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Hon. Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Recommendations for 2010-2011 Guidance Priority List

Dear Commissioner Shulman:

The American Bar Association Section of Taxation welcomes the opportunity to provide recommendations for inclusion in the 2010-2011 Treasury-IRS Guidance Priority List. These recommendations represent the views of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or the House of Delegates of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

The enclosed list contains recommendations made by the members of various committees within the Section of Taxation. I hope you find the suggestions helpful as you formulate the new Priority Guidance List. The recommendations include items in the following areas of the practice:

Administrative Practice	Financial Transactions
Affiliated and Related Corporations	Investment Management
Capital Recovery and Leasing	Partnerships and LLCs
Civil and Criminal Tax Penalties	Real Estate
Corporate Tax	Tax Accounting
Employee Benefits	Tax Exempt Financing
Estate & Gift, Fiduciary Income Tax	Transfer Pricing
Exempt Organizations	U.S. Activities of Foreigners

We would be happy to discuss the recommendations with you or your staff, if that would be helpful.

Sincerely,

Stuart M. Lewis
Chair, Section of Taxation

Enclosure

cc: Michael Mundaca, Assistant Secretary (Tax Policy), Department of the Treasury
William Wilkins, Chief Counsel, Internal Revenue Service
Jeffery Van Hove, Acting Tax Legislative Counsel, Department of the Treasury

RECOMMENDATIONS FOR THE 2010-2011 TREASURY-IRS GUIDANCE PRIORITY LIST

As requested in Notice 2010-42, the Section of Taxation of the American Bar Association has identified the following tax issues that we recommend be addressed through regulations, rulings or other published guidance in 2010-2011. In each case, the name and contact information for a representative of the committee making the suggestion are provided.

ADMINISTRATIVE PRACTICE

Fred Murray, Administrative Practice Committee, (202)861-4141, counselor@att.net

1. Guidance providing for the development of a process for higher level pre-assessment review of cases in which a section 6707A penalty is being proposed that would include a taxpayer conference or other appropriate method for a taxpayer to address the issues involved before the final assessment decision is made.¹
2. Reproposed regulations updating section 10.34(a) of Circular 230, including to address the 2008 changes to section 6694. The Tax Section submitted comments on this topic on June 4, 2009.
3. Guidance on the economic substance doctrine as recently codified in new section 7701(o).

AFFILIATED AND RELATED CORPORATIONS

Jeffrey Vogel, Affiliated and Related Corporations Committee, (202)533-5554, jvogel@kpmg.com

1. Guidance regarding the application of section 172(h) to a consolidated group.
2. Guidance concerning the interaction of Regulation sections 1.1502-11, -28, and -36.
3. Guidance regarding the application of Regulation section 1.267(f)-1(c)(1)(iv) to certain losses between members of a controlled group as defined in section 267(f)(1).
4. Guidance regarding the impact of intercompany transactions on the gross receipt test contained in section 165(g)(3)(B).
5. Guidance regarding the application of section 172(b)(1)(H) to consolidated groups (*e.g.*, when members are joining or leaving an affiliated group).

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

CAPITAL RECOVERY AND LEASING

Katherine M. Breaks, Capital Recovery and Leasing Committee, (202)533-4578, kbreaks@kpmg.com

1. Guidance relating to the reimbursement of the costs of specified energy property under section 1603 of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, including guidance regarding the interplay of section 1603 with sections 45 and 48.
2. Proposed regulations under section 263(a) regarding the treatment of capitalized transaction costs, such as in stock acquisitions and tax-free reorganizations.
3. Final regulations under section 263(a) regarding the treatment of expenditures with respect to tangible property.
4. Guidance on how *Clajon Gas Co., L.P. v. Commissioner*, 354 F3d 786 (8th Cir. 2004) principles can, or should, apply to asset classification determinations under Rev. Proc. 87-56, 1987-2 C.B. 674.

