "prepaid interest," in the traditional sense of interest paid before it is earned, no longer exists for tax purposes,[50] because such payments are treated as principal.[51]

Rentals, however, remain a significant gap. Early case law established that rent paid in advance was immediately includable,[52] even if the recipient reported on an accrual method,[53] and Reg. § 1.61-8(b) has provided for nearly 50 years that "advance rentals . . . must be included in income for the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer."

Revenue Procedure 71-21 does provide that

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"for purposes of this Revenue Procedure and Reg. § 1.61-8(b) . . . the term 'rent' does not include payments for the use or occupancy of rooms or other space where significant services are also rendered to the occupant," citing former Reg. § 1.1372-4(b).[54] The citation invokes the substantial line of authorities addressing whether rents earned by subchapter "S" corporations were passive income.[55] A series of cases and rulings under these rules have held that income from airline[56] and yacht[57] charters, and rental of motion pictures,[58] storage space,[59] motor vehicles,[60] television sets,[61] housewares,[62] and miscellaneous personal property[63] was not "passive" so long as significant services are performed. Similarly, the IRS has conceded that Revenue Procedure 71-21 covers payments for grain storage[64] and trade show booth rentals.[65]

On the other hand, income from licensing videocassettes,[66] or from "dry" leases of aircraft[67] or net leases of equipment is "passive," as is the rental of office buildings,[68] storefronts,[69] apartments,[70] or mobile home lots[71] if the only services provided are "the type of services generally provided by a landlord to a tenant or are customarily rendered in connection with the rental of space for occupancy only"[72] or occasional use.[73] Correspondingly, the IRS has ruled under Revenue Procedure 71-21 that a retirement community cannot defer rental income because of ancillary support that it provided to its older tenants,[74] and that while payments for hotel rooms are deferrable,[75] payments to rent banquet rooms and similar facilities are not.[76] In what seems to be the only case on point, *BJR Corporation v. Commissioner*,[77] the Tax Court relied on the "S" corporation precedents to hold that the taxpayer could not defer revenues from renting mobile homes to the federal government when no services beyond the ordinary were provided.

Taxpayers are allowed to use the new procedure to account for payments for "the occupancy of space or the use of property if the occupancy or use is ancillary to the provision of services."[78] The intent seems to be to continue the general contours of the previous exclusion, although interestingly the new procedure adds a reference to the procedure's potential application to rentals for "recreational and banquet facilities."

Other Excluded Payments

Also excluded from the new procedure are insurance premiums and "payments with respect to financial instruments (for example, debt instruments, deposits, letters of credit, notional principal contracts, options, forwards, futures, foreign currency contracts, credit card agreements, financial derivatives, etc.)"[79] Notably, the exclusion applies not only to payments called for under the terms of the instrument but to other payments "with respect to" the transaction. This clause would appear to preserve the IRS's existing position that credit card membership fees, as well as loan commitment fees and guaranty fees and the like relating to financial transactions,[80] are ineligible for deferral. Other miscellaneous financial payments, such as those under a REMIC "yield guaranty" that was at issue in recent field service advice,[81] would fall under the same heading. Premiums for bail bonds likely also remain outside the new procedure, whether they represent insurance or not.[82]

1. 2002 WL 31681285.

2. 1971-2 C.B. 549.

3. 372 U.S. 128 (1963).

4. *E.g., Artnell Co. v. Commissioner*, 400 F.2d 981 (7th Cir. 1968) (baseball tickets); *Boise Cascade Corp. v. United States*, 530 F.2d 1367 (Ct. Cl.), *cert. denied*, 429 U.S. 867 (1976) (engineering services); *Collegiate Cap & Gown Co. v. Commissioner*, 37 T.C.M. (CCH) 960 (1978); *Tampa Bay Devil Rays, Ltd. v. Commissioner*, 84 T.C.M. (CCH) 394 (2002), discussed in J. Salles, "Tax Accounting," 4(3) *Corp. Bus. Tax'n Monthly* 18, 19 (Dec. 2002).

5. *E.g., Hagen Advertising Displays v. Commissioner*, 47 T.C. 139 (1966), *aff'd*, 407 F.2d 1105 (6th Cir. 1969).

6. 35 Fed. Reg. 12,612 (Aug. 7, 1970).

7. 1970-2 C.B. 501.

8. 1971-2 C.B. 549.

9. *See* J. Salles, "Tax Accounting," 3(12) *Corp. Bus. Tax'n Monthly* 35, 38 (Sept. 2002) and 4(3) *Corp. Bus. Tax'n Monthly* 18, 20 (Dec. 2002).

