



NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 • PH 518.463.3200 • www.nysba.org

TAX SECTION

2012-2013 Executive Committee

ANDREW W. NEEDHAM

Chair
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
212/474-1440

DIANA L. WOLLMAN

First Vice-Chair
212/558-4055

DAVID H. SCHNABEL

Second Vice-Chair
212/909-6336

DAVID R. SICULAR

Secretary
212/373-3082

COMMITTEE CHAIRS:

Bankruptcy and Operating Losses

Stuart J. Goldring
Deborah L. Paul

Compliance, Practice & Procedure

Elliot Pisem
Bryan C. Skarlatos

Consolidated Returns

Lawrence M. Garrett
Edward E. Gonzalez

Corporations

Karen Gilbreath Sowell
Linda Z. Swartz

Cross-Border Capital Markets

S. Douglas Borisky
Andrew Walker

Employee Benefits

Eric Hillers
Andrew L. Oringer

Estates and Trusts

Alan S. Halperin
Laura M. Twomey

Financial Instruments

Michael S. Farber
William L. McRae

"Inbound" U.S. Activities of Foreign

Taxpayers

Peter J. Connors
Yaron Z. Reich

Individuals

Robert E. Brown
Sherry S. Kraus

Investment Funds

Marcy G. Geller
Joel Scharfstein

New York City Taxes

Maria T. Jones
Irwin M. Slomka

New York State Taxes

Paul R. Comeau
Arthur R. Rosen

"Outbound" Foreign Activities of

U.S. Taxpayers

Andrew H. Bratterman
David R. Hardy

Partnerships

David W. Mayo
Eric Sloan

Pass-Through Entities

James R. Brown
John T. Lutz

Real Property

Robert Cassanos
Lisa A. Levy

Reorganizations

Peter F. G. Schuur
Gordon Warnke

Securitizations and Structured

Finance

Jiyeon Lee-Lim
W. Kirk Wallace

Tax Exempt Entities

Elizabeth T. Kessenides
Richard R. Upton

MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE

Lee E. Allison	Stephen B. Land	Amanda H. Nussbaum	Philip Wagman
Janel A. Andolina	Matthew Lay	David M. Schizer	
Steven A. Dean	Robert J. Levinsohn	Stephen E. Shay	
Kathleen L. Ferrell	Vadim Mahmoudov	Ansgar A. Simon	
Joshua M. Holmes	Gary B. Mandel	Andrew P. Solomon	
Charles I. Kingson	Charles M. Morgan	Eric Solomon	

August 15, 2012

The Honorable Mark Mazur
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Report on the "May Company" Regulations

Dear Messrs. Mazur, Shulman and Wilkins:

I am pleased to submit the attached report of the Tax Section of the New York State Bar Association on Proposed Treasury Regulation Section 1.337(d)-3 (the "Proposed Regulations"). The report addresses whether any of the intervening legislative changes to Subchapter K and other provisions of the Code obviate the need for the Proposed Regulations. It also provides technical comments regarding the treatment of transactions involving stock of affiliates.

By way of background, the Proposed Regulations seek to prevent the use of partnerships to circumvent the 1986 repeal of the *General Utilities* doctrine. The Proposed Regulations targeted a transaction in which assets left corporate solution purportedly tax-free in reliance on Subchapter K and

FORMER CHAIRS OF SECTION:

John E. Morrissey, Jr.	Richard J. Hiegel	John A. Cory	Robert H. Scarborough	David S. Miller
Peter L. Faber	Dale S. Collinson	Peter C. Canellos	Robert A. Jacobs	Erika W. Nijenhuis
Hon. Renato Beghe	Richard G. Cohen	Michael L. Schler	Samuel J. Dimon	Peter H. Blessing
Alfred D. Youngwood	Donald Schapiro	Carolyn Joy Lee	Andrew N. Berg	Jodi J. Schwartz
Gordon D. Henderson	Herbert L. Camp	Richard L. Reinhold	Lewis R. Steinberg	
David Sachs	William L. Burke	Richard O. Loengard	David P. Hariton	
J. Roger Mentz	Arthur A. Feder	Steven C. Todrys	Kimberly S. Blanchard	
Willard B. Taylor	James M. Peaslee	Harold R. Handler	Patrick C. Gallagher	

Section 1032. In order to curtail such transactions, the Proposed Regulations proposed a “deemed redemption rule” and a “distribution rule.”

