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November 5, 2013

The Honorable Mark Mazur  
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Daniel I. Werfel  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

## Re: New York State Bar Association Tax Section Report on the Role of the Step Transaction Doctrine in Section 355 Distributions: Control Requirement and North-South Transactions

Dear Messrs. Mazur, Werfel and Wilkins:

I am pleased to submit this report of the New York State Bar Association Tax Section that addresses the appropriate role of the step transaction doctrine in determining the U.S. Federal income tax consequences of certain transactions involving stock distributions intended to qualify as tax-free under section 355.

Specifically, the report addresses two areas upon which the Service announced in January 2013 that it will no longer issue private letter rulings, pending study and the issuance of guidance. First, the report focuses on the requirement that the distributing corporation possesses section 368(c) control of the controlled corporation immediately before the section 355 distribution. The Service announced it will not rule if, in anticipation of the distribution of its stock, the distributing corporation acquires or retains putative control of the controlled corporation through the use of classes of shares having different voting powers. Second, we focus on whether a transaction involving a contribution of property in connection with distribution of property (so-called "north-south" transactions) should be respected as separate transactions or collapsed and treated as an exchange. If a north-south transaction that is undertaken as part of an intended section 355 distribution is treated as an exchange, the stock distribution may be rendered taxable.

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Mr. Mazur  
Mr. Werfel  
Mr. Wilkins  
November 5, 2013

These no-rule areas are drafted broadly and, consequently, cover a broad range of transactions. The report does not undertake to make recommendations for all of the transactional patterns that are covered, but instead discusses a range of possible transactions and provides recommendations for certain transactions where it is clearest that the application of the step transaction doctrine is not necessary to give effect to the relevant section 355 policies.

For the control requirement, the report makes recommendations to exclude certain transactions from the areas under study and to provide guidance confirming the results so that taxpayers will not need to seek confirmation in PLRs. Other transactions covered by the control requirement no-rule raise questions that require analyzing various policies, which questions have not been resolved by existing guidance. This report provides a comprehensive analysis of the relevant policies and considerations that we hope will aid Treasury and the Service in their formulation of guidance that will address these fact patterns, and recommends safe harbors as an interim solution to address certain cases while the broader study is undertaken.

For the north-south no-rule, the report makes recommendations only for transactions where the "north" transaction is a spin-off. While the north-south no-rule encompasses many other types of transactions in its scope, we believe the resolution of cases that implicate other Internal Revenue Code provisions should be decided upon the policies unique to those provisions. Because of the breadth of the north-south no-rule and the frequency with which north-south transactions can occur as a result of restructurings that are required to separate businesses, we respectfully urge Treasury and the Service to issue guidance in this area expeditiously.

We very much appreciate your consideration of our recommendations and would be happy to discuss them with you or provide additional assistance.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D. Schnabel', with a stylized flourish extending to the right.

David H. Schnabel  
Chair

Enclosure

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