

REPORT #777

TAX SECTION

New York State Bar Association

Suggestion on Priorities

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TAX SECTION

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January 4, 1994

Honorable Margaret Milner Richardson
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Commissioner Richardson:

Recent reports in the tax press indicate that Treasury and the Internal Revenue Service are giving consideration to preparing a formal business plan for 1994. We would hope that finalization of the following regulation projects might be accorded significant priority in any such plan:

- Finalization of the original issue discount regulations proposed in December 1992.
- Finalization of Prop. Reg. §1.382-4, eliminating the evergreen option rule of Treas. Reg. §1.382-2T(h)(4).
- Finalization of the section 338 asset and stock consistency regulations proposed in January 1992.
- Finalization of the regulations defining an activity under section 469. Proposed regulations were published in May 1992.

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John A. Corry

It is our belief that the absence of final regulations in each of the above areas results in significant uncertainty in business decisionmaking.* In some cases this lack of guidance has prevented otherwise sound business transactions from occurring; in other cases, transactions must be restructured to avoid an adverse tax result that should not occur as a policy matter. In all events, the absence of guidance in these important areas fosters conflict with the goals of tax simplification, and stymies taxpayers' ability to achieve rational and reliable tax planning.

We would be happy to work with you and your staff to bring these projects to completion.

Very truly yours,

Peter C. Canellos

* Although the evergreen option rule of section 382 is reflected in temporary regulations, there seems to be general agreement that the rule is much broader than necessary to protect the governmental interest.

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Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Les:

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