

Numerical Finding List

Committee Reports

Senate:

96-433 (PL 96-167), 486
96-498 (PL 96-222), 517

House:

96-63 (PL 96-178), 495
96-120 (PL 96-205), 498
96-448 (PL 96-167), 493

Conference:

96-718 (PL 96-178), 496

Court Decisions:

1999, 310

Delegation Orders:

4 (Rev. 10), 569
35 (Rev. 11), 571
42 (Rev. 13), 571
57 (Rev. 4), 571
66 (Rev. 10), 571
77 (Rev. 14), 573
93 (Rev. 7), 573
97 (Rev. 17), 573
97 (Rev. 18), 574
149 (Rev. 1) (Rev. Notice), 575
152 (Rev. 1), 576

Notices:

80-1, 576
80-2, 576
80-3, 577
80-4, 577
80-5, 577
80-6, 577
80-7, 578

Public Laws:

96-167, 483
96-178, 494
96-205, 497
96-222, 499
96-239, 566

Railroad Retirement Quarterly Rate:

220

Revenue Procedures:

80-1, 579
80-2, 580
80-3, 580
80-4, 581
80-5, 582
80-6, 586
80-7, 590
80-8, 592
80-9, 598
80-10, 599
80-11, 616
80-12, 616
80-13, 617
80-14, 617
80-15, 618
80-16, 619
80-17, 621
80-18, 623
80-19, 628
80-20, 633
80-21, 646
80-22, 654
80-23, 657

Rev. Procs.—Continued

80-24, 658
80-25, 667
80-26, 671
80-27, 677
80-28, 680
80-29, 681
80-30, 685

Revenue Rulings:

80-1, 45
80-2, 61
80-3, 145
80-4, 169
80-5, 284
80-6, 296
80-7, 296
80-8, 298
80-9, 11
80-10, 21
80-11, 22
80-12, 23
80-13, 27
80-14, 33
80-15, 365
80-16, 82
80-17, 45
80-18, 103
80-19, 185
80-20, 231
80-21, 233
80-22, 286
80-23, 17
80-24, 47
80-25, 65
80-26, 66
80-27, 85
80-28, 304
80-29, 93
80-30, 250
80-31, 251
80-32, 287
80-33, 69
80-34, 251
80-35, 305
80-36, 366
80-37, 51
80-38, 56
80-39, 112
80-40, 175
80-41, 211
80-42, 182
80-43, 133
80-44, 34
80-45, 54
80-46, 62
80-47, 83
80-48, 99
80-49, 127
80-50, 146
80-51, 333
80-52, 100
80-53, 252
80-54, 43
80-55, 65
80-56, 154
80-57, 157
80-58, 181
80-59, 191
80-60, 97
80-61, 287
80-62, 63

Rev. Ruls.—Continued

80-63, 116
80-64, 158
80-65, 183
80-66, 204
80-67, 221
80-68, 225
80-69, 55
80-70, 104
80-71, 106
80-72, 109
80-73, 128
80-74, 137
80-75, 314
80-76, 15
80-77, 56
80-78, 171
80-79, 191
80-80, 194
80-81, 203
80-82, 209
80-83, 210
80-84, 35
80-85, 54
80-86, 118
80-87, 189
80-88, 234
80-89, 238
80-90, 240
80-91, 29
80-92, 31
80-93, 50
80-94, 170
80-95, 252
80-96, 317
80-97, 257
80-98, 368
80-99, 10
80-100, 25
80-101, 70
80-102, 108
80-103, 120
80-104, 135
80-105, 78
80-106, 113
80-107, 117
80-108, 119
80-109, 129
80-110, 190
80-111, 208
80-112, 306
80-113, 58
80-114, 115
80-115, 138
80-116, 141
80-117, 143
80-118, 254
80-119, 40
80-120, 41
80-121, 43
80-122, 84
80-123, 205
80-124, 212
80-125, 246
80-126, 14
80-127, 53
80-128, 86
80-129, 86
80-130, 117
80-131, 238
80-132, 255
80-133, 258

bility for the tax is not solely personal. See Rev. Rul. 75-558, 1975-2 C.B. 67, and Rev. Rul. 73-600, 1973-2 C.B. 47.

