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April 11, 2014

The Honorable Mark Mazur
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The Honorable John Koskinen
Commissioner
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The Honorable William J. Wilkins
Chief Counsel
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Re: Recommendations for 2014-2015 Priority Guidance Plan

Dear Messrs. Mazur, Koskinen and Wilkins:

In response to Notice 2014-18, the Tax Section of the New York State Bar Association submits the following recommendations for the 2014-2015 Priority Guidance Plan.¹ The Tax Section has submitted reports on many of these issues, and those reports are referenced below. All Tax Section reports submitted from 2000 through 2013 can be accessed on our website at www.nysba.org (go to Sections/Tax Section/Tax Section Reports). Items of highest priority under each topic are marked with an asterisk.

I. Corporations

*Guidance addressing whether transfers to a distributing corporation in connection with a section 355 distribution of controlled corporation stock by the distributing corporation will be treated as an exchange of the transferred assets for the controlled corporation stock (Report No. 1292).

*Finalize proposed regulations under section 368(a)(1)(F) (Report No. 1229).

*Guidance on consolidated return issues arising under sections 382(1)(5) and 382(1)(6) (Report No. 1163).

¹ This letter may be cited as New York State Bar Association Tax Section Report No. 1304, "Notice 2014-18: Recommendations for 2014-2015 Priority Guidance Plan" (April 11, 2014). This letter reflects solely the views of the Tax Section of the New York State Bar Association and not those of the New York State Bar Association Executive Committee or the House of Delegates.

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Other guidance under section 382, including (i) the circumstances under which debt will be treated as stock for section 382 purposes or otherwise in a restructuring, (ii) issues regarding the right to rely on 13Ds and 13Gs for purposes of determining the identity and ownership of a “5-percent shareholder” under section 382, and (iii) codifying the IRS ruling position with respect to the treatment under the section 382 regulations of certain coordinated acquisitions by less-than-5-percent shareholders as an acquisition by a constructive entity (Reports Nos. 1238, 1255 and 1258).

Finalize proposed regulations under section 368 to expand the “signing date” continuity rule to include certain types of reorganizations that provide for variable consideration (Report No. 1266).

Revise and finalize proposed regulations under section 312 regarding the allocation of earnings and profits in certain types of reorganizations under section 368 (Report No. 1275).

Finalize proposed regulations under Section 362(e)(1) (Report No. 1302).

Guidance on investment company issues under sections 351(e) and 368(a)(2)(F) (Report No. 1252).

Guidance on distributions in connection with acquisitions (Report No. 1158).

Guidance regarding satisfaction of the control requirement of section 355(a)(1)(A) where described in section 368(c) and providing safe harbors in certain fact patterns while a broader study is undertaken (Report No. 1292).

Guidance regarding the application of section 361(c)(3) where the distributing corporation debt is refinanced or incurred “in anticipation of” the stock distribution, or where the distributing debt is acquired by an intermediary to facilitate the exchange.

Guidance addressing the application of Section 355(d) to partnership formations and liquidations.

Guidance applying the circular basis adjustment rules in the case of multiple dispositions of subsidiaries in a single year.

Revise and finalize proposed regulations under Treas. Reg. § 1.1502-91 relating to the redetermination of consolidated net unrealized built-in gain and loss (Report No. 1269).

Finalize proposed regulations under section 172(h) on the application of the CERT rules to consolidated groups (Report No. 1290).

II. Employee Benefits

*Clarification of the rules under Section 409A regarding the treatment of stock rights and equity-based deferred compensation in the context of mergers and acquisitions and other corporate transactions.

*Finalize the recently released proposed regulations under Section 162(m)(6) relating to limitations on compensation deductions of certain health insurers (Report No. 1291).

Clarification of the scope and application of the rule effectively permitting correction of Section 409A noncompliance in the case of as-yet unvested deferred compensation (contained in proposed regulations but currently effective).

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Further guidance on the scope and application of Section 409A(b), relating to offshore and springing funding vehicles, in light of the expiration of the transition relief provided by Notice 2006-33.

Guidance on the Section 4985 inversion penalty, including (i) the definition of Disqualified Individual (which relies on Section 16(a) Exchange Act standards as applied to each member of the expatriate's affiliated group), and (ii) the application of valuation rules to different types of stock compensation.

III. Exempt Organizations

Guidance under Section 501(c)(4).

Final regulations under Section 4944 on program-related investments.

Guidance regarding the new excise taxes on donor advised funds and fund management.

IV. Financial Products

*Finalize proposed regulations under Section 871(m) (Reports Nos. 1234 and 1264, and Report forthcoming).

*Guidance on the taxation of prepaid financial instruments and contingent value swaps.

Guidance on the treatment of distressed debt, including the obligation of the holder to accrue stated interest, OID and/or market discount where there is no reasonable expectation of payment, on mitigating or eliminating character mismatches with respect to accrued interest, OID and market discount that is never paid, and on other market discount and AHYDO issues (Reports Nos. 1163, 1209 and 1248).

