

but before it has been received. This area in the tax field has not been trod upon with frequency and the allowable paths are not very clear.

While the Ruling gives greater elasticity to informal deferred compensation arrangements between an employer and his employee, no such leniency appears for entrepreneurs and professional persons. Example Five in Ruling 60-31 presented a situation where a boxer attempted to make a deferred compensation agreement with a boxing club for his share of the gross receipts from a prize fight. The Commissioner held that since the boxer, his opponent, and the boxing club were engaged in a joint venture and the taxpayer was not an employee of the boxing club, the gross receipts were income to the taxpayer in the year they were paid to the boxing club. This decision, however, appears to be inconsistent with the Commissioner's allowance of a similar deferred compensation agreement between an author and a publishing corporation in reference to specific royalties based on proceeds received from the sale of the author's work.

In the second part of his article Mr. Rice comments on problems that draftsmen may run into in drawing up such deferred compensation plans. He emphasizes that the deferred fund should not be put in trust or in escrow. Under such arrangements the employee will be taxed in the year services were rendered. Mr. Rice points out two features that draftsmen must be cognizant of in using special accounts for deferred compensation. They are: (1) The Commissioner might conclude that where the employer was setting up an informal reserve he could do this only where payment to the employee was not vested. (2) Draftsmen should make it clear that an informal reserve and not a trust is being used.

The author's main criticism of Ruling 60-31 was the Commissioner's failure to settle on a positive approach to deferred compensation in regard to professional people and entrepreneurs. Mr. Rice presents the situation of a client who agrees to pay his attorney over a period of years without putting money into an account or setting it aside. This problem is yet to be answered.

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