Tax Accounting

BY JAMES E. SALLES

This month's column explores a spate of recent IRS administrative releases on tax accounting issues:

- An IRS "advance notice of proposed rulemaking" provides a sneak preview of the forthcoming intangibles capitalization regulations.
- In the meantime, the IRS promulgates a "safe harbor" method of accounting for restaurant "smallwares."
- Notice 2002-8[1] allows more generous transition relief for "split-dollar" insurance arrangements.
- Announcement 2002-18 confirms that most frequent flier miles will remain untaxed pending further guidance.

INDOPCO REGULATIONS PREVIEW

In January, the IRS continued its ongoing initiative to deal with capitalization issues by releasing an "advance notice of proposed regulations" addressing what costs should be capitalized in connection with intangible assets.[2] The notice provided a preview in narrative form of the proposed regulations expected later this year.

Overview

Some aspects of the advance notice strikingly resemble the "proposed capitalization principles" submitted by the "*INDOPCO* Coalition" in December,[3] and indeed, the IRS has drawn some mild flak on that score.[4] So far, however, the IRS initiative remains more limited in scope than the Coalition's proposals. Unlike the Coalition, which tried to tackle the whole capitalization question at once, the IRS is confining the contemplated regulation project to intangible assets. Thus, the thorny question of repairs versus improvements[5] and the Coalition's proposal for a system of repair allowances are left for another day.

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The "big picture" is that the IRS seems to be willing to adopt the Coalition proposal's general approach, which requires capitalizing outlays that relate to specific types of assets and benefits while allowing most other expenditures to be deducted currently. Unlike the Coalition, the IRS may not regard the capitalization "laundry list" as entirely exclusive. As discussed below, the advance notice suggests that the proposed regulations may allow room for a residual category of capital outlays in relatively rare circumstances. However, if the regulations that eventually emerge follow the pattern of the notice, capitalization analysis will, in some respects, have come full circle over the past decade. Both the Coalition and IRS proposals somewhat resemble the "separate and distinct asset" approach to capitalization that the taxpayer argued for and lost in *INDOPCO*, although with a fairly expansive definition of "asset" that encompasses particular types of intangible benefits as well as "property" a taxpayer can sell.

The other significant guidance offered concerns how to treat costs incurred in connection with capital transactions and "self-developed" intangibles, such as a bank's loans. Recent years have seen much controversy over the IRS's attempts to require capitalization of employee salaries and other "internal" costs in such situations. The advance notice appears largely to concede the issue, suggesting that the IRS will require capitalization only of incremental "external" costs beyond some *de minimis* threshold. Specific provisions of the advance notice are examined below.

Twelve-Month Rule

Like the Coalition, the IRS proposes a "twelve-month rule" under which taxpayers could generally deduct expenditures that provided a future benefit for no more than 12 months, so long as that period did not extend beyond the end of the taxable year following the outlay. Following the Seventh Circuit's holding in *USFreightways Corp. v. Commissioner*,[6] the IRS would allow accrual taxpayers access to this rule of convenience on the same terms as cash basis taxpayers.

Indeed, the proposal would seem to extend the existing case law applying the twelve-month rule. Most of those authorities involve prepayments of "period costs" such as interest, rent, or other outlays that are not associated with another asset, whereas the advance notice appears to contemplate applying the rule to all expenditures that "create or enhance" an intangible asset.

The Capitalization Laundry List

Besides the direct costs of acquiring an intangible asset or a "financial interest," such as a loan, the proposed regulations are expected to require capitalization, subject to the twelve-month rule, of outlays falling under any of several specified headings:

- The first such category comprises prepayments for goods, services, or other benefits.
- The next two categories include "market entry" payments, such as payments to obtain a membership, privilege, or the right to conduct business, and payments to a government to obtain a license or other rights, such as a copyright, or registration of a trade name or trademark.
- The fourth and fifth categories concern payments for contract rights. The current treatment of such payments is somewhat murky.[7] Contracts that produce gross income (e.g., a lease to a lessor, or a sales contract) are clearly "separate and distinct assets," but a mere "at-will" customer relationship probably is not. Similar doubt attends the status of "supplier contracts," given that expenditures to reduce future costs have traditionally been treated differently than expenditures to produce future income. The IRS, like the Coalition, concludes that costs to obtain contracts with either customers or suppliers that grant the taxpayer "enforceable rights" should be capitalized. Similarly, the IRS expects to require capitalization of amounts paid to terminate certain contracts (such as a lease or franchise) when the result is that rights held by others revert to the taxpayer.
- The next category comprises payments that, while they may directly enhance someone else's tangible property, indirectly benefit the taxpayer's own property. An example would be payments to improve public roads adjacent to the taxpayer's property.[8]
- The final category of capitalizable outlays comprises payments to "protect and defend title" to existing intangible assets.