The Tax Section submitted two reports relating to the Proposed Regulations: “Report on Notice 89-37” dated November 14, 1989 and “Report on Proposed Regulations Implementing Notice 89-37” dated March 3, 1993. For your reference, we have enclosed a copy of these reports. Both of these reports endorsed the deemed redemption rule and opposed (except on a transitional basis) the distribution rule. Because we continue to believe that the deemed redemption rule is conceptually correct, we reiterate our support of the conclusions of our earlier reports.

Under the deemed redemption rule, a corporate partner must recognize gain when it enters into certain transactions with a partnership that have the economic effect of an exchange of an interest in appreciated property for an interest in its own stock. For example, the deemed redemption rule would apply to the otherwise tax-free contribution by a corporate partner of an appreciated asset to a partnership under Section 721 of the Code if the transferee partnership owns stock of the corporate partner.

Since 1989, Congress has enacted Sections 704(c)(1)(B), 731(c), 732(f), 737 and 755(c) of the Code and has amended Section 734 of the Code. Although many of these legislative changes to Subchapter K have made it more difficult to exit a partnership that holds stock of a corporate partner on a tax-free basis, we do not believe they obviate the need for the deemed redemption rule under the Proposed Regulations. As described more fully in the report, one of the primary reasons is that these amendments are generally relevant (if at all) to distributions and other transactions occurring *after* the economic exchange targeted by the deemed redemption rule has already occurred.

The report also makes certain recommendations regarding the treatment of transactions involving stock of affiliates of the corporate partner. As a general matter, we believe that the Proposed Regulations are too broad as applied in this context, at least in principle. Specifically, we believe that the deemed redemption rule properly applies to a subsidiary that becomes a partner in a partnership that owns or acquires the stock of such subsidiary’s direct or indirect parent. We also believe that the deemed redemption rule properly applies to any corporation that becomes a partner in a partnership that owns or acquires stock of an affiliate of such corporation if the stock of such affiliate is issued as part of the transaction. In all other cases (*i.e.*, the partnership owns stock in a subsidiary or a sister of the corporate partner and the stock is not issued as part of the transaction), we do not believe the deemed redemption rule should apply unless and until a subsequent transaction implicating *General Utilities* repeal occurs.

We acknowledge, however, that discriminating between different categories of affiliate stock is likely to increase the complexity of the final regulations because it would require taxpayers to trace stock basis during future periods for some categories of affiliate stock but not others. If necessary to avoid these complexities, therefore, it may be appropriate to finalize the deemed redemption rule in its current form or to suspend the rule only until such time as the affiliate stock is distributed by the partnership.

Messrs. Mazur, Shulman and Wilkins

August 15, 2012

Page 3

We appreciate your consideration of our comments.

Respectfully submitted,



Andrew W. Needham

Chair

Enclosures

cc: William D. Alexander
Associate Chief Counsel (Corporate)
Internal Revenue Service

Jennifer Alexander
Attorney-Advisor (Tax Policy)
Department of the Treasury

Erik Corwin
Deputy Chief Counsel (Technical)
Internal Revenue Service

Beverly Katz
Special Counsel to the Associate Chief Counsel (Passthroughs and Special Industries)
Internal Revenue Service

Christopher Kelley
Special Counsel to the Associate Chief Counsel (Passthroughs and Special Industries)
Internal Revenue Service

Lee A. Kelley
Deputy Tax Legislative Counsel (Regulatory Affairs)
Department of the Treasury

Emily S. McMahon
Deputy Assistant Secretary (Tax Policy)
Department of the Treasury

Curt Wilson
Associate Chief Counsel (Passthroughs and Special Industries)
Internal Revenue Service

Messrs. Mazur, Shulman and Wilkins

August 15, 2012

Page 4

Lisa Zarlenga

Tax Legislative Counsel (Regulatory Affairs)

Department of the Treasury