

whether interests in a partnership are readily tradable on the substantial equivalent of a secondary market. As a result, the 2 percent rule does not apply in determining whether interests are readily tradable on a secondary market and thus does not apply to partnerships with interests subject to firm quote trading.

The proposed regulations contain a qualified matching service exclusion similar to the matching service exclusion contained in section II.D of Notice 88-75. The proposed regulations, however, contain certain modifications designed to prevent a qualified matching service from operating as a secondary market or the substantial equivalent thereof. For example, the matching service can display only nonfirm quotes or nonbinding indications of interest and cannot provide firm quotes or two-sided quotes. The selling partner cannot enter into a binding agreement to sell an interest until the 15th calendar day after the date information regarding the offering of an interest for sale is made available to potential buyers, and closing of the sale cannot occur prior to the 30th calendar day after the first day that the seller can enter into a binding agreement to sell the interest. The matching service must obtain written representations from any subscribers that the subscribers and their customers will not act as market makers for any partnership interest listed on the matching service and that the subscriber, acting on its own account or on behalf of the same investor, will not enter offers for interests in the same partnership more than once in any 15 calendar day period.

As in Notice 88-75, this matching service exclusion does not apply if more than 10 percent of the total percentage interests in partnership capital or profits is transferred during the taxable year. For purposes of this 10 percent limitation, all transfers (other than private transfers) are considered, including transfers that do not take place on the matching service and transfers that are eligible for another exclusion under the proposed regulations. For example, if 1 percent of the total partnership interests in capital or profits is transferred on a nonqualified matching service, the amount of interests that can be transferred pursuant to a qualified matching service and still qualify for the matching service exclusion is reduced to 9 percent.

The proposed regulations clarify that certain activities will not prevent a matching service from qualifying for the exclusion. Under the proposed

regulations, a qualifying matching service may provide: (1) Prior pricing information, including information regarding resales of interests and actual prices paid for interests; (2) a description of the business of the partnership; and (3) financial and reporting information from the partnership's financial statements and reports. The operator of the matching service may also assist with the transfer documentation necessary to transfer the partnership interest. The operator may receive and deliver funds for completed transactions, and its fee may be a flat fee for use of the service, a fee based on completed transactions, or any combination thereof. While these activities may allow the operator of the matching service to assist in the completion of the transfer, the activities should not, by themselves, result in the type of activity that would cause the matching service to be a secondary market or the substantial equivalent thereof under section 7704(b)(2).

The proposed regulations adopt the exclusions for redemption and repurchase agreements contained in section II.E of Notice 88-75 with no significant modifications.

The IRS and Treasury request comments on the proposed regulations. In particular, comments are requested concerning: (1) Whether transitional relief is necessary for partnerships that qualified for an exclusion contained in Notice 88-75, but do not qualify for an exclusion contained in the proposed regulations and, if so, what type of relief would be appropriate; (2) whether further modifications to the private placement exclusion are necessary in light of developments in the securities laws since the issuance of Notice 88-75, including the issuance of Rule 144A (17 CFR 230.144A) and Regulation S (17 CFR 230.901); and (3) which members in a limited liability company or other entity that is treated as a partnership for federal tax purposes should be treated as general partners for purposes of determining the percentage interests in partnership capital or profits transferred during the taxable year of the partnership under paragraph (j)(1) of the proposed regulations.

Proposed Effective Date

These regulations are proposed to apply for taxable years of a partnership beginning on or after the date the final regulations are published in the **Federal Register**. The provisions of Notice 88-75 regarding the definition of readily tradable on a secondary market or the substantial equivalent thereof for purposes of section 7704(b) will

continue to apply until these regulations are effective.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 31, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed (a signed original and eight (8) copies) by July 31, 1995.

A period of 10 minutes will be allotted for each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Christopher T. Kelley, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.