CIVIL AND CRIMINAL TAX PENALTIES

Charles Rettig, Civil and Criminal Tax Penalties Committee, (310)281-3243, retig@taxlitigator.com

1. Review of the IRS voluntary disclosure practice policy set forth in IRM 9.5.11.9 (06-26-2009) with consideration of further encouraging voluntary disclosures by taxpayers who may not have actual criminal exposure but are concerned about potential application of civil penalties that may be imposed by voluntarily disclosing prior non-compliance. There should be strong emphasis placed upon encouraging non-compliant taxpayers to “get right” with the government to ensure ongoing, future compliance.
2. Increased discretion and penalty guidance for field examiners and managers with respect to the impact on taxpayers in a recessionary economy.
3. Publication of “top 10” employment tax audit priorities. The Service should increase the publication and clarification of worker status and employment tax priorities with meaningful examples setting forth potential liabilities for taxes and penalties. Pyramiding of employment tax liabilities often occurs in a recessionary economy making it difficult for both the Service and the employer to achieve any realistic resolution in a timely manner.
4. Employment tax voluntary disclosure program. The Service should consider creation of an informal voluntary disclosure program emphasizing employment tax and worker classification issues. The employment tax / worker classification voluntary disclosure program could provide for a graduated worker classification settlement program (CSP) treatment for employers who voluntarily contact the Service before:

- a. the Service has initiated a civil examination or criminal investigation of the employer, or has notified the employer that it intends to commence such an examination or investigation;
 - b. the Service has received information from a third party (*e.g.*, from an informant, another governmental agency or the media) alerting the Service to the specific employer's noncompliance; or
 - c. the Service has initiated a civil examination or criminal investigation that is directly related to the specific liability of the employer.
5. Apply the "mailbox rule" to FBAR filings, just as it applies to tax filings (*see*, section 7502). Individuals should not be responsible for delivery delays beyond their control.
 6. Review process for selection of administrative law judges for Circular 230 disciplinary proceedings. To increase the integrity of Circular 230 disciplinary proceedings, it is recommended that the Service secure the services of individuals who have actual tax practice experience to serve as administrative law judges in Circular 230 disciplinary cases.
 7. We recommend that the Service establish a task force comprised of government representatives and stakeholders to analyze the possibility of updated comprehensive civil tax penalty reform as a method of encouraging voluntary compliance.

CORPORATE TAX

Roger Ritt, Corporate Tax Committee, (617)526-6475, roger.ritt@wilmerhale.com

1. Consolidated Returns:
 - a. Guidance regarding the application of section 172(h) to a consolidated group.
 - b. Guidance concerning the interaction of Regulation sections 1.1502-11, -28, and -36.
 - c. Guidance regarding the application of Regulation section 1.267(f)-1(c)(1)(iv) to certain losses between members of a controlled group as defined in section 267(f)(1).
 - d. Guidance regarding the impact of intercompany transactions on the gross receipts test of section 165(g)(3)(B).
2. Corporations and their Shareholders:
 - a. Guidance regarding recovery of stock basis in section 301 distributions.
 - b. Final regulations regarding the section 355(b) active trade or business requirement.

- c. Guidance under section 355(d) to expand the exception to the definition of “purchase” for transfers between members of the same affiliated group to include corporations listed in section 1504(b).
- d. Revenue rulings regarding application of final regulations to all-cash D reorganizations.
- e. Guidance regarding issues in no-net-value proposed regulations.
- f. Guidance regarding section 357(d).
- g. Guidance regarding step transaction issues where there is a stock acquisition that is not a qualified stock purchase followed by the liquidation of the acquired corporation.
- h. Guidance excluding various common business transactions from application of section 7701(o).

EMPLOYEE BENEFITS

John L. Utz, Employee Benefits Committee, (913)685-7978, jutz@utzmiller.com

1. Guidance on conversions to Roth IRAs under the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, 120 Stat. 345.
2. Guidance on the limitations on remuneration in excess of \$500,000 under section 9014 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (“PPACA”).
3. Guidance on what constitutes a “grandfathered health plan” under section 1251 of PPACA.
4. Guidance on the prohibition of lifetime or annual limits under sections 1001 and 1004(a) of PPACA and section 2301 of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (“HCERA”).
5. Guidance on the prohibition of rescission or cancellation of coverage under sections 1001 and 1004(a) of PPACA and section 2301 of HCERA.
6. Guidance on the minimum coverage and cost-sharing requirements for certain preventive health services under sections 1001 and 1004(a) of PPACA.
7. Guidance on the prohibition against discrimination in favor of highly compensated individuals in insured group health plans under section 10101 of PPACA.
8. Guidance on reporting the cost of employer-sponsored health coverage under section 9002 of PPACA.

