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**TOM REICHER**  
Partner,  
Cooley LLP  
Co-Author, *Statutory Stock Options*  
(Portfolio 381)



# U.S. INCOME PORTFOLIOS LIBRARY

Bloomberg BNA's *U.S. Income Portfolios Library* is written by expert practitioners and provides a single solution for researching, planning, and implementing the most effective strategies for virtually every federal income tax scenario.

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- C Corporations
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- Natural Resources
- Other Pass-Through Entities
- Partnerships
- Procedure and Administration
- Real Estate
- S Corporations
- U.S. Tax Overview
- Green Incentives\*

## Practice Tools

- Federal Tax Calendar
- Federal Tax Forms
- Tables, Charts, and Lists
- Working Papers (sample plans, documents, and more)

## News and Commentary

- *Daily Tax Report*<sup>®\*</sup>
- *Daily Tax Report*<sup>®</sup> Highlights
- *Weekly Report*
- *Tax Management Memorandum*
- *BNA Insights*
- *Compensation Planning Journal*\*
- *Financial Planning Journal*\*
- *International Journal*\*
- *Estates, Gifts and Trusts Journal*\*
- *Real Estate Journal*\*
- *Weekly State Tax Report*\*

- *IRS Practice Adviser Report*\*
- *Accounting Policy & Practice Report*\*
- *Transfer Pricing Report*\*

## Source Documents

- Laws and Regulations
  - Internal Revenue Code
  - Treasury Regulations
  - Proposed Regulations
  - Tax Legislation
  - State Tax Statutes\*
  - State Tax Regulations\*
- Agency Documents
  - Treasury Decision Preambles
  - IRS Documents
  - IRS Publications
  - Circular 230
  - CIPs/ISP Papers
  - MSSP Audit Guidelines
  - State Tax Rulings & Official Material\*
- Cases
  - Federal Tax Cases
  - Tax Court Rules
  - Court of Federal Claims Rules
  - State Tax Cases\*

\* Optional

**TODD C. SIMMENS**  
Partner & National Director of  
Tax Controversy & Procedure,  
BDO Seidman, LLP  
Co-Author, *Reportable  
Transactions*  
(Portfolio 648)



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The screenshot shows the Bloomberg BNA Tax and Accounting Center website. The interface includes a navigation bar with links like 'MY HOME PAGE', 'ABOUT', 'GETTING STARTED', 'CONTACT US', 'MY FOLDERS', 'PREFERENCES', 'SITE MAP', 'HELP', and 'SIGN OUT'. Below the navigation bar is a search area with 'SEARCH HISTORY', 'SAVED SEARCHES', 'SAVED CHARTS', and a 'SEARCH' button. A secondary navigation bar lists various practice areas: 'Federal', 'Daily Tax Report', 'Estate Planning', 'State', 'Sales & Use', 'International', 'Transfer Pricing', 'Accounting', 'Tax Practice Series', 'Payroll', and 'More Practice Areas'. The main content area is divided into several sections: 'New Webinar' (1), 'Indexes' (2), 'TAX FORMS', 'PRACTICE TOOLS', 'SOURCE DOCUMENTS' (2), 'EXPERT ANALYSIS' (3), 'DAILY TAX REPORT' (4), 'NEWS & COMMENTARY' (5), and 'FROM THE EDITORS'. The 'EXPERT ANALYSIS' section includes 'Fast Answers: Federal Tax', 'U.S. Income Portfolios', and 'Estates, Gifts and Trusts Portfolios'. The 'DAILY TAX REPORT' section features articles like 'Lawmakers, Retailers See Opportunity for Online Sales Tax Bill in 2012' and 'AICPA Asks Congress to Address Complexity of Estate, Trust Payments'. The 'NEWS & COMMENTARY' section lists various reports and journals.

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# U.S. INCOME PORTFOLIOS

## DIRECT LINKS

You'll always get direct links to cited cases.

