American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004

May 1, 2014

Internal Revenue Service
Attn: CC:PA:LPD:PR (NOTICE 2014-18)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Recommendations for 2014-2015 Guidance Priority List (Notice 2014-18)

Dear Sir/Madam:

The AICPA is pleased to offer our suggestions regarding the 2014 - 2015 Guidance Priority List, which were prepared by the AICPA Tax Division's committees and technical resource panels, and approved by our Tax Executive Committee.

The suggestions are listed under the AICPA working group that developed them, and we have indicated the priority order for our comments under each category of the attached document. For your convenience, contact information for each working group's chair and AICPA staff liaison is listed. Please feel free to contact these individuals directly with your specific questions or concerns.

In addition, the AICPA again encourages the Department of the Treasury and the Internal Revenue Service to continue pursuing tax simplification. Although we recognize you must balance competing interests and concerns when drafting guidance, we urge you to consider the following as part of the process:

- Use the simplest approach to accomplish a policy goal;
- Provide safe harbor alternatives;
- Offer clear and consistent definitions;
- Use horizontal drafting (a rule placed in one Internal Revenue Code ("Code") section should apply in all other Code sections) to the greatest extent possible;
- Build on existing business and industry-standard record-keeping practices;
- Provide a balance between simple general rules and more complex detailed rules; and
- Match a rule's complexity to the sophistication of the targeted taxpayers.

The AICPA welcomes the opportunity to discuss these comments. If you have any questions, please contact me at (304) 522-2553, or jporter@portercpa.com; or Melissa Labant, AICPA Director of Tax Advocacy & Professional Standards at (202) 434-9234, or mlabant@aicpa.org.

Sincerely,

Jeffrey A. Porter, CPA
Chair, AICPA Tax Executive Committee

Encl.

# AICPA Tax Division
# Comments on the
# 2014 - 2015 Guidance Priority List (Notice 2014-18)
# May 1, 2014

**Corporations and Shareholders Taxation Technical Resource Panel** (Bart Stratton, Chair, (202) 312-7531, bart.stratton@us.pwc.com; or Jason Cha, AICPA Technical Manager, (202) 434-9231, jcha@aicpa.org.) NOTE: Comments are listed in priority order.

**<u>Consolidated Returns</u>**

1. Provide additional guidance as to the application of section 382(h)(6) in conjunction with Notice 2003-65, 2003-2 C.B. 747, within consolidation.

2. Provide guidance for determining when the Continuity of Business Enterprise (COBE) requirement is satisfied following a section 382 ownership change.

3. Provide additional guidance under Treas. Reg. § 1.1502-36:

   - Provide guidance that would permit a reattribution of losses where a worthless stock deduction is taken on subsidiary stock and the subsidiary ceases to be a member of the group but does not have a separate return year.

   - Regarding the interaction of Treas. Reg. §§ 1.1502-11(c) and 1.1502-28 (i.e., how does Treas. Reg. § 1.1502-36 apply in a year when there is a disposition at a loss in the same year as a cancellation of debt event subject to Treas. Reg. §§ 1.1502-28 and 1.1502-11(c)).

4. Provide guidance that would permit a worthless stock deduction with respect to a class of subsidiary stock notwithstanding that there is a section 381 transaction with respect to other classes of subsidiary stock.

5. Provide guidance with respect to group continuation and the application of Revenue Ruling 82-152. Specifically, reevaluate the existing group continuation rules under Treas. Reg. § 1.1502-75(d) to eliminate the uncertainty that exists as a result of the expanded application of Revenue Ruling 82-152.

6. Provide guidance with respect to the application of Treas. Reg. § 1.1502-76(b)(1)(ii)(B) to transactions occurring prior to or contemporaneously with the event that results in a subsidiary's change in status as a member. Additionally, provide guidance regarding the treatment of discharge of indebtedness income that is recognized on the day the subsidiary becomes a nonmember and is not excluded from gross income under section 108(a).

7. Provide guidance regarding the treatment of intercompany transactions in determining satisfaction of the gross receipts test for purposes of section 165(g)(3)(B).

8. Provide guidance on uncertain tax position (UTP) reporting of an acquiring corporation on its Schedule UTP, Uncertain Tax Position Statement:

   - Whether an acquiring corporation needs to report on its Schedule UTP, a tax position taken on a selling consolidated group's pre-closing consolidated return for which the selling group did not record a reserve.

   - Whether an acquiring corporation needs to report on its Schedule UTP on the acquiring consolidated group's post-closing return, tax positions already taken on a selling consolidated group's return (where the "only once rule" applies).

9. Provide guidance that excludes the application of section 351(g) to redemptive transactions between members of a consolidated group where a member redeems its stock through the issuance of non-qualified preferred stock as defined under section 351(g).

10. Provide guidance concerning the application of Revenue Ruling 99-6 involving members of a consolidated group.

11. Provide guidance on circular basis adjustments under Treas. Reg. § 1.1502-11 regarding issues associated with the dispositions of brother-sister subsidiaries within the same consolidated return year.

**<u>Corporations and Their Shareholders</u>**

1. Provide guidance under section 382:

   - Provide guidance on identifying five percent shareholders of public companies.

   - Provide guidance under sections 382 and 384, including regulations regarding built-in items under section 382(h)(6).

2. Provide guidance with respect to section 108:

   - Provide guidance concerning how an election under section 108(i) affects the determination of recognized built-in gain or loss under section 382(h)(6).

   - Provide guidance as to the application of section 108(e)(6) if the subsidiary is insolvent before the contribution of the debt.

3. Provide updated guidance regarding transactions involving receipt of no net equity value.

4. Provide guidance on the application of the solely voting stock requirement, meaningless gesture doctrine and deemed issuances under section 368(a)(1)(C) in the event of an upstream reorganization where no actual shares are issued and the transferee corporation has multiple voting and non-voting classes of stock.

5. Finalize regulations under section 368(a)(1)(F).

6. Provide guidance on what constitutes an effective abandonment of stock.

7. Provide guidance as to what represents a "characterization" for purposes of section 385(c)(1) regarding a characterization of an interest as stock or indebtedness.

8. Strongly consider releasing a list(s) of specific common organizational actions that require (or do not require) reporting on Form 8937, Report of Organizational Actions Affecting Basis of Securities, to help taxpayers understand the filing requirement, without the administrative burden and cost that a taxpayer may need to incur to verify if reporting is necessary.

9. Provide additional guidance on the following areas in conjunction with Revenue Procedure 2013-3, 2013-1 I.R.B. 113 that would eliminate issuance of private letter rulings:

   - Whether a "distributing" corporation's distribution of the stock of a "controlled" corporation meets the requirements of section 355(a)(1)(A) where, in anticipation of the distribution, the distributing corporation acquires control of the controlled corporation through a recapitalization or issuance of new stock resulting in a "high vote/low vote" structure;

   - Whether either section 355 or section 361 applies to a distribution of a "controlled" corporation's stock or securities in exchange for, and in retirement of, any debt of the distributing corporation if such debt was issued in anticipation of the distribution; and

   - Whether a contribution of property and a distribution of property in a so-called "north-south" transaction are respected as separate transactions for federal income tax purposes.

10. Provide guidance on the scope and application of the rescission doctrine as described in Revenue Ruling 80-58, 1980-1 C.B. 181.

11. Provide guidance on how to determine the amount of gain or loss that is recognized if an exchange of excess principal amount (as defined in section 354(a)(2)) occurs.

**Employee Benefits Taxation Technical Resource Panel** (Wayne Kamenitz, Chair, (732) 516-4302, wayne.kamenitz@ey.com; or Kristin Esposito, AICPA Technical Manager, (202) 434-9241, kesposito@aicpa.org.) NOTE: Comments are listed in priority order.

**Retirement Benefits**

1. Issue guidance on international tax issues relating to qualified retirement plans.

2. Provide model language for preapproved qualified plan documents to provide for the deferral of compensation for unused vacation and leave time.

3. Issue guidance to simplify the correction methods under the Employee Plans Compliance Resolution System (EPCRS) as they pertain to correcting actual deferral percentage (ADP) and actual contribution percentage (ACP) testing failures after the 12-month statutory correction period has expired.

   Correction methods currently available under the EPCRS as they pertain to correcting ADP and ACP testing failures, after the 12-month statutory correction period has expired can be inordinately expensive relative to the size of the failure. Therefore, we recommend the Internal Revenue Service (IRS or "Service") revisit the correction methods available to provide expanded guidance that promotes compliance in a more cost effective and efficient manner.

   For 401(k) retirement plans, the ADP and ACP tests provide a limit on the amount of certain benefits provided under a plan to highly compensated employees over benefits provided to non-highly compensated employees. A plan annually satisfies these nondiscrimination requirements if the plan passes the ADP or ACP tests; however, if a plan fails these tests for a given plan year, corrective action must be taken within the 12-month statutory correction period following the close of the plan year in which the failure occurred. Any corrective action shall be made in accordance with the EPCRS. Failure to correct within the statutory correction period will result in plan disqualification if the plan is not subsequently corrected in accordance with EPCRS.

4. Issue guidance to assist plan sponsors in correcting areas of noncompliance relating to Rollovers as Business Start-ups (a/k/a "ROBS").

   Rollovers, as a business start-up, are an arrangement in which a prospective business owner uses their retirement funds to pay for their new business start-up costs in a tax-free transaction. The prospective business owner rolls over their existing retirement funds to the ROBS plan, where the ROBS plan uses the rollover assets to purchase stock of the new business, resulting in the ROBS plan owning the new business. It has been our members' experience, that many ROBS plan sponsors are unaware that the plan is a qualified plan with its own set of regulatory requirements. We also think that noncompliant ROBS plans are costly to correct and can result in discrimination, prohibited transactions, plan disqualification and adverse tax consequences to the plan sponsor and plan participants.

**Executive Compensation, Health Care and Other Benefits, and Employment Taxes**

5. Issue Consolidated Omnibus Budget Reconciliation Act (COBRA)-related guidance, including:

   - Guidance on the applicability of section 162(l) to COBRA premiums.

6. Issue guidance on the treatment of partnership employees working for a single member limited liability company (SMLLC) or other disregarded entity owned by an upper tier partnership (after the SMLLC employment tax reporting rules changed, effective in 2009). Specifically provide guidance on whether an owner of the upper tier entity is treated as a partner or an employee if he or she provides service to the lower tier SMLLC or other disregarded entity.

7. Provide regulations to implement section 3121(z) related to foreign employers, as added by section 302 of the Heroes Earnings Assistance and Relief Tax Act of 2008.

8. Issue guidance on the application of section 409A(b) as amended by the Pension Protection Act of 2006 (PPA), especially guidance on employees transferred from one country to another.

9. Finalize the regulations on cafeteria plans under section 125. Proposed regulations were published on August 6, 2007. Also, regulations are needed under section 4980G on interaction of section 4980G and section 125 with respect to comparable employer contributions to employees' health savings accounts.

10. Issue guidance on substantial risk of forfeiture issues under section 457(f).

**Exempt Organizations Technical Resource Panel** (Jeanne Schuster, Chair, (617) 585-0373, jeanne.schuster@ey.com; or Amy Wang, AICPA Technical Manager, (202) 434-9264, awang@aicpa.org.) NOTE: Comments are listed in priority order.

1. Change the extension process for Form 990, Return of Organization Exempt from Income Tax, from two separate three-month extensions to one single six-month extension. A single six-month extension for the Forms 990, 990-EZ, and 990-PF would be beneficial for several reasons.

   - Internal Revenue Code (IRC or "Code") section 6033 describes the annual return and information required of exempt organizations. Exempt organizations who want a six-month extension to file Forms 990, 990-EZ, or 990-PF must file two separate three-month extensions. However, taxpayers who file other types of annual returns, such as the Forms 990-T, 1040, and 1120, only need to submit a single six-month extension. Some people may argue that the Forms 990, 990-EZ, and 990-PF are information returns or reporting forms, not tax forms such as the Form 990-T, 1040, and 1120. Nevertheless, all of these forms have in common an annual filing requirement that involves the gathering of extensive data, both financial and informational. It is logical for all of these forms to have a single six-month extension.

   - A single six-month extension would also simplify the filing requirements for exempt organizations. These organizations are very likely to request both three-month extensions in order to completely and accurately file their annual returns. Especially with the emphasis on transparency in the new and improved Form 990, many organizations are taking extra time and care to properly disclose all relevant activities. A single six-month extension would reduce the administrative burden on exempt organizations as well as the IRS.