9. Guidance on the establishment of simple cafeteria plans under section 9022 of PPACA.
10. Guidance on the limitations on preexisting condition exclusions under sections 1201 and 10103 of PPACA and section 2301 of HCERA.
11. Guidance on the effective date of the automatic enrollment requirement for large employers under section 1511 of PPACA.
12. Guidance regarding the definition of “child” under section 1101 of PPACA and section 2301 of HCERA.

ESTATE & GIFT TAXES, FIDUCIARY INCOME TAX

Paul Van Horn, Estate & Gift Taxes Committee, (212)448-1100, pvanhorn@mclaughlinstern.com
Jeanne L. Newlon, Fiduciary Income Tax Committee, (202)344-8553, jnewlon@venable.com

1. Section 901(b) of the Economic Growth and Tax Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (“EGTRRA”) provides that after December 31, 2010, the Code shall be applied as if the provisions of EGTRRA “had never been enacted.” Guidance is needed as to whether this provision will be interpreted to mean that after 2010 the Service will construe the tax laws as if the provisions of EGTRRA were never in effect or, alternatively, that after 2010 the tax laws will be applied to transfers and events post-2010 without applying any of the provisions of EGTRRA to such transfers and events but without ignoring the fact that provisions of EGTRRA were in effect until 2011. Guidance on this issue impacts many different areas of the tax laws related to estate planning, some of which are listed below.
2. The fact that the modified carryover basis regime is instituted for only one year has caused significant confusion. With respect to the assets of a decedent who dies in 2010, guidance would be appreciated on the following: (i) the consequence of a sale of the decedent’s assets prior to allocation of adjustments to basis; and (ii) the consequence of a sale of the decedent’s assets in 2011 or thereafter.
3. Generation skipping transfer tax (“GST”):
 - a. The fact that section 2664 provides that the provisions of Chapter 13 shall not apply to generation-skipping transfers after December 31, 2009, while section 901 of the EGTRRA states that the Code shall be applied to transfers after December 31, 2010 as if EGTRRA had never been enacted, has caused significant confusion. Guidance is needed in the following areas in particular:
 - i. Where a transfer is made to a trust in 2010, how will distributions from such trust to skip persons in 2011 and thereafter be treated for GST tax purposes?

- ii. Will the deemed allocation rules of section 2632(c) apply to transfers made in 2010 even though there is no GST tax exemption to allocate in 2010?
- iii. Will the “move down” rule of section 2653(a)(1) be applied to direct skip transfers in trust after 2010, even though the transfer occurred in 2010 when no GST tax applied to the transfer?
- iv. After 2010, will a direct skip transfer in trust in 2010 that met the requirements of section 2642(c) (if 2642(c) had applied in 2010) be treated as a “nontaxable gift” made in 2010 with an inclusion ratio of zero?
- v. Can a “reverse QTIP election” be made under section 2652(a)(3) with respect to a transfer in trust made in 2010? If so, how?
- vi. If a transferor created a trust during the years 2004 through 2009 and the transferor’s GST tax exemption was allocated to the trust (in excess of \$1 million) resulting in an inclusion ratio of zero under section 2631, will the trust’s inclusion ratio change after 2010 as if the increases in the GST tax exemption “had never been enacted”?
- vii. If, during the years 2001 through 2009, a grantor created and funded a trust to which GST tax exemption was deemed allocated under section 2632(c), will the trust be exempt from GST tax after 2010, when section 2632(c) will be treated as if it “had never been enacted”?
- viii. If a grantor created and funded a trust before 2001, neglected to timely allocate GST tax exemption to the trust, but obtained a ruling from the Service under Notice 2001-50, 2001-34 I.R.B. 189, permitting an extension of time to make that allocation, will the grantor’s late allocation be effective after 2010 even though section 2632(c), the statutory basis for the such an extension of time, will be treated as if it “had never been enacted”?
- ix. If a trust was severed in the years 2001 to 2009 under the qualified severance rules of section 2642(a)(3), will the severance be respected after 2010 when section 2642(a)(3) is treated as if it “had never been enacted”?
- x. With respect to transfers made prior to 2010 where the “estate tax inclusion period” remained open at the end of 2009, has the ETIP closed because there is no federal estate tax in 2010? Will the ETIP “reopen” in 2011?

