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May 14, 2013

The Honorable Mark Mazur
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Steven Miller
Acting Commissioner
Internal Revenue Service
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Washington, DC 20224

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

Re: Notice 2013-22: Recommendations for 2013-2014 Priority Guidance List

Dear Messrs. Mazur, Miller and Wilkins:

In response to Notice 2013-22, the Tax Section of the New York State Bar Association submits the following recommendations for the 2013-2014 Guidance Priority List. The Tax Section has submitted reports on many of these issues, and those reports are referenced below. All Tax Section reports submitted since 2000 can be accessed on our website at www.nysba.org (go to Sections/Tax Section/Tax Section Reports).

I. Consolidated Returns

Revise and finalize proposed regulations under Treas. Reg. § 1.1502-91 relating to the redetermination of consolidated net unrealized built-in gain and loss (Report No. 1269);

1 This letter may be cited as New York State Bar Association Tax Section, Notice 2013-22: Recommendations for 2013-2014 Priority Guidance List (Report No. 1283, May 14, 2013). This letter reflects solely the views of the Tax Section of the New York State Bar Association and not those of the New York State Bar Association Executive Committee or the House of Delegates.

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Finalize proposed regulations under section 172(h) on the application of the CERT rules to consolidated groups (Report forthcoming);

II. Corporations

Finalize proposed regulations under section 382 involving (i) sales by 5% shareholders, (ii) redemptions, (iii) constructive ownership, and (iv) the codification of the IRS ruling position with respect to the treatment under the section 382 regulations of certain coordinated acquisitions by less-than-5-percent shareholders as an acquisition by a constructive entity (Reports Nos. 1163, 1238 and 1258);

Guidance under section 382, including (i) issues arising under sections 382(l)(5) and 382(l)(6), (ii) the circumstances under which debt will be treated as stock for section 382 purposes or otherwise in a restructuring, and (iii) issues regarding the right to rely on 13Ds and 13Gs for purposes of determining the identity and ownership of a “5-percent shareholder” under section 382 (Reports Nos. 1163, 1238 and 1255);

Finalize proposed regulations under section 368 to expand the “signing date” continuity rule to include certain types of reorganizations that provide for variable consideration (Report No. 1266);

Revise and finalize proposed regulations under section 312 regarding the allocation of earnings and profits in certain types of reorganizations under section 368 (Report No. 1275);

Guidance on investment company issues under sections 351(e) and 368(a)(2)(F) (Report No. 1252);

Finalize proposed regulations under section 368(a)(1)(F) (Report No. 1229);

Guidance on distributions in connection with acquisitions (Report No. 1158);

Guidance addressing the “no-rule” areas of Rev. Proc. 2013-3, sections 5.01(9) (control requirement for section 355), 5.01(10) (debt exchanges in section 355 transactions), and 5.02(2) (“north-south” transactions) (Report forthcoming);

III. Employee Benefits

Clarification of the scope and application of the rule effectively permitting correction of section 409A noncompliance in the case of as-yet unvested deferred compensation (contained in proposed regulations but currently effective);

Further guidance on the scope and application of section 409A(b), relating to offshore and springing funding vehicles, in light of the expiration of the transition relief provided by Notice 2006-33;

Clarification of the rules under section 409A regarding the treatment of stock rights and equity-based deferred compensation in the context of mergers and acquisitions and other corporate transactions;

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Finalize the recently released proposed regulations under section 162(m)(6) relating to limitations on compensation deductions of certain health insurers (Report forthcoming);

Finalize proposed regulations on the application of the aggregation rule under Section 162(m)(6);

IV. Financial Products and Financial Transactions

Finalize proposed regulations under section 871(m) (Reports Nos. 1234 and 1264);

Guidance on the treatment of debt-for-debt exchanges, including how to account for cancellation-of-indebtedness income (Report No. 1209);

Guidance on the treatment of distressed debt, including the obligation of the holder to accrue stated interest, OID and/or market discount where there is no reasonable expectation of payment, on mitigating or eliminating character mismatches with respect to accrued interest, OID and market discount that is never paid, and on other market discount issues (Reports Nos. 1163, 1209 and 1248);

Guidance under the AHYDO rules (sections 163(e)(5) and 163(i)), including whether the AHYDO rate should be modified in light of the current economic situation (Reports Nos. 1196 and 1248);

