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Report No. 1381
October 2, 2017

The Honorable David Kautter
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Department of the Treasury
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The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William M. Paul
Acting Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: *Report No. 1381 on Revenue Ruling 2017-09 and "North-South" Transactions*

Dear Messrs. Kautter, Koskinen, and Paul:

I am pleased to submit the attached report of the Tax Section of the New York State Bar Association. The Treasury Department (the "Treasury") and the Internal Revenue Service (the "Service") recently issued Revenue Ruling 2017-09 (the "Ruling"), containing welcome guidance on certain so-called "north-south" transactions.¹ We commend Treasury and the Service for allocating resources to address common "north-south" fact patterns and for removing the Service's prior policy not to issue private rulings in this area. The report recommends a modification

¹ The central issue in a "north-south" transaction is whether a transfer of cash or other property to a corporation (the "south" leg) and a transfer of cash or other property by that corporation to that person or a related party (the "north" leg) are respected as separate transactions for federal income tax purposes. Although "north-south" transactions can occur in several different contexts, they are frequently implicated by corporate separation transactions (that is, Section 355 distributions).

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to the Ruling to reflect more clearly what we believe was intended by Treasury and the Service, and makes suggestions for future guidance on similar fact patterns.

Specifically, we recommend that the Ruling be clarified to provide that a contribution of cash or other property by a parent corporation to a distributing corporation will be respected as a separate transaction from the distribution of controlled stock by the distributing corporation to the parent corporation, whether or not the contribution was necessary in order for the distributing corporation to satisfy the active trade or business requirement. We believe this is consistent with the intent and analytical framework of the Ruling. Furthermore, given the importance of certainty on this issue to taxpayers, making the proposed clarification is likely to conserve administrative resources by avoiding the need for the Service to consider private letter ruling requests from taxpayers to the same effect.

We appreciate your consideration of our recommendations and comments. If you have any questions or comments on this report, please feel free to contact us and we would be happy to assist in any way.

Respectfully submitted,



Michael Farber
Chair

Attachment

cc: Dana L. Trier
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October 2, 2017

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