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April 12, 2016

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The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
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1111 Constitution Avenue, NW
Washington, DC 20224

Re: *Report No. 1342 on Notice 2015-59 and Revenue Procedure 2015-43*

Dear Messrs. Mazur, Koskinen, and Wilkins:

I am pleased to submit the attached report of the Tax Section offering comments and recommendations on Notice 2015-59 and Revenue Procedure 2015-43. Notice 2015-59 announced the intention of the Treasury Department and the Internal Revenue Service to study issues pertaining to certain corporate distributions intended to qualify under Section 355 involving substantial investment assets, reliance on relatively small active businesses, and conversion into a regulated investment company. Revenue Procedure 2015-43 added corresponding Internal Revenue Service "no-rule" areas.

We believe that distributions characterized by substantial and disproportionate investment assets are not, as a general matter, intended to be covered by Section 355, as Section 355 is meant to cover business-motivated separations of businesses. The types of transactions targeted by

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The Honorable Mark Mazur
The Honorable John Koskinen
The Honorable William J. Wilkins

April 11, 2016

the Notice and the Revenue Procedure bear a strong resemblance to the transaction in *Gregory v. Helvering*. We believe that such transactions raise device, business purpose, active trade or business and *General Utilities* repeal circumvention concerns. However, we also believe that current law provides significant obstacles to these types of transactions.

At the heart of the report is our recommendation that consideration be given to issuing guidance that circumscribes Section 355 in the case of transactions that involve substantial and disproportionate *appreciated* investment assets. In cases involving solely shareholder-level concerns, we believe that current law works reasonably well in distinguishing between transactions that are and are not within the scope of Section 355, and thus we do not recommend issuing guidance in these cases. We also do not recommend adoption of a *de minimis* rule for purposes of the five year active trade or business requirement as we believe that guidance addressing substantial investment assets would be more consonant with Section 355 policy and *General Utilities* repeal policy. The business purpose and device regulations, principally, serve as a bulwark against transactions of the type described in the Notice and Revenue Procedure qualifying under Section 355. In light of the higher stakes involved in cases involving appreciated investment assets as compared with cases that involve only shareholder-level concerns, we recommend consideration be given to issuing guidance in cases involving substantial and disproportionate investment assets where the investment assets are appreciated.

We very much appreciate your consideration of these recommendations and would be happy to discuss them with you or provide additional assistance.

Respectfully Submitted,



Stephen B. Land
Chair

cc: Emily S. McMahon
Deputy Assistant Secretary (Tax Policy)
Department of the Treasury

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