June 11, 2003

Hon. Pamela F. Olson
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Hon. B. John Williams
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Recommendations for 2003-2004 Guidance Priority List

Dear Assistant Secretary Olson and Chief Counsel Williams:

The Section of Taxation of the American Bar Association welcomes the opportunity to provide input on the Treasury-IRS Guidance Priority List of 2003-2004.

The enclosed list of recommendations were made by various committees within the Section of Taxation. I hope you find our suggestions helpful as you formulate the final version of the Priority List. Our recommendations include items in the following areas of practice:

- Corporations & Shareholders
- Employee Benefits
- Exempt Organizations
- Individual Income Tax
- International Tax Issues
- Partnerships
Immediate guidance would be especially welcomed on a number of issues relating to the recently enacted reduction in tax rates applicable to certain dividends received by individuals. We have identified some of those issues in the "International" portion of the following list.

Please contact Bill Wilkins, our Vice Chair for Government Relations (202) 663-6204, or me ((202) 383-0120), if you would like to discuss any of these recommendations.

Sincerely,

[Signature]

Herbert N. Beller
Chair, Section of Taxation

encl.

c: Gregory F. Jenner, Deputy Assistant Secretary, Tax Policy, Department of Treasury
Eric Solomon, Deputy Assistant Secretary, Regulatory, Department of Treasury
Helen M. Hubbard, Tax Legislative Counsel, Department of Treasury
Gary Wilcox, Deputy Chief Counsel, Technical, Internal Revenue Service
RECOMMENDATIONS FOR THE TREASURY-IRS
GUIDANCE PRIORITY LIST 2003-2004

As requested in Notice 2003-26, members of the Section of Taxation of the American Bar Association have identified the following tax issues that should be addressed through regulations, rulings or other published guidance in 2003-2004. In each case, the contact person and contact information is stated. We are happy to discuss the issues with you, if you would find that helpful.

CORPORATIONS AND THEIR SHAREHOLDERS

   David Wheat – tel: 214-969-1468

2. Updated guidance on section 355 ruling procedures and related substantive guidance.
   David Wheat – tel: 214-969-1468

3. Guidance under section 355(e) regarding successor/predecessor issues and other non-plan issues.
   David Wheat – tel: 214-969-1468

4. Reconsider proposed section 302 regulations.
   David Wheat – tel: 214-969-1468

5. Loss disallowance rules (both the recognized built-in gain rule and the duplicated loss rule).
   David Wheat – tel: 214-969-1468

6. Ruling that a post-merger “push-up” of target’s assets does not prevent the transaction from qualifying under either section 368(a)(2)(E) or (D).
   David Wheat – tel: 214-969-1468
7. Guidance on “substantially all” calculation issues, including debt repayment and new debt, particularly in acquisitions of highly-leveraged target corporations.

   David Wheat – tel: 214-969-1468

8. Reorganizations - scope of Rev. Rul. 96-29, especially where a reincorporation occurs as part of a plan that includes a sale of the corporation’s stock or assets.

   David Wheat – tel: 214-969-1468

9. Reorganizations involving restricted stock or deep-in-the-money stock options, especially the effect of restricted stock or such options on continuity of interest and on the solely for voting stock requirement.

   David Wheat – tel: 214-969-1468

10. Reorganizations involving escrowed stock or contingent stock, especially the impact on continuity of interest.

    David Wheat – tel: 214-969-1468


    David Wheat – tel: 214-969-1468

12. Additional guidance on active trade or business issues under section 355, particularly expansion and partnership variations.

    David Wheat – tel: 214-969-1468


    David Wheat – tel: 214-969-1468
EMPLOYEE BENEFITS

1. Guidance allowing expanded use of incorporation by reference in the preparation of qualified plan documents.
   
   Tom Hoecker – tel: 602-382-6361

2. Guidance permitting welfare benefit plans relief similar to that provided to certain qualified plans under section 410(b)(6)(C).
   
   Tom Hoecker – tel: 602-382-6361

3. Guidance clarifying whether section 402(c)(2) permits rollovers of after-tax contributions only if the participant transfers the entire account balance (including any pre-tax or untaxed amounts) to another qualified plan.
   
