

Tax Notes

Focus on Treasury

Incoming Treasury Letters

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STEEFEL, LEVITT & WEISS URGES SERVICE TO
CONTINUE TO ISSUE PRIVATE LETTER RULINGS
ON SECTION 355 TRANSACTIONS.

Section 355 -- Controlled Firm Stock

Robert W. Wood and Jill S. Dodd of Steefel, Levitt & Weiss, San Francisco, Calif., have expressed concern over the impact of Rev. Proc. 89-34 on private letter rulings involving section 355 transactions. That revenue procedure, they say, states that the National Office will not issue rulings on issues that are addressed clearly and adequately by a statute, regulation, Supreme Court decision, tax treaty, revenue ruling, revenue procedure, or other authority in the I.R.B. Wood and Dodd are concerned that the Service might decide that the business purpose requirement and the related device test in section 355 are clearly and adequately enumerated in Rev. Proc. 89-34.

Wood and Dodd argue that the authorities do not adequately address the complicated requirements of a section 355 distribution. The tests in section 355, they say, are by their nature fact-specific. Moreover, they argue that the section 355 regulations do not offer clear and certain guidance for taxpayers structuring section 355 transactions. They say that without a private letter ruling, businesses will be very reluctant to engage in a section 355 distribution. The result may be, they say, that the Service prevents all section 355 distributions except in the simplest and clearest transactions. They argue that it is not the function of the Service to limit these transactions so markedly.

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