10. 2002 WL 31681285.

11. Rev. Rul. 72-49, 1972-1 C.B. 125 (telephone services covered even though use of equipment included).

12. *See* LTR 8929040 (Apr. 25, 1989) (eligible, although one-year rule not met).

13. *See* MSSP, Audit Techniques Guide for Sports Franchises (Aug. 1999), 1999-2000 CCH IRS Positions ¶ 217,951 ["Sports MSSP"] at 116,069; TAM 200147032 (Aug. 14, 2001).

14. LTR 9840002 (May 13, 1998).

15. Sports MSSP at 116,069; *see also, e.g.,* GCM 39177 (12/15/82); PLR 8331053

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(4/29/83).

16. *Id.* at 116,072.

17. *See* unnumbered FSAs dated Feb. 2, 1998, at 1998 WL 1984297-98.

18. LTR 200102034 (Oct. 12, 2000), *reconsidering and superseding* LTR 200005031 (Nov. 3, 1999).

19. *See, e.g., Applied Communications v. Commissioner*, 57 T.C.M. (CCH) 1473 (1989) (seller must accrue under "merchandise rule").

20. *E.g.*, PLR 9231002 (Apr. 3, 1992); unnumbered FSA, 1998 WL 1984180 (Mar. 25, 1998).

21. *See* Reg. § 1.861-18(i)(4) (Ex. 2).

22. Reg. § 1.461-4(d)(6)(iv).

23. Regs. § 1.446-1(a)(4)(i), (c)(2)(i); *see generally* J. Salles, "Of Merchandise, Accruals, and Administrative Grace," 95 Tax Notes 1778 (June 17, 2002).

24.TAM 9408003 (Nov. 10, 1993).

25. *Hospital Corp. of America v. Commissioner*, 71 T.C.M. (CCH) 2319, 2332-34 (1996).

26. Reg. § 1.451-5(a)(2)(i).

27. Reg. § 1.451-5(a)(3).

28. Rev. Proc. 71-21, § 3.07.

29. *See Standard Television Tube Corp. v. Commissioner*, 64 T.C. 238 (1975); Rev. Proc. 71-21, § 3.08.

30. Rev. Proc. 71-21, § 3.07. *Compare id., §* 3.12, Ex. (4) *with* Proposed Rev. Proc., § 5.03, Ex. (4).

31. Rev. Proc. 71-21, § 3.02.

32. TAM 199944040 (June 21, 1999).

33. Unnumbered FSA (Apr. 1999), 1999 WL 33520481 (taxpayer "may have an argument" for segregating "separate and distinct services" that could "stand alone as a separate contract"); 1999 NSAR 5066 (Apr. 10, 1999) (similar).

34. LTR 9840002 (May 13, 1998) (generally accepted practice in broadcasting industry to provide advertising "make-goods" within a few months); LTRs 9348035-044 (Sept. 7, 1993) (monthly billings without written agreement); 1999 NSAR 5066 (Apr. 10, 1999), 1999 WL 33459116.

35. Rev. Proc. 71-21, § 3.12 (Ex. 2).

36. Prop. Rev. Proc. § 5.03 (Ex. 2).

37. Prop. Rev. Proc. § 5.02(2).

38. Rev. Proc. 71-21, § 3.13; Prop. Rev. Proc. § 5.02(3).

39. Rev. Proc. 71-21, § 3.11; Prop. Rev. Proc. § 5.02(1).

40. *E.g., Charles Schwab Corporation. v. Commissioner*, 107 T.C. 282, 292 (1996), *aff'd*, 161 F.3d 1231 (9th Cir. 1998), *cert. denied*, 528 U.S. 822 (1999); Rev. Rul. 74-607, 1974-2 C.B. 149, 150.

41. Reg. § 1.451-5(a)(1), (a)(2)(ii); Rev. Proc. 71-21, § 1; *see also, e.g.,* unnumbered FSA (Apr. 1999), 1999 WL 33520481; NSAR 5066 (Apr. 10, 1999), 1999 WL 33459116.

42. Prop. Rev. Proc. § 4.04.

43. *Cf.* Reg. § 1.451-5(b).

44. Reg. § 1.451-5(b)(ii)(a); Rev. Proc. 71-21, § 3.02.

45. Rev. Proc. 71-21, §§ 3.04-.05.

46. *See* Prop. Rev. Proc. § 5.03 Ex. (6).

47. 916 F.3d 110 (3d Cir. 1990), *rev'g* 92 T.C. 1084 (1989).

