



# New York State Bar Association

Tax Report #963

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>

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34<sup>th</sup> Floor  
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February 14, 2000

The Honorable Stuart L. Brown  
Chief Counsel  
Room 3026  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Eric Solomon, Esq.  
Acting Deputy Assistant Secretary (Tax Policy)  
Treasury Department  
Room 1330, Main Treasury  
Washington, D.C. 20220

Re: Business Plan for 2000

Dear Stuart and Eric:

I am writing in response to Notice 2000-10, in which the Internal Revenue Service and Treasury Department solicited suggestions of items to be included in their Guidance Priority List for 2000. The officers of the Tax Section have received a number of suggestions from individual members for transmittal to the Service and Treasury. These suggestions, which have not been considered or approved by the Section's Executive Committee, are listed below.

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### Corporations

1. A project to consider whether the regulations (Regs. § 1.368-2(b)(1)) defining a “statutory merger or consolidation” in Section 368(a)(1)(A) should include mergers and consolidations effected wholly under foreign corporate law or should be limited, as they are now, to mergers and consolidations “effected pursuant to the corporation laws of the United States or a State or Territory, or the District of Columbia”.
2. Guidance as to whether, under current regulations, a “statutory merger or consolidation” as defined in Section 368(a)(1)(A) encompasses a merger between a U.S. corporation and a foreign corporation, notwithstanding that it is pursuant to foreign as well as U.S. law.
3. Revision of proposed regulations under section 355(e) to reflect public comments.
4. Finalization of regulations under section 355(d).
5. Guidance concerning the treatment of a merger of a domestic corporation into a disregarded entity wholly owned by another domestic corporation.
6. New ruling guidelines to reflect amended regulations on continuity of interest and continuity of business enterprise.
7. Guidance on the tax consequences if an acquiring corporation acquires a target corporation using its own stock (in whole or in part) as consideration, and thereafter as part of a plan liquidates or merges the target corporation into itself. Compare Rev. Rul. 90-95 (step transaction doctrine does not apply following qualified stock purchase) and Rev. Rul. 67-274 (purported B reorganization followed by liquidation of target is an asset acquisition that is a good C reorganization).

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8. Guidance relating to qualified small business stock under section 1202 and 1045, including holding of such stock by pass-through entities.
9. Additional guidance on disqualified preferred stock (section 351(g)).
10. Guidance on section 108(e)(6) (capital contribution exception to COD income).
11. Guidance under sections 382(l) (including as to issues that are reserved in Regs. § 1.382-9) and 384.

#### International

1. Published guidance that can be relied on in the absence of a private ruling as to when a transaction is substantially in compliance with Regs. § 1.367(a)-3(c)(1)(iv). Such guidance would address the question of the date as of which the substantiality test must be met in a cross-border acquisition.
2. Guidance on determination of source of equity-based income characterized as compensation for tax purposes (such as income realized under section 83 on exercise of certain options or on lapse of restrictions on restricted stock), where services have been performed within and without the US by a non-resident alien.
3. Guidance on determination of source of income from a covenant not to compete, if treated as compensation, where covenant is not to compete in both the US and another country or countries.

#### Financial Products

1. Regulations on timing and character of income from notional principal contracts that provide for contingent payments.
2. Regulations on "deep-in-the-money" options and prepaid forwards.
3. Regulations on application of wash-sale rules to derivatives.

The Honorable Stuart L. Brown  
Eric Solomon, Esq.

February 14, 2000

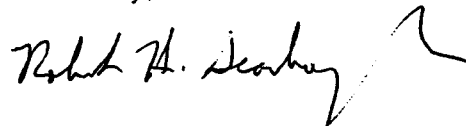
4. Regulations on treatment of unbalanced straddles ("one side larger than the other") under section 1092.
5. Regulations or other guidance on section 263(g).

Miscellaneous

1. Guidance on repeal of the installment method for accrual-basis taxpayers.

Please call me if we can be of assistance to you in your consideration of any of the foregoing suggestions.

Sincerely,



Robert H. Scarborough

copies to: The Honorable Jonathan Talisman

Joseph M. Mikrut, Esq.

Philip R. West, Esq.

Internal Revenue Service  
Attn: CC:DOM:CORP:R (Notice 2000-10)  
Room 5228  
P.O. Box 7604  
Ben Franklin Station, Washington, D.C. 20044

Sharon.Y.Horn@M1.IRSCounsel.Treas.Gov  
(by e-mail)