Self-Developed Intangibles

According to the advance notice, the proposed regulations will generally require capitalization of ancillary costs, which the notice describes as "transaction costs that facilitate the taxpayer's acquisition, creation, or enhancement of intangible assets or benefits" of the types included in the laundry list. This rule would apply to both isolated capital transactions, such as an acquisition by or of the taxpayer, and to intangibles routinely created or acquired in the course of business operations, such as a bank's loans. However, the advance notice suggests—in contrast to the IRS's litigation position in the past—that the proposed regulations will not require capitalizing fixed employee compensation or overhead. For example, fees paid to an outside law firm in connection with a corporate acquisition would generally be capitalizable, but the salaries of corporate officers working on the transaction would not.

Confining capitalization to these types of "incremental" costs would largely concede the issue in the *Wells Fargo* and *PNC* cases discussed in earlier columns,[9] thereby forestalling a lot of litigation. The advance notice also suggests that the proposed regulation may permit ancillary costs under a *de minimis* threshold to be expensed for administrative convenience.

Taxpayer Input Requested

The final section of the advance notice requests taxpayer comments on a variety of topics, including whether and when book-tax conformity should be required, amortization periods, and a possible *de minimis* rule. The IRS also requests input on general principles of capitalization, suggesting that the proposed regulations may require capitalization of outlays beyond those included on the laundry list in "rare and unusual cases."

In the Meantime…

The administrative status of the advance notice and its effect on pending proceedings are a little unclear. An internal memorandum issued in late February by two IRS divisional commissioners[10] advised that "the rules and standards in the [advance notice] are not Service

position and do not provide any authority for concession of these issues," and are not intended to prescribe "standards to be utilized in resolving existing cases." The memorandum added, however, that as "it is likely that Treasury and this Service will ultimately adopt" a twelve-month rule, agents should not propose fresh adjustments that would be covered by such a rule, although existing proposed adjustments should be pursued.

A couple of weeks later, the Chief Counsel's office announced that, for the time being, the IRS would no longer seek to enforce capitalization of ancillary costs that would be eligible for expensing under the proposed regulations as described in the advance notice: that is, fixed internal costs such as employee compensation and overhead, and "incremental" costs below a $5,000 *de minimis* threshold. However, taxpayers that have deducted costs that the final regulations ultimately require to be capitalized may be later required to change accounting methods, with an appropriate cumulative adjustment under Code Section 481.[11]

Remaining in limbo are expenditures that are not covered by the laundry list of capitalizable outlays in the advance notice, but which are associated with some sort of future benefit that might be argued to require capitalization under *INDOPCO*. The IRS will presumably resolve such issues on a case-by-case basis with an eye to, but not constrained by, the expected proposed regulations.

NEW PROCEDURE ADDRESSES "SMALLWARES"

While the advance notice addresses capitalization issues at the most general level, it followed closely on the heels of a revenue procedure whose application could hardly have been more specific. Revenue Procedure 2002-12[12] attempts to resolve a common audit issue in the food industry by prescribing a specialized elective method of accounting for restaurant "smallwares."

