June 16, 2015

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20024

Re: Recommendations for 2015-2016 Priority Guidance Plan

Dear Commissioner Koskinen:

The American Bar Association Section of Taxation welcomes the opportunity to provide recommendations for inclusion in the 2015-2016 Priority Guidance Plan. These recommendations represent the views of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or 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 Plan. The recommendations include items submitted by the following committees:

- Affiliated and Related Corporations
- Capital Recovery and Leasing
- Corporate Tax
- Estate and Gift Tax
- Exempt Organizations
- Financial Transactions
- Foreign Activities of U.S. Taxpayers
- Government Relations
- Insurance Companies

- Investment Management
- Partnerships and LLCs
- Pro Bono and Tax Clinics
- Real Estate
- Sales, Exchange and Basis
- Tax Accounting
- Tax Exempt Financing
- U.S. Activities of Foreigners and Tax Treaties

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

Sincerely,

Armando Gomez
Chair

Enclosure
cc: Mark J. Mazur, Assistant Secretary (Tax Policy), Department of the Treasury
Emily S. McMahon, Deputy Assistant Secretary (Tax Policy), Department of the Treasury
Robert Stack, Deputy Assistant Secretary (International Tax Affairs), Department of the Treasury
Danielle Rolfes, International Tax Counsel, Department of the Treasury
Thomas West, Tax Legislative Counsel, Department of the Treasury
William J. Wilkins, Chief Counsel, Internal Revenue Service
Erik Corwin, Deputy Chief Counsel (Technical), Internal Revenue Service
AMERICAN BAR ASSOCIATION  
SECTION OF TAXATION  

Recommendations for the 2015-2016  
Department of the Treasury Office of Tax Policy and Internal Revenue Service  
Priority Guidance Plan  

As requested in Notice 2015-27, 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 2015-2016. In each case, the name and contact information for a representative of the committee making the suggestion are provided.

AFFILIATED AND RELATED CORPORATIONS  
David Friedel, Affiliated and Related Corporations Committee, (202) 414-1606, david.b.friedel@us.pwc.com  

1. Guidance regarding the proper application of the "Gross Receipts" rules under section 165(g)(3)(B) with respect to intercompany transactions.  

2. Corrections to the intercompany transaction Regulations fixing the treatment of “non-qualified preferred stock” issued in intra-group corporate transactions.  

3. Addition of a “Commissioner’s Discretionary Rule” to the reverse acquisition rules under Treas. Reg. § 1.1502-75(d)(3) to more closely align the rule with the current ruling policy.

CAPITAL RECOVERY AND LEASING  
Alison Jones, Capital Recovery and Leasing Committee, (202) 327-6684, alison.jones@ey.com  

1. Regulations on delay rentals under sections 263A and 612.  

2. Guidance clarifying whether the business use of an aircraft by a lessee that is a five percent owner or related party of the lessor of the aircraft is qualified business use for purposes of section 280F.  

3. Guidance under section 167 regarding the depreciation of precious metal catalysts.  

4. Guidance under sections 167 and 168 for determining whether certain assets used by a wireline telecommunication service provider are primarily used for providing one-way or two-way communication services.

1 2015-13 I.R.B. 816.  
2 References to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”) or the Treasury regulations issued thereunder, unless otherwise indicated.
5. Guidance under sections 167 and 1031 regarding whether property held simultaneously for sale and for lese (also known as “dual-use property”) is eligible for depreciation deductions and/or like-kind exchange treatment.

6. Revenue Procedure under section 263(a) regarding the capitalization of cable network property.

7. Revenue Procedure under section 263(a) regarding the capitalization of natural gas transmission and distribution property.

8. Revenue Procedure under section 263(a) regarding the capitalization of certain retail store expenditures.

9. Update of Rev. Proc. 87-56,\(^3\) or expanded guidance as to use of non-MACRS methods electively, when appropriate, pursuant to section 168(f)(1)(A) election to depreciate tangible property under section 167.

**CORPORATE TAX**

Julie Rodgers, Corporate Tax Committee, (617) 526-6543,

[julie.rodgers@wilmerhale.com](mailto:julie.rodgers@wilmerhale.com)

1. Regulations under section 336(e) to revise the treatment of certain stock dispositions as asset sales.

2. Regulations under sections 351(e) and 362(a)(2)(F) addressing the application of the investment company rules to affiliated groups and insurance companies, the circumstances under which cash is treated as an investment asset, and the treatment of non-diversifying transferors.


