



## FROM THE CHAIR

By William M. Paul\*

Tax reform continues to be a topic of widespread interest and discussion. Chairman Dave Camp of the House Ways and Means Committee has released a proposal for international tax reform and more recently the Obama administration released an outline of its thoughts on corporate tax reform. One may or may not agree with the direction in which these proposals—and others—are headed, but they advance the debate.

Various committees within the Tax Section have also been hard at work in developing ideas for tax reform. This effort was launched by Charlie Egerton while he was Chair of the Section, and Charlie has continued to take the lead on the project. While the initial thinking was that the Section would present these ideas as “proposals” for tax reform, the Council decided to style these ideas as “options” for tax reform in order to allow a wider variety of ideas to be presented by Section members. Presenting the ideas as “options” also reduces the likelihood that some other section of the ABA might object, which would prevent the Tax Section from submitting the ideas to Congress.

As I write this column in March, two sets of options have been submitted to Congress and two more have been approved by Council. Options for tax reform in the area of financial products and partnerships were submitted to Congress last December. At the Midyear Meeting in San Diego, Council approved the options developed in the estate and gift area and an option to address taxpayer identity theft.

I’d like to describe a few of these options for you so you’ll have a sense of the kinds of ideas the Section is presenting to Congress. As you’ll see, they are primarily changes to improve, rather than fundamentally restructure, our existing tax system.

The Partnership Committee developed seven separate “options” for improving the tax law relating to partnerships. One idea is to repeal the technical termination rule in section 708, which deems a partnership to terminate if more than 50% of the interests in the partnership are sold or exchanged during a 12-month period. As described in the submission, the original reason for the rule—to prevent trafficking in partnerships with certain fiscal years—has been addressed by section 706 since 1986, and the provision now acts as a trap for the unwary. Another option identified is to coordinate the at-risk rules of section 465 and the economic risk of loss concept under section 752. Both provisions have essentially the same goal, namely to determine whether the taxpayer bears the economic risk of loss for a liability, and coordinating the standards under the two rules would be a simplification.

In the esoteric area of financial products, the Financial Transactions Committee produced an impressive submission running some 63 pages in a typeface that would not be acceptable in most judicial tribunals. The submission tackles a wide variety of subjects, including the tax treatment of distressed debt, character rules for various types of derivatives, updating the wash sale rules of section 1091, and the treatment of derivatives on a corporation’s own stock

under section 1032. Reading through the submission is not for the faint of heart.

The financial products report has been very well received by Congress and by Treasury. Chairman Camp referred to the report at a joint hearing of the Ways and Means and Finance Committees on the taxation of financial products. The working group that prepared the report then met with staff members of the Ways and Means Committee, Finance Committee, and the Joint Committee on Taxation to discuss the options. Treasury officials have also praised the report, and both Treasury and congressional staff have expressed interest in advancing some of the options even outside the context of tax reform.

A similarly large-scale report was produced by the Estate and Gift Taxes Committee in its areas of jurisdiction. The options in this report were prepared jointly with the Section of Real Property, Trust and Estate Law. The report starts with a plea for stability and predictability, which are much needed in this area. Among the numerous areas for reform addressed in the report is the difficult subject of valuing interests in closely held entities. The use of valuation discounts for such interests is a common aspect of estate planning and these discounts have their place. However, they are also subject to abuse. The report identifies the option of allowing discounts for interests in closely held

\* Covington & Burling LLP, Washington, DC.

## Boxscore

Since January 2012 the Section has coordinated the following government submissions, which can be viewed and downloaded free of charge from the Section's website at <http://www.americanbar.org/groups/taxation/policy.html>.

### Submissions and Comments on Government Regulations, Administrative Rulings, Blanket Authority, and ABA Policy

TO	DATE	CODE SECTION	TITLE	COMMITTEE	CONTACT
Internal Revenue Service	4/13/2012	1471, 1472, 1473, 1474	Comments on Proposed Treasury Regulations Relating to the Foreign Account Tax Compliance Offset Provisions of the HIRE Act, P.L. 111-147 Certification & Verification	U.S. Activities of Foreigners and Tax Treaties	Alan I. Appel
Internal Revenue Service	4/09/2012	514	Comments on the Scope of Section 514 of the Internal Revenue Code	Exempt Organizations	Robert A. Wexler, Fredrick J. Gerhart
House Committee on Ways & Means, Senate Committee on Finance	4/04/2012	2010, 2056, 2523, 2651, 6166	Options for Tax Reform and Simplification with Respect to Federal Estate, Gift and GST Taxes	Estate and Gift Taxes	Paul E. Van Horn
House Committee on Ways & Means, Senate Committee on Finance	4/02/2012	6103(e)	Options for Tax Reform to Amend Code Section 6103(e) of the Internal Revenue Code	Low Income Taxpayers	Keith Fogg, Susan Morgenstern, George Willis
U.S. Tax Court	3/01/2012	n/a	Proposed Amendments to the Rules of the United States Tax Court	Court Procedure and Practice	Mark Allison
Internal Revenue Service	1/30/2012	892	Proposed Regulations Issued under Section 892	U.S. Activities of Foreigners and Tax Treaties	Len Schneidman, Michael J. Miller
Internal Revenue Service	1/17/2012	108(a), 61(a)(12)	Guidance under Section 108(a) Concerning the Exclusion of Section 61(a)(12) Discharge of Indebtedness Income of a Grantor Trust or a Disregarded Entity	Bankruptcy & Workouts and Partnerships & LLCs	Lee G. Zimet
Internal Revenue Service	1/05/2012	482	Advance Pricing and Mutual Agreement Program	Transfer Pricing	E. Miller Williams, Jr.

The technical comments and blanket authority submissions listed in this index represent the views of the ABA Section of Taxation. They have not been approved by the ABA Board of Governors or the ABA House of Delegates and should not be construed as representing the policy of the ABA.

FROM THE CHAIR | WILLIAM M. PAUL *continued from page 3*

entities that are engaged in an active business and denying discounts for closely held entities that are not so engaged.

The Low Income Taxpayers Committee has developed an option to address taxpayer identity theft. Problems arise when someone else has used a taxpayer's identification number to file a false return or to obtain employment. Under section 6103, there is some uncertainty as to whether the IRS is authorized to disclose such information to the taxpayer. The IRS has taken the

position that such disclosure to the taxpayer is not authorized, though it appears the IRS may be modifying its position on this question. The option presented would eliminate any uncertainty and make clear that a taxpayer is entitled to such information.

While prospects for tax reform are not imminent, it is clear that the options put forth by the Section will be important in the evolutionary process that leads to enactment of tax reform. It is the nature of the process that as the stars begin to align for enacting tax reform, the various

ideas and options that have been presented are "taken off the shelf" and reviewed. When the time comes, the options identified by the Section will be among the options receiving serious attention. Some may even see legislative action more quickly.

If you're curious and want to take a look at the tax reform options that the Section has presented so far, the submissions are available on the public policy page of the Section's website at <http://www.americanbar.org/groups/taxation/policy.html>. ■