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Report No. 1378
August 18, 2017

The Honorable David Kautter
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The Honorable John Koskinen
Commissioner
Internal Revenue Service
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Washington, DC 20224

The Honorable William M. Paul
Acting Chief Counsel
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Washington, DC 20224

Re: *Report No. 1378 on the Proposed Regulations Related to the Partnership Audit Rules of the Bipartisan Budget Act of 2015*

Dear Messrs. Kautter, Koskinen, and Paul:

I am pleased to submit the attached report of the Tax Section of the New York State Bar Association providing comments on proposed regulations issued under the Bipartisan Budget Act of 2015 (the "BBA").

The BBA transformed the IRS's procedures for auditing, and assessing and collecting tax from, partnerships and other pass-through entities. Under the BBA, if the IRS audits and adjusts items of partnership income, gain, loss, or deduction, it will impose an "imputed underpayment" on the partnership for which the partnership, instead of the partners, is liable, at least in the first instance. In addition, the BBA eliminated the Tax Matters Partner, and replaced it with the Partnership Representative, who is not required to be a partner of the partnership but will have exclusive power to act on behalf of the partnership.

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We recognize that the motivation behind the BBA was to simplify the audit and collection procedures for partnerships, which had become unwieldy for the IRS to administer because of the increasing number of large and multi-tiered partnerships.

As discussed in detail in the attached report, we believe that certain modifications to the Proposed Regulations would enhance the administrability of the new partnership audit rules. Our comments provide suggestions as to how Treasury can implement the BBA while minimizing complexities and burdens for both the IRS and taxpayers.

The following is a brief summary of our principal recommendations:

1. We recommend that partners be permitted to modify an imputed underpayment by filing an information statement relating to the proposed partnership adjustments and paying any additional tax due, rather than filing an amended return.
2. We recommend that partnerships be permitted to push out an imputed underpayment through tiers of upper-tier pass-through partners, on the condition that the partnerships and partners furnish the IRS with sufficient information to identify the direct and indirect partners, track the adjustments through the tiers of partnerships, and confirm that all taxes are properly reported and paid.
3. We recommend that the rules for calculating an imputed underpayment as part of an Administrative Adjustment Request be more flexible, to encourage taxpayers to self-report and correct underpayments.
4. We recommend that, when a Partnership Representative cannot serve in that capacity because of death, dissolution, incompetency, or adversity to the partnership, the Partnership Representative may resign or be replaced at any time.
5. We recommend that the Proposed Regulations clarify that there will be access to administrative and judicial review of IRS determinations denying an election out of the BBA, an election to push out an imputed underpayment, or a request to modify an imputed underpayment.
6. We recommend that Treasury consider allowing partnerships with a limited number of partners to elect out of the BBA, even if a small number of those partners are partnerships, trusts, disregarded entities, or nominees, subject to certain conditions that will reduce the potential administrative burden on the IRS.

We appreciate your consideration of our comments. Please let us know if you would like to discuss these matters further or if we can assist you in any other way.

Respectfully submitted,



Michael Farber
Chair

Attachment

cc: Dana L. Trier
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August 18, 2017

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