48. Rev. Proc. 71-21, § 3.08; Prop. Rev. Proc. § 4.02(1) & (3).

49. *See, e.g., Bell Federal Savings & Loan Ass'n v. Commissioner*, 62 T.C.M. (CCH) 376 (1991).

50. *See, e.g.,* TAM 200019041 (Mar. 3, 2000), discussing Rev. Rul. 58-225, 1958-1 C.B. 258.

51. *See generally* Reg. §§ 1.446-2(e), 1.1275-2(a).

52. *See, e.g., Gilken Corp. v. Commissioner*, 10 T.C. 445, 450-56 (1948) (reviewed), aff'd, 176 F.2d 141 (6th Cir. 1949) and authorities cited.

53. *E.g., New Capital Hotel v. Commissioner*, 261 F.2d 437 (6th Cir. 1958) (*per curiam*), *aff'g* 28 T.C. 706 (1957); *Commissioner v. Lyon*, 97 F.2d 70 (9th Cir. 1938); *see also Hyde Park Realty v. Commissioner*, 211 F.2d 462, 463 (2d Cir. 1954), *aff'g* 20 T.C. 43 (1953) (prepaid rents taxable on either cash or accrual basis); *Palm Beach Aero Corp. v. Commissioner*, 17 T.C. 1169 (1952) (also involving an accrual taxpayer, although not discussing the distinction).

54. Rev. Proc. 71-21, § 3.08.

55. *See* I.R.C. § 1375, and former § 1372(e)(5) (before amendment by the Subchapter S Revision Act of 1982).

56. Rev. Rul. 81-197, 1981-2 C.B. 166.

57. LTR 7718003 (Feb. 1, 1977).

58. Rev. Rul. 75-349, 1975-2 C.B. 349.

59. Rev. Rul. 65-91, 1965-1 C.B. 431.

60. Rev. Rul. 76-469, 1976-2 C.B. 252; Rev. Rul. 65-40, 1965-1 C.B. 429.

61. Rev. Rul. 70-206, 1970-1 C.B. 177.

62. Rev. Rul. 64-232, 1964-2 C.B. 334.

63. Rev. Rul. 65-83, 1965-1 C.B. 430.

64. LTR 8909002 (Oct. 28, 1988).

65. Unnumbered FSA, 1998 WL 1757778 (Sept. 29, 1998).

66. *Thompson v. Commissioner*, 73 T.C. 878, 889-93 (1980).

67. Rev. Rul. 81-197, 1981-2 C.B. 166, situation 2.

68. *Bramlette Building Corp. v. Commissioner*, 424 F.2d 751 (5th Cir. 1970) (landlord provided porter, maid, and repair services typical of "similar office buildings"); *H&L Reid, Inc. v. United States*, 375 F. Supp. 109 (E.D. Mich. 1973) (services typical of medical professional building).

69. *City Markets, Inc. v. Commissioner*, 433 F.2d 1240 (6th Cir. 1970) (market provided maintenance and allied services); *Lillis v. Commissioner*, 45 T.C.M. (CCH) 1000 (1983) (developer renting subdivision homes provided customary maintenance and repairs).

70. *Crouch v. United States*, 692 F.2d 97 (10th Cir. 1982) (apartment building including recreation, laundry, storage facilities, etc.).

71. *Stover v. Commissioner*, 781 F.2d 137 (8th Cir. 1986) (lots included utility hookups).

72. *Stover v. Commissioner*, 781 F.2d at 140-41.

73. *E.g., Feingold v. Commissioner*, 49 T.C. 461 (1968) (resort operator occasionally sponsored bingo games and childrens' parties); *McIlhinney v. Commissioner*, 39 T.C.M. (CCH) 554 (1979), *aff'd*, 3d Cir. 1/19/81 (shopping center sponsored car raffle and annual Santa Claus visit).

74. Rev. Rul. 73-549, 1973-2 C.B. 17.

75. Rev. Proc. 71-21, § 3.08.

76. TAM 8140010 (undated).

77. 67 T.C. 111 (1976).

78. Prop. Rev. Proc. § 4.01(4)(d).

79. Prop. Rev. Proc. § 4.02(2)-(3).

80. *See, e.g., American Express Co. v. United States*, 262 F.3d 1376 (Fed. Cir. 2001), discussed in J. Salles, "Tax Accounting," 3(2) *Corp. Bus. Tax'n Monthly* 21, 22-23 (Nov. 2001).

81. FSA 200047014 (Aug. 10, 2000).

82. *See Allied Fidelity Corp. v. Commissioner*, 66 T.C. 1068 (1976), *aff'd*, 572 F.2d 1190 (7th Cir.), *cert. denied*, 439 U.S. 835 (1978).