

Partnership Anti-Mixing Bowl Regulations

Notice 2005-15

The Internal Revenue Service intends to promulgate regulations under §§ 704 and 737 of the Internal Revenue Code to address the income tax consequences of distributions of property following partnership mergers.

BACKGROUND

Rev. Rul. 2004-43, 2004-18 I.R.B. 842, holds that new § 704(c) gain or loss is created when assets are contributed by the transferor partnership to the continuing partnership in an assets-over merger. Rev. Rul. 2004-43 also holds that § 704(c)(1)(B) applies to the newly created § 704(c) gain or loss in property contributed by the transferor partnership to the continuing partnership in an assets-over partnership merger, but does not apply to reverse § 704(c) gain or loss resulting from a revaluation of property in the continuing partnership. In addition, Rev. Rul. 2004-43 holds that for purposes of § 737(b), net precontribution gain includes the newly created § 704(c) gain or loss in property contributed by the transferor partnership to the continuing partnership in an assets-over partnership merger, but does not include reverse § 704(c) gain or loss resulting from a revaluation of property in the continuing partnership.

Some commentators have argued that Rev. Rul. 2004-43 is not consistent with the current regulations under §§ 704(c)(1)(B) and 737, and that the conclusions in the ruling should not be applied retroactively. In response to these comments, the Treasury Department and the Service intend to issue regulations under §§ 704(c)(1)(B) and 737 implementing the principles of the ruling. The regulations will be effective for distributions occurring after January 19, 2005. Rev. Rul. 2005-10, published in this issue of the Internal Revenue Bulletin, revokes Rev. Rul. 2004-43.

DESCRIPTION OF REGULATIONS

The regulations will apply the principles of Rev. Rul. 2004–43 to distributions of property following assets-over partnership mergers. The regulations will apply to distributions of property with newly created § 704(c) gain or loss whether or not that gain or loss is treated as reverse § 704(c) gain or loss as the result of a revaluation by the transferor partnership. The regulations also will apply to distributions of property with original § 704(c) gain or loss that existed upon contribution to the transferor partnership. However, the regulations will provide that if the transferor partnership in an assets-over merger holds contributed property with original § 704(c) gain or loss, the seven year periods in §§ 704(c)(1)(B) and 737 do not restart with respect to that gain or loss as a result of the merger.

The regulations will provide that § 704(c)(1)(B) does not apply to newly created § 704(c) gain or loss in property contributed by the transferor partnership to the continuing partnership in an assets-over partnership merger involving partnerships owned by the same owners in the same proportions. In addition, the regulations will provide that for purposes of § 737, net precontribution gain does not include newly created § 704(c) gain or loss in property contributed by the transferor partnership to the continuing partnership in an assets-over partnership merger involving partnerships owned by the same owners in the same proportions. In order for merging partnerships to qualify for the exceptions described in this paragraph, each partner's percentage interest in the transferor partnership's capital, profits, losses, distributions, liabilities, and all other items must be the same as the partner's percentage interest in those items of the continuing partnership.

EFFECTIVE DATES

The regulations will be effective for distributions from partnerships made after January 19, 2005.

REQUEST FOR COMMENTS

Comments are requested regarding whether there are any other commonly owned partnerships that should be accepted from the principles of Rev. Rul.

2004–43, and, if so, under what circumstances the exceptions should apply. Comments are specifically requested regarding the application of §§ 704(c)(1)(B) and 737, including the previously contributed property exception of § 737(d)(1), to a distribution of property, after an assets-over partnership merger, to a partner who had been a partner in the transferor partnership, where the distributed property was held by the transferor partnership prior to the merger. Comments are also requested regarding whether the continuing partnership may apply a § 704(c) method to original § 704(c) gain or loss that is different than the method applied by the transferor partnership, and whether the continuing partnership may apply a § 704(c) method to newly created § 704(c) gain or loss that is different than the method that it applies to original § 704(c) gain or loss.

Comments are also requested regarding whether there are any additional issues that should be addressed in the regulations. For example, comments are requested regarding whether the regulations should apply the principles of §§ 704(c)(1)(B) and 737 to reverse section 704(c) gain or loss. Comments are also requested regarding whether the tiered partnership rule of § 1.704–3(a)(9) of the Income Tax Regulations should be modified or expanded to provide rules, similar to those applicable to assets-over partnership mergers, for the application of §§ 704(c)(1)(B) and 737, as well as § 704(c)(1)(A), to tiered partnership arrangements.

Comments may be submitted on or before July 19, 2005, to Internal Revenue Service, PO Box 7604, Washington, DC 20044, Attn: CC:PA:LPD:PR (Notice 2005–15), Room 5203. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk at 1111 Constitution Avenue, NW, Washington DC 20224, Attn: CC:PA:LPD:PR (Notice 2005–15), Room 5203. Submissions may also be sent electronically via the internet to the following email address: Notice.comments@irscounsel.treas.gov. Include the notice number (Notice 2005–15) in the subject line.

The principal author of this notice is Laura Fields of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regard-

ing this notice, contact Ms. Fields at (202) 622–3050 (not a toll-free call).
