Comments Regarding
LMSB Productivity Improvement Phase II

The following comments represent the individual views of those members of the Section of Taxation who prepared them and do not represent the position of the American Bar Association or of the Section of Taxation. These comments were prepared by individual members of the Administrative Practice Committee. Principal responsibility was exercised by Raj Madan. Substantive contributions were made by Steve Salch, Jim Merritt, Alan Weinberg, and Larry Langdon. The comments were reviewed by John Barrie of the Section’s Committee on Government Submissions and by Loretta Argrett, the Council Director of the Administrative Practice Committee.

Although the members of the Section of Taxation who have participated in preparing these Comments have clients who would be affected by the guidance addressed in these Comments or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or the outcome of, the specific subject matter of these Comments.

Contact Person: Raj Madan
(rmadan@mckeenelson.com)

Dated: May 12, 2004
Comments Regarding
LMSB Productivity Improvement Phase II

On April 16, 2004, Laura Prendergast, Acting Deputy Director of LMSB, requested that the members of the ABA Section of Taxation’s Administrative Practice Committee provide comments to an LMSB team initiative, LMSB Productivity Improvement Phase II, which sets forth new procedures for improving audit currency. Given the short deadline of May 7, 2004, this memorandum provides very focused feedback to the LMSB initiative. While we concur with LMSB’s goal of improving audit currency and with some of the procedural steps recommended, this memorandum focuses on how to improve the initiative.

20-Day IDR Response Time

In our view, the LMSB team’s recommendation of standardizing the IDR response time to 20 days does not reflect a balanced review of the underlying causes for delays in taxpayers’ response time. Shorting the period to 20-days presumes that corporate taxpayers are the cause of the delays. In fact, the delays in responding are caused by a variety of factors, some of which are not attributable to taxpayers.

Proposed 20-days is an unreasonably short period of time because:

- IRS often issues multiple IDRs at once, making it impossible to respond in such a short time period
- The plan does not explain how taxpayers are supposed to accomplish the same tasks in less time
- At times, the IRS issues IDRs that require the taxpayer to produce voluminous information, which is unhelpful to the IRS
- Mid-sized companies would often need to add additional staff and resources to timely respond; many companies may not be able to afford to add such resources

20-day time frame will likely cause the issuance of more summonses

- It would appear to us that the proposed 20-day time frame will likely cause issuance of more summonses which, given the time it takes to enforce a summons, is likely to run counter to improving audit currency
- The rigidity of the proposed procedures runs the risk of turning compliant taxpayers into adversarial taxpayers because of the possibility of increased summonses

Rather than impose a rigid 20-day response time, we recommend the following procedures:

- Explore the reasons why the existing process takes the time it does take with compliant taxpayers and diligent revenue agents. Then address those root causes, rather than sweeping them aside and proposing shortened time periods without

May 12, 2004
regard to whether those time periods are realistically achievable by compliant taxpayers.

- Rather than setting a rigid standard time period of 20 days, the IRS should meet with each taxpayer and set a timetable up front. Delays in IDR responses are caused by a variety of factors and are generally taxpayer-specific. If the taxpayer expresses concerns about meeting deadlines, the agents should explore whether the taxpayer concerns are valid. While IRS agents and taxpayers are meeting more now than in the past, the IRS should concentrate on improving the effectiveness of communicating with the taxpayer. Improving communication between the taxpayer and the audit team will improve currency.
  
  - IRS should communicate what they are looking for and why
  - Discuss the IDR before it is issued
  - Do not overload the taxpayer with multiple IDRs
  - Use the Joint Audit Planning Process more effectively

- Give the taxpayer an opportunity to do a presentation on a particular issue. The presentation might eliminate the need for some IDRs and would likely make follow-up IDRs more focused.

**Elimination of RAR**

The LMSB team recommends eliminating the traditional Revenue Agent Report by combining it with the 30-day letter. By eliminating the RAR, the LMSB team believes it can save 30 to 60 days in the audit. It is our view that eliminating the RAR may in fact have the opposite effect – reducing audit efficiency because taxpayers are more likely to disagree with 5701s. Taxpayers need to know the total IRS adjustments before determining how to respond to individual 5701s. With no RAR, the taxpayer is likely to object to all 5701s in order to preserve its position for the Protest. Again, we recommend dealing with taxpayers individually, rather than imposing standard procedures that do not solve issues for many taxpayers.

The LMSB team recommends that agents should no longer automatically approve extensions to filing Protests. Instead, under the proposed procedures, extensions would be granted in very limited circumstances. In our view, it is generally very difficult in LMSB cases to respond to a 30-day letter in 30 days. We recommend making the time to respond 60 days with no extensions. Similarly, we believe that LMSB’s proposed recommendation of rejecting more protests as invalid will cause the issuance of more statutory notices of deficiency. While this procedure may improve audit currency statistics, the true effect will be that Appeals will hear more cases in docketed status than it does now.