   Tom Hoecker – tel: 602-382-6361

4. Guidance clarifying impact of removal of “separation from service” language in sections 401(k) and 403(b).
   
   Tom Hoecker – tel: 602-382-6361

EXEMPT ORGANIZATIONS

1. Guidance regarding the various tax exemption (e.g., lobbying and political activities) and unrelated business income issues arising from internet activities of tax-exempt organizations.
   
   Betsy Buchalter Adler – tel: 415-421-7555

2. Guidance regarding joint ventures between tax-exempt organizations and for-profit organizations outside of the whole-hospital (or whole-entity) joint venture context.
   
   Betsy Buchalter Adler – tel: 415-421-7555

3. Guidance to disclose the Service’s post-litigation position on the status of income from affinity credit card arrangements and mailing list rentals after decisions in cases involving the Sierra Club, Inc. and various university
alumni associations that such revenue streams were not unrelated business income.

Betsy Buchalter Adler – tel: 415-421-7555

4. Guidance confirming that the Service will follow the decision in *Ann Jackson Family Foundation*, 97 T.C. 534 (1991), *aff’d* 15 F.3d 917 (9th Cir. 1994), invalidating Treasury Regulation § 53.4942(a)-2(b)(2) regarding private foundations that are the beneficiaries of split-interest trusts.

Betsy Buchalter Adler – tel: 415-421-7555

5. Finalize regulations proposed in the summer of 1998 regarding qualified state tuition programs under section 529.

Betsy Buchalter Adler – tel: 415-421-7555

6. Guidance regarding the implications of issue advocacy and political intervention for organizations qualified for tax exemption under section 501(c)(4) and section 527.

Betsy Buchalter Adler – tel: 415-421-7555

7. Guidance regarding international grant making and international activities of section 501(c)(3) organizations. (Note: specific comments in response to Announcement 2003-29 will be provided separately.)

Betsy Buchalter Adler – tel: 415-421-7555

8. Guidance regarding the application of section 501(m) to commercial-type insurance in light of the Supreme Court’s decision in *Rush Prudential HMO, Inc. v. Moran*, 122 S. Ct. 2151 (June 20, 2002), and the Service’s withdrawal of its audit guidelines in this area.

Betsy Buchalter Adler – tel: 415-421-7555

9. Guidance regarding the definition and scope of program related investments of private foundations.

Betsy Buchalter Adler – tel: 415-421-7555
10. Updated guidance, such as a revenue procedure, concerning group exemp-
tions.

   Betsy Buchalter Adler – tel: 415-421-7555

11. Guidance on qualification for exemption under section 501(c)(3) for organi-
zations serving as general partners in low income housing tax credit limited partnerships.

   Celia Roady – tel: 202-739-3000

GENERAL BUSINESS ISSUES

1. Reportable transactions – identify additional garden-variety commercial or
   business transactions that need not be treated as reportable transactions.

   Bill Paul – tel: 202-662-5300

INDIVIDUAL INCOME TAX

1. Guidance for tenancy in common arrangements seeking to comply with the

   Ronold Platner – tel: 602-382-6256

2. Clarify under what circumstances the Service will apply Section 1041, or
   alternatively, the assignment of income doctrine, to transfers of unrecognized
   deferred income between spouses and former spouses incident to divorce
   following its ruling in Rev. Rul. 2002-22 (addressing the tax treatment of
   transfers of stock options and nonqualified deferred compensation incident to
   divorce).

   Cindy Lynn Wofford – tel: 703-237-9227

INTERNATIONAL TAX ISSUES

1. Guidance regarding qualified foreign corporations under new section
   1(h)(11)(C).

   Joan Arnold – tel: 215-981-4362
2. Guidance permitting individual taxpayers making a QEF election to treat the annual inclusion as a dividend for purposes of section 1(h)(11)

   Joan Arnold – tel: 215-981-4362

3. Guidance permitting individual taxpayers taking into account income under section 951 to treat such inclusions as dividends for purposes of section 1(h)(11).

   Joan Arnold – tel: 215-981-4362

**PARTNERSHIPS**

1. Guidance permitting combined nonresident reporting for nonresident partners.

   Phil West – tel: 202-429-6227

2. Guidance under section 751, including reconsideration of Rev. Rul. 84-102, 1984-2 CB 119, which addresses the impact of admission of a new partner to a partnership, in light of subsequent promulgation of regulations under sections 704 and 752 dealing with, among other things, “book-ups” and “book-downs” after admission of new partners to a partnership.

   Michael Hirschfeld – tel: 212-698-3635