

TAX SECTION

New York State Bar Association

Letter in Opposition to the Effective Date

Table of Contents

Cover Letter: i

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November 19, 1992

The Honorable Shirley Peterson
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, N.W.
Room 3000
Washington, DC 20224

Dear Commissioner Peterson:

On behalf of the Tax Section of the New York State Bar Association, I am writing to express opposition to the December 1, 1992 effective date of the repeal, in Prop. Treas. Reg. § 1.1502-76, of the "30-day rule" contained in existing Treas. Reg. § 1.1502-76(b)(5).

This rule, under which ownership or non-ownership periods of 30 days or less may be disregarded for purposes of the consolidated return regulations, has been contained in those regulations and prior regulations since 1929.¹ Unlike the proposed revision of the investment adjustment system, the repeal of the 30-day rule was proposed without advance warning. Undoubtedly, therefore, a number of transactions involving post-November 30 sales and purchases have been structured in reliance on the 30 day rule.

The proposed December 1, 1992 repeal date stands in sharp contrast to the balance of the proposed regulations, which become effective only on their publication as final regulations in the

¹ See Regulations 75 Art. 12(f) issued pursuant to Sec. 141(b) of the Revenue Act of 1928.

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Federal Register and which reflect the current policy of the Internal Revenue Service and the Treasury Department to permit thorough review and consideration of taxpayer comments before a proposed regulation becomes effective. The proposed repeal of the 30-day rule should not be an exception to that policy. Although that action reflects the Service's concern as to tax avoidance by "some groups" and perceived conflicts between inconsistent provisions, the administrative convenience that the rule provides is just as relevant as when it was adopted more than 60 years ago. It is therefore by no means obvious that repeal is warranted.

The December 1, 1992 effective date is particularly egregious in that it falls less than three weeks after the proposed regulations were published in the Federal Register on November 12. Indeed, the proposed repeal would take effect prior to the December 18 hearing date scheduled under the abbreviated comment period that has been provided. Thus, discussion of the issue at the hearing together with consideration of written comments will necessarily occur after the rule has been effectively repealed.

We therefore urge the Service to announce immediately that the proposed repeal of the 30-day rule will be effective only upon its publication as a final regulation in the Federal Register or, at the least, that the December 1, 1992 date will apply only in the case of abusive transactions enumerated by the Service.

Very truly yours,

John A. Corry
Chair

cc: Honorable Fred T. Goldberg, Jr.
Abraham N.M. Shashy, Esq.
Andrew Dubroff, Esq.