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

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Report No. 1513

May 30, 2025

The Honorable Kevin Salinger
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Michael Faulkender
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable Andrew De Mello
Acting Chief Counsel
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Re: NYSBA Tax Section Recommendations for 2025-26 Priority Guidance Plan (Notice 2025-19)

Dear Messrs. Faulkender, Salinger and De Mello:

In response to Notice 2025-19, the Tax Section of the New York State Bar Association submits the following recommendations for the 2025-2026 Priority Guidance Plan.¹ The Tax Section has submitted reports on a number of these matters, and those reports are referenced below. All Tax Section reports submitted from 2000 through 2025 can be accessed on our website at www.nysba.org (go to Sections/Tax Section/Tax Section Reports).

¹ This letter may be cited as New York State Bar Association Tax Section Report No. 1513, "Notice 2025-19: Recommendations for 2025-2026 Priority Guidance Plan" (May 30, 2025).

Opinions and views expressed herein are solely those of the Tax Section and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

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Items we consider to be the highest priority under each topic are marked with an asterisk (*).

CORPORATIONS AND THEIR SHAREHOLDERS

1. Withdraw current Proposed Regulations under section 355 (REG-112261-24, 90 Fed. Reg. 5220 and REG-116085-23, 90 Fed. Reg. 4687) and issue targeted regulatory or sub-regulatory guidance. (Reports No. 1509, 1436, 1491 and 1497). (*)
2. Guidance clarifying the rules under 165(g)(3) for ordinary loss treatment when a worthless stock deduction is claimed for an affiliated subsidiary, in particular, as to when a holding company can look through intercompany payments to the nature of underlying income in active subsidiaries. (Reports No. 1230 and No. 1315).
3. Regulatory or binding sub-regulatory guidance regarding Section 355(e) “counting issues” to memorialize in the form of binding authority existing private rulings (for example, as to relevant dates and information requirements, how to count “overlapping” ownership, and the treatment of share repurchases).
4. Guidance on the corporate alternative minimum tax (“CAMT”), including simplifying applicable loss limitation rules under Prop. Treas. Reg. § 1.56A-23(e). (Report No. 1506).
5. Guidance extending the “signing date rule” for purposes of determining satisfaction of the “continuity of shareholder interest” requirement (Treas. Reg. 1.368-1(e)(2)) to the other appropriate instances where the value of acquiror stock is relevant to the determination of whether the transaction qualifies as a reorganization, for example, for purposes of the “acquisition of control” requirement of 368(a)(2)(E)(ii).
6. Guidance on the application of section 382(l)(5) and (l)(6) to consolidated groups. (Report No. 1490).
7. Remove the proposed “funding rule” and “principal purpose” standard in the “computational” proposed regulations (REG-115710-22) and finalize regulatory guidance under section 4501. (Report No. 1494).

EXEMPT ORGANIZATIONS

1. Guidance clarifying how a tax-exempt hospital can satisfy the “community benefit” requirement for tax exemption. The limited guidance in the area is based on a single 1969 Revenue Ruling (Rev. Rul. 69-545, 1969-2 C.B. 117). Additional guidance would be helpful given the dramatic changes in, and expansion of, the non-profit hospital sector. (*)
2. Withdraw or substantially revise Proposed Treas Reg. § 53.4966-3(h)(3) treating any investment advisor who renders advice to a donor advisor of the fund as a donor advisor, thereby subjecting any payments to the investment advisor to the excise tax. (Report No. 1489).

FINANCIAL INSTITUTIONS AND PRODUCTS

1. Guidance clarifying the income tax character, source and characterization of digital asset “staking rewards” income (from operating a node or delegating), including when and whether it is “passive” versus “active” income, whether it benefits from the securities or commodities “trading safe harbors” of section 864, and whether it gives rise to unrelated business taxable income under section 512 or to income from commercial activity for purposes of section 892 and guidance on “lending” of crypto-currency. (Report No. 1433). (*)
2. Guidance to allow disallowed business interest expense carryforwards under section 163(j) to offset cancellation of debt income in appropriate circumstances. (Report No. 1447).
3. Guidance clarifying the treatment of certain financial transaction payments and fees. (Report No. 1500).

