

(often referred to as “lease strips”) (identified as “listed transactions” on February 28, 2000));

(4) Transactions described in Part II of Notice 98–5, 1998–1 C.B. 334 (transactions in which the reasonably expected economic profit is insubstantial in comparison to the value of the expected foreign tax credits (identified as “listed transactions” on February 28, 2000));

(5) Transactions substantially similar to those at issue in *ASA Investorings Partnership v. Commissioner*, 201 F.3d 505 (D.C. Cir. 2000), and *ACM Partnership v. Commissioner*, 157 F.3d 231 (3d Cir. 1998) (transactions involving contingent installment sales of securities by partnerships in order to accelerate and allocate income to a tax-indifferent partner, such as a tax-exempt entity or foreign person, and to allocate later losses to another partner (identified as “listed transactions” on February 28, 2000));

(6) Treas. Reg. § 1.643(a)–8 (transactions involving distributions described in § 1.643(a)–8 from charitable remainder trusts (identified as “listed transactions” on February 28, 2000));

(7) Rev. Rul. 99–14, 1999–1 C.B. 835 (transactions in which a taxpayer purports to lease property and then purports to immediately sublease it back to the lessor (that is, lease-in/lease-out or LILO transactions) (identified as “listed transactions” on February 28, 2000));

(8) Notice 99–59, 1999–2 C.B. 761 (transactions involving the distribution of encumbered property in which taxpayers claim tax losses for capital outlays that they have in fact recovered (identified as “listed transactions” on February 28, 2000));

(9) Treas. Reg. § 1.7701(l)–3, (transactions involving fast-pay arrangements as defined in § 1.7701(l)–3(b) (identified as “listed transactions” on February 28, 2000));

(10) Rev. Rul. 2000–12, 2000–11 I.R.B. 744 (certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions (identified as “listed transactions” on February 28, 2000));

(11) Notice 2000–44, 2000–36 I.R.B. 255 (transactions generating losses resulting from artificially inflating the basis of

partnership interests (identified as “listed transactions” on August 11, 2000));

(12) Notice 2000–60, 2000–49 I.R.B. 568 (transactions involving the purchase of a parent corporation’s stock by a subsidiary, a subsequent transfer of the purchased parent stock from the subsidiary to the parent’s employees, and the eventual liquidation or sale of the subsidiary (identified as “listed transactions” on November 16, 2000));

(13) Notice 2000–61, 2000–49 I.R.B. 569 (transactions purporting to apply § 935 to Guamanian trusts (identified as “listed transactions” on November 21, 2000));

(14) Notice 2001–16, 2001–9 I.R.B. 730 (transactions involving the use of an intermediary to sell the assets of a corporation (identified as “listed transactions” on January 18, 2001));

(15) Notice 2001–17, 2001–9 I.R.B. 730 (transactions involving a loss on the sale of stock acquired in a purported § 351 transfer of a high basis asset to a corporation and the corporation’s assumption of a liability that the transferor has not yet taken into account for federal income tax purposes (identified as “listed transactions” on January 18, 2001)); and

(16) Notice 2001–45, 2001–33 I.R.B. 129 (certain redemptions of stock in transactions not subject to U.S. tax in which the basis of the redeemed stock is purported to shift to a U.S. taxpayer (identified as “listed transactions” on July 26, 2001)).

Notice 2000–15 is supplemented and superseded.

The principal author of this notice is David A. Shulman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Shulman at (202) 622-3080 (not a toll-free call).

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26 CFR 601.201: Rulings and determination letters.

(Also Part I, §§ 61, 83, 721; 1.721–1.)

## Rev. Proc 2001–43

### SECTION 1. PURPOSE

This revenue procedure clarifies Rev. Proc. 93–27 (1993–2 C.B. 343) by providing guidance on the treatment of the

grant of a partnership profits interest that is substantially nonvested for the provision of services to or for the benefit of the partnership.

### SECTION 2. BACKGROUND

Rev. Proc. 93–27 provides that (except as otherwise provided in section 4.02 of the revenue procedure), if a person receives a profits interest for the provision of services to or for the benefit of a partnership in a partner capacity or in anticipation of being a partner, the Internal Revenue Service will not treat the receipt of the interest as a taxable event for the partner or the partnership. For this purpose, section 2.02 of Rev. Proc. 93–27 defines a profits interest as a partnership interest other than a capital interest. Section 2.01 of Rev. Proc. 93–27 defines a capital interest as an interest that would give the holder a share of the proceeds if the partnership’s assets were sold at fair market value and then the proceeds were distributed in a complete liquidation of the partnership. Section 2.01 of Rev. Proc. 93–27 provides that the determination as to whether an interest is a capital interest generally is made at the time of receipt of the partnership interest.

### SECTION 3. SCOPE

This revenue procedure clarifies Rev. Proc. 93–27 by providing that the determination under Rev. Proc. 93–27 of whether an interest granted to a service provider is a profits interest is, under the circumstances described below, tested at the time the interest is granted, even if, at that time, the interest is substantially nonvested (within the meaning of § 1.83–3(b) of the Income Tax Regulations). Accordingly, where a partnership grants a profits interest to a service provider in a transaction meeting the requirements of this revenue procedure and Rev. Proc. 93–27, the Internal Revenue Service will not treat the grant of the interest or the event that causes the interest to become substantially vested (within the meaning of § 1.83–3(b) of the Income Tax Regulations) as a taxable event for the partner or the partnership. Taxpayers to which this revenue procedure applies need not file an election under section 83(b) of the Code.

#### SECTION 4. APPLICATION

This revenue procedure clarifies that, for purposes of Rev. Proc. 93-27, where a partnership grants an interest in the partnership that is substantially nonvested to a service provider, the service provider will be treated as receiving the interest on the date of its grant, provided that:

.01 The partnership and the service provider treat the service provider as the owner of the partnership interest from the date of its grant and the service provider takes into account the distributive share of partnership income, gain, loss, deduction, and credit associated with that interest in computing the service provider's income

tax liability for the entire period during which the service provider has the interest;

.02 Upon the grant of the interest or at the time that the interest becomes substantially vested, neither the partnership nor any of the partners deducts any amount (as wages, compensation, or otherwise) for the fair market value of the interest; and

.03 All other conditions of Rev. Proc. 93-27 are satisfied.

#### SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 93-27 is clarified.

#### SECTION 6. DRAFTING INFORMATION

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