- b. Section 2652(a) defines a “transferor” for GST tax purposes as the decedent or donor who makes a transfer that is subject to gift or estate tax. Because there is no estate tax applicable in 2010, a decedent who dies in 2010 and who created a trust under her Will is not technically a “transferor.” After 2010, will distributions from such a trust be subject to GST tax even though there was no transferor?
4. Gift Tax:
 - a. If a donor makes a gift in 2010 and pays a gift tax at the 35% rate and then dies after 2010, will the gift tax with respect to “adjusted taxable gifts” that is subtracted in the calculation of the estate tax under section 2001(b)(2) be the 25% tax or will it be the rate that would have been applicable if the 35% rate had never been enacted?
 - b. While “guidance under section 2511(c)” was added to the updated Priority Guidance Plan, the issuance of Notice 2010-19, 2010-7 I.R.B. 404, appears to have satisfied the perceived need for guidance. While Notice 2010-19 was a welcome clarification of the interpretation of section 2511(c), further guidance would be helpful. The Notice stated that a 2010 transfer to a trust that is not a wholly grantor trust will be considered a transfer by gift “of the entire interest in the property.” Given this statement, it is unclear how section 2511(c) will be applied to a transfer to an inter vivos charitable remainder trust, for example.
5. Section 6018 requires an executor to file a return with respect to large transfers at death and transfers of certain gifts received by the decedent within three years of death. The requirement is new and guidance in the form of the return to be filed and instructions to the return would be helpful.
6. Is a testamentary charitable remainder trust created by a decedent dying in 2010 exempt from income tax under Regulation section 1.664-1(a)(1)(iii)(a) even though no estate tax charitable deduction is allowable with respect to such trust (because there is no estate tax) as required by regulation?
7. Many estate plans include formulas based on estate and GST tax concepts. Because the estate and GST tax concepts on which the formulas were based do not exist for decedents dying in 2010, many Wills of decedents dying in 2010 have been rendered ambiguous. Many states have enacted remedial legislation designed to clarify the amounts passing to particular beneficiaries under Wills drafted prior to 2010. Will the Service respect the state remedial legislation for the purposes of the application of the federal tax laws?
8. The rule set forth in section 67(a) allowing an individual to deduct miscellaneous itemized deductions to the extent they exceed two percent of the individual’s adjusted gross income (the “two percent floor”) applies to trusts and estates under

section 67(e), except that expenses incurred by a trust or estate that would have not have been incurred if the property were not held in the trust or estate are not subject to the two percent floor. The Supreme Court held that fees paid to investment advisors by an estate or a nongrantor trust will generally be subject to the two percent floor for miscellaneous itemized deductions under section 67(a). This holding may require trustees to “unbundle” their fees so that fees subject to the two percent floor are distinguished from fees that are not subject to the two percent floor. While Notices issued by the Service allowing taxpayers to deduct all fiduciary fees without regard to the two percent floor (except for payments made by a fiduciary to third parties for expenses subject to the two percent floor that are readily identifiable) are welcome, the issuance of final regulations would be appreciated to give fiduciaries clarification with respect to the structuring of their fees going forward.

9. Section 675(4)(c) states that the power held by the grantor or a nonadverse party to reacquire trust property by substituting property of an equivalent value causes a trust to be treated as a grantor trust for federal income tax purposes if such power is held in a nonfiduciary capacity. Concern was raised whether this power of substitution caused any of the trust property to be included in the grantor’s estate for federal estate tax purposes. In 2008, the Treasury Department issued Rev. Rul 2008-16, 2008-11 I.R.B. 1, which ruled that such a power of substitution will not cause the trust property to be included in the grantor’s estate for federal tax purposes under section 2036 or section 2038. A further question arose as to whether, if the trust owns an insurance policy on the grantor’s life, the power of substitution could be considered an “incident of ownership” that causes inclusion of the policy in the grantor’s estate for federal estate tax purposes under section 2042. Guidance has been requested in this area in the past and continues to be needed.