Background

Historically, the IRS has taken the position that there is no generally applicable *de minimis* threshold for capitalization,[13] and the Tax Court recently endorsed that view in *Alacare Home Health Services*.[14] However, in some circumstances, small size may combine with limited useful life to justify a deduction. Reg. §1.162-6 allows professionals to deduct outlays "for books, furniture, and professional instruments and equipment, the useful life of which is short," and Reg. §1.162-12 allows farmers to deduct "[t]he cost of ordinary tools of short life or small cost." The Tax Court likewise has allowed relatively small outlays with limited useful lives to be expensed, even though the useful life may exceed the usual one-year rule of thumb. Thus, for example, in *Galazin v. Commissioner*,[15] Judge Irwin allowed the taxpayer to deduct a $50 calculator with an asserted two-year life "in light of the relatively minor size of the expenditure and the relatively short useful life," although a few weeks before he had required another taxpayer to capitalize $75 paid for a used adding machine with an expected remaining life of five years.[16]

Smallwares

Restaurant smallwares are items such as pots, pans, dishes, and glassware. A food service business typically purchases a smallwares "package" for about $10,000 to $50,000 when it begins operations. The items are then replaced piecemeal as the need arises. Revenue Procedure 2002-12 noted industry data indicating that smallwares have an average useful life of slightly over a year. Individually, smallwares are likely candidates for a *de minimis* rule. The initial bulk purchase, however, is a decent-sized outlay that arguably has a greater than one-year useful life.

Revenue Procedure 2002-12 attempts to resolve a recurring audit problem by allowing a restaurant or tavern to elect the specialized "smallwares method of accounting." The "smallwares method" is essentially a fancy name for treating smallwares as "non-incidental supplies" and deducting their cost as they are put into use and "consumed" in the taxpayer's business.[17] Under a simplifying (and taxpayer-favorable) assumption, however, smallwares would be deemed to be placed into service when they were ready for use on the premises. The procedure also provides a lengthy and generous definition of eligible smallwares, including "table top items," bar supplies, food preparation utensils, and miscellaneous small appliances costing $500 or less.

Pre-Opening Expenses

Revenue Procedure 2002-12 provides that the smallwares method is not available for purchases before the restaurant actually begins operations. The exclusion is

drafted rather clumsily to cover "smallwares that are start-up expenditures as described in [Code Section] 195." Presumably, the drafters intended that such costs would be subject to elective 60-month amortization under that provision. However, the definition of "start-up expenditures" is restricted to those outlays "which, if paid or incurred in connection with the operation of an existing active trade or business…would be allowable as a deduction for the taxable year in which paid or incurred."[18] Technically, therefore, the reference to Code Section 195 raises precisely the capitalization issue that the revenue procedure was designed to finesse.

The revenue procedure seems to assume that smallwares are "naturally" capital items. Even under the smallwares method a deduction can only be taken as the items are put into use, which is not necessarily the taxable year in which the costs are paid or incurred. If the smallwares are indeed capital assets, then their cost would not be eligible for amortization under Code Section 195, but would become depreciable once the items are placed into service, however that is defined. One hopes that such controversies will be resolved with due regard for common sense and administrative convenience.

IRS TAKES ONE STEP BACK ON "SPLIT-DOLLAR"

In early January, the IRS issued Notice 2002-8[19] addressing "split-dollar" insurance, revoking its earlier Notice 2001-10.[20] "Split-dollar" refers to a class of arrangements, typically between employer and employee, under which one party (the employer) pays premiums for insurance covering the other (the employee) in exchange for a portion of the rights under the policy. The consequences of such an arrangement depend upon which party is treated as owning the policy.

Notice 2001-10

In Notice 2001-10, which purported to "clarify" earlier guidance, the IRS attempted to require taxpayers to treat split-dollar arrangements consistently in applying different Code provisions. The following are among the potentially applicable provisions:

- Code Section 72 applies to distributions received by owners of life insurance and annuity policies.
- Code Section 83, which applies to transfers of property in connection with services, generally taxes the value of property received as compensation income when the recipient's right to retain the property is no longer conditional on future performance.
- Code Section 7872 imputes interest income and deductions on certain loans at below-market interest rates, including loans between an employer and employee.

Notice 2001-10 effectively required taxpayers to choose between two models of accounting for split-dollar arrangements. Under one model, the employee would be treated as owing the insurance policy. Under this assumption:

- If the employer's premium payments are repayable (for example, from the policy proceeds) they would be treated as loans to the employee, which would be subject to imputed interest under Code Section 7872. The premium payments would be considered immediate compensation income if the employee is not required to repay them.
- Policy distributions received by the employee would be distributions taxable under Code Section 72.