GENERAL TAX ISSUES

1. Guidance under section 461(l) (which disallows excess business losses for taxpayers other than C corporations). (*)
2. Guidance confirming that expenses of “private” regulated investment company (e.g., a business development company) engaged in an active business should not be treated as miscellaneous itemized deductions with respect to individual shareholders who would not have been subject to limitation had they conducted the activity directly.
3. Finalize regulations under section 465. (Report No. 239).
4. Guidance defining “collectibles” in the case of physical assets (other than non-fungible tokens, which Notice 2023-27 already addresses).
5. Finalize rules relating to series LLCs and cells, including expanding the application of the rules to all foreign series organizations. (Report No. 1245).

INTERNATIONAL

1. Reconsideration of the section 385 regulations, particularly the funding rule. (Report No. 1395). (*)
2. Guidance to permit a look-through approach to section 1445 withholding with respect to foreign partnerships. (Report No. 1504). (*)
3. Updated guidance clarifying the source of income from transactions involving intellectual property (other than digital services), in particular income from licensing of intellectual property under the “place of use” standard.

4. Updated guidance under section 367(b) (revise Treas. Reg. § 1.367(b)-3) to reflect changes to the international tax regime after the Tax Cuts and Jobs Act. (Report No. 1463).
5. Guidance addressing the application of section 382 to controlled foreign corporations. (Report No. 1457).
6. Final regulatory guidance under section 892 relating to the exemption from taxation afforded to foreign governments from qualified investments in the United States. (Report No. 1257).
7. Guidance on the application of the branch profits tax to hybrid entities. (Report No. 1373).
8. Guidance (which could be temporary sub-regulatory guidance) on the treatment of Pillar II taxes as creditable foreign taxes. (Report No. 1476).
9. Modification of regulations under section 7874. (Reports No. 1124, 1279, 1308, and 1477, among others).

PARTNERSHIPS

1. Guidance on partnership terminations under section 708. (Report No. 1432). (*)
2. Guidance under section 707(a)(2)(B) on disguised sales of partnership interests. (Reports No. 1027 and 1085).
3. Revised guidance under section 707(a)(2)(A) on disguised payments for services. (Reports No. 1330 and 1357).
4. Guidance under section 704(b), in particular with respect to allocations in accordance with the “partners’ interests in the partnership”. (Report No. 1502).
5. Revised guidance amending Treas. Reg. § 1.721-3 to reflect that the authority granted under section 721(c) is limited to preventing shifting of “recognized” built in gain to non-U.S. persons (Report No. 1336).
6. Revised guidance under section 1061, including to rationalize the rules for contributions funded with partner, partnership or related person loans and guarantees, rationalize the rules for raising and returning capital and provide guidance under 1061(b). (Report No. 1442).

TAX ADMINISTRATION

1. Guidance to rationalize and clarify rules for use of EINs (see, e.g., Revenue Rulings 2001-61 and 2008-18) including in respect of partnership mergers, S corporation

subsidiaries, disregarded entities, in particular, where the rules for income taxes and employment taxes may differ and require inconsistent use of the same EIN.

* * *

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 2025-2026 Guidance Plan on which we have not already commented.

Respectfully submitted,



Andrew Walker
Chair

cc: Rebecca O. Burch
Krishna Vallabhaneni
Shelley Leonard
Natasha Goldvug
Sarah Haradon
Lindsay Kitzinger
Jim Wang
Helen Morrison
Elena Virgadamo
Brenda Zent
Beth Bell
Erika Nijenhuis
Colin Campbell

William Paul
Mark A. Schneider
Peter Blessing
Jeffrey A. Van Hove
Jeffrey Erickson
Paul T. Butler
Rachel L. Levy
Lisa A. Fuller
Daniel M. McCall
Richard L Reinhold
Russell G. Jones