Guidance on the treatment of debt-for-debt exchanges, including how to account for cancellation-of-indebtedness income (Report No. 1209).

Guidance relating to Treas. Reg. § 1.956-2T(b)(1)(xi), including whether it should be expanded to over-the-counter swaps and whether swaps described therein should be deemed to give rise to loans for other tax purposes (including withholding tax purposes and Section 514).

V. General

Guidance on the impact of contingent liabilities in measuring insolvency under section 108 in light of *Merkel v. Commissioner*, 192 F.3d 844 (9th Cir. 1999) and related authorities (Report No. 1278).

Revise and finalize proposed regulations under sections 108 and 7701 concerning the bankruptcy and insolvency rules and disregarded entities (Report No. 1289).

Guidance on the treatment of the buyer in an asset purchase when the assumed liabilities include deferred revenue (i.e., prepaid income) of the seller (Report No. 1281).

Guidance under Section 165(g)(3).

VI. Gifts and Estate and Trusts

Guidance on when estates and trusts are treated as materially participating in a trade or business for purpose of Code Sections 469 and 1411.

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Guidance on the income, gift, estate and generation-skipping transfer tax consequences of a transfer by a trustee of a portion or all of the principal of an irrevocable trust to another irrevocable trust, commonly referred to as “decanting” (Report No. 1265).

VII. International

*Further guidance under FATCA, including (i) definition of Investment Entity, (ii) revision and finalizing of relevant withholding tax and reporting forms, and (iii) harmonization with IGAs (Reports Nos. 1199, 1224, 1253, 1267, 1282, and 1295).

*Guidance on the characterization of commitment and letter of credit fees by non-bank foreign investors in revolving and term loan credit facilities of U.S. borrowers, and characterization of fees for consenting to waivers or modifications of bonds or loans particularly for withholding tax purposes.

Further guidance under section 7874 (Reports Nos. 1211 and 1279, and report forthcoming).

Guidance concerning cross-border securities lending (Notice 2010-46) (Report No. 1234).

Guidance under Section 367(d), regarding transfers of intangible property to foreign corporations (Report No. 1122).

Finalize regulations under section 987 and guidance for taxpayers that are specifically not covered by the currently proposed section 987 regulations (Report No. 1140).

Finalize or re-propose the proposed PFIC regulations, including guidance on banking and securities businesses, look-through rules, tiered entities and options (Report Nos. 994 and 1207).

Finalize proposed regulations under section 909 relating to foreign tax credit splitting events (Reports Nos. 1135, 1223, 1249, and 1273).

Finalize or re-propose proposed regulations under section 163(j) related to earnings stripping (1991 Report).

Guidance on the disallowance of foreign tax credits under the covered asset acquisition rules of section 901(m) (Report No. 1231).

Guidance addressing (i) the amount of a section 956 inclusion, including where multiple CFCs guarantee the same loan, or where the value of CFC stock or assets pledged is less than the amount of the loan, and (ii) the effect (if any) of a pledge of the stock of a "US holdco" that owns solely stock of CFCs or a loan to a CFC.

Finalize or re-propose the proposed global dealing regulations (proposed Treas. Reg. § 1.482-8) (Report No. 926).

Final regulations under Section 892 (Report No. 1157 and 1257).

VIII. Partnerships

*Guidance on partnership distributions under section 751(b), including (i) guidance on measurement issues, and (ii) guidance on the consequences of a shift in shares of hot assets (Report No. 1122).

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*Guidance on the proper treatment of contingent liabilities under sections 743(b) and 755 (Report No. 1274).

Guidance on targeted allocations under section 704(b) (Report No. 1219).

Guidance on section 704(c) layers relating to partnership mergers (Reports Nos. 1202 and 1220).

Revise and finalize proposed Treas. Reg. § 1.337(d)-3 (1989 Report, 1993 Report and Report No. 1270).

Finalize proposed regulations under section 469 relating to the definition of limited partner for purposes of the passive activity loss rules (proposed Treas. Reg. § 1.469-5) (Report No. 1259).

Guidance on the application of Treas. Reg. § 1.267(b)-1(b) in light of the addition of section 267(b)(10) to the Code and the 1986 amendment of section 707(b)(1) (Report No. 1271).

Guidance in light of *Pilgrim's Pride v. Comm'r*, 141 T.C. No. 17 (2013), on the status of Rev. Rul. 93-80.

Final regulations on noncompensatory partnership options (Report No. 1286).

Guidance under sections 704(c)(1)(C), 743(b), and 743(b) on partnership built-in losses (Report forthcoming).

IX. Tax Administration

Revise regulations under Sections 6662 and 6664 relating to accuracy-related penalties.

General review and reorganization of the TEFRA Regulations under Sections 6221-6234.

Regulations revising Circular 230.

* * *

We hope that our recommendations are helpful to you. We would be pleased to discuss with you preparing reports to address any issues on your 2014-2015 Guidance Plan on which we have not already commented.

Respectfully submitted,



David H. Schnabel

Chair

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