April 29, 2005

Eric Solomon  
Acting Deputy Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Hon. Donald L. Korb  
Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Re: Recommendations for 2005-2006 Guidance Priority Plan

Dear Acting Deputy Assistant Secretary Solomon and Chief Counsel Korb:

The members of the Section of Taxation of the American Bar Association welcome the opportunity to provide input to the Treasury-IRS Guidance Priority Plan of 2005-2006. The enclosed recommendations are the individual views of the members of the Section of Taxation who prepared them and do not represent the position of the American Bar Association or the Section of Taxation.

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 final draft of the Priority Guidance Plan. The recommendations include items in the following areas of practice:

- Corporations and Their Shareholders
- Employee Benefits
- Exempt Organizations
- General Tax Issues

Sincerely,

Kenneth W. Gideon  
Chair, Section of Taxation

Enclosure
RECOMMENDATIONS FOR THE TREASURY-IRS
GUIDANCE PRIORITY PLAN 2005-2006

As requested in Notice 2005-25, 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 2005-2006. 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
Philip B. Wright, Corporate Tax Committee (314) 259-2499 nbwright@bryancave.com

High priority items currently on the 2004-2005 list:

1. Guidance regarding selected issues under section 336(e).
2. Guidance regarding the effect of pre-closing changes of acquirer stock value on continuity of interest.

Additions to the list:

1. Guidance on “substantially all” calculation issues, including debt repayment and new debt, particularly in acquisitions of highly-leveraged target corporations.
2. Reorganizations involving contingent consideration, including guidance on (i) the treatment of restricted stock and compensatory stock options, especially their effect on continuity of interest and the solely for voting stock requirement; and (ii) reorganizations involving escrowed or contingent stock or other variable consideration, particularly the impact of such arrangements on continuity of interest.
3. Guidance under section 362(e), including: methodology for stock basis election, application to overlap transactions (e.g. whether section 362(e)(2) is applicable to a reorganization described in section 381(a) that also constitutes a section 351 exchange), calculation of net built-in loss, definition of "not subject to tax".
4. Guidance on transactions that qualify under multiple provisions of the Code ("overlap" transactions) including whether section 357(c) is applicable in the context of an acquisitive “D” reorganization that also constitutes a section 351 exchange.
5. Treatment of contingent liabilities in taxable asset acquisitions and pursuant to transactions in which a section 338 election has been made.
6. Guidance under section 351(e) to reflect 1997 Act amendments including guidance providing for the non-applicability of section 351(e) in a case in which

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all of the stock of the transferee corporation is owned by members of the same section 1563(a)(1) controlled group and the transferee corporation is neither a REIT nor a RIC.

EMPLOYEE BENEFITS
Priscilla E. Ryan, Employee Benefits Committee (312) 853-7072 pryan@sidley.com

High priority items currently on the 2004-2005 list:

Retirement Benefits
1. Additional guidance on the relative value of optional forms of benefit.
2. Guidance under section 412 mortality tables.

Executive Compensation, Health Care & Other Benefits, and Employment Taxes
1. Guidance under section 3504.
2. Guidance on FICA and FUTA tax with respect to incentive stock options under section 422 and employee stock purchase plans under section 423.
3. Revenue ruling on section 83(b) elections.
4. Revenue ruling on timing issues under section 83.
5. Revenue ruling under section 280G on section 83(b) elections.

Addition to the list:
1. Guidance under section 401(b) on the staggered remedial amendment period.

EXEMPT ORGANIZATIONS
Michael A. Clark, Exempt Organizations Committee (312) 853-2173 mclark@sidley.com

High priority items currently on the 2004-2005 list:

1. Section 4958 and Revocation Standards. Guidance as to the standards the Service will apply in determining whether to revoke the tax-exempt status of section 501(c)(3) or section 501(c)(4) organizations which have been involved in excess benefit transactions.
2. Low-income housing partnerships. Guidance regarding the standards for participation by section 501(c)(3) organizations in low-income housing partnerships.

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3. Qualified State Tuition Programs. Finalize regulations proposed in the summer of 1998 regarding qualified state tuition programs under section 529.

Additions to the list:

1. International Grant-Making and Activities. Guidance regarding international grant-making and international activities of section 501(c)(3) organizations taking into account the comments in response to Announcement 2003-29.

2. Simplification of Public Support Test. Simplify the regulations under sections 509(a)(1), 170(b)(1)(A)(vi), and 509(a)(2) to simplify, clarify, and achieve greater consistency in application of the alternative public support tests for organizations seeking classification as public charities.

3. Program-Related Investments. Guidance regarding the definition and scope of program-related investments of private foundations.

4. Section 501(m). Guidance regarding the application of section 501(m) regarding commercial-type insurance. Following 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, there is no guidance concerning the Service’s interpretation of section 501(m).

5. Political Activities and Primary Purpose Test. Guidance regarding acceptable methods for determining whether an organization is conducting political activities (including both candidate campaign intervention and improper private benefit to partisan interests) as its primary activity (consistent with section 527 exemption), or as a less-than-primary activity (consistent with non-charitable section 501(c) exemption).

6. Internet Activities of Tax-Exempt Organizations. Guidance regarding the various tax exemption issues (e.g., lobbying and political activities) arising from internet activities of tax-exempt organizations.

7. Acknowledgement of vehicle contributions. Guidance regarding the requirements and method of filing of the contemporaneous written acknowledgement of contributions of used motor vehicles, boats, and airplanes required by section 170(f)(12), as added by the JOBS Act.

8. Reporting of income from intellectual property. Guidance regarding the computation and reporting of “qualified donee income” from “qualified intellectual property” contributions described in section 170(m), as added by the JOBS Act.

9. Group Exemptions. Updated guidance, such as a revenue procedure, concerning group exemptions.

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GENERAL TAX ISSUES
Ronold P. Platner, Sales, Exchanges and Basis Committee (602) 382-6256 rplatner@swlaw.com

Additions to the list:

1. A regulation or Revenue Ruling that answers the question: what is the meaning of section 1031(f)(2)(C) and how does a taxpayer establish that an exchange does not have as one of its principal purposes the avoidance of federal income tax.

2. A regulation or Revenue Ruling that answers the question: what type of events that occur within the two year period will ordinarily not trigger gain recognitions under section 1031(f) (such as the transfer of the replacement property to an LLC in a transaction governed by section 721).

3. A regulation or Revenue Ruling that answers the question: does the purchase by a related person from a QI of the taxpayer’s relinquished property cause the event to be treated as a related party exchange.