   If the Form 990 extension is not changed to require only one six-month extension, the IRS should allow e-filing for the second extension without requiring the paid preparer to receive a signed Form 8879 from the taxpayer in order to file. The second extension currently only requires the signature of the paid preparer. Therefore, guidance is needed to make the e-filed second extension valid if it is filed by the paid preparer with a valid statement of reasonable cause.

2. Issue guidance regarding the new excise taxes on donor advised funds and fund management under section 4966 as added by section 1231 of the PPA.

3. Issue final regulations under sections 501(r) and 6033 on additional requirements for tax-exempt hospitals as added by section 9007 of The Patient Protection and Affordable Care Act (PPACA).

4. Affirm that the conclusion and analysis set forth in G.C.M. 39813 represents the current IRS position with respect to the tax treatment of public charities whose

exemptions have been retroactively revoked. If such is not the case, provide guidance as to the current position of the IRS. Pursuant to the PPA, most tax-exempt organizations were required to file an annual information return (Form 990 or 990-EZ) or a notice (Form 990-N) with the IRS. In addition, the law automatically revokes the tax-exempt status of any organization that does not file required returns or notices for three consecutive years. Although guidance has been issued with respect to reinstatement and retroactive reinstatement, no guidance has been provided with respect to the tax treatment of such retroactively revoked public charities.

5. Clarify who constitutes a "patient" for purposes of the definition of "patient care." For example, would the following services be considered "patient care" (especially when the individual receiving the services is not an inpatient of a hospital at the time the services are rendered): services provided via a telemedicine network or reading of images, laboratory services and pathology services where the technician or physician interpreting the tests does not actually see or "touch" the patient. Such guidance under section 501(r) would reduce uncertainty and support the move toward accountable care organization (ACO) and cost effective health care methods. In addition, absent guidance, costly information technology changes are being made by hospitals which will likely have to be made again when guidance is finally issued.

6. Update Revenue Procedure 89-23 to clarify guidelines for grant-making private foundations when making grants to public charities that would be significant enough to alter the non-private foundation status of the public charity (i.e., from public charity to private foundation – so called "tipping"). Clarifying guidance is needed to: (1) address the impact of the changes to the support test as provided by section 170(b)(1)(a)(vi) and Form 990, Schedule A, including the years to include in the support test and use of books and records when completing the support test; (2) clarify that grants from a private foundation to a Type III Non-functionally Integrated Supporting Organization under 509(a)(3) are not considered qualifying distributions for purposes of section 4942; and (3) update the language to provide that advanced rulings have expired.

7. Provide guidance similar to the guidance set forth by the IRS in Revenue Procedure 2011-33. The guidance should provide that any grantor (most particularly, a private foundation) should be able to affirmatively rely upon the "Type" of supporting organization that is reported by the filing supporting organization on a duly executed and filed Form 990, Schedule A, Part I, Line 11a through Line 11d.

8. Withdraw Temp. Reg. § 1.170A-9T and issue final regulations defining section 170(b)(1)(A) organizations with one change to the "Definition of support; meaning of general public" under Temp. Reg. § 1.170A-9T(f)(6)(i). Similar to governmental units and organizations described in section 170(b)(1)(A)(vi),

provide an exception from the two percent limitation for organizations described in section 170(b)(1)(A)(i)-(iv). There is no reason to limit the support that churches, schools, hospitals, supporting organizations and similar entities provide to other charitable organizations.

9. Issue a revenue procedure allowing all members under a group ruling (including the central organization and the subordinate organizations) to file a single consolidated return rather than the current process which requires a separate return for the central organizations and a consolidated return for all consenting subordinates. The AICPA strongly believes a single consolidated return more accurately reflects the operations of the group.

10. Issue guidance limiting the reporting on Form 990, Schedule R, Parts III and IV of brother-sister related party affiliates of central or subordinate members of a group exemption similar to the exclusion from reporting of tax-exempt members of the group. For example, there may be hundreds of organizations taxable as partnerships or corporations that are affiliated with a particular church whose exempt members are covered by a group ruling and not reportable in Schedule R, Part II. But many of those taxable entities may meet the technical definition of related parties merely because of the centralized structure at some high level in the church and as such are currently reportable on multiple Forms 990 for the various members covered by the group ruling. However, there may be no board overlap or intercompany transactions with those entities beyond their direct owners and their brother-sister affiliates controlled by their direct owners. Issue guidance limiting the reporting to only those related parties directly controlled by the filing organization or with whom the filing organization has engaged in transactions exceeding a fixed dollar amount.

11. Provide additional guidance that allows organizations that have exempt status revoked for failure to make required annual filings for three years under section 6033(j) the option to request prospective reinstatement and simultaneously, but separately, request retroactive reinstatement to be determined at a later date. This recommendation allows organizations that qualify to resume operations and solicit the contributions it needs to survive as an organization. It also allows the IRS additional time to properly consider whether reasonable cause exists for the retroactive reinstatement.

12. Update Revenue Procedure 75-50, which speaks to the publication of a school's racially nondiscrimination policy. This language has not been updated since its publication and Form 990, Schedule E relies upon it. The revenue procedure generally requires publication of the policy in a newspaper. The language needs to be revised and updated to reflect the role of the internet and the current communication mediums of schools today.

13. Issue guidance, similar to Notice 2007-45, to expand on information regarding public inspection of Forms 990. The IRS released guidance on the public inspection of Form 990-T, Exempt Organization Business Income Tax Return. This guidance explains that section 501(c)(3) organizations that filed Form 990-T after August 17, 2006 are subject to the same public inspection and disclosure requirements that apply to Forms 990 and 990-PF. The notice further clarifies that a section 501(c)(3) organization that is not required to publicly disclose its Form 990 must still publicly disclose its Form 990-T. This guidance regarding public disclosure is needed for all other Forms 990.

**Individual and Self-Employed Tax Technical Resource Panel** (Jonathan Horn, Chair, (212) 744-1447, jmhcpa@verizon.net or Amy Wang, AICPA Technical Manager, (202) 434-9264, awang@aicpa.org.) NOTE: Comments are listed in priority order.

1. Issue guidance regarding issues of basis reporting on Form 1099-B, Proceeds from Broker and Barter Exchange Transactions. Since basis reporting on Form 1099-B began with 2011 tax returns, various issues have arose that warrant guidance. We encourage the IRS to request comments from the public to uncover additional issues to ensure that extended guidance addresses all issues. Examples of issues with the basis reporting include the following:

   - How do taxpayers and practitioners properly report the sale of a publicly-traded partnership? Broker-reported basis is not reflective of any return of capital or other changes to taxpayer's original basis. In addition, for royalty trusts, a broker has no information on what amount of depletion has been deducted by the taxpayer. Gain or loss must be split between capital and ordinary gains or losses.

   - How do taxpayers and practitioners properly report corrections to amounts indicated as "wash sale loss disallowed" where the broker used an inappropriate method of calculating figures reported to the IRS and taxpayer?

   - How should taxpayers and practitioners respond to matching notices when the correct basis, gross proceeds, gain/loss, holding period and tax have been reported by the taxpayer on the return but either the wrong box was checked (A or B) on Form 8949, Sales or Other Dispositions of Capital Assets, or the improper adjustment code was entered on Form 8949 by the taxpayer?

2. Issue guidance on how section 6041, "Information at source," applies to owners of rental real estate:

   - P.L. 111-240 (9/27/10), the Small Business Lending Fund Act of 2010, modified section 6041 to add subsection (h) requiring certain landlords to file Form 1099-MISC for payments made for services in excess of $600. The legislative history provided: “Under the provision, recipients of rental income from real estate generally are subject to the same information reporting requirements as taxpayers engaged in a trade or business. In particular, rental income recipients making payments of $600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income are required to provide an information return (typically Form 1099-MISC) to the IRS and to the service provider.” This new provision was effective starting after 2010.

- P.L. 112-9 (4/14/11), the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, repealed section 6041(h) retroactive to January 1, 2011. Thus, the 1099 reporting obligation for landlords never went into effect.

- Despite repeal of section 6041(h), since 2011 the Form 1040 Schedule E and the instructions have included the following two questions (A and B):

**SCHEDULE E**
**(Form 1040)**
Department of the Treasury
Internal Revenue Service (99)

**Supplemental Income and Loss**
**(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)**
**▶ Attach to Form 1040, 1040NR, or Form 1041.**
**▶ Information about Schedule E and its separate instructions is at *www.irs.gov/schedulee.***

OMB No. 1545-0074
**2013**
Attachment Sequence No. **13**

Name(s) shown on return | **Your social security number**

**Part I** **Income or Loss From Rental Real Estate and Royalties** **Note.** If you are in the business of renting personal property, use **Schedule C** or **C-EZ** (see instructions). If you are an individual, report farm rental income or loss from **Form 4835** on page 2, line 40.

**A** Did you make any payments in 2013 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☐ No
**B** If “Yes,” did you or will you file required Forms 1099? ☐ Yes ☐ No

These questions contradict the legislative history of P.L. 111-240 (above) and repeal of section 6041(h). With these questions added to Schedule E rather than Schedule C, they imply that it may require landlords who are not in a trade or business to file Form 1099-MISC. The questions raise issues as to the distinction between a real estate rental that qualifies as a trade or business for section 6041 purposes and one that does not.

In addition, the form instructions were also revised. Under the instructions for Schedule E, line A, the following language now appears (bold type added):

> TIP: **Generally, <u>you must</u> file Form 1099-MISC if you paid at least** $600 in rents, services, prizes, medical and healthcare payments, and other income payments. The Guide to Information Returns on page 15 of the General Instructions for Certain Information Returns has more information, including the due dates for the various information returns.

However, under “General Instructions,” the following language still appears (bold type added):

> "Information returns. **<u>You may</u> have to file information returns** for wages paid to employees, certain payments of fees and other nonemployee compensation, interest, rents, royalties, real estate transactions, annuities, and pensions. You generally use Form 1099-MISC, Miscellaneous Income, to report rents and payments of fees and other nonemployee compensation. For details, see the instructions for line A and the 2011 General Instructions for Certain Information Returns (Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G)."

The phrasing of "you may" which appears in the General Instructions has been used in the instructions for Schedule E for many years, and we believe is accurate. The new phrasing "generally, you must" used in the line A TIP is simply misleading.

Clarification is needed under section 6041 as to when an owner of rental real estate is required to file Form 1099-MISC. Also, given the use of the term trade or business and special rules for rental real estate included under section 1402 (self-employment tax), section 469 (passive activity loss limitation) and section 1411 (special tax on net investment income), further guidance should explain how all of these rules apply to owners of rental real estate. In addition, individuals should receive relief if they are rental real estate owners who are required to file Form 1099-C, Cancellation of Debt, but failed to file for 2011, 2012 or 2013 due to the confusion in the law and instructions for Schedule E and Form 1099-MISC.

3. Issue additional formal guidance and clarifications regarding the effect of the U.S. Supreme Court's *Windsor* decision beyond that already provided in Revenue Ruling 2013-17 and Notice 2013-61. Among the issues that require additional guidance include:

- The IRS should provide guidance on the status of certain civil unions and registered domestic partnerships (RDPs).
    - State law can vary as to whether it views a civil union or RDP as the equivalent of marriage. To avoid inconsistencies and difficult legal interpretations for taxpayers, it would help if the IRS would provide a list of states in which a civil union or RDP is considered a marriage for federal tax purposes. This list will need updating as state laws change.
- Examples of situations needing interpretation:
    - Vermont permits both civil unions and same-sex marriages.
    - Connecticut automatically considers past civil unions as same-sex marriages.

- Guidance is needed on the marital status of same-sex couples who entered into civil unions under Illinois law along with clarification of the status of opposite-sex couples in an Illinois civil union who may have already filed using a married status. The Office of Chief Counsel previously stated that opposite-sex couples who enter into a civil union under Illinois law may file jointly for federal tax purposes.
- Clarification of how the Chief Counsel ruling affects civil unions (between both same-sex and opposite-sex couples) in states whose law is virtually identical to Illinois (such as Nevada).

- The IRS should consider adding information to the frequently asked questions (FAQs) to indicate that a spouse who amends without his/her spouse also amending is required to use the MFS status. The FAQs should explain if there are any problems with one spouse using MFS and the other using single or head-of-household (because they did not amend).