EXEMPT ORGANIZATIONS

Frederick J. Gerhart, Exempt Organizations Committee, (215)994-2938, fred.gerhart@dechert.com

1. After taking into account public comments, we request the Service and Treasury to finalize the temporary and proposed regulations under sections 509(a)(1), 170(b)(1)(A)(vi), and 509(a)(2) to reflect the elimination of the advance ruling period and the changes to the public support measuring period, and in addition, further modify the regulations to simplify, clarify, and achieve greater consistency in application of the alternative public support tests.
2. Update Revenue Procedure 92-94, 1992-1 C.B. 507, to reflect the changes in the public support test and to simplify the procedures for foreign equivalency determinations, including the establishment of an affidavit repository.
3. Guidance regarding what constitutes non-deductible political campaign activity under sections 162(e) and 6033(e), consistent with interpretations of the legislative lobbying limit and the candidate electioneering prohibition under section 501(c)(3). In view of the Supreme Court’s decision in *Citizens United v.*

Federal Election Commission, 558 U.S. 50 (2010) (“*Citizens United*”), commentators anticipate a substantial increase in corporate political expenditures by section 501(c)(6) trade associations, section 501(c)(4) social welfare organizations, and possibly other types of exempt organizations, making existing regulations, which focus mainly on lobbying activity rather than electioneering, inadequate.

4. Guidance regarding the measurement and extent of political campaign activity by section 501(c)(6) trade associations to assist in applying the requirement that their non-political exempt activities must be primary is also needed due to the decision in *Citizens United*.
5. Guidance concerning the application of reserved Regulation section 1.527-6(b)(3), “Expenditures allowed by Federal Election Campaign Act” in light of the *Citizens United* decision, which broadens the scope of activity that must be constitutionally permitted under FECA.
6. Guidance regarding when statements that propose to voters an issue-based “litmus test” for choosing candidates to support or oppose, but without reference to any specifically identified candidate or political party, would violate the prohibition against intervention in a political campaign for organizations described in section 501(c)(3), or violate the primary purpose test for organizations described in sections 501(c)(4), 501(c)(5), and 501(c)(6) .
7. Guidance is requested to clarify that borrowing in order to make charitable grants or to support charitable programs does not normally constitute acquisition indebtedness within the meaning of section 514(c), including examples clarifying the application of the "but for" and "reasonably foreseeable" tests under section 514(c)(1)(C) to situations in which a charity borrows to fund charitable programs or grants.
8. Update the definition of “control” in Regulation section 1.512(b)-4 to conform to the changes made by the Tax Reform Act of 1997, Pub. L. No. 105-34, 111 Stat. 788.
9. Guidance is requested regarding how to obtain a revised determination letter without the need for filing a new exemption application on Form 1023 or 1024, where there is a mere change in the state of incorporation (Rev. Rul. 67-390, 1967-2 C.B. 179, Case 4).
10. Guidance regarding when a member of a tax-exempt organization’s board of directors can be considered independent for purposes of the rebuttable presumption of Regulation section 53.4958-6 notwithstanding a financial relationship between the organization and the director or the director’s employer under a *de minimis* standard or otherwise.

11. In addition to updating the regulations on group returns, which was included on the 2009-2010 Priority Guidance Plan, update Rev. Proc. 80-27, 1980-1 C.B. 677, with respect to the process for applying for group exemptions.
12. Guidance regarding the application of section 501(m) to commercial-type insurance. Following the Supreme Court's decision in *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355 (2002), the Service's withdrawal of its HMO audit guidelines in this area, and the expiration of the 18-month directive suspending the application of section 501(m) to HMOs, there is no guidance concerning the Service's interpretation of section 501(m).
13. Guidance on how a split-interest trust can protect the identity of its non-charitable beneficiary (as permitted by law and the instructions to Schedule A of Form 5227) where the name of the non-charitable beneficiary also appears in the name of the trust.
14. Guidance as to whether section 2511(c) applies to charitable remainder trusts.
15. Guidance under sections 1441 and 861 through 863 for withholding on grants and other payments made by section 501(c) organizations outside the U.S., including:
 - Clarifying when a grant constitutes a gift upon which no withholding is required;
 - Clarifying when a grant might be considered compensation for services; and
 - Clarifying the consequences when grants involve travel to or from the United States.

FINANCIAL TRANSACTIONS

Lucy W. Farr, Financial Transactions Committee, (212)450-4026, farr@davispolk.com

1. Final regulations under section 1058 addressing securities lending.
2. Final regulations under section 263(g) addressing capitalization of interest and carrying costs in the case of straddles.
3. Final regulations under section 446 and section 1234A relating to the treatment of notional principal contracts with contingent nonperiodic payments.
4. Guidance on the characterization of credit default swaps and other credit derivatives.
5. Additional guidance with respect to the definition of "publicly traded" debt under section 1273.
6. Guidance on market discount and the accrual of original issue discount in the context of debt instruments where there is substantial uncertainty of repayment.

