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AICPA *Washington Report*

December 17, 1984, Volume XIII, Issue 43

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INTERIOR, DEPARTMENT OF

Modification of Federal Timber Contracts by the Bureau of Land Management, Department of the Interior, is the subject of a notice of proposed rulemaking (see the 12/5/84 Fed. Reg., pp. 47511-15). This proposed rulemaking, according to the notice would establish procedures for modification of certain Federal Timber Contracts that were awarded by the Bureau of Land Management (BLM). Among the definitions contained in the proposal are the following: "Net book worth" means the excess of the assets of a company over the liabilities as reported in its most recent annual or quarterly financial statement within 15 months of the date of the purchaser buy-out request. Net book worth shall not include the value of any outstanding federal timber sale contracts. "Independent certified public accountant" means an individual authorized by a government agency (generally a state agency) to render an opinion on the propriety of financial statements. Such an individual may practice as a sole practitioner or as a member of a firm of certified public accountants but shall not be an employee of the applicant. Concerns are "affiliates" of each other when either directly or indirectly, one concern controls or has the power to control the other, or a third party or parties that controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships. Comments should be submitted by 1/4/85. For further information contact Charles Frost at 202/653-8864.

JUSTICE, DEPARTMENT OF

An undercover "sting" operation conducted by the IRS led to the filing of seven civil suits by the Department of Justice (DOJ) to halt the activities of 12 tax shelter promoters, including lawyers and accountants, according to DOJ Spokesman Assistant Attorney General Glenn L. Archer, Jr. Archer said IRS undercover agents posed as potential investors who needed tax relief for a tax year that had already ended. Meetings with tax shelter promoters were tape recorded or video taped. The tax shelters involved activities as diverse as a California kiwi fruit farm, race horse breeding, nuclear waste disposal research, master tape recordings of classical music, and oil and gas limited partnerships. IRS undercover agents paid from \$25,000 to \$175,000 to the promoters to participate in the tax shelter schemes, then stopped payment on the checks before they could be cashed. The suits charged that the promoters -- some of whom were lawyers and accountants -- provided or arranged for backdated documents to substantiate fraudulent deductions or tax credits for the prior federal tax year. By backdating the documents, the suits said, the promoters made false statements, aided in the preparation of documents that would result in the understatement of federal tax liability, and interfered with the proper administration of the internal revenue laws. An investment scheme, according to DOJ, also used a promissory note with a secret side agreement that the undercover agent would not be required to pay the note, which would serve only as substantiation for the unwarranted federal tax benefits, the suit said. The suits filed by DOJ asked the court to permanently enjoin the promoters from engaging in any activity whose purpose is tax avoidance and involves making false statements relating to taxes. Archer said the total cost to the United States Treasury resulting from these activities could run into the millions of dollars. He stressed that backdating is illegal and warned that clients of the defendants who have engaged in similar transactions will be confronted with large federal income tax deficiencies, as well as substantial penalties and interest. Archer said the investigation is continuing.

LABOR, DEPARTMENT OF

The feasibility of participation by self-regulatory organizations in developing exemptions from the prohibited transaction rules of ERISA is the subject of a recent request for public comment by the Department of Labor (see the 12/10/84 Fed. Reg., pp. 49111-16). Section 406 of ERISA prohibits certain transactions between a plan and a "party in interest" and the Internal Revenue Code imposes an excise tax with respect to prohibited transactions between a plan and a "disqualified person". However, the Secretaries of Labor and Treasury may grant administrative exemptions from the prohibited transaction provisions of ERISA provided certain conditions are met. The Labor Department is exploring methods of enhancing the prohibited transaction exemption process, particularly as it relates to complex financial transactions. Comments are requested by 2/8/85. For additional information contact Janet Brown at 202/523-8952.