  Revenue Ruling 2013-17 provides (at the section on prospective application): "Except as provided below, affected taxpayers also may rely on this revenue ruling for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or refund for any overpayment of tax resulting from these holdings, provided the applicable limitations period for filing such claim under section 6511 has not expired. If an affected taxpayer files an original return, amended return, adjusted return, claim for credit, or refund in reliance on this revenue ruling, all items required for reporting on the return or claims that are affected by the marital status of the taxpayer must adjust for consistency with the marital status reported on the return or claim."

  However, this statement or concept does not appear explicitly in the FAQs. For example, FAQ #10 for same-sex married couples states that a taxpayer may file an amended return to claim a refund of taxes paid on benefits that covered the employee's same-sex spouse. There is no statement included that the amended return must also change to married filing joint (MFJ) or married filing separate (MFS) or if the spouse must also amend (the question does state though that the employee is amending Form 1040 to reflect his/her status as a married individual). Also, the reference to "refund" in the answer implies that "refund" is the effect of amending though it is possible that when other items on the return are changed due to the required filing status change (and the spouse's return is also amended), the taxpayer might actually owe additional taxes.

- The IRS should clarify whether a same-sex married employee who requests that his/her employer file to obtain a Federal Insurance Contributions Act (FICA) tax refund must also amend his/her Form 1040 to change the filing status.

- The IRS should provide guidance on the tax treatment of payments that qualify as alimony to/from a former same-sex marriage partner. If one ex-spouse amends a previously filed return to report payments made as a deduction, must the other ex-spouse amend to report payments received as income?

- The IRS should provide guidance on the tax-free transfer of property between spouses, including the following issues:

  - Requirement for basis adjustments per section 1041 for same-sex married couples.

  - Requirement for same-sex married couples to amend returns to recognize that no gain or loss is reported on the transfer of property between same-sex spouses or between former spouses incident to a divorce.

  - How can a taxpayer that should have received the benefit of section 1041 make the basis adjustment? Are amended returns required?

- The IRS should clarify the application of the related party rules. Same-sex married couples who are considered married for federal income, gift and estate tax purposes are subject to related party rules. This issue could impact the tax consequences of transactions between same-sex spouses. For example, clarification is needed on certain transactions such as selling property between spouses and not recognizing a loss under the related party rules.

4. Issue formal guidance on filing, reporting and income/expense allocation procedures for registered domestic partners and similarly situated couples (ex., civil unions) located in community property states. While the IRS has issued some unofficial guidance in the form of FAQs on www.irs.gov, several CCAs and Form 8958, Allocation of Tax Amounts Between Certain Individuals in Community Property States, it is critical that these taxpayers are given official authoritative instructions relating to their unique tax situation.

5. Update and finalize the longstanding temporary regulations under section 163(h) (Treas. Regs. § 1.163-9T and 1.163-10T) to provide greater clarity and certainty to taxpayers and practitioners.

   The Tax Reform Act of 1986 made changes to section 163 regarding personal and home mortgage interest. Further changes were made to the home mortgage interest rules by the Revenue Act of 1987. Temporary regulations were issued on these provisions soon after the legislative changes. Several of the regulations were issued prior to the effective date of the change made to section 7805 by the Technical and Miscellaneous Revenue Act of 1988 providing that temporary regulations expire within three years of issuance (effective for regulations issued after November 20, 1988). Thus, temporary regulations issued after enactment of the Tax Reform Act of 1986 and before November 21, 1988, which have not been finalized, remain in their temporary form.

In addition, not all of the regulations are complete or current, such as Treas. Reg. § 1.163-10T on home mortgage interest. Among unsettled issues are the following:

- Section 163(h)(4)(A) does not provide certainty on how to define a qualified residence or a second residence in the context of divorce.

- Must the taxpayer have responsibility for the mortgage and own the underlying property before the interest is deductible? (Or, may the taxpayer satisfy only one of these two requirements?) For example, husband may transfer ownership of the residence to the wife but remain responsible for the mortgage. Is the interest deductible?

- What is the proper method to determine deductible qualified residence interest when there are multiple debts that exceed the debt limit? While CCA 201201017 and IRS Publication 936 provide information on this question, official guidance is needed, such as in regulations.

- Further, guidance is needed regarding whether the $1,000,000 "aggregate" acquisition indebtedness referred to in section 163(h)(3)(B) refers to and applies per taxpayer or per residence. This issue is particularly important with regard to unmarried taxpayers who jointly own a residence in light of the interpretation presented in CCA 200911007, issued on March 13, 2009 and by the Tax Court in Sophy, 138 TC No. 8 (2012). While these rulings conclude that the mortgage dollar limitations apply per residence rather than per taxpayer/owner, guidance is needed in order to properly apply this conclusion to fact patterns beyond those in the two rulings. For example, assume a brother and sister own a vacation home jointly. In addition, each owns a principal residence with their spouse. If each of the three homes has a mortgage of $1.1 million, how is the section 163(h) limitation applied to each couple on their joint returns? What if either files as married filing separately? What if a same-sex couple in a community property state owns a principal residence and a vacation home as community property with mortgages on each totaling over $1.1 million? There are many other variations of fact patterns that raise issues of how to apply the mortgage limitations that are addressed by formal guidance, ideally, by regulations that update and eventually finalize Treas. Reg. § 1.163-10.

6. Issue guidance on the statutory terms that were introduced by Title XII of the PPA pertaining to appraisals and individuals performing these appraisals. Proposed regulations (REG-140029-07--Charitable Contributions: Cash and Noncash: Substantiation) were published in August 2008 but have not been issued to date. The AICPA submitted comments on November 5, 2008, requesting further clarification of the terms "generally accepted appraisal standards" and "qualified appraiser."

7. Update and finalize the longstanding temporary regulations under section 163 on interest tracing and identification of the type of interest generated from a debt, in order to provide greater clarity and certainty to taxpayers and practitioners. Also, incorporate the changes provided in Notices 89-35, 88-37 and 88-20, as well as any clarifications provided in court cases.

   The interest tracing regulations of § 1.163-8T were issued in 1987 (TD 8145, 7/1/87), soon after enactment of the Tax Reform Act of 1986 which increased the importance of identifying the type of interest generated on any debt. These temporary regulations were issued before the effective date of section 7805(e) which provides that temporary regulations expire after three years.

   In 1989, these regulations were modified by Notice 89-35, 1989-1 CB 675, which made significant changes to how the regulations apply to identify the use of borrowed funds and their operation with respect to debt of passthrough entities. Notice 89-35 supplemented earlier guidance: Notice 88-20, 1988-1 CB 487 and Notice 88-37, 1988-1 CB 522. When a practitioner has a question on interest expense classification under section 163 and turns to the regulations, the practitioner will not readily find the notices and therefore, can easily apply the law incorrectly.

8. Issue guidance to clarify the requirements for deductibility of real property taxes under section 164.

   Issues have existed as to what types of real property taxes are deductible under section 164. This provision requires that personal property taxes are ad valorum; there is no such stated requirement for real property taxes. Treasury Reg. § 1.164-4(a) provides that in order for deduction, real property taxes are "levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction." There is no definition of "like rate" in the Code or regulations.

   Revenue Ruling 80-121 provides that one characteristic of a deductible real property tax is that it is "measured by the value of real property." PLR 8033022 held that a parcel tax was not deductible under section 164. The ruling explains that "rate" in "like rate" refers to a proportion or ratio. In the ruling, the IRS stated that the parcel tax is "not levied at a like rate within the meaning of the regulations under section 164 of the Code; the tax is a specific tax, not a tax levied according to value, one of the characteristics that a real property tax must have in order to be deductible under section 164(a)(1)."

The 2013 instructions to Schedule A, Publication 530, Tax Information for Homeowners and Tax Topic 503 (updated December 12, 2013) all contain statements that in order for deduction, property in the jurisdiction at a like rate must have real estate taxes charged uniformly against them.

In April 2012, the IRS released Information Letter 2012-18 (http://www.irs.gov/pub/irs-wd/12-0018.pdf) which states: "there is no statutory or regulatory requirement that a real property tax be an ad valorem tax to be deductible for federal income tax purposes." The letter also notes that the IRS "will recommend appropriate revisions to our forms and publications on this subject."

Issues remain as to when real estate taxes are considered taxes under section 164 rather than assessments for local benefits. In addition, given the language of Revenue Ruling 80-121 and PLR 8033022, official guidance is needed on the application of section 164 to payments labeled as real property taxes at the local level. Such guidance could include a new revenue ruling or regulations under section 164; merely updating the IRS form instructions and publications is insufficient as they are not binding authority for purposes of penalties under sections 6662 and 6694.

9. Issue guidance relating to the coordination of a tuition payment and the receipt of a distribution from a 529 Plan. Specifically, guidance is needed on the permitted period of time prior to and after the payment of a qualified expense to make a qualified distribution. For example, if a taxpayer makes a tuition payment in September 2013, but receives the 529 distribution in January 2014, assuming no other tuition payments are made, is the 2014 distribution taxable? Section 529(c)(3) does not address the question. The same question arises if the distribution precedes the payment of qualified education expenses. Guidance is needed on what constitutes a taxable event with regard to the timing of distributions and subsequent payments.

   In January 2008, the IRS issued an advance notice of proposed rulemaking (Announcement 2008-17; 2008-9 IRB 512, March 3, 2008) (ANPRM) to curb the possible abuse of section 529 qualified tuition program accounts by creating a general anti-abuse rule and other obstacles to prevent individuals and entities from using the accounts to avoid transfer and other types of taxes. Although a number of organizations commented, there has been no action to date.

10. Issue guidance on the treatment of Medicare Part B and section 162(l) for self-employed individuals. A change in the treatment of this item was first noted in

the 2010 Form 1040 instructions. In addition, Publication 535, Business Expenses, states on page 18: “Medicare premiums you voluntarily pay to obtain insurance that is similar to qualifying private insurance can also be used to figure the deduction. If you previously filed a return without using Medicare premiums to figure the deduction, you can file an amended return to refigure the deduction.” Issuance of this new interpretation is needed in an official pronouncement, such as a revenue ruling, rather than in form instructions and publications which are not considered binding guidance or “authority” for section 6662 or 6694 purposes. In addition, “voluntarily pay” and the application to owners of pass through entities requires explanation in official guidance. Finally, clarification is needed regarding the treatment of Medicare premiums paid by a self-employed taxpayer’s spouse. CCA 201228037 states that under section 162(l), Medicare premiums paid for a self-employed taxpayer’s spouse are deductible. However, it also states that “sole proprietors must pay the Medicare premiums directly.” Since Medicare premiums are usually withheld from the covered individual’s Social Security payment, the Service should explicitly state that they would consider such payments as having come directly from the sole proprietor for purposes of section 162(l).

11. Issue guidance on how section 6041, “Information at source,” applies to taxpayers making payments to non-corporate entities which cover both personal and business expenses. Also needed is an explanation of whether these individual taxpayers are subject to the Form 1099-MISC reporting requirements for applicable payments made to non-corporate entities. For example, there are certain taxpayers who may allocate tax preparation fees paid to their tax preparer between different schedules such as Schedules A, C and E. The allocation is made as a portion of the tax preparation expense is allocable to their trade or business (Schedules C and E) and the non-trade or business sections of their tax return.

The instructions for Form 1099-MISC indicate that payments need reporting when made in the course of your trade or business. In addition, Form 1040, Schedule C, Profit or Loss from Business (Sole Proprietorship) and Form 1040, Schedule E, Supplemental Income and Loss, have questions that ask the taxpayer if they have complied with the Form 1099 reporting requirements.

Clarification is needed on whether the taxpayers are required to file Form 1099-MISC in those circumstances when they file Schedule C for a sole proprietorship or Schedule E to report trade or business income that is passed through to them on a Schedule K-1. We think that this lack of clarity increases complexity and compliance burden for taxpayers who operate a small business outside of a formal entity structure such as an S corporation, partnership or a limited liability company or for taxpayers who have trade or business activities allocated to them on a Schedule K-1.

12. Issue guidance on whether the Service considers tablets (such as iPads) as listed property under code section 280F or if they are treated similarly to cellphones under the provisions of Notice 2011-72.