4. Guidance stating that the Service will not challenge the treatment of a distribution that otherwise qualifies under section 355 as separate from the contribution of cash or other property to the distributing corporation by a distributee shareholder.

5. Regulations under section 382 addressing the timing of the start of the recognition period described in section 382(h)(7)(A) and the impact of that rule on the calculation of NUBIG/NUBIL under section 382(h)(3)(A).

6. Removal of transactions involving fast-pay arrangements as defined in Treas. Reg. § 1.7701(l)-3(b) from the listed transactions set forth in Notice 2009-59.\(^4\)

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\(^3\) 1987–2 C.B. 674.

1. Guidance on “decanting” taking into consideration the recommendations submitted by the Section as well as other professionals in accordance with Notice 2011-101.\(^5\)

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**EXEMPT ORGANIZATIONS**

Robert A. Wexler, Exempt Organizations Committee, (415) 421-7555, wexler@adlercolvin.com

1. Finalization of the following Regulations:
   a. Regulations under sections 4942 and 4945 on reliance standards for making good faith determinations.
   b. Regulations under section 4944 on program-related investments and other related guidance.
   c. Regulations under section 6104(c).
   d. Regulations under section 7611 relating to church tax inquiries and examinations.

2. Proposed Regulations under section 501(c) relating to political campaign intervention.

3. Regulations under section 4966 regarding donor advised funds, and Proposed Regulations and guidance under sections 4958 and 4967 pertaining to donor advised funds.

4. Update of Rev. Proc. 92-94,\(^6\) including to (i) confirm that support from a non-U.S. governmental entity counts as public support in the same manner as support from a federal, state, or local governmental entity counts for purposes of the public support calculation under section 509(a), (ii) revise the definition of “currently qualified” in light of the current five-year calculation period for public support and to provide that an affidavit is currently qualified if a foreign organization in the first five years of its existence reasonably can be expected to qualify as publicly supported, (iii) clarify that grantors need not evaluate foreign hospitals for compliance with section 501(r), (iv) clarify that foreign schools must attest that they do not discriminate on the basis of race, color or national and ethnic origin, but are exempt from the specific requirements of Rev. Proc. 75-50\(^7\) and (v)

\(^5\) 2011-52 I.R.B. 932. Given that such guidance is unlikely by the end of the fiscal year, a request is made for a special exception to the rule limiting inclusion to just matters that are anticipated to be completed by the end of the fiscal year.


\(^7\) 1975-2 C.B. 587.
clarify that sponsoring organizations of donor-advised funds may make equivalency determinations pursuant to Rev. Proc. 92-94 when making grants to foreign organizations.

FINANCIAL TRANSACTIONS
Eileen Marshall, Financial Transactions Committee, (202) 973-8884, emarshal@wsgr.com

1. Guidance on treatment of distressed debt, including Regulations relating to accruals of interest and discount, application of payment ordering rules when debt is not paid in full, and further mitigating character mismatches with respect to accrued interest and discount that is never paid.

2. Regulations under section 446 on notional principal contracts (NPC) relating to the inclusion in income or deduction of a contingent nonperiodic payment, and guidance relating to the character of payments made pursuant to an NPC.

3. Guidance under Treas. Reg. § 1.1001-3 regarding circumstances where there is a change in either the corporate legal obligor or the tax obligor (e.g., check-the-box elections, F reorganizations), including the application of Treas. Reg. § 1.1001-3(f)(7)(ii), relating to deterioration in financial condition of the obligor.

4. Guidance on the characterization, particularly for withholding tax purposes, of (i) consent fees for debt modifications and waivers; (ii) standby letter of credit fees and commitment fees; and (iii) positive rebates, borrow fees, negative repo rate payments and negative rebates on cross-border securities loans and repos.

5. Revised Regulations under section 249 addressing manner of demonstrating that an amount is attributable to the cost of borrowing and not to conversion feature.

6. Final Regulations under section 871(m) on dividend equivalent payments.

FOREIGN ACTIVITIES OF U.S. TAXPAYERS
Joseph M. Calianno, Foreign Activities of U.S. Taxpayers Committee, (202) 521-1505 joe.calianno@us.gt.com

1. Guidance under section 901(m), relating to disqualified foreign tax credits arising in covered asset acquisitions.


3. Guidance on passive foreign investment company (PFIC) issues, including look-through rule.

4. Guidance under section 367(d), relating to transfers of intangible property to foreign corporations, including Regulations implementing Notice 2012-39.\(^9\)

5. Final Regulations under section 959, including the treatment of previously taxed earnings in the absence of positive earnings and profits.

