

VIA Electronic Submission

June 18, 2018

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2018-43) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Notice 2018-43; Recommendations for 2018-2019 Priority Guidance Plan

Dear Sir or Madam:

On behalf of its members, the American Bankers Association (ABA)¹ is pleased to submit the following recommendations for items that should be included on the 2018-2019 Priority Guidance Plan. Certain items in the following recommendations are already included in the current Plan. By including them here, we are confirming the importance of those items for our members.

Issues for Guidance Related to the Tax Cuts and Jobs Act (TCJA):

Section 199A Application to Banks Operating as Pass-through Entities:

1. In recent years, Congressional intent has been clear in facilitating S Bank eligibility for bank businesses. Therefore, the application of the Section 199A deduction to S Banks should be consistent with the language of the statute and the overall intent of Congress to help pass-through businesses remain competitive in the context of a corporate rate reduction.
 - a. Because S Banks are highly regulated and limited in their activities, a rule clarifying the availability of Section 199A to S banks should be narrow in scope and limited in application.
 - b. Guidance should clarify that a “specified service trade or business” does not include banking. Banks are highly regulated and their permissible activities are clearly defined by statute and regulation. Thus, all of their permissible activities should be eligible for the deduction created by Section 199A.
 - c. A “banking trade or business” could be appropriately defined as a trade or business using regulatory references.
 - d. Certain references to ancillary activities in the statute (such as “dealing in securities”) should be read narrowly, consistent with congressional intent, to capture only those entities that were intended to be excluded from the 199A benefits.

¹ The American Bankers Association is the voice of the nation’s \$1 trillion banking industry, which is comprised of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend more than \$9 trillion in loans.

- e. For additional background, please see our [joint trades comment letter submitted on April 30, 2018](#).

Section 965 Tax for Trusts and Estates:

- 2. Section 965, as amended, requires United States shareholders to include in gross income certain amounts of deferred foreign income earned by foreign corporations (“965 income”). This rule also applies to trusts and estates.
 - a. Further guidance is needed to resolve potentially inconsistent treatment (as raised in IRS FAQs) for trusts and estates when 965 income is distributed and not accumulated. ABA urges the IRS to clarify that, in all cases, 965 income should be included in distributable net income (“DNI”) and reported on Form 1041, because Subchapter J does not provide any current DNI exclusion for that income. This income should be allocated according to the Subchapter J rules, with indirect expenses of the trust or estate allocated to any item of income included in DNI, as long as a reasonable portion is allocated to nontaxable income, and included on beneficiary K-1s based on the beneficiary’s share of DNI.
 - b. In the revised FAQs, the IRS not only prohibits a regular tax refund to offset the 965 tax due, it also applies regular tax overpayments to future section 965 installment payments due. Section 965(h) permits taxpayers to elect to pay the tax due under section 965 in installments over an eight-year period. Authority from the IRS indicates the IRS will automatically apply any overpayment of 2017 income tax to the next installment of section 965 tax elected to be paid for under the installment election.
 - c. Accordingly, with regard to the FAQ A14, ABA requests that the IRS honor a refund request for income tax overpayment or request for credit to a first quarter income tax estimate for the next year instead of automatically applying the overpayment to the taxpayer’s next 965 tax installment payment.

Treatment of Estate, Gift, and Generation-Skipping Transfer Taxes after Sunset in 2026:

- 3. ABA urges IRS and Treasury to clarify that when the estate and gift tax exclusion and GST exemption amounts revert to their previous levels after 2025, the federal government will not impose any tax liability on those transactions based on the 2026 lower exclusion or exemption amounts.

Deductions Allowed Under Section 67(e):

- 4. ABA requests that the IRS and Treasury issue guidance confirming that section 67, as amended by the TCJA, still permits a trust or an estate to fully deduct expenses that are not subject to the 2 percent floor, including trustee fees, tax preparation fees, accounting fees, and attorney fees.