**International Taxation Technical Resource Panel** (Christine Ballard, Chair, (408) 558-4338, christine.ballard@mossadams.com; or Kristin Esposito, AICPA Technical Manager, (202) 434-9241, kesposito@aicpa.org.) NOTE: Comments are listed in priority order.

1. Provide guidance regarding foreign tax credits, in particular:

   - Provide guidance under Treas. Reg. § 1.861-18 regarding the taxation of software as a service (SaaS), platform as a service (PaaS) and other cloud computing platforms particularly in situations where the provider does not own the servers on which the solution is hosted. Guidance is needed in determining both the character and source of income and should consider Organisation for Economic Co-operation and Development (OECD) guidance on the digital economy.

   - Provide guidance under section 901(m), including providing exemptions for certain covered asset acquisitions where basis difference is de minimis and where a taxpayer receives a basis step-up for local tax purposes that is comparable to the U.S. tax step-up in basis.

   - Provide guidance on the application of section 904(d)(6), including the interaction of such provision in the context of treaties that already contain their own separate limitation regime for the treaty credit.

   - Provide guidance under section 905(c) regarding taxes paid after a liquidation, stock sale, or section 338 election.

   - Finalize guidance under Temp. Reg. § 1.905-3T, -4T and -5T.

   - Issue guidance relating to the application of the overall foreign loss rules to certain dispositions involving partnerships.

   - Issue more complete guidance regarding the application of Treas. Reg. §§ 1.865-1(a)(2) and 1.865-2(a)(3) under which losses are allocated to reduce foreign source income if gain on the sale of the property (including stock) would have been taxable by a foreign country and the highest marginal rate of tax imposed on such gains in the foreign country is at least 10 percent.

2. Provide guidance in the following areas related to inbound transactions:

- Revise, as appropriate, and finalize the proposed section 163(j) "earnings stripping" regulations, taking into account taxpayer comments and developments since the original issuance of the proposed regulations.

- Provide guidance on the application of Temp. Treas. Reg. § 1.897-6T and section 1445 to non-recognition transactions involving transfers of United States real property interests (USRPI) to partnerships, and dispositions of interests in partnerships that directly and indirectly hold USRPIs.

- Provide guidance to explain the application of section 304(b)(6).

- Provide guidance on the amendment made to section 304(b)(5) by The Education Jobs and Medicaid Assistance Act (P.L. 111-226, August 20, 2010), including guidance on what is considered "subject to tax" for purposes of section 304(b)(5)(B).

3. Provide guidance in the following areas related to outbound transactions:

- Finalize the proposed section 987 regulations relating to foreign currency translation gains and losses with respect to branch transactions (taking into account public comments with respect to the proposed regulations). [Note: See AICPA comments to IRS submitted on March 29, 2007.]

- Finalize existing regulations under section 6038D. [Note: See AICPA comments to IRS submitted on October 25, 2012.]

- Coordinate valuation guidelines for purposes of evaluating the de minimis and indirect passive foreign investment company (PFIC) thresholds under Temp. Reg. § 1.1298-1T(c)(2) and Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund, reporting requirements with Temp. Reg. § 1.6038D-5T and Form 8938, Statement of Foreign Financial Assets.

- Provide guidance under section 6038D(b)(2)(B) defining instruments and contracts to be treated as specified foreign financial assets.

- Issue updated regulations under section 367(d) reflecting changes to the statute since its original issuance.

- Issue guidance relating to the carryover of tax attributes in section 355 transactions.

- Issue additional guidance under the relevancy rules Treas. Reg. § 301.7701-3(d), including the impact of certain acquisitions of entities that are not relevant and the consequences of certain elections relating to such entities.

- Issue guidance that internal restructurings within a U.S. multinational group following a section 338(g) election of a foreign target corporation made by one of the members of the U.S. multinational group is not a transaction described in Notice 2004-20.

4. Provide guidance related to the following areas related to Subpart F/Deferral:

   - Finalize proposed regulations under section 959, regarding exclusions from income of previously taxed earnings, and proposed regulations under section 961, regarding basis adjustments.

   - Provide more complete and definitive guidance under the PFIC regulations. In particular, (1) update the PFIC regulations to take into account the enactment of section 1297(e), which eliminates the overlap of the PFIC and Subpart F regimes under certain circumstances (including the application of section 1297(e) to a PFIC owned by a U.S. partnership that has U.S. partners) (see e.g., PLR 200943004), (2) provide guidance under section 1297(c) regarding the 25 percent ownership look-through rule and its interaction with the section 1297(b)(2)(C) related party income rules, and (3) provide guidance on the application of the definition of passive income under section 1297(b)(1).

   - Provide guidance on section 960(c), including guidance on the application of the provision when there is either a deficit or previously taxed earnings and profits in an upper-tier foreign corporation in the chain of ownership. Additionally, guidance also is requested on the application of this provision when a taxpayer has section 956 investments that pre-date and post-date the effective date of section 960(c).

   - Issue regulations pursuant to Notice 2007-13 regarding the substantial assistance rules for foreign base company services income.

   - Provide guidance under section 267(a)(3)(B), including guidance regarding the timing of deduction for interest, rental and royalty payments to controlled foreign corporations (CFC) that qualify for exclusion under section 954(c)(6) or the same country exception and guidance regarding exceptions for appropriate transactions pursuant to section 267(a)(3)(B)(ii). Also, provide guidance relating to when an item payable to a CFC, and subject to section 267(a)(3)(B), that is included in the gross income of a United States person by reason of section 956 or the payment of an actual dividend (i.e., other than by reason of section 951(a)(1)(A)), will be considered an amount attributable to such item that is includible in the gross income of such United States person.

- Provide additional guidance under section 954(c) relating to the active rent or royalty exception.

- Provide guidance on how to determine whether a transaction should be treated as a foreign base company sales transaction versus a foreign base company services transaction.

- Provide guidance under section 961(c) regarding basis adjustments to the stock of a CFC held through partnerships.

- Finalize the proposed section 898 regulations on conforming year-ends of certain foreign corporations to the year-ends of their U.S. shareholders.

- Provide guidance with respect to the Treas. Reg. § 1.954-2(b)(4) substantial assets test relevant to qualification under the same country exception for interest and dividends, as applied to (i) stock in non-CFC foreign corporations; and (ii) banks and insurance companies.

- With respect to section 952(c)(2) subpart F income recapture, provide guidance regarding the application of "rules similar to rules applicable under section 904(f)(5)," and in particular the latter section's incorporation of the disposition rules of section 904(f)(3).

- Provide a regulatory exception under section 6038 for down-stream attribution causing partnerships, S-corporations, and trusts to be required to file Form 5471 or Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, for constructive ownership of a foreign corporation (or partnership) created solely for attribution from its partners, shareholders or beneficiaries.

- Clarify the administrative process for filing Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations, when an income tax return is not required. The instructions to Form 5471 clearly state that the only mechanism for submitting the form is attaching it to an income tax return. Form 1040 does not modify its filing requirements for situations where an individual may have sufficiently low income as to not be required to file an income tax return but has a need to file Form 5471. To note, Form 8865, Return of U.S. Persons with Respect to Certain Foreign Partnerships, may be separately filed with IRS in this circumstance and Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Elected Fund, filings are waived.

5. Provide guidance is needed in the following areas related to withholding tax regimes under Chapter 3 and Chapter 4:

- Following the retroactive withdrawal of Treas. Reg. § 1.1441-1(b)(7)(iii) by T.D. 9323, provide guidance on liability of a withholding agent for interest with respect to withholding under section 1445 or section 1446, if the withholding agent does not withhold with respect to a foreign person that has no U.S. tax liability, or that has satisfied its U.S. tax liability.

6. Provide guidance in the following additional areas:

   - Provide guidance relating to the operation of certain treaty provisions, including the application of reduced or zero-rate tax provisions in treaties with respect to dividends received through hybrid disregarded entities (The Service has issued private letter rulings (e.g., PLRs 200626009 and 200522006) relating to this issue. See the application of certain anti-hybrid provisions (e.g., the treatment of such provisions in connection with the application of the branch profits tax).

   - Clarify and relax the double reporting rules under the section 1461 regulations and the treaty-based reporting requirements under section 6114.

   - Develop and provide guidance on a procedure under which U.S. partnerships may file a composite individual income tax return on behalf of partners who are nonresident aliens (NRA) that have been allocated effectively connected income. Currently, each NRA partner is subject to withholding in excess of the tax that will ultimately result, and must independently file Form 1040NR, U.S. Nonresident Alien Income Tax Return. A composite NRA partner filing, such as has been long and widely used by states that impose state-level income taxes, would enhance both proper taxpayer compliance and the IRS's ability to review and audit compliance, by giving it a single point of contact for questions and other NRA taxpayer contacts. This will reduce the burden and cost of compliance by NRA partners, and the administrative burden and costs on the IRS.

**Foreign Related Trust and Estate Tax Issues**

7. Provide guidance on the application of section 1411 to accumulation distributions from foreign trusts to United States beneficiaries, including the method to determine the portion of the distribution, if any, attributable to income accumulated in years prior to the effective date of section 1411.

8. Provide guidance on issues relating to foreign trusts and the Hiring Incentives to Restore Employer (HIRE) Act of 2010, including guidance including the section 679(d) presumption that a foreign trust has United States beneficiaries. [Note: See AICPA comments to Treasury and IRS on this issue submitted on March 28, 2011.]

9. Provide further guidance on issues relating to reporting of foreign accounts by U.S. beneficiaries of foreign trusts on the Foreign Bank Account Report (FBAR), and U.S. beneficiary reporting of foreign accounts and foreign financial assets owned by foreign trusts, as required by section 6038D. The AICPA is concerned that a U.S. beneficiary of a foreign trust may not have access to books and records of the foreign trust necessary to make an accurate determination of filing requirements and reportable amounts. [Note: See AICPA comments on this issue submitted to the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, and IRS on November 19, 2010 and November 16, 2009, and AICPA comments to Department of the Treasury and IRS submitted on March 28, 2011.]

10. Change the due date of Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner, from March 15 to April 15, to coincide with the due date for calendar year filers of related returns. If a change in the due date is not possible, then an extension or penalty relief is requested for taxpayers who file by April 15. In addition, IRS should consider adding a box to Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, to permit an extension of time to file Form 3520 in cases where the beneficiary's income tax return (Form 1040 and Form 1040NR) is not going to be extended. [Note: See AICPA comments to IRS on this submitted on June 12, 2008, March 3, 2008, January 31, 2007, and June 17, 2003. This change in the Form 3520A due date is included in proposed legislation, S. 420, introduced February 28, 2013 by Senators Enzi and Tester, and H.R. 901, introduced February 28, 2013 by Rep. Jenkins, as well as in Rep. Camp's March 12, 2013 House Ways and Means Committee small business tax reform discussion draft and the Senate Finance Committee March 21, 2013 tax reform options paper on simplifying the tax system for families and businesses.]

11. Change the form for tax reporting for foreign non-grantor trusts. The current tax reporting on Form 1040NR for foreign non-grantor trusts (and foreign grantor trusts with a U.S. owner) is extremely difficult because the IRS form is not designed for fiduciary tax return reporting. IRS instructions direct the preparer to "change the form" for Subchapter J provisions, but such attempts result in inconsistent or inadequate changes and lead to return processing errors and confusion. The creation of a new Form 1041NR, which could include information currently reported on Forms 3520 and 3520-A, would eliminate confusion and mistakes in processing returns and would enhance tax compliance filing requirements. [Note: See AICPA comments to IRS on this submitted on September 22, 2008, March 3, 2008, and January 31, 2007.]

12. Provide guidance whether a foreign grantor trust with a U.S. grantor is required to file Form 1041, U.S. Income Tax Return for Estates and Trusts, or Form 1040NR and whether a foreign grantor trust with a foreign grantor and some U.S. income is required to file Form 1041 or Form 1040NR.

13. Provide guidance on the reporting of and recognition of gain under the expatriation mark-to-market rules in section 877A, including guidance on the interplay of sections 877A and 684, relating to a transfer to a foreign estate or trust.

14. Provide guidance on how the generation-skipping transfer (GST) tax applies to grandfathered domestic trusts that become foreign trusts. This issue may be analogous to a GST-grandfathered trust that migrates from one state to another; thus, similar rules and safe harbors should be considered.