**A. Identifying the Transaction that Generated the Benefits**

The economic substance doctrine requires that the events giving rise to a particular tax position, many interrelated events can be lumped together and measured for this purpose. <sup>1128</sup> Some courts have held that the cost and the income functions [of a transaction], or to neither." <sup>1122</sup> Nevertheless, as the Service has stated, "whether to allow the claimed tax benefits, the relevant inquiry is "whether the transaction that generated the benefits is a bona fide business transaction. Accordingly, in a number of other cases, courts have bifurcated a transaction to identify the portion that is a bona fide business transaction, and in applying the economic substance doctrine, courts may bifurcate a transaction in which unrelated activities having only tax-avoidance motives in order to disallow the tax benefits of the entire transaction." This proposition) in a Coordinated Issue Paper that such a bifurcation approach can be applied to

>> <sup>1127</sup> *Nicole Rose Corp. v. Comr.*, 320 F.3d at 284.  
<sup>1128</sup> See generally Surdell, "ACM Partnership — A New Test for Corporate Tax Shelters?" 97 TNT

## NEW LAW ANALYSIS

Get expert analysis on the most recent laws and regulatory updates.

U.S. Income Portfolios: Income, Deductions, Credits and Computation of Tax > Portfolio 513-1st: Family and Household Transactions > Detailed Analysis > III. Exceptions Related to Family Expenses > F. Adoption Credit

**F. Adoption Credit**

**1. In General**

For taxable years beginning in 2010 and 2011, an individual taxpayer may claim a refundable credit for qualified adoption expenses. Prior to 2010, the adoption credit was non-refundable, and is scheduled to become non-refundable again after 2011.

<sup>1677</sup> **§36C.** The Patient Protection and Affordable Care Act of 2010 (2010 PPACA), P.L. 111-148, §10909(b), moved the adoption credit to §36C, and made it refundable, effective for taxable years beginning after Dec. 31, 2009.

## PRIMARY SOURCES

The *U.S. Income Portfolios Library* provides links to full text of primary sources to speed your research.