7. Guidance under the AHYDO rules, including guidance addressing the treatment of VRDIs and debt instruments with contingencies.
8. Guidance under section 1032 regarding the treatment of derivatives on a taxpayer's own stock.
9. Guidance under new section 871(l).

INVESTMENT MANAGEMENT

Joseph A. Riley, Investment Management Committee, (212)728-8715, jriley@willkie.com

1. Guidance under section 457A(d)(1)(B) as to compensation based upon gains from an investment asset, including clarification as to “directly acquired” with respect to master-feeders and similar fund structures and definition of “active management.”
2. Guidance under section 368 as to continuity of business enterprise requirements for mergers of regulated investment companies.
3. Guidance under section 337(d) related to real estate investment trusts and regulated investment companies.
4. Guidance regarding the application of section 382(l)(1) to regulated investment companies.
5. Guidance relating to the accrual of interest on distressed debt.
6. Guidance on inbound investment, financing, broker, and dealer activities, including further guidance on certain investment income of foreign governments.
7. Guidance implementing cost basis reporting requirements included in the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765.

PARTNERSHIPS & LLCs

Steven R. Schneider, Partnerships and LLCs Committee, (202)721-1145, sschneider@goulstonstorrs.com

1. Additional guidance with respect to section 108(i) relating to deferral of income from certain cancellations of indebtedness (including guidance regarding which events cause the acceleration of deferred items, and which debt instruments are issued "in connection with the conduct of a trade or business" of a taxpayer other than a C corporation).
2. Guidance regarding the treatment of cancellation of indebtedness income as qualifying income for purposes of section 7704.

3. Guidance confirming that subpart F inclusions and qualified electing fund inclusions are qualifying income for purposes of section 7704 regardless of whether cash equal to such inclusions are distributed.
4. Guidance under section 751(b). Consideration should be given to splitting the guidance project into two parts, the first that updates the regulations to reflect the hypothetical sale approach to measuring shares of hot assets, and the second that adopts an exchange model that minimizes the recognition of capital gain in hot asset exchanges to the maximum extent possible.
5. Revoke or modify Regulation section 1.267(b)-1(b) to take into account the enactment of section 267(b)(10) in 1982, and the amendment of section 707(b)(1) in 1986.
6. Guidance suspending the enforcement of the anti-churning rules of section 197(f)(9) in the interests of sound tax administration.
7. Guidance on the allocation of partnership liabilities under Regulation section 1.752-4(b)(2)(iii) in light of *IPO II, et al. v. Comm'r*, 122 T.C. No. 17 (2004).
8. Clarify that there is not a realization event, and a deemed exchange under section 721 does not occur, in the conversion transactions described in Rev. Rul. 84-52, 1984-1 C.B. 157, Rev. Rul. 86-101, 1986-2 C.B. 94, Rev. Rul. 95-37, 1995-1 C.B. 130 and Rev. Rul. 95-55, 1995-2 C.B. 313.
9. Guidance on the treatment of unamortized organizational costs under section 709 and start-up costs under section 195 upon a technical termination of a partnership under section 708(b)(1)(B).
10. Guidance regarding the application of Rev. Rul. 99-6 , 1999-6 I.R.B. 6, to (i) nonrecognition transactions and (ii) situations in which the terminating partnership has liabilities, section 751 property or section 704(c) property.
11. Guidance allowing securities partnerships that use an aggregation method for qualified financial assets under Regulation section 1.704-3(e) to treat basis adjustments under sections 734(b) and 743(b) as separate assets and to recover them under a reasonable method, rather than allocating the basis adjustments to particular partnership assets.
12. Guidance modifying or clarifying the application of Rev. Rul. 84-53, 1984-1 C.B. 159, and Regulation section 1.704-3(a)(7) to transfers of partial interests (i) in nonrecognition transactions and (ii) when the transferred interest and the retained interest are not identical.
13. Clarification and application of the codified economic substance doctrine in section 7701(o) to common partnership transactions.

14. Guidance on whether debt of a limited liability company is recourse or nonrecourse under section 1001 when all of the LLC's assets are subject to the debt, but none of the members is liable for the debt (exculpatory debt).