6. Guidance under section 987, relating to foreign currency exchange gain or loss of qualified business units having a functional currency different from the home office.

GOVERNMENT RELATIONS
Edgar D. McClellan, Government Relations Committee, (202) 414-4404, ed.mcclellan@us.pwc.com

1. Guidance under sections 332, 351, and 368 regarding transactions involving the transfer or receipt of no net equity value.\(^{10}\)

2. Clarification of the treatment of guaranteed payments for the use of capital as excludible from the net earnings from self-employment base under section 1402.

INSURANCE COMPANIES
Bryan Keene, Insurance Companies Committee, (202) 662-2273, bwkeene@davis-harman.com

1. Guidance to address Federal income tax issues that will arise as a result of the adoption of Life Principles-Based Reserves (Life PBR), pursuant to Notice 2008-18.\(^{11}\)

INVESTMENT MANAGEMENT
William P. Zimmerman, Investment Management Committee, (215) 963-5023, wzimmerman@morganlewis.com

1. Final Regulations amending the examples in Treas. Reg. § 1.851-5 relating to the application of the “controlled group” rules in section 851(c).

2. Guidance addressing investment in commodities and commodity-linked derivatives by regulated investment companies (“RICs”) through controlled foreign corporations and commodity-linked notes.

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\(^{10}\) Proposed Regulations have been outstanding since 2005 and they continue to create confusion for taxpayers with insolvent subsidiaries.

\(^{11}\) 2008-5 I.R.B. 363. At the current rate of adoption by the various states, it is very possible that the rules will be effective for contracts issued on or after January 1, 2017. Life insurers will need tax guidance well before January 1, 2017, to give them sufficient time to design and price products, secure necessary regulatory approvals and implement systems and processes in advance of the implementation of Life PBR.
3. Guidance regarding the tax treatment of exchange-traded notes.

4. Regulations regarding the taxation of notional principal contracts (‘‘NPCs’’), including the character of payments made under a NPC, the inclusion in income or deduction of a contingent nonperiodic payment, and the definition of a ‘‘payment’’ made pursuant to a NPC.

5. Guidance addressing the treatment of anticipated foreign tax refunds, under sections 853 and 905(c), received by RICs from European Union countries.

6. Guidance confirming that RICs can generally ‘‘look through’’ their interests in a partnership to the partnership’s underlying assets for purposes of the asset diversification test under section 851(b)(3). To date, the Service’s published guidance has been limited to specific factual situations.12

PARTNERSHIPS AND LLCs
Jeanne M. Sullivan, Partnerships and LLCs Committee, (202) 533-6571, jsullivan@kpmg.com

1. Final Regulations regarding series LLCs.

2. Guidance on the definition of a limited partner for SECA purposes

3. Regulations concerning the fractions rule under section 514(c)(9).

4. Regulations establishing a new de minimis rule under section 704(b).

5. Guidance on the proper treatment of contingent liabilities under sections 743(b) and 755.

6. Guidance on section 704(c) layers relating to partnership mergers.

7. Guidance on who can sign a partnership return.

PRO BONO AND TAX CLINICS
Andrew R. Roberson, Pro Bono and Tax Clinics Committee, (312) 984-2732, aroberson@mwe.com

1. Guidance under section 61(a), relating to the exclusion of attorneys’ fees from the prevailing party’s income where the fee is awarded directly to a Legal Aid Organization.13

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2. Update of Treas. Reg. § 1.152-1 to clarify support-related issues relating to the definition of “qualifying child” for purposes of the dependency exemption and related tax credits.\textsuperscript{14}

3. Clarification if/when/how a Notice of Filing of Tax Lien withdrawal request could be done after completing an Offer in Compromise.


**REAL ESTATE**
Wayne L. Pressgrove, Jr., Real Estate Committee, (404) 572-2722, wpressgrove@kslaw.com

1. Final Regulations under section 460 relating to the home construction contracts exemption and its application to land development contracts and condominium developers and contractors.

2. Guidance regarding the meaning of “actively and regularly engaged in the business” of lending money for purposes of section 465.