Under the alternative model, the employer would be treated as owning the insurance policy. In turn, this would mean:

- The employee would be currently taxable on the value of the insurance coverage provided, which is determined under an IRS rate table unless the insurer's "standard rates" are lower. Notice 2001-10 provided an updated rate table (Table 2001) to use for this purpose.
- Any amounts that the employee received under the policy would be treated as received from the employer in connection with services. For example, any lifetime payout would generally be compensation income. The employee could also be taxed under Code Section 83 and the "economic benefit doctrine" on increases in the policy's cash value before payout. This would clearly be

the case for increases directly attributable to additional employer contributions, and possibly also for "inside buildup" that accrues while the employer continues to own the policy, although the IRS has promised that any rules providing for current taxation of inside buildup would not be retroactive.

- The policy itself would not be treated as transferred to the employee so long as the parties continued to report consistently with the above requirements.

Notice 2002-8

Notice 2001-10 was controversial and attracted considerable criticism, particularly in its application to existing arrangements. Commentators proposed an array of alternative solutions, including…

1. An elective regime under which employer-paid premiums would not be treated as loans, but the policy would be treated as transferred only if and when the employee received a pre-death payout;[21] and
2. Allowing the employee to claim basis in the policy (technically, "investment in the policy" under Code Section 72) for the value of current insurance coverage previously included in income.[22]

Commentators also requested that the IRS commit to regularly update the actuarial tables used in valuing current insurance coverage.[23] However, the writers' main complaint was that Notice 2001-10 upset settled expectations as applied to existing "split-dollar" arrangements and that taxpayers could not be certain that the rules would not change yet again in the future.[24]

Notice 2002-8 revokes Notice 2001-10 and provides a further glimpse at the likely contents of the forthcoming proposed regulations, which officials have hinted will be out by the end of the year.[25] While Notice 2002-8 relaxes some aspects of Notice 2001-10 and has been billed as a concession to taxpayers,[26] the core of the analysis in Notice 2001-10 remains. Taxpayers will still not be able to have their cake and eat it too by treating the insurance policy as owned by the employee from the outset (to avoid taxing the buildup in the policy under Code Section 83), while at the same time avoiding treating employers' premium payments as loans under Code Section 7872. The proposed regulations will provide that either the employee or the employer will be treated as owning the policy, and the consequences to both parties will be determined consistently with the assumption chosen.

Notice 2002-8 signals some changes in the IRS's substantive thinking. For example, while Notice 2001-10 generally would have allowed the parties a choice of which taxation model to use, Notice 2002-8 suggests that the regulations will determine which treatment applies based on which party is treated as the owner under the policy documents.[27] However, the most significant changes made by Notice 2002-8 concern the effective dates of the new rules. In general, Notice 2002-8 promises that the forthcoming regulations will not apply to arrangements entered into before final regulations are issued. The notice also prescribes specific transition rules that will apply both in determining the policy's "owner" for tax purposes and in valuing the current coverage provided to the employee.

Transition Relief

Notice 2002-8 generally promises that an existing "split-dollar" arrangement will not be treated as creating a taxable transfer under Code Section 83—that is, the policy will be treated as having been owned by the employee throughout the term of the arrangement—if either:

1. The arrangement is terminated before the end of 2003.
2. Starting in 2004, the parties treat all potentially repayable premium payments by the employer as loans and make reasonable efforts to comply with the imputed interest rules.

As to "new" arrangements entered into after January 27, 2002, but before the issuance of further guidance, there will be no taxable transfer so long as the parties consistently treat employers' repayable premium payments as loans.[28]

Notice 2002-8 also provides some transition relief in valuing the current insurance coverage provided to the employee if the parties treat the policy as owned by the employer. The IRS's old guidance generally required that current insurance coverage be valued under the P.S. 58 rates unless the carrier's published "standard risk rates" were lower. Under Notice 2001-10, the Table

2001 rates had to be substituted for the P.S. 58 rates beginning in 2002. This particular change did not attract much criticism because the Table 2001 rates are generally lower than the P.S. 58 rates. However, Notice 2001-10 also adopted a more restrictive definition of "published standard risk rates" beginning in 2004. Moreover, the notice warned that the new regulations might not permit taxpayers to continue to use published standard risk rates at all for contracts issued after February 28, 2001.[29]

The following rules will now apply to split-dollar arrangements in existence as of January 27, 2002:

- The Table 2001 rates will generally apply beginning in 2002, but taxpayers may continue to use the P.S. 58 rates if the contract between the parties expressly so provides.
- The more restrictive definition of standard risk rates will not apply.