REAL ESTATE

Andrea Whiteway, Real Estate Committee, (202)756-8425, awhiteway@mwe.com

1. Revisions to Regulation section 1.514(c)-2.
2. Guidance under section 108(c), with particular focus on definition of “secured by real property.”
3. Guidance regarding the determination of a partner’s insolvency and the application of Rev. Rul. 92-53, 1992-27 I.R.B. 24, in the context of discharged nonrecourse debt of a partnership.
4. Guidance regarding the treatment of cancellation of indebtedness income as “unrelated business taxable income” under section 512.
5. Guidance regarding treatment of an interest in a money market fund as a “cash item” under section 856(c)(4)(A).
6. Revisions to regulations under section 337(d) for REITs involved in exchanges under section 1031 and dispositions under section 1033 and clarification regarding the treatment of tax-exempt entities as C corporations under these regulations.
7. Revisions to Regulation section 1.856-5(c) addressing distressed debt acquisitions and modifications.
8. Final Regulations under section 460 relating to the home construction contracts exemption.

STANDARDS OF TAX PRACTICE

Scott D. Michel, Standards of Tax Practice, (202)862-5030, sdm@capdale.com

1. Revision of Circular 230, section 10.27 -- This section regulates fee arrangements between clients and practitioners authorized to practice before the IRS. Guidance is requested consistent with comments to be submitted by our Committee suggesting revisions to section 10.27.
2. Revision of Circular 230, section 10.35 -- This section regulates tax opinions and has presented interpretation and application issues since it first came into existence approximately six years ago. Guidance is requested that would modify and simplify this provision.

TAX ACCOUNTING

Carol Conjura, Tax Accounting Committee, (202) 533-3040, cconjura@kpmg.com

1. Guidance under section 174 regarding changes in method of accounting from an impermissible method.
2. Guidance under section 174 regarding whether certain costs associated with producing inventory may be characterized as research and experimental expenses.
3. Guidance under section 199 regarding the application of the benefits and burdens of ownership test with respect to contract manufacturing arrangements.
4. Proposed regulations under section 263(a) regarding the treatment of capitalized transaction costs.
5. Final and repropounded regulations under section 263(a) regarding the treatment of expenditures with respect to tangible property.
6. Guidance under section 263(a) regarding the deduction and capitalization of costs for maintenance of network assets.
7. Guidance regarding supporting documentation required under Regulation section 1.263(a)-5(f) to allocate success-based fees between activities that facilitate a transaction and activities that do not facilitate a transaction.
8. Guidance regarding the treatment of post-production costs, including sales based royalties, under section 263A.
9. Guidance under section 263A regarding whether “negative” additional section 263A costs are taken into account under Regulation section 1.263A-1(d)(4).
10. Guidance under section 263A regarding the criteria for using the simplified resale method, for treating a facility as an on-site storage facility, and the extent to which services performed by a retailer on customer-owned property cause the taxpayer to be a producer.
11. Final Regulations under sections 381(c)(4) and (5) regarding changes in method of accounting.
12. Guidance to update the change in method of accounting procedures for obtaining automatic consent and advance consent.
13. Guidance regarding the nonaccrual experience method under section 448, including the addition of safe harbors, the definition of actual experience, the use of the nonaccrual experience method by new taxpayers, and non-safe harbor methods that clearly reflect income.

14. Guidance regarding the application of Regulation section 1.451-4 to customer loyalty programs.
15. Guidance under section 451 regarding the timing of income from the sale and use of gift cards.
16. Guidance under section 453A regarding the application of the interest charge rules to contingent payment sales.
17. Final regulations under section 460 on contracts that qualify for the rules for home construction contracts.
18. Guidance under section 468B regarding the tax treatment of a single-claimant qualified settlement fund.
19. Guidance under Regulation section 1.472-8 regarding the inventory price index computation (IPIC) method, including whether purchased and produced items may be combined in a single pool.