The Vermont land gains tax is not imposed or triggered by the ownership of real property, but rather, by the exercise of one of the incidents of property ownership, the transfer of real property at a gain. The land gains tax is not measured by the value of the real property, but rather, by the gain derived from the transfer of that property. Liability for the tax is personal because Vermont has no recourse against the buyer's land to satisfy any land gains tax owed by the seller in excess of the amount withheld and paid over to the state by the buyer. Thus, the land gains tax is not a real property tax within the meaning of section 164(a)(1) of the Code.

With respect to the Vermont land gains tax qualifying under the section 164 state income tax deduction provision, such tax, unlike federal income tax law, is not structured to fall on net gain, because the taxpayer cannot reduce taxable gain from sales or exchanges of land during the taxable year by any losses from other sales or exchanges of land during that year. Under federal income tax law, taxpayers are allowed to reduce gains from sales or exchanges of land (or other property) by losses from sales or exchanges of land (or other property). See sections 165, 1211, 1212, 1222, and 1231 of the Code and section 1.165-1(c)(3) of the regulations. A taxpayer could be required to pay the land gains tax even though under federal income tax law the taxpayer actually had a net loss from sales or exchanges of land for the taxable year. Thus, the land gains tax is not an income tax within the meaning of section 164(a)(3).

HOLDING

The Vermont land gains tax is a transfer tax and, therefore, is deductible under section 164(a) of the Code only to the extent that it is paid or accrued within a taxable year in carrying on a trade or business or in con-

nection with an activity described in section 212 (relating to expenses for the production of income). See Rev. Rul. 65-313, 1965-2 C.B. 47, which also provides guidelines for the federal income tax treatment of transfer taxes imposed by state or local governments.

26 CFR 1.164-1: Deduction for taxes.

Whether a deduction is allowable for social security taxes paid or accrued to the Federal Republic of Germany on or after December 1, 1979. See Rev. Rul. 80-94, page 170.

26 CFR 1.164-3: Definitions and special rules.

Sales tax; California. The sales tax imposed by California on the retailer and paid to the retailer by the consumer is includible in the retailer's gross income. The tax is deductible by the consumer when paid to the retailer and by the retailer when accrued or paid to the State.

Rev. Rul. 80-1

The California State sales tax levied under section 6051 of the Cal. Rev. & Tax Code (West Supp. 1978) (California Code) is imposed on the retailer for purposes of section 164(a)(4) of the Internal Revenue Code and section 1.164-1(a) of the Income Tax Regulations. Thus, the sales tax paid to the retailer by the consumer must be included in the retailer's gross income for federal income tax purposes and is deductible by the retailer (when paid or accrued by the retailer) as a tax under section 164(a)(4).

Although the California State sales tax is imposed on the retailer, sections 6052 and 6052.5 of the California Code provide for its collection from the consumer. The law provides that the retailer have a separate statement of the sales tax in a "sales tax reimbursement schedule" available for inspection by the consumer or post a notice to consumers that the sales tax computed on the basis of such sched-

ule is included in the posted or advertised price of an item. Therefore, the tax is a separately stated general sales tax within the meaning of section 164(b)(5) of the Code. Thus, when the sales tax is paid to the retailer by the consumer (other than in connection with his or her trade or business), the consumer may deduct such tax if either the consumer itemizes deductions or the sales tax is attributable to property held for the production of rents or royalties. See sections 62(5) and 63 of the Code.

In *Diamond National Corp. v. State Board of Equalization*, 425 U.S. 268 (1976) (*per curiam*), the Supreme Court of the United States held that the incidence of the California sales tax was on the purchaser national bank, and not the retailer because the California sales tax required the retailer to pass on the tax to the consumer. In *Diamond National* the issue was whether the California sales tax was imposed on a purchaser national bank in the violation of the bank's immunity from state taxation under the former 12 U.S.C. section 548 (1964) (current version at 12 U.S.C. section 548 (1976)). The *Diamond National* case does not involve the incidence of a state sales tax for purposes of section 164(a)(4) of the Code and thus does not control the incidence of the California sales tax for purposes of section 164(a)(4) of the Code.

For a statement of the tax results when the sales tax is paid by a consumer with respect to items used in connection with the consumer's trade or business, see Rev. Rul. 77-465, 1977-2 C.B. 61 at 63.

Section 165.—Losses

26 CFR 1.165-1: Losses.
(Also Sections 871, 873; 1.871-1.)

Losses; foreign confiscation of property; resident alien. A citizen of a foreign country left that country under a limited exit visa to be-