LEGAL SERVICES CORPORATION

The Audit and Appropriations Committee of the Legal Services Corporation will hold an open meeting at 10:30 a.m. at the Capitol Holicay Inn, 550 C Street, S.W. Washington, D.C. on 12/19/84 (see the 12/12/84 Fed. Reg., pp. 48407-08). Among the matters to be considered at this meeting are: the Report from the Audit Division, Audit and Accounting Guide for Recipients and Auditors; the Report from the Office of the Comptroller, including the presentation of Corporation Audit FY 1984, and the FY 1986 Budget Mark. For further information contact Thomas Opsut at 202/272-4040.

TREASURY, DEPARTMENT OF

There is a tightening up of money being refunded as a result of tax shelters claimed on federal income tax returns, according to a 12/10/84 speech by IRS Commissioner Roscoe L. Egger, Jr. before the Federal Tax Division of the AICPA meeting in Orlando, Florida. Egger said: "The days of the quickie refunds being generated by the IRS are over for taxpayers claiming abusive tax shelter deductions." He continued: "By now, most of you are familiar with our pre-filing notification letters to shelter investors. These letters advise investors that the tax benefits connected with a particular promotion are not allowable and that if claimed, their returns will be audited, Egger began talking about the new program. Other program pieces include injunctions and fines against promoters of abusive shelters and lists that promoters must keep. The new tax shelter registration program also should provide good intelligence about what's being promoted and how and where it's being promoted." Noting that the pre-filing notification letters, the injunctions and fines, and the tax shelter registration were all ways to identify abusive shelters before returns are filed, Egger went on to say, "If for whatever reason, the investor has not been discouraged from claiming the shelter on the return, and the particular shelter has certain earmarks of an abusive shelter, we're now going to 'freeze' that portion of the refund which is connected with the shelter." Explaining the "quickie refund" scheme, Egger said "typically an individual investor or partner in a partnership claims a loss, deduction or credit on a return that's related to a particular shelter which eliminates tax in the current tax year. The taxpayer then files the 'quickie refund' Form 1045 which carries any remaining loss back for up to the three preceding years. This 'quickie refund' is generally paid by the Service within 90 days." According to Egger, until now, the Service has

been paying out the "quickie refunds", and only then subjecting the recipients to audits. He noted that such audits generally resulted in the Service handing the taxpayer large bills for taxes owed. "For the more than 100,000 returns examined in FY 1984 which showed an abusive tax shelter investment, the proposed tax deficiency averaged over \$19,000," Egger pointed out and "...it's unrealistic to think that an average taxpayer can easily cough up \$19,000 in tax and penalties along with interest." Under the new concept, detection teams at IRS service centers will be analyzing the merits of shelter deductions as returns are processed, before, not after, the refund check has been issued. And, the program will not be limited to 1045 refunds, according to Egger. It will also apply to claims made on forms 1040 and 1040X. In implementing the freeze on tax shelter refunds, Egger said the IRS recognizes fully the public's sensitivity about any kind of holds on refund checks. "As with all others parts of our abusive shelter program," he emphasized, "decisions will not be made in a cursory fashion. We will not interrupt the refund process unless we're backed by strong and positive evidence that tax is owed."

Temporary regulations on procedure and administration relating to special enforcement areas under the rules for consolidated partnership proceedings have recently been issued by the IRS (see the 12/13/84 Fed. Reg., pp. 49536-39). The Tax Equity and Fiscal Responsibility Act of 1982 amended the tax law to allow for consolidated administrative and judicial proceedings to determine the tax treatment of partnership items at the partnership level rather than at the partner level. Additionally, the Act authorized special rules for areas that present special enforcement considerations. The temporary regulations provide partners with the guidance necessary to comply with the new provisions. The temporary regulations are applicable with respect to certain applications for tentative carryback and refund adjustments and claims for credit or refund filed after 12/10/84. Comments are requested by 2/11/85. For additional information contact Nerman Dobyne Hubbard at 202/566-3297.

For additional information, please contact Stephanie McCarthy, Gina Rosasco or Nick Nichols at 202/872-8190.

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