



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

Elliott 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. Hilfers

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
Irwin M. Stomka

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

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

August 10, 2016

The Honorable Mark J. 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. 1352 on Proposed Regulations under Section 305(c)*

Dear Messrs. Mazur, Koskinen, and Wilkins:

I am pleased to submit the attached report of the Tax Section of the New York State Bar Association. The report comments on proposed regulations under Section 305(c) (the "**Proposed Regulations**"), which were issued by the Treasury Department ("**Treasury**") on April 13, 2016.

The Proposed Regulations address deemed distributions under Section 305(c) that arise as the result of an adjustment to the terms of a right to acquire stock of the issuer of the relevant instrument (a "**Stock Right**"). They determine the amount of a deemed distribution by treating it as a deemed receipt of additional Stock Rights, rather than a deemed receipt of the full amount of stock reflected in the adjustment. We generally support this approach to the calculation of the amount of a deemed distribution in this context, as well as the issuer reporting requirements and special withholding rules contained in the Proposed Regulations.

FORMER CHAIRS OF SECTION:

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

Our primary recommendations are as follows:

1. The final regulations should clarify whether the rules apply to derivative instruments other than options, convertible bonds and convertible stock, or to exchangeable debt or other instruments issued by an entity related to the underlying stock issuer.
2. The determination of the amount of a deemed distribution should be based on the value of the entire instrument to which the right to acquire stock relates, not the embedded Stock Right alone.
3. A deemed distribution should not occur before the date of the adjustment to a Stock Right (or possibly the date the terms of the adjustment to a Stock Right become fixed).
4. The final regulations should confirm that a deemed shareholder has a single basis and holding period in the instrument containing the Stock Right.
5. The final regulations should clarify that deemed shareholders of convertible bonds can treat deemed distributions as qualified dividend income or as eligible for the dividends-received deduction.
6. Treasury should clarify how the Section 871(m) regulations are intended to apply to securities loans, repurchase transactions and other derivative transactions on convertible bonds.
7. The final regulations should clarify the effective dates of an issuer's reporting obligations under Section 6045B in the case of a security held in a clearing system.
8. The final regulations should clarify what constitutes "actual knowledge" of a deemed distribution for purposes of determining whether a withholding agent has an obligation to withhold.
9. Public reporting should be made the sole reporting method for an issuer to satisfy its Section 6045B reporting obligation, and a delay should be allowed between the issuer's satisfaction of the public reporting requirement and the time at which any related withholding obligation arises.
10. The final regulations should limit the liability of a withholding agent in the event that the relationship between the withholding agent and a deemed shareholder is terminated before the issuer satisfies its reporting requirement under Section

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

August 10, 2016

6045B, as well as in certain other situations in which the withholding agent has insufficient amounts from which to withhold.

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

Robert B. Stack
Deputy Assistant Secretary (International Tax
Affairs)
Department of the Treasury

Danielle E. Rolfes
International Tax Counsel
Department of the Treasury

Douglas L. Poms
Deputy International Tax Counsel
Department of the Treasury

Thomas C. West, Jr.
Tax Legislative Counsel
Department of the Treasury

Karl Walli
Senior Counsel – Financial Products
Department of the Treasury

Helen M. Hubbard
Associate Chief Counsel (Financial Institutions and Products)
Internal Revenue Service

David Silber
Deputy Associate Chief Counsel (Financial
Institutions and Products)
Internal Revenue Service

William E. Blanchard
Special Counsel to Associate Chief Counsel
(Financial Institutions and Products)
Internal Revenue Service

Marjorie A. Rollinson
Associate Chief Counsel (International)
Internal Revenue Service

Mark E. Erwin
Branch Chief (International Branch 5)
Internal Revenue Service

D. Peter Merkel
Senior Technical Reviewer (International
Branch 5)
Internal Revenue Service

Karen Walny
Attorney-Advisor (International Branch 5)
Internal Revenue Service