15. Provide guidance regarding several aspects of section 2801:

    - Provide guidance regarding reporting the receipt of a "covered gift or bequest" and the payment of tax thereon required under section 2801(a). While the IRS has stated in Notice 2009-85, 2009-45 IRB 598, that satisfaction of the reporting and tax obligations for covered gifts or bequests will be deferred pending the issuance of guidance, the longer the delay, the longer the undue burden on those who are required to comply with section 2801(a). This guidance should also include the determination of the reduction of this liability by a credit for the payment of foreign gift or estate taxes on a covered gift or bequest under section 2801(d).

    - Provide guidance regarding the making of an election by a foreign trust to be treated as a domestic trust under section 2801(e)(4)(B)(iii). In particular, guidance is needed regarding the treatment and reporting of the section 2801 tax for transfers under section 2801(e)(4). Also, neither section 2801(e)(1) nor the legislative history discusses how property can be acquired "indirectly" by gift or by an indirect transfer by a decedent for estate tax purposes. For a covered gift or bequest made to a domestic trust, the section 2801 tax applies in the same manner as if the trust were a U.S. citizen and the tax must be paid by the trust. Under section 2801(e)(4)(B)(iii), an election can be made to treat a foreign trust as a domestic trust for purposes of the transfer tax on covered gifts and bequests. Guidance is needed on whether the foreign trust should withhold the section 2801 tax in the distribution(s) to the beneficiary.

      Further, section 2801 does not provide any provision on how to determine whether a distribution from a foreign trust is "attributable to a covered gift or bequest," where the trust includes other property in addition to the property received in the covered gift or bequest. Guidance is needed on this issue.

16. Provide guidance as to what qualifies as a "reasonable period of time" for a U.S. grantor or beneficiary of a foreign trust to pay the trust the "fair market value" (FMV) for the "personal use" of trust property under section 643(i)(2). This guidance should also include the determination of the proper FMV measurement and whether "de minimis" amounts can be such a small amount as to make

accounting for them unreasonable or administratively impractical. "Safe harbor" guidelines to administer this new law also would be appreciated. For example, a grantor or beneficiary might personally maintain landscaping requirements (at no compensation) for a rental property owned by a foreign trust, but have little or no personal use of the property during the year. [Note: See AICPA comments to IRS, submitted March 28, 2011.]

17. Provide regulations to enhance guidance in Notice 2009-85 regarding the reporting of tax withholding and payment of these taxes by trustees to the IRS. Such guidance is needed as to the appropriate forms and reporting on applicable tax returns. Guidance on possible "expedited" procedures for successful receipt of a private letter ruling for an expatriate to determine the value of his or her interest in the trust would be appreciated. This guidance should also define "adequate security" for a "tax-deferred agreement" for the covered expatriate's return under section 877A(b).

18. Provide regulations under section 6677 regarding the failure to file information with respect to certain foreign trusts. The HIRE Act amended section 6677, but guidance is not adequate in Notice 97-34, the only IRS guidance on making a determination on penalties under section 6677. New recently designed letters, as described in IRS memorandum SBSE-20-0709-016, provide determination letters based upon a review of a taxpayer's compliance with section 6677, but taxpayers need regulations to provide them with guidance before the applicable letter is issued.

**IRS Advocacy & Relations Committee** (Mark VanDeveer, Chair, (751) 460-0901, markv12@juno.com; or Melanie Lauridsen, AICPA Technical Manager, (202) 434-9235, mlauridsen@aicpa.org.) NOTE: Comments are listed in priority order.

1. Issue guidance and expand the capability of the Modernized efile (MeF) program. The Service is phasing in the MeF program to handle the electronic filing of Forms 1040 returns. We recommend that the IRS issue guidance and expand the capability of the MeF program to accept amended returns (beyond those of 2013), claims for refund, and various supporting schedules.

2. Issue additional guidance (in the form of more plain-language publications and webpages) for individual and small business taxpayers regarding correspondence examinations. In general, a correspondence examination involves an individual or small business taxpayer receiving a letter from the IRS requesting the taxpayer to address a few limited issues about the tax return; often focusing on credit or deduction issues. Unfortunately, many taxpayers (when receiving the letter) either: (a) assume they made a mistake on their return and quickly send in a check to cover the IRS's computation of the underpayment of taxes; or (b) disregard the response deadline set out in the Service's letter, which is often 30

days. If the IRS's letter is ignored, the Service's computers automatically send out the notice of deficiency to the taxpayer.

According to Treasury Inspector General for Tax Administration (TIGTA) Report (February 18, 2011, Reference number 2011-30-016), the IRS has made significant improvements in its handling of correspondence cases. Nevertheless, TIGTA found that the IRS continued to make errors based on a statistical sampling of 62 cases, including circumstances where IRS employees did not always take into account taxpayer correspondence before closure of the case.

With the IRS's increasing reliance on correspondence audits as the primary procedure for examining taxpayers' returns, the AICPA recommends that Treasury and IRS issue additional guidance (in the form of more plain-language publications) for individual and small business taxpayers. We also recommend that a webpage be set up at www.irs.gov dedicated to correspondence audits. Implementation of these suggestions should contribute to an increase in tax compliance and respect for the tax administration process by taxpayers. [Note: See AICPA testimony provided to the IRS Oversight Board on February 28, 2012.]

3. Issue regulations under section 6662A regarding the accuracy-related penalty on a reportable transaction understatement. Section 6662A imposes an accuracy-related penalty on any reportable transaction understatement attributable to a listed transaction or a reportable avoidance transaction for taxable years ending after October 22, 2004. We recommend that Treasury issue regulations under section 6662A which addresses (among other matters): (a) the definition of a "reportable transaction understatement"; (b) coordination of the reportable transaction understatement penalty with the substantial understatement penalty, particularly when multiple years and both penalties are involved; (c) coordination of the reportable transaction understatement penalty with the accuracy-related penalty on underpayments; and (d) application of the penalty (if any) to net operating loss ("NOL") carryback and carryover years.

4. Issue guidance under section 6662A to address the application of the penalty to partnerships and partners. Under section 6662A, if a partnership fails to properly disclose a reportable transaction and the transaction creates a reportable transaction understatement, the partners of the partnership can find themselves liable for a section 6662A penalty with no avenue to challenge the penalty because they did not make the required disclosure under Treas. Reg. § 1.6011-4, even though the partners might have never been aware of the transaction creating the understatement. Accordingly, we recommend that guidance be issued under section 6662A to address the application of the penalty to partnerships and partners.

5. Clarify the instructions for Form 8886, Reportable Transaction Disclosure Statement. Treasury Reg. § 1.6011-4(b)(4) addressed the requirement for a statement disclosing participation in transactions with contractual protections. T.D. 9046 amended these regulations to exclude "tax insurance" from the definition of "transactions with contractual protection." We recommend that the IRS clarify in the instructions for Form 8886, Reportable Transaction Disclosure Statement, line 7b that a description for tax result protection (which includes "insurance company and other third party products commonly described as tax result insurance") with respect to the transaction is not required to be included in the description.

6. Issue immediate guidance and coordinate the rules for obtaining an electronic filers identification number (EFIN) with the rules for obtaining a preparer tax identification number (PTIN). Given the mandate for tax return preparers to e-file most Forms 1040 and 1041, many more tax return preparers will be required to obtain an EFIN to participate in the e-file system as an electronic return originator (ERO). However, unlike the PTIN rules, a tax practitioner with any outstanding account balance (even if the tax practitioner disputes the account balance) cannot obtain an EFIN even if that preparer is diligent in engaging with the IRS to work through the issues, has a history of compliance with the tax laws, and the individual(s) from the taxpayer who will be named as responsible parties on the EFIN application have a PTIN. The inability to obtain an EFIN under these circumstances is unfair, particularly since the statute requires that the practitioner participate in the e-file system. Although the IRS has procedures that allow the preparer to prepare and a taxpayer to file a paper return in these circumstances, the limit on a preparer's ability to obtain an EFIN undermines the e-file mandate. We recommend that the IRS consider coordinating the rules for obtaining an EFIN with the rules for obtaining a PTIN. Such coordination would not only allow PTIN-registered preparers the ability to e-file, but will reduce burden and duplication of effort on the part of the preparer and the IRS. With the current preparer e-file mandate in effect, the AICPA recommends the issuance of immediate guidance to address this matter.

**Partnership Taxation Technical Resource Panel** (William O'Shea, Chair, (202) 758-1780, woshea@deloitte.com; or Amy Wang, AICPA Technical Manager, (202) 434-9264, awang@aicpa.org.) NOTE: Comments are listed in overall priority order and are additionally segregated into sections designated as Top Priorities and Lower Priorities.

## TOP PRIORITIES

1. Issue expanded guidance under the principles of Revenue Rulings 99-5 and 99-6. [Note: See AICPA comments to IRS on this submitted on June 5, 2013, and October 1, 2013.]

**Revenue Ruling 99-5**

Issue guidance related to Revenue Ruling 99-5 in the following areas:

- The amount of the LLC's liabilities that is included in the seller's amount realized on the deemed asset sale that occurs under Revenue Ruling 99-5, Situation 1.

- The treatment of the liabilities owed by the LLC to its single owner upon the formation of the partnership in Revenue Ruling 99-5, Situations 1 and 2 (springing liabilities).
- The treatment of transfers that are not described in Revenue Ruling 99-5 Situations 1 and 2, but which result in the conversion of the single-member LLC to a partnership.

**Revenue Ruling 99-6**

Issue guidance related to Revenue Ruling 99-6 in the following areas:

- The amount of the LLC's liabilities that are considered assumed by the buyer (a) as part of the purchase of the selling partner's interest in the LLC and (b) as part of the buying partner's liquidating distribution from the LLC.

- The amount of the LLC's assets that are considered acquired by the buyer (a) from the selling partner, and (b) as part of the buying partner's liquidating distribution from the LLC.

- The deemed extinguishment of any liabilities of the LLC to the acquiring partner that results from the merger of the debtor-creditor relationship which occurs upon the termination of the partnership.

- Application of the section 704(c)(1)(B) and section 737 "mixing bowl" rules to the acquiring partner with respect to the deemed liquidating distributions that occur as part of the Revenue Ruling 99-6 construct.

- Application of the section 751(b) "disproportionate distribution" provisions to the acquiring partner with respect to the deemed liquidating distributions that occur as part of the Revenue Ruling 99-6 construct.

- The treatment of transfers that are not described in Revenue Ruling 99-6, Situations 1 and 2, but which result in the conversion of the partnership to a disregarded LLC.

- Application of Revenue Ruling 99-6 to interest over partnership merger transactions. Such guidance should describe what constitutes a merger or a division under section 708(b)(2). In the preamble to the regulations issued in 2001, the IRS declined to provide a precise definition. Nevertheless, it would be helpful if the IRS provided some examples showing mergers vs. non-mergers. Further, such guidance should address what constitutes a continuation under section 708(b)(1)(A) when one or more historic partner(s) continue in the new partnership.

2. Provide guidance on the meaning of partners' interest in the partnership in connection with the use of targeted allocations under section 704(b), including under what circumstances the targeted allocations would qualify under the economic effect equivalence test under the regulations. On February 11, 2014, the AICPA submitted to the IRS a draft revenue ruling on partnership targeted allocations [Note: See AICPA draft revenue ruling submitted on February 11, 2014.]. Target allocations are widely used, but there is no guidance as to whether the IRS considers it an acceptable partnership allocation method and how they are treated.

3. Issue guidance regarding energy tax credit partnerships. In response to the Third Circuit opinion in *Historic Boardwalk Hall vs. Commissioner of Internal Revenue*, the IRS issued Revenue Procedure 2014-12. This revenue procedure establishes a safe harbor under which the IRS will not challenge partnership allocations of section 47 rehabilitation credits by a partnership to its partners. Revenue Procedure 2007-65 provides a safe harbor for wind production tax credit partnerships. There is no guidance for energy investment credit partnerships. The Revenue Procedure 2014-12 and Revenue Procedure 2007-65 safe harbors differ in several respects. For example, Revenue Procedure 2014-12 only allows a fair market value put option to eliminate the tax equity investor (TEI) after the TEI has flipped down to a small continuing interest. Revenue Procedure 2007-65, for a similarly timed option, only allows a call option and the exercise price can be set from the beginning of the deal at a reasonably projected fair market value amount. Although neither safe harbor applies to wind, solar, and other energy investment credit partnerships, traditionally, those deals have tried to come within the spirit of the rules in Revenue Procedure 2007-65 as necessarily modified to account for an investment credit instead of a production credit. The energy investment credit industry needs to know whether it can, for example, use the guarantee rules of Revenue Procedure 2014-12, combined with the option rules of Revenue Procedure 2007-65.

