

36. On page 46529, column 1, § 1.954-2 (h)(4)(iv), Example 5, line 3, the language "receivable to Y for \$99 on day 45, at which" is corrected to read "receivables to Y for \$99 on Day 45, at which".

37. On page 46529, column 1, § 1.954-2 (h)(4)(iv), Example 5, lines 7 through 10, the language "receivable at a rate equal to at least 120 percent of the applicable Federal short-term rate, income derived by Y from the factored receivable is excluded from factoring income" is corrected to read "receivables at a rate equal to at least 120 percent of the applicable Federal short-term rate, income derived by Y from the factored receivables is excluded from factoring income".

38. On page 46529, column 1, § 1.954-2 (h)(4)(iv), Example 6, line 4, the language "controlled foreign corporation. On Day 1" is corrected to read "controlled foreign corporation. On Day 1,".

39. On page 46529, column 2, § 1.954-2 (h)(6), Example 1, is corrected to read as follows:

§ 1.954-2 Foreign personal holding company income.

* * * * *

(h) * * *

(6) * * *

Example 1. *CFC*, a controlled foreign corporation, promises that Corporation A may borrow up to \$500 in principal for one year beginning at any time during the next three months at an interest rate of 10 percent. In exchange, Corporation A pays *CFC* a commitment fee of \$2. Pursuant to this agreement, *CFC* lends \$80 to Corporation A. As a result, the entire \$2 fee is included in the computation of *CFC*'s foreign personal holding company income under paragraph (h)(2)(i)(G) of this section.

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40. On page 46529, column 2, § 1.954-2 (h)(6), paragraph (i) of Example 3, lines 7 and 8, the language "a floating rate of interest set at the London Interbank Offered Rate (LIBOR) plus one" is corrected to read "a floating rate of interest set at LIBOR plus one".

41. On page 46529, column 3, § 1.954-2 (h)(6), paragraph (i) of Example 4, line 1 in the column, the language "contemporaneously, enters into a 3 month" is corrected to read "contemporaneously, enter into a 3-month".

§ 1.957-1 [Corrected]

42. On page 46529, column 3, § 1.957-1 (a)(2), the third line from the bottom of the paragraph, the language "association, joint stock company, or" is

corrected to read "association, joint stock company or".

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Certain Publicly Traded Partnerships Treated as Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the classification of certain publicly traded partnerships as corporations. These regulations provide guidance needed by taxpayers to comply with changes to the law made by the Omnibus Budget Reconciliation Act of 1987. The regulations affect the classification of certain partnerships for federal tax purposes.

DATES: These regulations are effective December 4, 1995.

For dates of applicability of these regulations, see § 1.7704-1(l).

FOR FURTHER INFORMATION CONTACT: Christopher T. Kelley, (202) 622-3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document adds § 1.7704-1 to the Income Tax Regulations (26 CFR part 1) relating to the definition of a publicly traded partnership under section 7704(b) of the Internal Revenue Code (Code).

Background

Section 7704 was added to the Code by section 10211(a) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203), as amended by sections 2004(f)(1)-(5) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647). Section 7704(a) provides that a publicly traded partnership is treated as a corporation for federal tax purposes unless the partnership meets the 90 percent qualifying income test of section 7704(c) or qualifies as an existing partnership. The term *existing partnership* is defined in § 1.7704-2. Under section 7704(b), a partnership is a publicly traded partnership if interests in the partnership are traded on an established securities market or are readily tradable

on a secondary market or the substantial equivalent thereof. Section 7704 applies to all domestic and foreign entities treated as partnerships under section 7701, including limited liability companies and other entities treated as partnerships for federal tax purposes.

Notice 88-75 (1988-2 C.B. 386) was issued to provide interim guidance on the definition of a publicly traded partnership under section 7704(b). Notice 88-75 provides that interests in a partnership are not treated as readily tradable on a secondary market or the substantial equivalent thereof for purposes of section 7704(b)(2) if the interests are: (1) Issued in certain private placements; (2) transferred pursuant to transfers not involving trading; (3) traded in amounts that meet the requirements of a 5-percent or 2-percent safe harbor; (4) transferred through a matching service that meets certain requirements; or (5) transferred pursuant to a qualifying redemption or repurchase agreement. Notice 88-75 does not address when partnership interests are treated as traded on an established securities market for purposes of section 7704(b)(1).

On May 2, 1995, the IRS published in the Federal Register a notice of proposed rulemaking (60 FR 21475) to provide guidance regarding section 7704(b). A number of public comments were received concerning the proposed regulations, and a public hearing was held on July 31, 1995. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Significant Comments and Revisions

The significant comments on the proposed regulations and the revisions made in the final regulations are discussed below.

Public Trading

Several commentators requested clarification of the definition of an established securities market, a secondary market, and the substantial equivalent of a secondary market. The definitions in the proposed regulations, however, are drawn directly from the legislative history to section 7704(b) and incorporate the most important elements of public trading within the meaning of section 7704(b). As a result, the final regulations generally adopt the definitions in the proposed regulations.

The final regulations contain two changes to the definition of a secondary market and the substantial equivalent thereof. The final regulations clarify that the determination of whether interests in a partnership are readily tradable on