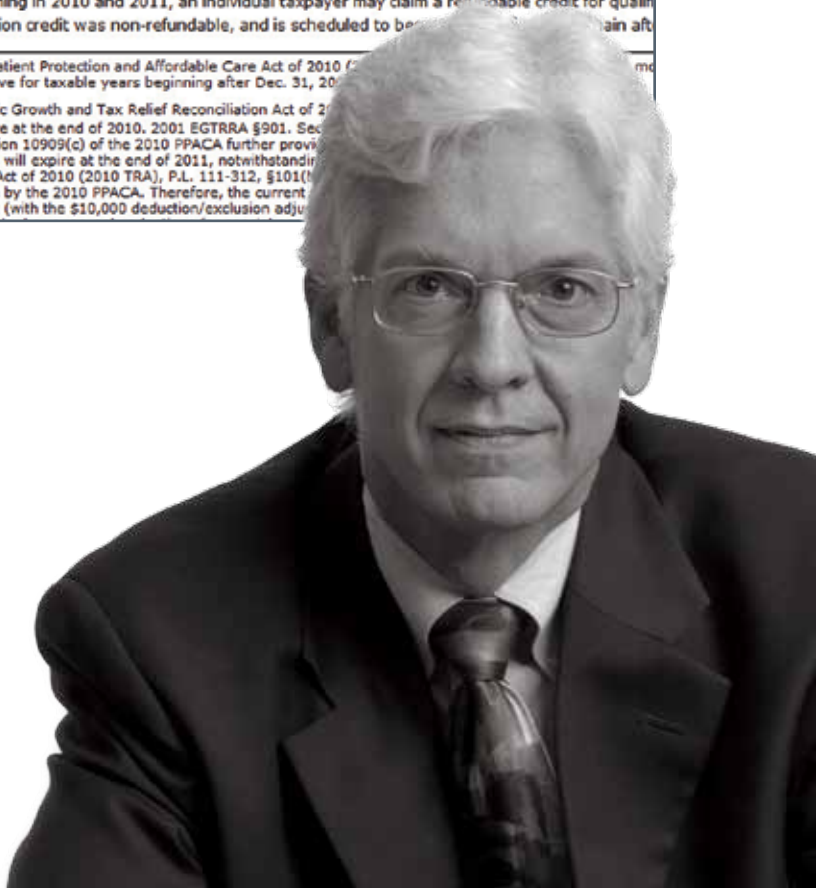
**F. Adoption Credit**

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>> <sup>1678</sup> The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), P.L. 107-173, §901, scheduled to expire at the end of 2010. 2001 EGTRRA §901. Section 10909(c) of the 2010 PPACA further provided that the 2001 EGTRRA, will expire at the end of 2011, notwithstanding the changes made by the 2010 PPACA. Therefore, the current law will be replaced for 2012 (with the \$10,000 deduction/exclusion adjustment).

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**The U.S. Income Portfolios earn their unrivaled reputation by helping you understand and resolve complex tax issues, offering detailed guidance and authoritative insights from leading practitioners to give you a confident advantage.**  
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## SUPPORT DOCUMENTS

Every Portfolio includes supporting worksheets that you can put into practice right away, case studies, computations, sample election statements, and more.

Worksheet ID	Worksheet Title	Description
<b>B-101</b>	<b>CHARTS COMPARING VARIOUS BUSINESS ENTITIES</b>	
B-101	<a href="#">Worksheet 1</a>	Chart Showing Alternative Business Organization Forms, Comparison of Business Entity Requirements.
B-201	<a href="#">Worksheet 2</a>	Chart Comparing Subchapter C with Subchapter S Corporation Tax Computation, Capital Gain and Distributed Income.
B-301	<a href="#">Worksheet 3</a>	
<b>B-401</b>	<b>CHARTS DESCRIBING "CHECK THE BOX" REGULATIONS</b>	
B-401	<a href="#">Worksheet 4</a>	Flow Chart—Summary of Elective Entity Classification Steps.
B-501	<a href="#">Worksheet 5</a>	Flow Chart for "Check the Box" Regulations—General Rules.
B-601	<a href="#">Worksheet 6</a>	Flow Chart for "Check the Box" Regulations—Domestic Eligible Entity.
B-701	<a href="#">Worksheet 7</a>	Flow Chart for "Check the Box" Regulations—Foreign Eligible Entity.
B-801	<a href="#">Worksheet 8</a>	Flow Chart for "Check the Box" Regulations—Existing Entity (as of 5/8/96)
B-901	<a href="#">Worksheet 9</a>	Listing of Foreign Entities Characterized as "Per Se" Corporations.
<b>B-1001</b>	<b>CHARTS IDENTIFYING ENTITY OWNERSHIP STRUCTURING OPTIONS</b>	

## UPDATED EXPLANATIONS

U.S. Income Portfolio editors provide plain-English explanations of the law, with examples, planning points, and frequent updates to allow you to develop tax savings plans and avoid missteps.

[§102](#): *Carlson v. Comm.*, *Tax Mgmt. Memo.* 363 (8/13/01).

[§224](#) The applicable state fraudulent transfer laws must be taken into account whenever property transfers are made for purposes arising in the bankruptcy area may provide some guidance as to the permissible boundaries of converting property to a corporation on *Bankruptcy*, §522.03[4] (15th ed. 1990).

>>> **Planning Point:** The *Carlson* decision creates the potential for drastically different tax results depending on whether a tax insolvent exclusion or instead restructures in a formal bankruptcy proceeding, because bankruptcy shields the taxpayer regardless of insolvency. Thus, taxpayers with substantial exempt property should consider filing bankruptcy, even in a restructuring is otherwise possible.