4. Issue guidance regarding the tax treatment to both the partnership and the partner when there is a cancellation of a partner loan. Specifically, guidance is requested on the manner in which the loan is cancelled (e.g., whether the cancellation of the debt occurs at the partnership level or whether the partner can be viewed as assuming the partnership's liability, then cancelling the loan, under an approach similar to the principles applied in Arthur L. Kniffen v. Commissioner, 39 T.C. 553, 561 (1962), acq., 1965-2 C.B. 3). If the cancellation occurs at the

partnership level, guidance is requested on the character of the bad debt loss to a partner (e.g., whether the business of the partnership can be attributed to the creditor-partner to prevent a character mismatch under section 166).

5. Issue guidance on the treatment of the contribution of the interests in an existing partnership to a newly-formed partnership (whose owners are comprised of all or some of the partners of the existing partnership) such that the existing partnership becomes a disregarded entity held by the newly-formed partnership. Specifically, guidance is requested on whether the existing partnership terminates under section 708(b)(1)(A), or whether the newly-formed partnership is considered to be a continuation of the existing partnership. Such guidance should address the continuity of ownership required to treat the newly-formed partnership as a continuation of the existing partnership (e.g., whether the newly-formed partnership is a continuation of the existing partnership under section 708(a) if less than fifty percent of the partners of the existing partnership continue their interest in the new partnership, or if the continuing partners of the existing partnership hold less than 50 percent of the interests in the newly-formed partnership). Additionally, guidance is requested on the manner in which the federal income tax and employment tax returns for the newly-formed partnership and the existing partnership should be filed in situations where the newly-formed partnership is treated as a continuation of the existing partnership. In particular, guidance should be provided to whether the Form 1065, U.S. Return of Partnership Income, for the newly-formed partnership should be filed with the employer identification number of the existing partnership or whether the newly formed partnership should apply for and use a new employer identification number.

**LOWER PRIORITIES**

6. Provide guidance on technical terminations. AICPA supports the proposal to repeal section 708(b)(1)(B) that is included in Chairman Camp's proposals and the Administration's Fiscal Year 2015 Budget. If that legislation is enacted, the issues below regarding technical terminations would be resolved going forward, and the below guidance projects would not be necessary. However, until that legislation is enacted, the below guidance projects would be helpful. We are pleased that a proposed regulation was issued, in response to our request, on the treatment of unamortized organizational costs under section 709 and start-up costs under section 195 upon a technical termination. Published 12/09/13, as REG-126285-12 (NPRM). That proposed guidance concludes that the technical termination does not accelerate the recovery of organizational or start-up costs. However, for section 481 adjustments, the IRS seems to reach the opposite conclusion. Pursuant to Revenue Procedure 2008-52, section 5.04(3)(c)(ii)(E), section 481 adjustments are accelerated when there is a section 721 contribution of the adjustments, which would include a technical termination. The AICPA believes this is the incorrect result in many circumstances and requests that the

section 481 treatment be revisited. The section 481 guidance should also address several unresolved issues including (1) allocation of the 481 adjustment where there has been a change in ownership, and (2) the impact of the 481 adjustment on a section 754 basis adjustment.

- Guidance is also requested in circumstances where partnerships have inadvertently filed a late short period return and associated Schedules K-1 due to a technical termination under section 708(b)(1)(B). It is common for partnerships to be unaware of events that would cause a technical termination until after the due date of the tax return for the short year.

7. Provide guidance with respect to partnerships that use the special aggregation rule for securities partnerships under Treas. Reg. § 1.704-3(e). Specifically:

   - Expanded guidance is requested under Treas. Reg. § 1.704-3(e)(4) to permit the aggregation of assets for certain partnerships that do not qualify for section 704(c) aggregation under the provisions of Treas. Reg. § 1.704-3(e)(3) or under Revenue Procedure 2007-59. Such guidance would expand the requirements to allow a greater number of taxpayers the ability to aggregate in appropriate situations.

   - Guidance on the methodology of applying section 743 for partnerships using the special aggregation rule for securities partnerships under Treas. Reg. § 1.704-3(e). Guidance would be expected to include a similar aggregation rule for allocating the section 743 adjustment under section 755 and a methodology for determining when the section 743 adjustment is taken into account.

   - Guidance should be issued that identifies certain forward section 704(c) circumstances where aggregation can be used without obtaining a private letter ruling. Such guidance would allow eligible partnerships to aggregate built-in gains and losses from contributed property with built-in gains and losses from revaluations in appropriate circumstances (such as in the case of a merger of eligible partnerships), or provide automatic consent procedures. Permission for such aggregation may currently be obtained only through a private letter ruling request.

8. Provide guidance to address the revaluation of partnership assets where the assets were either contributed to the partnership or previously revalued by the partnership. This guidance should include (1) how the multiple layers under section 704(c) are maintained; (2) the impact on minimum gain calculations under section 704(b); (3) the impact on nonrecourse debt allocations under section 752; and (4) the treatment of debt obligations including Treas. Reg. § 1.752-7 in a revaluation.

9. Provide guidance with respect to publicly traded partnerships. Specifically:

- Guidance is requested granting optional relief from the "single basis in a partnership" rule of Revenue Ruling 84-53 for owners of interests in publicly traded partnerships, similar to the special exception in the holding period rules of Treas. Reg. § 1.1223-3(c)(i) for publicly traded partnerships.

- Guidance is requested granting relief to publicly traded partnerships to use simplifying assumptions for purposes of calculating section 743 adjustments and section 751(a) amounts upon sale. Such relief would allow the partnership to use the same price for all trades in a particular month to calculate the section 743 adjustments of transferees as opposed to actual purchase price as required in the regulations. Such relief is necessary for ease of administration and due to the lack of precise trading data. Similar simplifying conventions would be used for calculating the gain on the hypothetical sale of "hot assets" under section 751(a) to transferors.

10. Provide guidance under section 6063 defining the circumstances in which an originally filed partnership tax return will be considered validly signed by a partner, within the meaning of this statute. Section 6063 and the regulations thereunder require that the partnership tax return be signed "by any of its partners." However, the instructions to Form 1065 appear to narrow the pool of valid signatories by indicating that the return must be signed by a "general partner or LLC member manager." Further, the IRS has indicated in Publication 3402 and in informal advice that limited partners cannot sign the partnership tax return (GCM 38781; FSA 0556). A valid signature is a prerequisite to the valid filing of an income tax return (Agri-Cal Venture Associates, v. Commissioner, T.C. Memo 2000-271; Burford Oil Co. v Commissioner, 153 F.2d 745 (5th Cir. 1946); Elliott v Commissioner, 113 T.C. 125 (1999)). Because the tax ramifications of failure to timely file a return are significant, the IRS should clarify in one set of guidance, the signature requirements for signing a partnership tax return. In particular, such guidance should address if and when a limited partner or non-member manager LLC member can sign the partnership return, what partners are appropriate signatories in a non-member managed LLC, and what partners can sign in situations where the entity is a foreign eligible entity classified as a partnership. Furthermore, in cases where the appropriate partner signatory of a partnership return is itself another entity classified as a partnership, the guidance should address whether an authorized officer of such entity partner can sign the lower-tier partnership return in its capacity as an officer of the partner entity (e.g., if an LLC is the general partner of a partnership, can an authorized officer of the LLC sign the partnership return on behalf of the LLC as general partner of the lower-tier partnership).

11. Provide guidance on the treatment of limited liability company members (and limited partners in light of recent judicial rulings) under section 1402(a)(13).

Some taxpayers aggressively avoid classifying LLC income as earnings from self-employment, while others may be overly conservative in this regard. Without guidance, widespread inconsistency will continue to flourish and practitioners trying to take the most upright positions have difficulty retaining clients who prefer an overly aggressive position. While the AICPA continues to believe that the Service should withdraw and re-propose or finalize existing regulations addressing this important issue, our understanding is that such guidance will only be forthcoming following legislative action in this area.

**S Corporation Taxation Technical Resource Panel** (Chris W. Hesse, Chair, (612) 397-3071, chris.hesse@cliftonlarsonallen.com; or Jason Cha, AICPA Technical Manager, (202) 434-9231, jcha@aicpa.org.) NOTE: Comments are listed in overall priority order and are additionally segregated into sections designated as Top Priorities and Lower Priorities.

**TOP PRIORITIES**

1. Provide additional guidance regarding the inability to utilize certain suspended passive activity losses upon redemption. Section 469(g) generally allows for the utilization of all suspended passive activity losses that have been carried forward when a taxpayer disposes in a taxable transaction of his entire interest in a passive activity. This rule does not apply, however, when the sale of S corporation stock is to a related party described in sections 267(b) and 707(b)(1). When the related party exception applies, the loss is deferred until the party acquiring such stock interest in the passive activity disposes of it to a party that is unrelated to the initial selling taxpayer. In the case of a redemption of S corporation stock, the second disposition cannot occur because the stock redeemed no longer exists for federal income tax purposes. It is not possible to trace the redeemed stock to a subsequent disposition.

   The legislative history to the provision does not appear to contemplate this situation. Although the statute treats redemptions of corporations differently than redemptions of partnership interests with regard to the ability to recognize realized losses on redemption,[1] we believe that a complete redemption of interests in a passthrough entity should release all suspended losses. Suspended passive losses do not result from a sale or exchange of property between related parties, but rather from true economic losses. The sale transaction solely governs the timing of taking the loss into account. If such losses are not allowed upon a complete redemption in a pass through entity, true economic losses are never recognized as the provisions of section 469(g) are not satisfied.

[1] See section 707(b)(1) allowing for losses on redemption of partnership interests; and see section 267(b) and Revenue Ruling 57-387 for disallowance of loss on redemption of corporate stock.

2. Issue a revenue ruling incorporating the guidance from PLRs 200308035 and 201015019. Specifically, guidance is requested concerning whether a second class of stock is created by an S corporation's pro rata distributions made to pay: (1) taxes in year one; (2) redemptions in year two; (3) additional taxes in year three for an amendment of its year one tax return; and (4) subsequent distributions to pay additional year one taxes.

   PLR 201017019 provides that there is only one class of stock when an S corporation pays distributions to its shareholders based on the apportionment of taxable income for a given period. The distribution plan discussed in the ruling also provides that if a subsequent audit increases taxable income for a prior period, the corporation may make distributions to shareholders in proportion to their relative shares of taxable income during the prior period. The payment policy described in this ruling appears to relate to distributions on specific dates or events, and implies that there is more than one distribution, subject to different formulae, within a single corporate taxable year.

   Additionally, guidance is needed to confirm that an S corporation can simultaneously make both pro rata distributions according to current stock ownership and other distributions that meet the varying interest rule of Treas. Reg. § 1.1361-1(l)(2)(iv) without creating a second class of stock.

3. Provide additional guidance regarding the ordering rule for adjustments to the accumulated adjustment account (AAA) when ordinary and redemption distributions are made in the same year and an ordinary distribution occurs after the redemption distribution. Under Treas. Reg. § 1.1368-2(d)(1)(ii), AAA is adjusted first for ordinary distributions and then for redemptions. The regulations provide an example where the redemption occurs later in the year than the ordinary distribution, but does not provide an example where the redemption occurs prior to the ordinary distribution. Since the redemption distribution is based on the AAA amount as of the date of the redemption, the rule is not clear in the case of a post-redemption ordinary distribution. The regulation simply says to adjust first for ordinary distributions but does not make a distinction for those ordinary distributions that are before or after redemption. A taxpayer could interpret the rule either way. Reducing the AAA balance for all ordinary distributions regardless of the timing relative to the redemption provides the best answer in most circumstances. Since a complete redemption is a sale or exchange transaction, the presence of AAA is irrelevant for purposes of determining the shareholder's gain or loss on the redemption. Allocating more AAA to redemptions by ignoring post redemption distributions does not benefit the redeemed shareholder while it provides a smaller AAA for the post redemption distribution to be recovered tax free by the recipient shareholders. We specifically request an example where ordinary distributions are made subsequent to a redemption and how AAA is impacted in that situation. We suggest the

issuance of a revenue ruling to provide such guidance or modifying the existing regulation.