TAX EXEMPT FINANCING

Jeremy Spector, Tax Exempt Financing Committee, (212)692-8283, jaspector@mintz.com

1. Guidance on the definition of “issue price” for tax-exempt bonds, Build America Bonds and other direct pay tax credit bonds.
2. Guidance on direct pay Build America Bonds and tax credit bonds as requested in our report dated November 20, 2009 addressed to the Commissioner.
3. Guidance on the application of the section 265(b)(3)(G) aggregation provisions to section 501(c)(3) organizations as requested in our report dated January 6, 2010 addressed to the Commissioner.
4. Guidance on record retention requirements for tax exempt bonds and tax credit bonds, including safe harbor guidance regarding any records required to support the periodic returns required to be filed in the case of direct pay Build America Bonds and other direct pay tax credit bonds.
5. Guidance on, and expansion of, the safe harbors for determining private use of management contracts for bond financed facilities through updates to Revenue Procedure 97-13, 1997-1 I.R.B. 632.
6. Guidance with respect to qualified hedge and yield reduction payments including finalizing Regulation section 106143-07 published in the September 26, 2007 Federal Register.

7. Guidance on the application of section 10.35(b)(9) of Circular 230 to Build America Bond and Qualified Tax Credit Bond opinions to provide that such opinions are state or local bond opinions for purposes of Circular 230.
8. Guidance with respect to solid waste disposal facilities, including finalizing the proposed regulations as requested in our report dated February 23, 2010 addressed to the Commissioner.
9. Guidance on allocation and accounting provisions of section 141, including finalizing Regulation sections 140379-02 and 142599-02 published in the September 26, 2006 Federal Register.
10. Guidance on public approval provisions of section 147, including finalizing Regulation section 128841-07 published in the September 9, 2008 Federal Register.
11. Finalizing miscellaneous proposed regulations relating to Regulations sections 1.141-1(b) and (e), 1.141-4(e)(5), 1.141-12(j), 1.141-13, 1.141-15, 1.148-3, 1.148-4, 1.148-5 and 1.150-1.

TRANSFER PRICING

Darrin Litsky, Transfer Pricing Committee, (212)436-5760, DLitsky@deloitte.com

1. Guidance under section 482 on guarantee arrangements (financial and performance) and intercompany loans, including the effect of passive association on the compensability and pricing of such transactions.
2. Revision of Rev. Proc. 94-69, 1994-2 C.B. 804, to permit disclosures at opening examination conferences to avoid penalties under section 6662(e) to the same extent as disclosures on pre-examination amended tax returns.
3. Guidance on the availability of a pre-filing agreement (PFA) and an advance pricing agreement (APA) to determine whether a joint venture and a joint venture party are commonly controlled under section 482
4. Revision of Rev. Proc. 2006-54, 2006-49 I.R.B. 1035, to allow for the availability of competent authority relief for foreign self-initiated adjustments.
5. Revision of Rev. Proc. 2006-54, 2006-49 I.R.B. 1035, to allow for the availability of competent authority relief for tax settlement agreements with foreign tax authorities where the foreign taxpayer made reasonable efforts to contest the foreign adjustment.

U.S. ACTIVITIES OF FOREIGNERS AND TAX TREATIES

Alan I Appel, U.S. Activities of Foreigners and Tax Treaties Committee, (212)541-2292,
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1. Foreign Account Tax Compliance Act, §501 of The Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat. 78 (2010) (“FATCA”) - Substitute Dividends:
 - a. Definition of "transferring the underlying security" at the beginning or termination of a swap (*i.e.*, when, if at all, do sales in the market constitute transferring the security to a counterparty?).
 - b. Ability to cleanse a bad swap (*e.g.*, one with respect to which there was crossing in) so that future payments made after September 14th will not be covered.
2. FATCA - Chapter IV Withholding:
 - a. Grandfathering rule:
 - i. Definition of “obligation”.
 - ii. Circumstances where modifications will not cause an obligation to be deemed reissued for purposes of the grandfathering rule.
 - b. Who is an FFI and possible exceptions.
 - c. Definition of pass-through payments.
 - d. Guidance re required due diligence and compliance for NFFEs.
3. FBAR:
 - a. Relevance and definition of “in and doing business”.
 - b. Coordination with FATCA reporting (to avoid duplication).
 - c. Treatment of funds other than mutual funds.
4. Section 7874:
 - a. Guidance on “substantial business activities”.
5. Estate & gift tax treatment of non-resident alien’s interest in assets held through a partnership.
6. How are treaty benefits claimed by a hybrid treaty entity (with, *e.g.*, a non-treaty owner) for non-FDAP income? For example:
 - a. ECI not attributable to a PE.
 - b. Reduced rate of, or exemption from, BPT.