V. General

Guidance on the availability of section 47 rehabilitation tax credits in light of *Historic Boardwalk Hall, LLC v. Commissioner*, 694 F.3d 425 (3rd Cir. 2012) (Report forthcoming);

Guidance on the impact of contingent liabilities in measuring insolvency under section 108 in light of *Merkel v. Commissioner*, 192 F.3d 844 (9th Cir. 1999) and related authorities (Report No. 1278);

Revise and finalize proposed regulations under sections 108 and 7701 concerning the bankruptcy and insolvency rules and disregarded entities (Report forthcoming);

Finalize temporary regulations under § 108(i) for partnerships and S corporations;

Guidance on the treatment of the buyer in an asset purchase when the assumed liabilities include deferred revenue (*i.e.*, prepaid income) of the seller (Report No. 1281);

Finalize proposed regulations under section 1411 (Report No. 1247 and Report forthcoming);

VI. International

Further guidance on the implementation of FATCA: (i) issuance of model agreements for foreign financial institutions, (ii) further revision and finalizing of relevant withholding tax and reporting forms and (iii) coordination of chapter 3 withholding rules with the final FATCA regulations (Reports Nos. 1199, 1224, 1253, 1267 and 1282);

Guidance under the trading safe harbor of section 864(b)(2) regarding the extent to which the safe harbor applies to debt workouts, including acquisitions of distressed debt by a foreign investor for the purpose of participating in the recapitalization of the debtor (Report No. 1163);

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Finalize proposed regulations under section 909 relating to foreign tax credit splitting events (Reports Nos. 1135, 1223, and 1273);

Guidance on the disallowance of foreign tax credits under the covered asset acquisition rules of section 901(m) (Report No. 1231);

Guidance under section 960(c) on the amount of foreign taxes deemed paid with respect to section 956 inclusions;

Guidance on the penalties to be imposed as part of the Offshore Voluntary Disclosure Initiative (Report No. 1246);

Revise and finalize temporary regulations under section 988(d) relating to partial “leg-outs” of certain foreign currency hedges (Report No. 1277);

Finalize or re-propose the proposed PFIC regulations, including guidance on banking and securities businesses, look-through rules, tiered entities and options (Report Nos. 994 and 1207);

Further guidance under section 7874 (Reports Nos. 1211 and 1279);

Guidance under U.S. income tax treaties (Reports Nos. 1096, 1127 and 1214);

VII. Partnerships

Guidance on targeted allocations under section 704(b) (Report No. 1219);

Guidance on section 704(c) layers relating to partnership mergers and tiered partnerships (Reports Nos. 1202 and 1220);

Revise and finalize proposed Treas. Reg. § 1.337(d)-3 (1989 Report, 1993 Report and Report No. 1270);

Finalize proposed regulations under section 469 relating to the definition of limited partner for purposes of the passive activity loss rules (proposed Treas. Reg. § 1.469-5) (Report No. 1259);

Guidance on the application of Treas. Reg. § 1.267(b)-1(b) in light of the addition of section 267(b)(10) to the Code and the 1986 amendment of section 707(b)(1) (Report No. 1271);

Guidance in light of *IPO II, et al. v. Comm'r*, 122 T.C. 295 (2004), on the allocation of partnership liabilities under Treas. Reg. § 1.752-4(b)(2)(iii) (Report No. 1262);

Guidance on the proper treatment of contingent liabilities under section 743(b) and 755 (Report No. 1274);

Guidance on the extent to which corporate partners are entitled to an 80 percent dividends-received deduction with respect to dividends received through a partnership;

Guidance on partnership distributions under section 751(b), including (i) guidance on measurement issues, and (ii) guidance on the consequences of a shift in shares of hot assets (Report No. 1122);

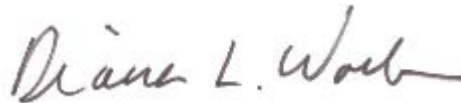
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VIII. Tax Administration

Revise regulations under sections 6662 and 6664 relating to accuracy-related penalties.

We hope that our recommendations are helpful to you. We would be pleased to discuss with you preparing reports to address any issues on your 2013-2014 Guidance Plan on which we have not already commented.

Respectfully submitted,



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Enclosure

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