



# NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 PH 518.463.3200 www.nysba.org

## TAX SECTION

2016-2017 Executive Committee

### STEPHEN B. LAND

Chair  
Duval & Stachenfeld LLP  
555 Madison Avenue  
New York, NY 10022  
212/692-5991

### MICHAEL S. FARBER

First Vice-Chair  
212/450-4704

### KAREN GILBREATH SOWELL

Second Vice-Chair  
202/327-8747

### DEBORAH L. PAUL

Secretary  
212/403-1300

### COMMITTEE CHAIRS:

#### Bankruptcy and Operating Losses

Stuart J. Goldring  
David W. Mayo

#### Compliance, Practice & Procedure

Elliot Pisem

Bryan C. Skarlatos

#### Consolidated Returns

Andrew H. Braiterman  
Kathleen L. Ferrell

#### Corporations

Linda Z. Swartz  
Gordon E. Warnke

#### Cross-Border Capital Markets

David M. Schizer  
Andrew R. Walker

#### Cross-Border M&A

Yaron Z. Reich  
Ansgar A. Simon

#### Employee Benefits

Lawrence K. Cagney  
Eric W. Hillers

#### Estates and Trusts

Alan S. Halperin  
Joseph Septimus

#### Financial Instruments

Lucy W. Farr  
William L. McRae

#### "Inbound" U.S. Activities of Foreign

Taxpayers  
Peter J. Connors  
Peter F.G. Schuur

#### Individuals

Steven A. Dean  
Sherry S. Kraus

#### Investment Funds

John C. Hart  
Amanda H. Nussbaum

#### New York City Taxes

Maria T. Jones  
Invin M. Slomka

#### New York State Taxes

Paul R. Comeau  
Arthur R. Rosen

#### "Outbound" Foreign Activities of

U.S. Taxpayers  
Andrew P. Solomon  
Philip R. Wagman

#### Partnerships

Marcy G. Geller  
Eric B. Sloan

#### Pass-Through Entities

James R. Brown  
Edward E. Gonzalez

#### Real Property

Robert Cassanos  
Phillip J. Gall

#### Reorganizations

Neil J. Barr  
Peter A. Furci

#### Securitized and Structured Finance

John T. Lutz  
W. Kirk Wallace

#### Spin Offs

Lawrence M. Garrett  
Joshua M. Holmes

#### Tax Exempt Entities

Stuart L. Rosow  
Richard R. Upton

#### Treaties and Intergovernmental

Agreements  
Lee E. Allison  
David R. Hardy

Peter L. Faber  
Alfred D. Youngwood  
Gordon D. Henderson  
David Sachs  
J. Roger Mentz  
Willard B. Taylor  
Richard J. Hiegel

Herbert L. Camp  
William L. Burke  
Arthur A. Feder  
James M. Peaslee  
John A. Corry  
Peter C. Canellos  
Michael L. Schler

Carolyn Joy Lee  
Richard L. Reinhold  
Steven C. Todrys  
Harold R. Handler  
Robert H. Scarborough  
Robert A. Jacobs  
Samuel J. Dimon

Andrew N. Berg  
Lewis R. Steinberg  
David P. Hariton  
Kimberly S. Blanchard  
Patrick C. Gallagher  
David S. Miller  
Erika W. Nijenhuis

Peter H. Blessing  
Jodi J. Schwartz  
Andrew W. Needham  
Diana L. Wollman  
David H. Schnabel  
David R. Sicular

## MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE:

William D. Alexander  
Megan L. Brackney  
Daniel M. Dunn  
Jason R. Factor

Robert C. Fleder  
Joshua E. Gewolb  
Amy Heller

Elizabeth T. Kessenides  
Richard M. Nugent  
Joel Scharfstein

Stephen E. Shay  
Eric Solomon  
Jack Trachtenberg

May 6, 2016

The Honorable Mark Mazur  
Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

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

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

Re: *Report No. 1345 on Notice 2015-54, Transfers of Property to Partnerships with Related Foreign Partners and Controlled Transactions Involving Partnerships – Section 482*

Dear Messrs. Mazur, Koskinen, and Wilkins:

I am pleased to submit the attached report of the Tax Section commenting on Notice 2015-54, issued August 6, 2015. Notice 2015-54 announced that the Treasury and Internal Revenue Service intend to issue regulations under Sections 482 and 6662 of the Internal Revenue Code to address certain transfers of appreciated property by a U.S. taxpayer to a partnership with foreign related partners. The regulations to be proposed are intended to provide guidance on the application of the arm's-length standard to these transactions.