There is some authority for including debt encumbering assets exempt under state law in determining the debtor's liability seems consistent with the decision in *Carlson*. [§224](#) Intangible assets (e.g., goodwill) and contingent liabilities should be included in measuring insolvency. The courts, however, have imposed a high burden of proof for contingent liabilities. The Tax Court that the taxpayer prove by a preponderance of the evidence that he or she will be called upon to pay a contingent liability the insolvency determination. [§224](#) This all-or-nothing approach rejects the analysis used in bankruptcy, which discounts liabilities by the probability of their occurrence. [§224](#)

## STAY CONNECTED

Quickly access related news and commentary articles.

[U.S. Income Portfolios: C Corporations > Portfolio 760-3rd: Stock Sales Subject to Section 304 > Detailed Analysis > III. Brother-Sister Stock Sales > A. Prerequisites for Application of §304\(a\)\(1\)](#)

**A. Prerequisites for Application of §304(a)(1)**

Two statutory terms determine the applicability of [§304\(a\)\(1\)](#) — "control" and "property."

**1. Control**

For [§304\(a\)\(1\)](#) to apply, stock of one corporation (the "issuing" corporation) must be acquired by another corporation ("control" both corporations. [§224](#)

[§224](#) [§7201\(a\)\(1\)](#) defines a person as "an individual, a trust, estate, partnership, association, company or corporation."

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**The Worksheets include forms, documents, and instructions needed for planning and dealing with all types of federal tax transactions.**  
 //////////////////////

**PHILIP J. HOLTHOUSE**  
 Partner,  
 Holthouse Carlin & Van Trigt LLP  
 Author, *Real Estate Leases*  
 (Portfolio 593)

## PINPOINT TOPICS

A comprehensive outline of each Portfolio helps you pinpoint specific topics and provides a contextual framework.

**Portfolio 780-3rd: Net Operating Losses and Other Tax Attributes — Sections 381, 382, 383, 384, and 269**

**Portfolio Description**

- [Authors](#)
- [Technical Advisors](#)
- [Description](#)

**Detailed Analysis**

- I. Net Operating Losses — In General**
  - A. Section 172**
    - [1. Development](#)
      - [a. Net Operating Loss](#)
      - [b. Carrybacks and Carryovers](#)
      - [c. Taxable Year](#)
      - [d. History](#)
      - [e. Bypassing the Carryback Years](#)
      - [f. Special Relief](#)
    - [2. Application](#)
      - [a. Sequence](#)

## FEATURED ANALYSIS

The Portfolios' topical approach covers not only individual Code sections but also features analysis of the interaction of all relevant Code sections.

**H. Relationship Between §§ 269 and 382** Relevant Code Sections: 269, 282

**Section 269** supplements §382. In enacting the 1986 version of §382, Congress declared that the new rules would not change the function or application of §382 confirmed by finalizing Regs. §1.269-7, making it clear that the IRS considers that §269 can apply whether §382 applies or not. The IRS concludes that the actual applicability of §382 is relevant to determining whether the principal purpose for the transaction was tax avoidance or evasion. <sup>4338</sup>

<sup>4338</sup> See VII, A, 3, above.  
<sup>4339</sup> Reg. §1.269-7.

