TAXATION SECTION

The District of Columbia Bar

SUMMARY OF COMMENTS BY THE SECTION OF TAXATION TO THE INTERNAL REVENUE SERVICE ON WHETHER THE SERVICE SHOULD ADOPT A "NO COMFORT" RULINGS POLICY

The Section of Taxation has commented as follows to the Associate Chief Counsel (Technical), Internal Revenue Service.

1. The Service should adopt a combination of the following two approaches: (i) the Service should adopt a general policy that it will not issue comfort rulings and that the taxpayer must establish in its request for a ruling that the issue involved is not a comfort issue; but, in addition, (ii) the Service should publish a nonexclusive list of those issues with respect to which it will not rule.

2. The area of Subchapter C of the Internal Revenue Code should be excepted from a "no comfort" rulings policy.

3. Other types of transactions which may affect a large number of taxpayers should also be excepted from a "no comfort" rulings policy. These include any material issue affecting more than a threshold number of taxpayers, such as one hundred.

4. The Service should develop better mechanisms for expediting rulings and delivering guidance, such as: (i) Proposed and temporary rulings should be issued simultaneously; (ii) Treasury's role should be confined to the participation in the issuance of Regulations, and its review of rulings should be eliminated; (iii) Notices should be followed by the issuance of proposed Regulations within 6 months; (iv) The Service should invite practitioners to submit drafts of rulings and regulations for review as a means of providing an incentive for taxpayers to call important issues to its attention.

5. Within two weeks after the issuance of a private ruling, the Service should determine whether such ruling should be converted into a published ruling. If such a determination is made, a published ruling should be issued within two months, and the issue should then be added to the no comfort rulings list. This will discourage the trend of relying on private rulings due to the current paucity of published rulings.

6. The Service should make greater use of model trusts and other documents, such as the models in Rev. Proc. 89-20.

1707 L Street, NW, Sixth Floor, Washington DC 20036-1202 — 202 331 3501 — Sections Hotline 202 223 7729 — FAX 202 828 8572

TAXATION SECTION

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Kenneth Klein, Esquire
Associate Chief Counsel
(Technical)
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Comments On Comfort Rulings Issues

Dear Mr. Klein:

This letter is in response to the IRS' request for comments on the specific issue of whether it should adopt a "no comfort" rulings policy for rulings under the jurisdiction of the Associate Chief Counsel (Technical) and, more generally, on how the IRS could use its resources more efficiently and effectively in the rulings area.[1/]

I. "No Comfort Rulings" Policy

The two most practical articulations of a "no comfort" rulings policy are (1) the IRS should adopt such a policy only with respect to issues which have been identified on a list published by the IRS or (2) it should have a general policy of "no comfort" rulings like the one which has been adopted in the

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1/ These comments have been approved by the Steering Committee of the Section of Taxation of the District of Columbia Bar, which Section has approximately 1,200 members. The views expressed herein represent only those of the Section of Taxation of the District of Columbia Bar and not those of the District of Columbia Bar or of its board of governors. The members of the Steering Committee of the Section of Taxation are Jane C. Bergner, Chair, Collette C. Goodman, Ellen A. Hennessy, Gerald A. Kafka, Stephen A. Nauheim, Celia L. Roady, Bradley Seltzer, and Charles B. Temkin. These comments were prepared by a Task Force whose members included Collette C. Goodman, D. Kevin Dolan, Leonard J. Henzke, and Jackie S. Levinson.

corporate restructurings have major economic and policy implications, and accordingly we think that it is appropriate to presume that any issue in this area is deserving of review by the IRS.

II. Exceptions to the "No Comfort Rulings" Policy

If the IRS exempts Subchapter C from the no comfort rulings policy, we doubt that there will be many instances where additional exceptions will be necessary. Most of the large transactions involving numerous taxpayers are likely to fall in the Subchapter C area. Nevertheless, there still are other types of transactions which could affect a large number of taxpayers, and we think it is to the advantage of the IRS, as well as taxpayers, to have certainty in advance of the tax consequences of such transactions. In the partnership area, for example, partnership audits still are time-consuming and unwieldy, even after the enactment of the TEFRA partnership audit procedures. Accordingly, we think that an exception should be provided for any material issue affecting more than a threshold number of taxpayers, such as 100.

III. Other Issues

A. Expedite Issuance of Rulings

The premise of the proposal to expedite the issuance of rulings appears to be that taxpayers will be willing to submit more novel or difficult or important issues to the IRS if there is certainty that the IRS will act in a specified period of time (e.g. 60 days). We agree that it is important for both the government and taxpayers that such issues be submitted by taxpayers for review and addressed by the IRS on a timely basis. We are not convinced, however, that expediting the issuance of private rulings is a realistic solution. First, these issues are precisely the ones which are likely to require more time and involvement at higher policy levels. Second, often these issues are highly political ones, in large part because they affect large numbers of taxpayers. One can point quite easily to several issues that the IRS is clearly aware of now, but on which it has not taken a position despite ample time to do so -- the tax treatment of liability hedges is one example. Finally, we think that a substantial majority of the bar do not rely on private letter rulings, and that even an expedited rulings policy will not provide a sufficient incentive for them to do so.

Finally, if the IRS does decide to provide an expedited rulings procedure, it will be important that it establish special procedures and internal task forces to insure that rulings can be issued on such an expedited timetable. In particular, such rulings often will involve policy matters, and procedures would have to be implemented to ensure that those issues would be resolved within the designated time period.

B. Increase Guidance From Published Rulings

We strongly believe that concurrently published proposed and temporary regulations are the preferable form of IRS guidance. Nevertheless, we believe that the IRS should stop the current trend of allowing private rulings to supplant revenue rulings through the paucity of published rulings. In particular, we believe that the IRS should require as a matter of its own internal procedures that a determination be made with respect to each private letter ruling as to whether it should be converted to a published ruling to avoid the increasing reliance on private letter rulings as precedents. This determination should be made within 2 weeks of issuance of a private ruling. If it is determined that an issue is significant, then a published ruling should be issued within 2 months, and the issue then should be added to the no comfort rulings list, if appropriate. We believe that this timetable would be met only if Treasury no longer reviewed revenue rulings.

We also think that the IRS should make greater use of model trusts and other documents, like the model charitable remainder trust contained in Rev. Proc. 89-20. Such models should attempt to cover a range of practical fact patterns. The Rev. Proc. 89-20 model, for example, involved a single life beneficiary. The IRS should issue model instruments for other common, but somewhat more complex cases -- such as joint and survivor beneficiaries, two successor beneficiaries, etc.

C. Instituting a "No-Action" Letter Procedure

A "no action" letter procedure seems to be tantamount to issuing comfort rulings, so we are inclined to think that it should not be adopted. It is similar to the procedures currently used for rulings on corporate reorganizations, and it may be appropriate to pursue it in that area if, as we have recommended, the IRS exempts Subchapter C from the "no comfort rulings" policy.

We appreciate the opportunity to submit these comments to you, and would be happy to discuss our views further with you.

Yours truly,

Jane C. Bergner

Jane C. Bergner,
Chair Steering Committee
of Section on Taxation

Collette C. Goodman

Collette C. Goodman,
Chair of Task Force