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IRS Rules on PTP's Status as Investment Company for Exchange

The IRS ruled in Private Letter Ruling 201633028 (<https://www.irs.gov/pub/irs-wd/201633028.pdf>) that the interests a publicly traded partnership (PTP) will acquire in a Section 351 exchange with another PTP will be disregarded and the PTP will be deemed to own its ratable share of the target's assets for purposes of determining whether the PTP constitutes an investment company excepted from the tax-free exchange provision. (Section references are to the Internal Revenue Code of 1986, as amended.)

IRS Rules on Qualifying Income of PTP – Fracking Fluids Management

The IRS ruled in Private Letter Ruling 201633020 (<https://www.irs.gov/pub/irs-wd/201633020.pdf>) that gross income derived by a partnership from its fluid management and disposal services and from selling filtered hydrocarbons and over recoverable minerals collected as part of the disposal process constitutes qualifying income under Section 7704(d)(1)(E), provided that sales are not to end users at a retail level.

S Corporation Disproportionate Distributions Did Not Create Second Class of Stock

The IRS ruled in Private Letter Ruling 201633017 (<https://www.irs.gov/pub/irs-wd/201633017.pdf>) that the facts that an S corporation erroneously made disproportionate distributions to its shareholders, which it later corrected, and changed its accounting for state taxes it paid for its shareholders did not result in the corporation having a second class of stock.

Asset Transfers and Merger Do Not Preclude Complete Liquidation of Subsidiaries

The IRS ruled in Private Letter Ruling 201633014 (<https://www.irs.gov/pub/irs-wd/201633014.pdf>) that the constructive liquidation of a number of subsidiaries, as part of a multistep transaction designed to separate one line of business from others conducted by an affiliated group and to facilitate a merger, qualifies for nonrecognition treatment under Section 332.

Tax-exempt Organization's Sales Were an Unrelated Trade or Business

In a highly redacted Technical Advice Memorandum (TAM 201633032 at <https://www.irs.gov/pub/irs-wd/201633032.pdf>), the IRS ruled that a Section 501(c)(3) tax-exempt organization engaged in an unrelated trade or business under Section 513 in its sale of items through its online store, printed catalog and at various unrelated retail outlets.

Tax Court Finds Taxpayers Liable as Subsequent Transferees

On remand from the Court of Appeals for the 9th Circuit and the Court of Appeals for the 2nd Circuit, the Tax Court, in *Salus Mundi, et al*, TC Memo 2016-154 (<https://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=10890>), has concluded that the taxpayers were transferees of a transferee under Section 6901

and that the IRS had properly assessed liability within the applicable limitations period. Section 6901(a) provides that the liability of a transferee of a taxpayer's property may be "assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred." It does not create or define a substantive liability but merely provides the IRS a procedure to assess and collect from the transferee of property the transferor's existing liability. The existence and extent of the transferee's liability are determined by the law of the state in which the transfer occurred. Transferee liability may be asserted against a transferee of a transferee.

IRS, Treasury Release 2016-2017 Priority Guidance Plan

The IRS and Treasury have released the text of the 2016-2017 priority guidance plan (https://www.irs.gov/pub/irs-utl/2016-2017_pgp_initial.pdf), which includes 281 guidance projects identified as priorities for the July 2016-June 2017 plan year.

Michigan Releases Guidance for Nexus Standards for Business Taxes

The Michigan Department of Treasury has issued a release (Michigan Nexus Standards for Business Taxes, Mich. Dept. Treasury, 5477 at http://www.michigan.gov/documents/taxes/5477_Michigan_Nexus_Standards_for_Business_Taxes_532073_7.pdf) that explains the nexus standards for business taxes. The release covers the sales and use tax presumption for out-of-state sellers, the nexus standards for



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the corporate income tax, and the nexus standards for flow-through entity withholding.

New Hampshire Explains Reporting of Sale or Exchange of Interest in a Business Organization

The New Hampshire Department of Revenue Administration has issued a Technical Information Release (New Hampshire Technical Information Release No. 2016-007 at <http://revenue.nh.gov/tirs/documents/2016-007.pdf>) that explains recent legislation addressing how a business organization treats and reports the sale or exchange of an ownership interest that results in an increase in the basis of assets under federal law.

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