Split-dollar arrangements entered into after January 27, 2002, but before the final regulations appear will be subject to the Table 2001 rates and, starting in 2004, to the more restrictive rules for standard risk rates.[30] However, the IRS's promise that the new regulations will apply only prospectively means that taxpayers do not have to worry about the rules changing again with respect to these contracts.

FREQUENT FLIER MILES STAY UNTAXED FOR NOW

Announcement 2002-18 formalizes the IRS's existing policy of not seeking to tax most benefits under frequent flier and similar programs, and promises that any forthcoming guidance will not be applied retroactively.

Background

The theoretical issues involved are fairly simple. The benefit from cashing in a frequent flier award or its equivalent is probably best regarded as a retroactive rebate or discount on the cost of the original transaction. A rebate or discount is not gross income.[31] However, a taxpayer recognizes income under the "tax benefit" rule when an event occurs that is "fundamentally whenan event occurs.[32] Accordingly, if travel is deducted as a business expense and the associated frequent flier award is used for personal travel or to purchase goods for personal use, the rebate may represent tax benefit income. If the taxpayer didn't pay for the original trip at all, any benefit from the frequent flier award likely is gross income under general tax principles. For example, in the common case where an employee uses a frequent flier award from employer-paid business travel for personal purposes, the employee will have some amount of compensation income when the miles are cashed in.

Nonetheless, the practical difficulties in determining when and how much income should be reported, still less effectively enforcing a requirement to do so, are daunting,[33] and the IRS has shown no great desire to come to grips with them. When it released proposed regulations on fringe benefits in 1985, the IRS asked for comments on tax issues relating to frequent flier programs.[34] A separate regulations project was later opened, but was closed in January 1990, and converted into a study project.[35]

A 1995 technical advice memorandum (TAM) concluded that a taxpayer's reimbursement arrangement with its employees was not an "accountable plan" that would permit the employees to exclude reimbursements received, because it allowed the employees to keep frequent flier awards from business travel.[36] An accountable plan cannot permit employees to retain amounts in excess of the actual expenses incurred.[37] The National Office reasoned that this was exactly what was happening if the employees were being paid the full ticket price and permitted to retain the award, which was essentially a rebate. The TAM attracted immediate negative comment, and a few days after its public release, the IRS indicated that it was reconsidering its analysis.[38] This did not stop the introduction of successive bills to exclude frequent flier benefits from income.[39]

Charley v. Commissioner

In the meantime, the courts got into the act in *Charley v. Commissioner.*[40] The taxpayer in *Charley* was the president and controlling shareholder in a closely held company. When he had to travel for business purposes, he regularly instructed his travel agent to bill the company for a first class ticket. The taxpayer then actually paid for a coach ticket, and used his frequent flier miles for an upgrade. The Tax Court seemed undecided whether the taxpayer had accomplished "a straight 'rip-off'…of his employer" or had merely sold frequent flier

miles with zero basis, but held that in either event the taxpayer had income, and slapped him with a negligence penalty for good measure.[41] On appeal, the Ninth Circuit agreed with the Tax Court's analysis except with regard to the penalty.[42]

Charley, however, illustrates the rare case in which the taxpayer reaped a cash benefit, so both the timing and amount of income were easily determinable. The IRS's victory in *Charley* did not alleviate the practical problems involved in extending the courts' analysis to the "normal" frequent flier case.

Announcement 2002-18

The IRS has now formally announced that, because of the "numerous technical and administrative issues" remaining to be resolved, it will adhere to its prior unwritten policy and generally will not assert tax based on the receipt or use of frequent flier miles and other "in-kind promotional benefits." The announcement covers the common kinds of airline, car rental, or hotel plans in which customers receive credits of one sort or another that are exchangeable for travel-related services or other services or goods. The IRS promises that the policy will continue in effect until further guidance is issued, and that such guidance will apply only prospectively. However, relief will not be available in cases where the benefits are converted into cash (as they were in *Charley*), to compensation deliberately paid in the form of such benefits, or in other circumstances where the programs are abused for tax avoidance purposes.

