

date the partner transfers the property to the partnership and that has encumbered the transferred property throughout that 2-year period; (2) a liability that was incurred within the 2-year period that has encumbered the transferred property since it was incurred, so long as the liability was not incurred in anticipation of the transfer of the property to a partnership; (3) a liability that is allocable under the rules of § 1.163-8T of the temporary Income Tax Regulations to capital expenditures with respect to the property; or (4) a liability that was incurred in the ordinary course of the trade or business in which property transferred to the partnership was used or held but only if all the assets related to that trade or business are transferred other than assets that are not material to a continuation of the trade or business. Certain additional limitations apply with respect to recourse liabilities. See § 1.707-5(a)(6)(ii).

Under § 1.707-4(e), the Commissioner may provide by guidance published in the Internal Revenue Bulletin situations in addition to those specifically addressed in the regulations where payments or transfers to a partner will not be treated as part of a disguised sale.

Section 381(a) references certain transactions that involve one corporation acquiring assets of another corporation in a tax-free transfer (that is, liquidations under § 332, reorganizations under § 368(a)(1)(A), (C), and (F), and certain nondivisive reorganizations under § 368(a)(1)(D) and (G)).

ANALYSIS

The rules regarding preformation expenses and qualified liabilities contained in the disguised sale regulations recognize that certain expenditures will be made, and certain liabilities will be incurred, under circumstances that do not violate the disguised sale rules. Where a corporation incurs preformation expenses or undertakes a borrowing, and another corporation acquires assets of the corporation in a § 381 transaction, the transfer does not alter the circumstances under which the expenditures or indebtedness were originally incurred or otherwise raise concerns that would justify not treating the transferee corporation as having incurred the expenditures or undertaken the liabilities at the time they were

incurred or undertaken by the predecessor corporation.

Transactions enumerated in § 381(a) involve situations where the transferor corporation is absorbed by the transferee corporation in a tax-free transaction. Given the purposes for the rules relating to preformation expenses and qualified liabilities, it is appropriate that, in transactions described in § 381(a), the transferee corporation will succeed to the status of the distributor or transferor corporation for purposes of applying the exception for reimbursements of preformation expenditures and determining whether a liability is a qualified liability.

Accordingly, under the facts presented, *P* will succeed to the status of *S* for purposes of determining whether the \$5x cash reimbursement from *PRS* qualifies for the exception for reimbursements of preformation expenditures under § 1.707-4(d). *S* incurred \$5x in capital expenditures with respect to the rental property on December 1, 1998, which is within the 2-year period preceding the transfer of the property to *PRS*. The reimbursed capital expenditures do not exceed 20 percent of the fair market value of the contributed property. Thus, the \$5x cash reimbursement from *PRS* to *P* for the capital expenditures incurred by *S* with respect to the rental property falls within the exception for reimbursement of preformation expenditures and will not give rise to a disguised sale between *P* and *PRS* under § 707(a)(2)(B) and the regulations.

P also will succeed to the status of *S* for purposes of determining whether the \$40x liability is a qualified liability within the meaning of § 1.707-5(a)(6). The \$40x liability encumbering the property was incurred by *S* on January 1, 1995, which is more than 2 years prior to the date the rental property was contributed to *PRS*. Accordingly, the \$40x liability is a qualified liability within the meaning of § 1.707-5(a)(6). As a result, the fact that *P* transfers the rental property to *PRS* subject to the liability will not give rise to a disguised sale between *P* and *PRS* under § 707(a)(2)(B) and the regulations.

HOLDING

A corporation that acquires assets of another corporation in a transaction described in § 381(a) will succeed to status

of the other corporation for purposes of applying the exception for reimbursements of preformation expenditures and determining whether a liability is a qualified liability under the regulations regarding the disguised sale provisions of § 707(a)(2)(B).

DRAFTING INFORMATION

The principal author of this revenue ruling is Shannon Cohen of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Shannon Cohen at (202) 622-3050 (not a toll-free call).

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2000. See Rev. Rul. 2000-45, page 337.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2000. See Rev. Rul. 2000-45, page 337.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for October 2000.

Rev. Rul. 2000-45

This revenue ruling provides various prescribed rates for federal income tax purposes for October 2000 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term ad-

justed applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in

section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally,

Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2000-45 TABLE 1				
Applicable Federal Rates (AFR) for October 2000				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	6.30%	6.20%	6.15%	6.12%
110% AFR	6.94%	6.82%	6.76%	6.73%
120% AFR	7.58%	7.44%	7.37%	7.33%
130% AFR	8.22%	8.06%	7.98%	7.93%
<i>Mid-Term</i>				
AFR	6.09%	6.00%	5.96%	5.93%
110% AFR	6.71%	6.60%	6.55%	6.51%
120% AFR	7.33%	7.20%	7.14%	7.09%
130% AFR	7.95%	7.80%	7.73%	7.68%
150% AFR	9.20%	9.00%	8.90%	8.84%
175% AFR	10.78%	10.50%	10.37%	10.28%
<i>Long-Term</i>				
AFR	5.96%	5.87%	5.83%	5.80%
110% AFR	6.56%	6.46%	6.41%	6.37%
120% AFR	7.16%	7.04%	6.98%	6.94%
130% AFR	7.78%	7.63%	7.56%	7.51%

REV. RUL. 2000-45 TABLE 2				
Adjusted AFR for October 2000				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
adjusted AFR	4.30%	4.25%	4.23%	4.21%
<i>Mid-term</i>				
adjusted AFR	4.52%	4.47%	4.45%	4.43%
<i>Long-term</i>				
adjusted AFR	5.33%	5.26%	5.23%	5.20%

REV. RUL. 2000-45 TABLE 3	
Rates Under Section 382 for October 2000	
Adjusted federal long-term rate for the current month	5.33%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.53%

REV. RUL. 2000-45 TABLE 4	
Appropriate Percentages Under Section 42(b)(2) for October 2000	
Appropriate percentage for the 70% present value low-income housing credit	8.41%
Appropriate percentage for the 30% present value low-income housing credit	3.60%

REV. RUL. 2000-45 TABLE 5

Rate Under Section 7520 for October 2000

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

7.4%

Section 1288.—Treatment of Original Issue Discounts on Tax-1 Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2000. See Rev. Rul. 2000-45, page 337.

May an accrual-basis subchapter S corporation elect under § 170(a)(2) of the Internal Revenue Code to treat a charitable contribution as paid in the year authorized by the S corporation's Board of Directors if the contribution is paid by the S corporation after the close of the taxable year and before the 15th day of the third month following the close of the taxable year? See Rev. Rul. 2000-43, page 333.

Section 7872.—Treatment of Loans with Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2000. See Rev. Rul. 2000-45, page 337.

Section 1366.—Pass-Thru of Items to Shareholders

26 CFR 1.1366-1: Shareholder's share of items of an S corporation.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2000. See Rev. Rul. 2000-45, page 337.