**LOWER PRIORITIES**

4. Update Treas. Reg. § 1.1361-5 to reflect the addition of clause (ii) (relating to termination of a Qualified Subchapter S Subsidiary by reason of the sale of Qualified Subchapter S Subsidiary stock) to section 1361(b)(3)(C) made by section 8234 of P.L. 110-28. We offer the following to accomplish this change: (1) delete the obsolete portion of existing regulation; (2) add a sentence to indicate that the old rules apply only for years before the effective date of the changes; or (3) revise and expand the regulations to indicate that the old rules apply to years before the effective date of the changes and also set forth new rules that apply for years after the effective date of the changes.

5. Provide additional guidance as to when, for alternative minimum tax purposes, S corporations will have attributes which are different for regular tax and alternative minimum tax purposes. For example, does an S corporation have an accumulated adjustments account for alternative minimum tax purposes which would differ by the adjustments of sections 56, 57 and 58 from the accumulated adjustments account for regular tax purposes? Assuming there are accumulated adjustment accounts kept for each type of tax, if distributions in excess of the regular tax and alternative minimum tax (AMT) accumulated adjustments accounts are made by an S corporation with accumulated earnings and profits, how much is taxable to the recipient shareholder for regular tax purposes and how much for AMT purposes? As more and more taxpayers become subject to the AMT, it is increasingly important for taxpayers to have guidance on how the regular tax and AMT interface with respect to common transactions.

6. Issue additional guidance to whether a state tax refund attributable to the S-portion of an electing small business trust (ESBT) is allocated to the S-portion.

**Tax Methods and Periods Technical Resource Panel** (Carol Conjura, Chair, at (202) 533-3040, cconjura@kpmg.com; or Jason Cha, AICPA Technical Manager, (202) 434-9231, jcha@aicpa.org.) NOTE: Comments are listed in priority order.

1. Issue additional guidance on capitalization under section 263:

   - Issue guidance clarifying the safe harbor method to allocate success-based fees under Revenue Procedure 2011-29, including clarification on the allocation of success-based fees between covered and non-covered transactions, milestone payments applied to the payment of success-based fees, and contingent employee compensation.

- Issue proposed regulations under sections 263(a) and 167 providing guidance on the treatment of capitalized transaction costs, including safe harbor amortization periods, for certain capitalized costs.

- Issue revenue procedure under section 263(a) regarding the capitalization of cable network property.

- Issue revenue procedure under section 263(a) regarding the capitalization of natural gas transmission and distribution property.

- Issue revenue procedure under section 263(a) regarding the capitalization of certain retail store expenditures.

2. Issue additional guidance on capitalization under section 263A:

   - Issue final regulations under sections 263A and 471 regarding sales-based royalties and sales-based vendor allowances.

   - Issue proposed regulations under section 263A for resellers (1) updating rules to reflect changes in retail business practices (including those resulting from technological advances and current trends) that have affected the application and administrability of the existing regulations under section 263A to retailers that transact both on-site sales and sales that are not on-site sales from the same sales facility, and (2) modifying the definitions of on-site sales, a retail customer, a retail sales facility, a dual-function storage facility, and other terms in Treas. Reg. § 1.263A-3(c)(5)(ii) to reflect current business practices of retailers that transact both on-site sales and sales that are not on-site sales from the same sales facility.

   - Issue proposed regulations under section 263A: (1) clarifying definition of costs included in and excluded from the simplified service cost production and labor cost formulas, (2) clarifying sufficient documentation for classification of activities and departments (e.g., sufficiency of interviews with employees), and (3) updating examples to reflect more common situations such as an information technology (IT) department.

3. Issue additional guidance under section 168:

   - Issue final regulations regarding the disposition of property under section 168.

   - Issue revenue procedure concerning procedures for changing methods of accounting to comply with final regulations regarding the disposition of property under section 168.

- Issue revenue procedure under section 168(k)(4) regarding election to accelerate carryover alternative minimum tax credits in lieu of claiming bonus depreciation.

4. Issue additional guidance on changes in method of accounting:

   - Modify certain procedures for obtaining automatic and advance consent to change a method of accounting in Revenue Procedure 97-27. [Note: See AICPA comment letters to IRS submitted on February 15, 2008, and July 9, 2013.]

   - Modify the voluntary accounting method change procedures addressing concerns regarding the "issue under consideration" standard for controlled foreign corporations (CFCs). [Note: See AICPA comments submitted to IRS on July 30, 2012.]

   - Issue guidance modifying final regulations and Revenue Procedure 2011-14, as modified by Revenue Procedure 2012-39, concerning procedures for changing accounting methods in non-taxable reorganizations under section 381(a). [Note: See AICPA comments submitted to IRS on July 9, 2013.]

   - Issue guidance regarding changes in method of accounting for section 174 research and experimental expenses.

5. Issue guidance regarding advance payments under section 451:

   - Issue guidance regarding the treatment of deferred revenue in taxable asset sales and acquisitions.

   - Issue guidance addressing the treatment of advance payments that are adjusted through purchase accounting in connection with an acquisition of stock.

   - Issue guidance addressing the treatment of advance payments between members of an affiliated group that are eliminated in consolidated financial statements.

   - Issue proposed regulations under section 451 regarding advance payments received for goods and services, including amounts received in exchange for the sale or issuance of gift cards, trading stamps, and loyalty points that are redeemable for goods or services.

6. Issue additional guidance on the domestic production activities deduction under section 199:

- Issue guidance regarding the relevant factors for determining the tax owner of property for section 199 purposes, including clarification that the standard for benefits and burdens under section 199 should be consistent with the standard for benefits and burdens under section 263A in contract manufacturing situations.

- Issue guidance providing that the definition of W-2 wages in section 199(b)(2)(A) refers to amounts described in section 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during such taxable year.

7. Issue final regulations under section 471 addressing the retail inventory method. [Note: See AICPA comments submitted to IRS on December 13, 2012.]

8. Issue proposed regulations under section 267(a)(3)(B) addressing transactions entered into in the ordinary course of a trade or business in which the payment of the accrued amounts occurs within 8 ½ months after year end and transactions in which an amount accrued is includible in the earnings and profits of a controlled foreign corporation.

9. Modify the regulations under section 170(e)(3) to provide that, for qualified contributions of inventory, the basis of the contributed inventory is included in cost of goods sold, and only the incremental "enhanced deduction" is treated as a charitable contribution subject to the 10 percent taxable income limitation for corporations under section 170(b)(2).

10. Issue guidance under section 118 specifically relating to the treatment of refundable and transferable credits and incentives as non-shareholder contributions to capital.

11. Issue guidance regarding the time when a business is considered to start for purposes of section 195.

12. Issue guidance under section 453:

    - Issue proposed regulations under section 453A regarding contingent payment sales.

    - Issue guidance under section 453B regarding non-recognition of gain or loss on the disposition of certain installment obligations.

13. Issue final regulations under section 460 regarding the definition of a home construction contract, including the treatment of condominiums, for purposes of the completed contract method, and rules for certain changes in method of accounting for long-term contracts.

14. Issue proposed regulations under section 472 regarding the carryover of last in first out (LIFO) layers following a section 351 or section 721 transaction.

15. Issue proposed regulations amending Treas. Reg. section 1.472-8 regarding the IPIC method (e.g., pooling purchased and produced items).

16. Issue guidance under section 6655 regarding corporate estimated tax payments.

**Tax Practice Responsibilities Committee** (Norma J. Schrock, Chair, (202) 327-8708, Norma.Schrock@ey.com; or Cari Weston, AICPA Senior Technical Manager, (202) 434-9267, cweston@aicpa.org.) NOTE: Comments are listed in order of priority.

1. Issue guidance to provide certain core principles for defining "tax shelter" under section 6662(d), including that the term "tax shelter" is intended to apply to an entity, plan or arrangement involving an abusive application of the federal income tax laws, but that the determination of whether a "tax shelter" exists depends upon all pertinent facts and circumstances. The definition is important for purposes of the taxpayer accuracy-related penalties under section 6662 and 6662A, the tax return preparer penalty under section 6694, the section 7525 federal tax practitioner privilege, and the Circular 230 written tax advice rules.

2. Provide guidance regarding the criteria that will be used to determine the competence of practitioners subject to Circular 230, assuming that the proposed amendment of Circular 230 section 10.35 is adopted substantially as proposed. Examples of the determination of whether a practitioner demonstrates the required knowledge, skill, thoroughness and preparation are needed by the practitioner community for compliance with this new provision.

3. Provide additional guidance regarding the imposition of monetary penalties under Circular 230 as amended by section 822 of the American Jobs Creation Act of 2004. [Note: See AICPA comments on Notice 2007-39 regarding this issue, submitted on August 22, 2007.]

4. Provide guidance, with the opportunity for comment before finalizing the guidance, regarding criteria the IRS will use in determining whether to:

    - Assert a section 6694 preparer penalty;

    - Refer a matter to Office of Professional Responsibility (OPR), particularly in the case of alleged violations under the section 6694 preparer penalty provisions; and

    - Sanction or otherwise limit a practitioner in providing tax services by OPR, Return Preparer Office (RPO) or Electronic Tax Administration (ETA).

Guidance regarding the interpretation of standards to be applied beyond, for example, "assessment of penalties" as an enumerated standard, set forth on page 14 of Publication 3112, to deny a practitioner participation in the e-file program, is essential to provide consistency of application of the standards to limit abuse of discretion by an IRS employee and to adequately inform practitioners of the standards to which they will be expected to adhere.

5. Provide published guidance or information regarding procedures of OPR, the RPO and the office of ETA, that also regulate, sanction and limit practitioners. Such guidance could be in the form of a comprehensive "plain English" publication or other statement of a practitioner's rights in the case of a referral to OPR or action to restrict a practitioner's rights or actions by other IRS offices. This might be done in a publication similar to the current IRS Publication 1, Your Rights as a Taxpayer.

   On a related matter, guidance is needed regarding the safeguarding of the taxpayer's rights in an OPR investigation of the preparer. To illustrate, to gather evidence against the preparer, the IRS examines the tax returns of the preparer's clients. Those taxpayers may be asked to give testimony about the targeted tax preparer's preparation procedures. In an effort to build a case against the targeted tax practitioner, we are concerned that the OPR investigator may inadvertently compromise the taxpayer's rights in the examination. For example, the OPR investigator may require that the taxpayer accompany the representative to the initial tax interview, contrary to the taxpayer's right to representation as described in IRM 4.10.2.7.5. The IRS may also require, in an affidavit to be completed at the initial interview, that the taxpayer provide answers' relating to the tax preparer's procedures. A taxpayer who is under examination at that time may fear reprisal if the affidavit is not completed.

6. Provide guidance clarifying that tax preparer email addresses will not be published by the IRS. The past few years have seen an increasingly sophisticated use of phishing emails and virus-infected attachments aimed at tax preparers specifically, often despite the use of email protection software. As preparers we remain concerned that the practice of the IRS publishing tax preparer email addresses in their public disclosure of PTIN registrants compromises the CPA's abilities to safeguard the privacy of taxpayer information. In the interest of protecting taxpayer confidential matters, we request that tax preparer email addresses not be published by the IRS.

**Trust, Estate and Gift Tax Technical Resource Panel** (Eric Johnson, Chair, (312) 486-4442, ericljohnson@deloitte.com; or Eileen Sherr, AICPA Senior Technical Manager, (202) 434-9256, esherr@aicpa.org.) NOTE: Comments are listed in priority order.

**Domestic**

1. Clarify more gift tax issues for same-sex couples with regard to the Defense of Marriage Act issues, including guidance on:

   - How taxpayers must report, or track, previously reported gifts that are now eligible for the marital deduction. [Note: See AICPA letter submitted to IRS on October 30, 2013.]

   - How taxpayers should report, or track, previously reported gifts that are now eligible for gift splitting. Married same-sex couples can elect to split gifts in order to take advantage of the combined annual gift tax exclusion (i.e., $14,000 for 2013, for a total tax-free gift of $28,000). [Note: See AICPA letter submitted to IRS on October 30, 2013.]

   - The number of years (or deadlines) for amending gift tax returns to restore applicable unified credit amounts for previous gifts. If it is too late to amend a return, the IRS should clarify how taxpayers adjust future estate taxes to remedy this problem. [Note: See AICPA letter submitted to IRS on October 30, 2013.]