## FORMER CHAIRS OF SECTION:

We understand that the Notice was motivated by a concern that allocations of partnership income or gain to U.S. partners were being reduced through the use of incorrect valuations either for contributed property or for property and services involved in controlled party transactions involving partnerships. In order to address these concerns, the Notice indicates that the proposed regulations will apply certain provisions of the regulations under Treasury Regulations Sections 1.482-7 (applicable to cost sharing arrangements) and 1.482-4 (relating to intangibles) to these partnership transactions.

These regulations as well as certain additional reporting requirements will be effective upon their issuance as specified in the regulations.

In this Report we address the portion of the Notice that relates to section 482. We addressed the portion of the Notice that related to the provisions of Subchapter K in our Report No. 1336, submitted on December 22, 2015.

We support the Treasury and Internal Revenue Service in their efforts to provide guidance with respect to the application of section 482 and arm's-length principles to partnership transactions among controlled entities. As the report notes, there is little authority in this area. Also as stated in the report, in general we believe that the better approach is to analyze partnership transactions in which contributions are incorrectly valued as transfers among the parties involved, rather than to address the issue through changes in the partnership allocations or other items.

Our comments are intended to support these efforts to provide guidance and include a number of suggestions intended to explain and illustrate our preferred approach. Our principal recommendations are following:

1. The Regulations generally should follow the approach of recharacterizing the initial transaction in which contributed property is incorrectly valued as having included a deemed transfer of property among the partners involved. Under this approach, the Regulations should generally provide for adjustments to partnership allocations only to the extent required to make those allocations consistent with this recharacterization.

2. The Regulations should be explicit about their scope. This involves identifying the partnership transactions to which specific aspects of the regulations apply. For example, the Regulations should have a more circumscribed application to transactions not involving intangible property.

3. The Regulations should provide specific guidance on how the principles of the existing cost sharing regulations under Section 482 will apply to partnership transactions involving development of intangibles in order to determine whether the results are arm's length.

4. The Regulations should provide that adjustments will generally not be made to the partnership allocations (or additional economic terms imputed) except in those circumstances in which a recharacterization of the transaction as a transfer between the related parties does not achieve an arm's-length result.

5. The Regulations should provide for the adjustment of the partners' respective interests in the partnership (or treatment of any recharacterized transfer), either in the case of the contribution of intangibles to the partnership or the development of intangibles by the partnership, based upon actual results to ensure that the resulting partnership allocations are commensurate with the income attributable to the intangible held by or developed by the partnership. This portion of the Regulations should be consistent with the principles of Treasury Regulations Sections 1.367(d)-1T and 1.482-4(f).

6. The regulations should require that controlled taxpayers provide documentation sufficient to justify their position that the valuation of the contributions to the partnership and the partnership interest received are arm's length.

We appreciate your consideration of our recommendations. If you have any questions or comments on this report, please feel free to contact us and we would be happy to assist in any way.

Respectfully Submitted,



Stephen B. Land  
Chair

cc: Emily S. McMahon  
Deputy Assistant Secretary (Tax Policy)  
Department of the Treasury  
  
Thomas C. West, Jr.  
Tax Legislative Counsel  
Department of the Treasury

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

May 6, 2016

Ossie Borosh  
Attorney-Advisor, Office of Tax Legislative Counsel  
Department of the Treasury

Danielle Rolfes  
International Tax Counsel  
Department of the Treasury

Brenda Zent  
Taxation Specialist, Office of International Tax Counsel  
Department of the Treasury

Kevin C. Nichols  
Attorney-Advisor, Office of International Tax Counsel  
Department of the Treasury

Elena Virgadamo  
Attorney-Advisor, Office of International Tax Counsel  
Department of the Treasury

William M. Paul  
Deputy Chief Counsel – Technical  
Internal Revenue Service

Curtis G. Wilson  
Associate Chief Counsel (Pass through and Special Industries)  
Internal Revenue Service

Marjorie Rollinson  
Associate Chief Counsel (International)  
Internal Revenue Service

Ryan Bowen  
Attorney-Advisor, Branch 4 (International)  
Internal Revenue Service

Kenneth Jeruchim  
Attorney-Advisor, Branch 6 (International)  
Internal Revenue Service