Continuation of Issues Currently on Guidance Plan:

The following issues are included on the current Priority Guidance Plan. We applaud your focus on getting out much needed tax reform guidance. Given the number of potentially affected taxpayers and administrative challenges, we also appreciate your attention to these issues and to the need for uniform guidance. Accordingly, we recommend that IRS and Treasury keep these issues on the Plan due to their importance to the banking industry and hope that guidance will be forthcoming shortly.

Resolution of the appropriate treatment and reporting of accrued, but unpaid interest on modified mortgages:

1. There is ambiguity and lack of guidance regarding the information reporting requirements for interest paid in cases where accrued, but unpaid mortgage interest is included in a modified mortgage loan. We believe that the IRS and Treasury are uniquely situated to address the issues in a way that is consistent with the law and the best interests of tax administration, including both the best interests of taxpayers and the IRS through proper tax compliance. To address this lack of guidance, the ABA recommends that the guidance ultimately should, at a minimum:
 - a. Provide that payments are attributable first to interest that has accrued under the terms of a modified mortgage, second to interest on the pre-modification mortgage that was added to principal at the time of modification, and finally to principal that is not attributable to pre-modification interest.
 - b. Reporting entities must then allocate payments received on a modified mortgage to interest as described.
 - c. Be prospective – that is, effective for mortgages modified after issuance of final regulations. To the extent a borrower on a mortgage that was modified prior to the effective date did not deduct the post-modification payments of pre-modification interest that he or she would otherwise be entitled to deduct under the requested guidance, the guidance should permit the borrower to deduct such amount in her/his next filed return via a simplified change in method of accounting process.

Guidance under Section 166 on the conclusive presumption of worthlessness for debts:

2. In connection with addressing a variety of issues related to the timing of deducting bad debts and the current rules related to the book / tax conformity election, Treasury initiated a project to review and potentially update the regulations in this area. Notice 2013-35, which requested comments on the existing rules, was published on June 10, 2013:
 - a. Although there appears to be less controversy on this issue than in the past, this continues to be an important issue for banks. An examination directive (LB&I-04-1014-008) regarding these issues applied only for taxable years 2010-2014 and accordingly, updated guidance is necessary.
 - b. A new financial accounting standard (Accounting Standards Update 2016-13, popularly known as “CECL”) has been promulgated for loan loss reserves. It is a relevant time to review the book and tax issues surrounding bad debts.
 - c. We ask that Treasury re-open this project and update the regulations as appropriate.
 - d. For additional background, please see our [joint trades comment letter submitted on October 8, 2013.](#)

Consistent Basis Reporting Between an Estate and the Person Acquiring Property from a Decedent:

3. ABA urges the IRS to issue final rules on consistent basis reporting of an estate's assets and make necessary changes to Form 8971, in keeping with our [June 1, 2016 comments](#).
 - a. In particular, the final rule should eliminate unnecessary filings of Form 8971, except certain property from the reporting requirements, withdraw the negative treatment of after-discovered or omitted property, and withdraw the reporting requirement for subsequent transfers of reported property. In addition, we request that the IRS amend the instructions to Form 8971 to not impose penalties for incomplete information on beneficiaries. For example, situations may arise in which an estate makes a distribution to a beneficiary that has no TIN.

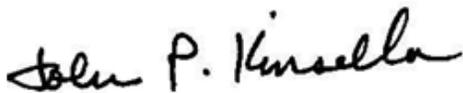
Other Recommended Issues for Guidance Plan:

Suggested Amendment to Form 1041:

1. ABA recommends that Form 1041, U.S. Income Tax Return for Estates and Trusts, include a line for the tax on electing small business trust (ESBT) income, as well as a schedule for the calculation of the tax. In addition to being helpful to the public, this change would provide an incentive for tax preparation vendors to include such a schedule in its program.

We appreciate the efforts of the IRS and Department of the Treasury to address these important issues. Please do not hesitate to contact us with any questions. For questions regarding the trust, estate and gift tax matters raised in this letter, please reach out to Phoebe Papageorgiou at (202) 663-5053.

Sincerely,



John P. Kinsella