3. Guidance regarding the treatment of cancellation of indebtedness income as “unrelated business taxable income” under section 512.

4. Guidance regarding simplification of section 514(c)(9)(E) and the “fractions rule.”

5. Guidance regarding the treatment of a deemed loan arising in connection with prepaid rent under section 467 with respect to the use of real property as a mortgage for purposes of section 856.

6. Reconsider withdrawing Notice 2007-55,\textsuperscript{15} addressing the treatment of certain distributions under section 897(h)(1).

**SALES, EXCHANGES AND BASIS**
Mary Foster, Sales, Exchange and Basis Committee, (425) 646-4020, mfoster@1030services.com

1. Guidance clarifying that

   (i) a non-recognition distribution-from-partnership transaction under section 731 immediately before an exchange of like kind property, (ii) a

\textsuperscript{14} Specifically, Treas. Reg. § 1.152-1(a) continues to list a support test where the taxpayer is claiming a qualifying child. However, Congress removed the support test from section 152(c) when it amended the statute in 2005.

non-recognition contribution-to-partnership transaction under section 721 immediately after an exchange of like kind property, or (iii) a non-recognition contribution-to-partnership transaction under section 721 immediately before an exchange of like kind property will not disqualify the exchange itself as a like kind exchange under section 1031, so long as title to the like kind property passes through the exchangor pursuant to the like kind exchange.

TAX ACCOUNTING
Colleen O’Connor, Tax Accounting Committee, (202) 533-8049, colleenmoconnor@kpmg.com

1. Guidance under section 446 addressing changes in methods of accounting relating to the new FASB/IASB revenue recognition standards.

2. Revenue Procedure under section 263(a) regarding the capitalization of natural gas transmission and distribution property.

3. Revenue Procedure under section 263(a) regarding the capitalization of certain retail store and restaurant expenditures.

4. Guidance regarding the treatment of deferred revenue in taxable asset sales and acquisitions.

5. Regulations under section 199 relating to computer software.

TAX-EXEMPT FINANCING
Nancy M. Lashnits, Tax-Exempt Financing Committee, (503) 890-9385, nancy.lashnits@steptoe-johnson.com

1. Guidance on reallocations of New Clean Renewable Energy Bonds under section 54C.

2. Guidance on the definition of political subdivision under section 103 for purposes of all tax-advantaged bonds, including tax-exempt, tax credit, and direct pay bond provisions.

3. Final Regulations on allocation and accounting principles under section 141. (Proposed Regulations were published on September 26, 2006.)

4. Additional guidance under section 141 regarding accountable care organizations (ACO) and arrangements with similar entities and/or health insurance companies entering into ACO-type arrangements with hospitals.
5. Revenue Procedure updating Rev. Proc. 97-13,16 relating to the conditions under which a management contract does not result in private business use under section 141, as regards both ACO arrangements and to public/private partnership type arrangements.

6. Final Regulations on public approval requirements for private activity bonds under section 147(f). Proposed Regulations were published on September 9, 2008.

7. Re-propose Regulations on the definition of “issue price” for all purposes of tax-advantaged bonds. (Proposed Regulations were published on September 16, 2013.)

8. Final Regulations on other arbitrage investment restrictions under section 148. (Proposed Regulations were published on September 27, 2007, and September 16, 2013.)

U.S. ACTIVITIES OF FOREIGNERS AND TAX TREATIES
Michael J. Miller, U.S. Activities of Foreigners and Tax Treaties Committee, (212) 903-8757, mmiller@rhtax.com

1. Guidance under sections 877A and 7701(a)(50) regarding the status of certain individuals who relinquished U.S. citizenship under the Immigration and Nationality Act on or prior to June 3, 2004.

2. Guidance on the application of treaty provisions to hybrid entities for non-FDAP items, e.g., effectively connected income not attributable to a permanent establishment, branch profits tax, or application of the limitation on benefits article.

3. Final Regulations under section 892.

4. Guidance on the applicability, or not, of international information return requirements (e.g., Forms 5471, 8865, 3520, 3520-A) to dual residents filing nonresident returns under a treaty tie-breaker provision.

5. Guidance on the application of FIRPTA to the restructuring of distressed mortgages.

6. Guidance on the application of FIRPTA to foreign purchasers of domestically controlled REIT stock who receive distributions that are described in section 897(h)(1) but represent a return of capital to such purchasers.

7. Final Regulations under section 871(m).