1. 2002-4 I.R.B. 398.

2. REG-125638-01, RIN 1545-BA00.

3. INDOPCO Coalition Proposed Capitalization Principles, Tax Analysts Doc. No. 2001-26125, submitted under cover of letter dated Sept. 6, 2001 from Fred T. Goldberg, Jr., et al. to IRS Commissioner Charles O. Rossotti, Tax Analysts Doc. No. 2001-26122, discussed in J. Salles, "Tax Accounting," 3(3) Corp. Bus. Tax'n Monthly 38 (December, 2001).

4. See, e.g., David Lupi-Sher, "Proposed IRS Capitalization Rules Raise Questions," 94 Tax Notes 804, 806 (Feb. 18, 2002).

5. See J. Salles, "Tax Accounting," 2(5) Corp. Bus. Tax'n Monthly 38 (Feb. 2001).

6. 270 F.3d 1137 (7th Cir. 2001), rev'g 113 T.C. 329 (1999).

7. See generally J. Salles, "Tax Accounting," 2(9) Corp. Bus. Tax'n Monthly 25 (June, 2001).

8. See authorities cited in J. Salles, "Tax Accounting," 3(7) Corp. Bus. Tax'n Monthly 33, 34 (April, 2002).

9. PNC Bancorp v. Commissioner, 212 F.3d 822 (3d Cir. 2000), *rev'g* 110 T.C. 349 (1998), discussed in J. Salles, "Tax Accounting," 1(11) Corp. Bus. Tax'n Monthly 26, 26-28 (August, 2000), and Wells Fargo & Co. v. Commissioner, 224 F.3d 874 (8th Cir. 2000), *aff'g and rev'g* Norwest Corp. v. Commissioner, 112 T.C. 89 (1999), discussed in J. Salles, "Tax Accounting," 2(2) Corp. Bus. Tax'n Monthly 35-36 (November, 2000).

10. Memorandum dated February 26, 2002, from Commissioners Larry R. Langdon of the Large and Mid-Size Business (LMSB) Division and Joseph G. Kehoe of the Small Business/Self-Employed (SB/SE) Division to LMSB and SB/SE Employees, Tax Analysts Doc. No. 2002-4959.

11. Chief Counsel Notice CC-2002-021 (March 15, 2002).

12. 2002-3 I.R.B. 374.

13. See, e.g., ILM 199952010 (Sept. 29, 1999), discussed in J. Salles, "Tax Accounting," 1(6) Corp. Bus. Tax'n Monthly 29, 32 (March, 2000).

14. 81 T.C.M. (CCH) 1794 (2001), discussed in J. Salles, "Tax Accounting," 2(11) Corp. Bus. Tax'n Monthly 24, 26-27 (August, 2001).

15. 38 T.C.M. (CCH) 851, 853 (1979).

16. Klutz v. Commissioner, 38 T.C.M. (CCH) 724, 725-26 (1979).

17. See Regs. § 1.162-3.

18. I.R.C. § 195(c)(1)(B).

19. 2002-4 I.R.B. 398.

20. 2001-5 I.R.B. 459, discussed in J. Salles, "Tax Accounting," 2(4) Corp. Bus. Tax'n Monthly 23 (July, 2001).

21. See letter of October 4, 2001, by Kenneth J. Kies of PricewaterhouseCoopers LLP to Mark A. Weinberger, Assistant Secretary for Tax Policy, on behalf of Association for Advanced Life Underwriting (AALU), Tax Notes Doc. 2001-26414.

22. See letter of September 19, 2001, by Jeanne E. Hoenicke of the American Council of Life Insurers (ACLI) to Assistant Secretary Weinberger, Tax Notes Doc. 2001-24787.

23. Comments submitted under cover of letter of April 23, 2001, by Richard M. Lipton of the ABA Tax Section to IRS Commissioner Charles O. Rossotti, Tax Notes Doc. 2001-12446, at III.B.