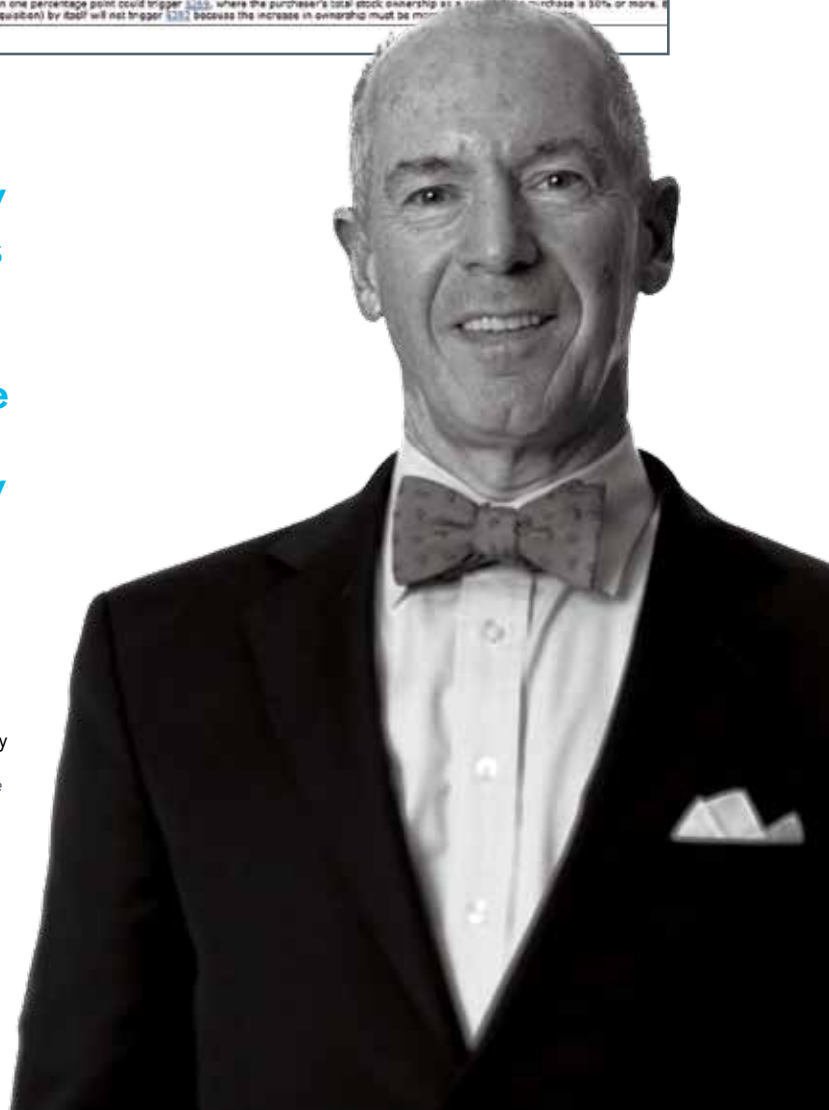
**Observation:** Ordinarily, applicability of §382 would indicate that the taxpayer's primary purpose was not tax avoidance, since §382 greatly limits the utility of an ownership change. However, §269 may nevertheless be asserted by the IRS where it finds the taxpayer entered into the transaction in ignorance of the effect of §382 or where it finds that the §382 limitation does not appreciably reduce the value of the NOL carryovers to the acquirer.

It is noteworthy that §269 and §382 do not always apply to the same transaction. Prior ownership is a key factor in §382 because a specific increase in ownership triggers its limitations, but is only an incidental factor in §269. Section 269 requires a significant ownership change, whereas a very small ownership change can trigger §269. <sup>4340</sup>

<sup>4340</sup> A purchase of less than one percentage point could trigger §269, where the purchaser's total stock ownership as a result of the purchase is 30% or more. If the purchase is small (or other acquisition) by itself will not trigger §382 because the increase in ownership must be more than one percentage point.

////////////////////////////////////  
**Unique to Bloomberg BNA, Portfolios are written to clarify tax issues — not just restate the laws — to help you save research time and help you make more informed decisions.**  
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**ALDEN J. BIANCHI**  
Member (Partner),  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
Author, *Employee Benefits for the  
Contingent Workforce*  
(Portfolio 399)



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- Planning opportunities
- Alternative approaches
- Probable IRS positions
- Pertinent Code citations
- IRS rulings and procedures
- Tax cases on point and conflicting cases
- Pitfalls to avoid

**The Working Papers** include relevant forms, documents, and other background tools you'll need to carry out decisions, including:

- Procedural checklists
- IRS forms and documents
- Suggested resolutions
- Sample plans and clauses
- Related IRS information

**The Bibliography** provides documents of all sorts—official and unofficial—used in researching the Portfolio's topic, including:

- Statutes and regulations
- Congressional committee reports
- Cases cited in the detailed analysis
- IRS rulings and procedures
- Tax articles in professional journals
- Agreements, conventions, and treaties

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