
From: Steve Wynn
Sent: Thursday, April 30, 2015 12:53 PM
To: Helen Hecht; Jennifer Hays; Sheldon H. Laskin; UDIPTA Sec. 1 Workgroup
Subject: RE: Today's MTC UDITPA Section 1 workgroup teleconference

Helen, in addition to the changes you have suggested for page (3) relating to subsection (5) Functional Test – we should consider adding definitions for “employment” and “development” as well as discussing what to do with the interpretation of “integral parts.”

Since the new definition of the functional test uses the phrase “is or was related to the operation of the trade or business”, we might want to discuss the Hearing Officers concerns contained within his report on pages 46-47, as follows:

The Draft includes property that *was related to the operation of the trade or business*, with no time limit imposed. Draft Art. IV.1(a)(i)(B). Consequently, property used in the past but no longer being used would be included within (B). This raises the possibility that if property had been used in the taxpayer’s business operations many years ago but had been held purely as an investment since then, its sale would produce apportionable income.

On this point, the Draft appears inconsistent with an MTC Regulation providing that “property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time (generally, five years is sufficient) or that has been removed as an operational asset and is instead held by the taxpayer’s trade or business exclusively for investment purposes has lost its character as a business asset . . . Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale.” MTC Reg. IV.1(a)(5)(A).

See http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Pomp%20final%20final3.pdf. If we leave in the discussion on converting from business to nonbusiness within the existing rules, we should update the cite from IV.1(a)(4)(A) to IV.(a)(5)(A) on pages 4, 5, and 14.

Should we reorder the phrase “trade or business operations” where used throughout the regulations relating to the functional test to “the operation of the taxpayer’s trade or business” as used in the new definition.

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From: Helen Hecht
Sent: Thursday, April 30, 2015 9:41 AM
To: Jennifer Hays; Sheldon H. Laskin; UDIPTA Sec. 1 Workgroup
Subject: RE: Today's MTC UDITPA Section 1 workgroup teleconference

I have some additional notes for discussion:

On page 3 – (5) Functional test – second line – change as follows: “if the acquisition, management, ~~and~~ or disposition of the property . . . etc.”

That paragraph goes on to refer to “integral part” language from the old definition which was changed to “related to the operation.” So I think we need to consider whether we want to redraft that sentence.

On page 4 – (A) Last line of the example Jennifer cites – “Property that was an integral part . . .” – “integral part” (old language) needs to be changed to “related to the operation of” (new language).

On page 5 – (E) (ii) – “integral” should be changed to “related”

On page 5 – (F) – I think I would make a change similar to what Jennifer proposes for (A) on page 4 where this paragraph refers to “Property that has been converted to nonbusiness use”

From: Hays, Jennifer (LRC)
Sent: Thursday, April 30, 2015 11:13 AM
To: Sheldon H. Laskin; UDIPTA Sec. 1 Workgroup
Subject: RE: Today's MTC UDITPA Section 1 workgroup teleconference

An example for consideration, page 4 (A):

Property that has been converted to ~~nonbusiness~~ a use **not related to the operation of the taxpayer's trade or business** through the passage of a sufficiently lengthy period of time (generally, five years is sufficient) or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes has lost its character as a **functional** ~~business~~ asset and is not subject to the rule of the preceding sentence.