24. See generally comments submitted under cover of letter of April 30, 2001, by Sidney Friedman of the AALU and Dennis R. Merideth of the National Association of Insurance and Financial Advisors, Tax Notes Doc. No. 2001-14382; letter of April 27, 2001, by Ms. Hoenicke and Laurie D. Lewis of ACLI to Assistant Secretary Weinberger and Deputy Assistant Secretary Pamela F. Olson, Tax Notes Doc. 2001-13997; letter of April 27, 2001, by William T. Sinclaire of the U.S. Chamber of Commerce to Commissioner Rossotti, Tax Notes Doc. No. 2001-14005.

25. See Kurt Ritterpusch, "IRS Could Issue Proposed Regulations on Split Dollar Life Insurance by End of Year," Daily Tax Report, December 7, 2001, at G-6, quoting remarks by Deputy Benefits Tax Counsel Deborah Walker.

26. See, e.g., Jon Almeras, "Service Takes Notice, Revokes 2001-10," 94 Tax Notes 165 (Jan. 14, 2002); Brant Goldwyn, "IRS Revokes 2001 Split-Dollar Notice, Retains Rules for Existing Arrangements," Daily Tax Report, Jan. 4, 2002, at GG-1.

27. Notice 2002-8, II.

28. Notice 2002-8, IV.

29. Notice 2001-10, IV.B, 2001-5 I.R.B. at 462.

30. Notice 2002-8, III.

31. E.g., Rev. Rul. 91-36, 1991-2 C.B. 17 (utility rebates); Rev. Rul. 76-96, 1976-1 C.B. 23 (automobile manufacturers' rebates).

32. See Hillsboro National Bank v. Commissioner, 460 U.S. 370, 383-85 (1983).

33. See, e.g., generally, Gene Steuerle, "Frequent Flier Miles: The Issue is More Than Taxes," 60 Tax Notes 121 (July 5, 1993); Lee Sheppard, "Collecting the Tax on Frequent Flier Benefits," 59 Tax Notes 1140 (May 31, 1993); Joseph M.

Dodge, "How to Tax Frequent Flier Bonuses," 48 Tax Notes 1301 (Sept. 3, 1990); George Guttman, "IRS Moves Slowly on Frequent Flyer Travel," 38 Tax Notes 1309 (Mar. 21, 1988); M. Bernard Aidinoff, "Frequent Flyer Bonuses: A Tax Compliance Dilemma," 31 Tax Notes 1345 (June 30, 1986).

34. LR-216-84, 50 Fed. Reg. 52333, 52335 (Dec. 23, 1985).

35. Department of the Treasury, Unified Agenda, 55 Fed. Reg. 16751 (Apr. 23, 1990); see Carol Susko, "Frequent Flier Regulation Project Reclassified as Study," 47 Tax Notes 281 (Apr. 16, 1990).

36. TAM 9547001 (July 11, 1995).

37. See Reg. § 1.62-2(f).

38. See "If Frequent Flier Benefit Kept, Plan is Nonaccountable," 24 Tax'n for Lawyers 304 (1996); James J. Hall, "IRS Reconsidering Controversial Technical Advice on Frequent Flyer Miles," West's Legal News, 1995 WL 907292 (Dec. 5, 1995).

39. H.R. 533, 105th Cong., 1st Sess. (Feb. 4, 1997) and H.R. 3111, 104th Cong., 2d Sess. (Mar. 19, 1996), both introduced by Cong. Barbara Kennelly (D-Conn.). Cong. Kennelly referred to TAM 9547001 in introducing both bills. 143 Cong. Rec. E130 (Feb. 4, 1997); 142 Cong. Rec. E379 (Mar. 19, 1996).

40. 66 T.C.M. (CCH) 1429 (1993), *aff'd in part, rev'd in part*, 91 F.3d 72 (9th Cir. 1996).

41. 66 T.C.M. (CCH) at 1430.

42. See, e.g., Adam Rosenzweig, "Employee-Owner of Company Taxable on Frequent Flier Miles 'Sold' Back to Company: *Charley v. Commissioner*," 50 Tax Lawyer 677 (Spring, 1997), "Tax Turbulence for Frequent-Flyer Mileage Cash-Out," 57 Tax'n for Acct. 180 (Sept. 1996).