



NEW YORK STATE BAR ASSOCIATION

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

TAX SECTION

2017-2018 Executive Committee

MICHAEL S. FARBER

Chair
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
212/450-4704

KAREN GILBREATH SOWELL

First Vice-Chair
202/327-8747

DEBORAH L. PAUL

Second Vice-Chair
212/403-1300

ANDREW H. BRAITERMAN

Secretary
212/837-6315

COMMITTEE CHAIRS:

Bankruptcy and Operating Losses

Stuart J. Goldring
David W. Mayo

Compliance, Practice & Procedure

Elliot Pisem
Bryan C. Skarlatos

Consolidated Returns

William Alexander
Richard Nugent

Corporations

Michael T. Mollerus
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

Robert C. Fleder
Jeffrey W. Ross

Estates and Trusts

Alan S. Halperin
Joseph Septimus

Financial Instruments

Lucy W. Farr
Jeffrey Maddrey

"Inbound" U.S. Activities of Foreign Taxpayers

Peter J. Connors
Peter F. G. Schuur

Individuals

Megan L. Brackney
Steven A. Dean

Investment Funds

John C. Hart
Amanda H. Nussbaum

Multistate Taxation

Arthur R. Rosen
Jack Trachtenberg

New York City Taxes

Maria T. Jones
Irwin M. Slomka

New York State Taxes

Paul R. Comeau
Joshua E. Gewolb

"Outbound" Foreign Activities of U.S. Taxpayers

Andrew P. Solomon
Philip R. Wagman

Partnerships

Phillip J. Gall
Eric B. Sloan

Pass-Through Entities

James R. Brown
Edward E. Gonzalez

Real Property

Robert Cassanos
Marcy Geller

Reorganizations

Neil J. Barr
Peter A. Furci

Securitizations and Structured Finance

Daniel M. Dunn
John T. Lutz

Spin Offs

Lawrence M. Garrett
Joshua M. Holmes

Tax Exempt Entities

Stuart Rosow
Richard R. Upton

Treaties and Intergovernmental Agreements

Lee E. Allison
David R. Hardy

#5

MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE:

Daniel Z. Altman
Pamela L. Endreyn
Jason R. Factor
Kathleen L. Ferrell

Elizabeth T. Kessenides
Shane J. Kiggen
Sherry S. Kraus
William L. McRae

Joel Scharfstein
Stephen E. Shay
Eric Solomon
Linda Z. Swartz

Andrea K. Wahlquist
S. Eric Wang
Sara B. Zabloutney

June 5, 2017

The Honorable Thomas C. West
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable William M. Paul
Acting Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

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

Re: *Report No. 1371 on Certain Corporate Reorganization Transactions
Followed by "Same-State" Asset Drop-Downs*

Dear Messrs. West, Koskinen, and Paul:

I am pleased to submit the attached report of the Tax Section of the New York State Bar Association. The report comments on recent statements that the IRS may be considering whether certain corporate reorganization transactions followed by a "same-state" drop-down of assets should be characterized as a nonrealization event coupled with a taxable distribution of assets rather than as a reorganization within the purview of section 368 followed by a tax-free drop-down of assets.

As discussed in greater detail in the attached report, we believe that the reorganization and nonrealization rules can best be harmonized by applying the step transaction rules under Treasury Regulations section 1.368-2(k) consistently for purposes of determining both reorganization and nonrealization status. Consistent with this recommendation, we think that if the first step of a transaction standing alone would result in realization in what is otherwise a reorganization transaction followed by an asset drop down to which Treasury

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
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
Stephen B. Land

Honorable Thomas C. West
Honorable John Koskinen
Honorable William M. Paul

June 5, 2017

Regulations section 1.368-2(k) would apply, then the transaction should be governed by the reorganization rules.

Alternatively, if the government does not agree with our recommendation, and believes that nonrealization principles should instead be analyzed by looking at the overall transaction, then we recommend that nonrealization be articulated such that there is realization in any situation in which there is not complete identity of assets at the end of the transaction. We believe this is consistent with the nonrealization authorities discussed in detail in the report, which can be read as applying nonrealization in what is otherwise a reorganization transaction only when there is no change in a corporation's assets or business as part of the transaction.

Whichever approach the government chooses to follow, we urge the IRS to resume issuing private letter rulings in this area and otherwise to confirm that it will treat the transactions that are the subject of the report as reorganizations followed by asset drop-downs.

Sincerely,



Michael Farber, Chair

Attachment

cc: Krishna P. Vallabhaneni
Deputy Tax Legislative Counsel
Department of the Treasury

Brett York
Attorney Advisor (Tax)
Department of the Treasury

Robert H. Wellen
Associate Chief Counsel (Corporate)
Internal Revenue Service

Alison G. Burns
Deputy Associate Chief Counsel (Corporate)
Internal Revenue Service

Lisa A. Fuller
Special Counsel, Office of Associate Chief Counsel (Corporate)
Internal Revenue Service