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June 1, 2016

The Honorable Mark J. Mazur
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The Honorable John Koskinen
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Re: *Report No. 1349 on Final Regulations on Reorganizations under Section 368(a)(1)(F)*

Dear Messrs. Mazur, Koskinen, and Wilkins:

I am pleased to submit the attached report of the Tax Section commenting on the final regulations on "F" reorganizations, published on September 21, 2015. The final regulations are intended to define the scope of an F reorganization so that such a reorganization involves only one continuing corporation and is not an acquisitive or divisive transaction. The final regulations prescribe six requirements for F reorganizations, and also provide certain additional rules addressing the impact of contemporaneous distributions and the application of step transaction principles. Under the construct of the final regulations, the satisfaction of the six requirements is tested over a period that commences when the transferor corporation begins to transfer assets to the resulting corporation, and ends when the

transferor corporation liquidates and the stock of the resulting corporation is distributed to the former owners of the transferor corporation. (This period of time is sometimes colloquially referred to as the “bubble.”) The final regulations also requested comments regarding how to assign or reassign employee identification numbers in an F reorganization, including in cases where the transferor corporation remains in existence as a disregarded entity.

As noted in the Report, we believe that the final regulations present a useful and thoughtful framework for defining the scope of an F reorganization. The Report does not seek fundamental changes to the approach set out in the final regulations. However, there are a few situations in which the rules of the final regulations introduce some uncertainty as compared to prior law, and thus the application of the final regulations in these situations, particularly with respect to the first recommendation noted below, could helpfully be clarified through the issuance of published guidance.

Specifically, the Report recommends that Treasury and the Service consider issuing guidance clarifying the following aspects of the final regulations:

1. That the *de minimis* exceptions regarding issuances of stock and holding of assets by the resulting corporation take into account all relevant facts and circumstances, including legal or regulatory requirements, and that issuances of stock or contributions of assets in order to facilitate a resulting corporation’s organization (or otherwise in connection with the organization) or maintain its legal existence will be presumed to be *de minimis* as long as they do not exceed 1% of the resulting corporation’s shares outstanding or assets (by value) immediately after the potential F reorganization.
2. That in a “drop and check” transaction pursuant to an integrated plan, the potential F reorganization begins when the stock of the transferor corporation is contributed to the resulting corporation.
3. That the prohibition on a resulting corporation holding tax attributes only looks to U.S. federal income tax attributes, and that tax attributes are not considered “property” for purposes of the final regulations. As an alternative, the guidance could provide that tax attributes only include attributes arising from prior business activities of the resulting corporation.
4. That the step transaction doctrine will only be applied to integrate steps occurring outside the “bubble” in a manner that disqualifies the transaction from F reorganization treatment where the resulting integrated transaction is a tax-free reorganization described in the “overlap” rule of Treas. Reg. § 1.368-2(m)(3)(iv).
5. That an insolvent corporation can successfully undergo an F reorganization.

6. That the overlap rule takes precedence over the distribution non-integration rule.
7. To what extent, if any, Revenue Rulings 61-156 and 68-349, which deal with stock issuances to non-historic owners, remain valid in light of the final regulations.
8. That a transferor corporation should retain its employee identification number for relevant purposes if it becomes disregarded in a “drop and check” F reorganization..

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,



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Chair

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