2. Provide a final ruling on the consequences under various estate, gift, and generation-skipping transfer tax provisions of using a family-owned company (private trust company) as the trustee of a trust. [Note: See AICPA pre-release comments on this item submitted on March 29, 2006, and AICPA comments on the proposed revenue ruling, submitted on November 12, 2008.]

   We note that the 2013-2014 IRS Priority Guidance Plan includes this guidance project.

3. Provide guidance, such as a Revenue Procedure, under section 2010(c) regarding the validity of a QTIP election on an estate tax return filed only to elect portability.

   We note that the 2013-2014 IRS Priority Guidance Plan includes this guidance project.

4. Add to regulations under section 6034 an administrative exception to the Form 1041-A, U.S. Information Return Trust Accumulation of Charitable Amounts, filing requirement for complex trusts that claim charitable deductions under section 642(c) solely for contributions flowed through to them from partnerships

and S corporations. The amendment to these regulations could be done as part of a project to update the section 6034 regulations to reflect the changes made to that section by the PPA. In order to implement this administrative exception as soon as possible, a Notice should be issued stating that regulations will be revised to allow this administrative exception to the Form 1041-A filing requirement for these trusts and that these trusts no longer have to file Form 1041-A. [Note: See AICPA letter submitted to IRS on September 14, 2010 and AICPA letter submitted to Congress on October 19, 2012.]

5. Provide a simplified procedure to obtain an extension of time to elect out of the automatic allocation of the GST exemption to indirect skips and at the end of the estate tax inclusion period, similar to Revenue Procedure 2004-46. Many PLRs have been issued allowing extensions of time to elect out of the automatic rules, but a simplified method for obtaining such extensions without the need for a private letter ruling would benefit taxpayers and the IRS. [Note: See AICPA comments to IRS, submitted June 26, 2007.]

6. Provide guidance regarding the appropriate means and timing of GST allocations to pour over trusts from GRAT terminations. Guidance is also needed under section 2632(c)(5)(A)(i) and examples, addressing the application of the GST exemption automatic allocation rules for indirect skips in a situation in which a trust subject to an estate tax inclusion period (ETIP) terminates upon the expiration of the ETIP, at which time the trust assets are distributed to other trusts that may be GST trusts. [Note: See AICPA comments to IRS, submitted June 26, 2007.]

   We appreciate that the 2013-2014 Priority Guidance Plan includes this suggestion.

7. Provide guidance on the ability to split gifts under section 2513 in *Crummey* or similar situations, where the donee spouse has an interest in the trust and others have the ability to withdraw the contributed assets but all the transfers made to the trust during the year may be withdrawn by trust beneficiaries.

   Such guidance is particularly needed in the case of late filing of gift tax returns. Because of the late filing, there is no opportunity to elect out of deemed allocation (i.e., each spouse's GST exemption would be allocated to his or her portion of the transfer) (Treas. Reg. § 26.2632-1(b)(4)(iii), Ex. 5). [Note: See AICPA comments to IRS, submitted June 26, 2007.]

8. Provide guidance for marital trusts under section 2056(b)(7) similar to Revenue Ruling 2006-26, regarding plans other than IRAs and defined contribution plans (i.e., defined benefit plans and deferred compensation plans).

9. Provide clarification in the instructions to Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, with regard to Column C in Part 3 of Schedule A as to the election made under section 2632(c) (electing "in and out" of a deemed allocation.) The instructions state that checking the box in Column C applies only for transfers reported on the return. Confusion can result as the instructions provide that, if a prior election has been made with respect to future transfers, the box in Column C should not be checked and no explanatory statement should be filed with the applicable Form 709. One suggestion would be to have an additional column to check if an election was made in a prior year that affects the GST exemption for a transfer made in the current year.

10. Provide guidance under section 2632(c), regarding the deemed allocation of GST exemption to certain lifetime transfers to GST trusts. In particular, clarification is requested with regard to the exceptions to the definition of a GST trust contained in section 2632(c)(3)(B)(i)-(vi) as well as the exception in the flush language of this section dealing with gift tax annual exclusions. Six types of GST trusts are defined in the statute, but taxpayers would benefit from additional guidance on many gray areas. Finally, until regulations are issued under section 2632(c)(3)(B)(i)(III), as required by such section, we believe this provision has no effect.

11. Provide guidance on how additional GST exemption (as a result of the inflation adjustment each year) can be allocated to a transfer made in the prior year, including whether an allocation on the gift tax return timely filed for the prior year is effective as of January 1 and what valuation date is used for purposes of determining the new inclusion ratio.

12. Provide a harmonization of what is necessary to satisfy the adequate disclosure requirements of sections 301.6501(c)-1(e) and -1(f). At a minimum, section 301.6501(c)-1(e) should contain a safe harbor for appraisal reports as exists in section 301.6501(c)-1(f).

13. Change Form 8868, Application for Extension of Time To File an Exempt Organization Return, to allow taxpayers to obtain an extension of time to file Form 5227, Split-Interest Trust Information Return, and Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, by filing only one Form 8868, rather than two.

14. Amend the regulations under sections 6042 and 6049 to require payors to provide charitable remainder trusts information about interest and dividends paid to them in order for the charitable remainder trusts to comply with the ordering rules of section 664(b).

15. Issue final regulations on the portability of the deceased spousal unused exclusion amount under section 2010(c)(4). [Note: See AICPA letter submitted to IRS on

September 14, 2012.] We appreciate that the IRS issued Revenue Procedure 2014-18, providing an automatic extension of time for certain estates without a filing requirement to elect before December 31, 2014, portability of the decedent's unused exclusion amount for the benefit of the decedent's surviving spouse, including same sex married couples. We encourage the IRS to provide a permanent extension of time until 15 months after the decedent's death for estates without a filing requirement to elect portability.

16. Issue final regulations, including examples, on the "simplified" method for computing net investment income under section 1411 for distributions from charitable remainder trusts. [Note: See AICPA comments to Treasury and IRS on this issue submitted on March 31, 2014.]

**Foreign Related**

17. Provide guidance on the application of section 1411 to accumulation distributions from foreign trusts to United States beneficiaries, including the method to determine the portion of the distribution, if any, attributable to income accumulated in years prior to the effective date of section 1411.

18. Provide guidance on issues relating to foreign trusts and the HIRE Act, including guidance including the section 679(d) presumption that a foreign trust has United States beneficiaries. [Note: See AICPA comments to Treasury and IRS on this issue submitted on March 28, 2011.]

19. Provide further guidance on issues relating to reporting of foreign accounts by U.S. beneficiaries of foreign trusts on the Foreign Bank Account Report (FBAR), and U.S. beneficiary reporting of foreign accounts and foreign financial assets owned by foreign trusts, as required by section 6038D. The AICPA is concerned that a U.S. beneficiary of a foreign trust may not have access to books and records of the foreign trust necessary to make an accurate determination of filing requirements and reportable amounts. [Note: See AICPA comments on this issue submitted to FINCEN, Treasury, and IRS on November 19, 2010 and November 16, 2009, and AICPA comments to Treasury and IRS submitted on March 28, 2011.]

20. Change the due date of Form 3520A from March 15 to April 15, to coincide with the due date for calendar year filers of related returns. If a change in the due date is not possible, then an extension or penalty relief is requested for taxpayers who file by April 15. In addition, IRS should consider adding a box to Form 7004 to permit an extension of time to file Form 3520 in cases where the beneficiary's income tax return (Form 1040 and Form 1040NR) is not going to be extended. [Note: See AICPA comments to IRS on this submitted on June 12, 2008, March 3, 2008, January 31, 2007, and June 17, 2003. This change in the Form 3520A due date is included in proposed legislation, S. 420, introduced 2/28/13 by

Senators Enzi and Tester, and H.R. 901, introduced 2/28/13 by Rep. Jenkins, as well as in Chairman Camp's March 12, 2013 House Ways and Means Committee small business tax reform discussion draft and the Senate Finance Committee March 21, 2013 tax reform options paper on simplifying the tax system for families and businesses.]

21. Change the form for tax reporting for foreign non-grantor trusts. The current tax reporting on Form 1040NR for foreign non-grantor trusts (and foreign grantor trusts with a U.S. owner) is extremely difficult because the IRS form is not designed for fiduciary tax return reporting. IRS instructions direct the preparer to "change the form" for Subchapter J provisions, but attempts to do so result in inconsistent or inadequate changes and lead to return processing errors and confusion. The creation of a new Form 1041NR, which could include information currently reported on Forms 3520 and 3520-A, would eliminate confusion and mistakes in processing returns and would enhance tax compliance filing requirements. [Note: See AICPA comments to IRS on this submitted on September 22, 2008, March 3, 2008, and January 31, 2007.]

22. Provide guidance on whether a foreign grantor trust with a U.S. grantor is required to file Form 1041 or Form 1040NR and whether a foreign grantor trust with a foreign grantor and some U.S. income is required to file Form 1041 or Form 1040NR.

23. Provide guidance on the reporting of and recognition of gain under the expatriation mark-to-market rules in section 877A, including guidance on the interplay of sections 877A and 684, relating to a transfer to a foreign estate or trust.

24. Provide guidance on how the GST tax applies to grandfathered domestic trusts that become foreign trusts. This issue may be analogous to a GST-grandfathered trust that migrates from one state to another; thus, similar rules and safe harbors should be considered.

25. Provide guidance regarding several aspects of section 2801:

   - Provide guidance regarding reporting the receipt of a "covered gift or bequest" and the payment of tax thereon required under section 2801(a). While the IRS has stated in Notice 2009-85, 2009-45 IRB 598, that satisfaction of the reporting and tax obligations for covered gifts or bequests will be deferred pending the issuance of guidance, the longer the delay, the longer the undue burden on those who are required to comply with section 2801(a). This guidance should also include the determination of the reduction of this liability by a credit for the payment of foreign gift or estate taxes on a covered gift or bequest under section 2801(d).

- Provide guidance regarding the making of an election by a foreign trust to be treated as a domestic trust under section 2801(e)(4)(B)(iii). In particular, guidance is needed regarding the treatment and reporting of the section 2801 tax for transfers "in trust" under section 2801(e)(4). Also, neither section 2801(e)(1) nor the legislative history discusses how property can be acquired "indirectly" by gift or by an indirect transfer by a decedent for estate tax purposes. For a covered gift or bequest made to a domestic trust, the section 2801 tax applies in the same manner as if the trust were a U.S. citizen and the tax must be paid by the trust. Under section 2801(e)(4)(B)(iii), an election can be made to treat a foreign trust as a domestic trust for purposes of the transfer tax on covered gifts and bequests. Guidance is needed on whether the foreign trust should withhold the section 2801 tax in the distribution(s) to the beneficiary.

  Further, section 2801 does not provide any provisions on how to determine whether a distribution from a foreign trust is "attributable to a covered gift or bequest," where the trust includes other property in addition to the property received in the covered gift or bequest. Guidance is needed on this issue.

26. Provide guidance as to what qualifies as a "reasonable period of time" for a U.S. grantor or beneficiary of a foreign trust to pay the trust the "fair market value" (FMV) for the "personal use" of trust property under section 643(i)(2). This guidance should also include the determination of the proper FMV measurement and whether "de minimis" amounts can be such a small amount as to make accounting for them unreasonable or administratively impractical. "Safe harbor" guidelines to administer this new law also would be appreciated. For example, a grantor or beneficiary might personally maintain landscaping requirements (at no compensation) for a rental property owned by a foreign trust, but have little or no personal use of the property during the year. [Note: See AICPA comments to IRS, submitted March 28, 2011.]

27. Provide regulations to enhance guidance in Notice 2009-85 regarding the reporting of tax withholding and payment of these taxes by trustees to the IRS. Such guidance is needed as to the appropriate forms and reporting on applicable tax returns. Guidance on possible "expedited" procedures for successful receipt of a private letter ruling for an expatriate to determine the value of his or her interest in the trust would be appreciated. This guidance should also define "adequate security" for a "tax-deferred agreement" for the covered expatriate's return under section 877A(b).

28. Provide regulations under section 6677 regarding the failure to file information with respect to certain foreign trusts. The HIRE Act amended section 6677, but guidance is not adequate in Notice 97-34, the only IRS guidance on making a determination on penalties under section 6677. New recently designed letters, as described in IRS memorandum SBSE-20-0709-016, provide determination letters

based upon a review of a taxpayer's compliance with section 6677, but taxpayers need regulations to provide them with guidance before the applicable letter is issued.