

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

NEIL L. BRADLEY  
EXECUTIVE VICE PRESIDENT &  
CHIEF POLICY OFFICER

1615 H STREET, NW  
WASHINGTON, DC 20062  
(202) 463-5310

May 26, 2021

Office of the Associate Chief Counsel (Procedure and Administration)  
Attention: Emily M. Lesniak  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

CC:PA:LPD:PR  
(Notice 2021-28)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

*Via Federal eRulemaking Portal*

**RE: Comments on Notice 2021-28: Priority Guidance Plan**

Dear Ms. Lesniak:

The U.S. Chamber of Commerce welcomes the opportunity to provide feedback on Notice 2021-28,<sup>1</sup> recommendations for items that should be included on the 2021-2022 Priority Guidance Plan, as published in the *Internal Revenue Bulletin* on May 3, 2021.

As requested by Notice 2021-28, the Chamber would like to express its support for continued consideration of the current 2020-2021 Priority Guidance Plan projects, including, but not limited to, the following (assuming such projects are not completed during the 2020-2021 Priority Guidance Plan year):

- Computational, definitional, and other guidance under §163(j)<sup>2</sup> (including guidance on tiered partnership structures and the flow through, reporting, and retention of attributes at each tier.)
- Guidance under §165(i) on COVID-19 pandemic losses.

---

<sup>1</sup> 2021-18 I.R.B. 1130 (May 3, 2021).

<sup>2</sup> Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

- Guidance under §166 on the conclusive presumption of worthlessness for bad debts.
- Guidance under §170(e)(3) regarding charitable contributions of inventory.
- Updating §301 regulations to reflect statutory changes.
- Regulations under §§367 and 482, including regulations addressing the changes to §§367(d) and 482 under the TCJA.
- Regulations under §472 concerning dollar-value last-in, first-out (LIFO) inventories, including rules for combining pools as a result of a change in method of accounting, certain corporate acquisitions, and certain nonrecognition transactions.
- Final regulations under §904 related to the definition of financial services income, financial services entity, and financial services group.
- Regulations under §954 concerning the application of the high tax exception.
- Guidance under §954, including the use of foreign statement reserves for purposes of measuring qualified insurance income under §954(i).
- Regulations addressing modifications to subpart F, including coordination with the enactment of §951A.
- Regulations under §§959 and 961 concerning previously taxed earnings and profits (PTEP) under subpart F and GILTI (including timing of basis for GILTI PTEP).
- Final regulations under §1001 on the elimination of interbank offered rates.
- Regulations under §1502 removing obsolete rules and updating regulations to reflect statutory changes.
- Regulations regarding life-nonlife consolidated groups under Regs. §1.1502-47.
- Final regulations addressing adjustments to basis and capital accounts and the tax and book basis of partnership property.
- Guidance on tax-advantaged bond appeals procedures.

In addition, the Chamber would like to express its support for consideration of new additions to the 2021-2022 Priority Guidance Plan, including, but not limited to:

- Guidance under §§267 and 707 regarding the sale of electricity from a joint venture to a utility where the utility immediately sells the electricity to an unrelated third party. The sale of electricity in a transaction in which a related party has flash title is not the kind of transaction that should fall within the scope of §§267(b)(10) and 707(b) and therefore any losses generated should not be disallowed under those provisions. Notice 2008-60 provides that the requirement of a sale to an unrelated person under §45 will be treated as satisfied if the producer sells the electricity to a related person for resale by the related person to a person that is not related to the producer. The statutory requirements for whether a person is related to a partnership are the same under §§45 and 45J and §§707(b) and 267(b)(10). Accordingly, the IRS should apply the same principles under §§267(b)(10) and 707(b) for testing relatedness (i.e., look to the ultimate purchaser) for sales of electricity from a joint venture to a utility.

- Provide guidance defining a syndicate under §461(i)(3), including when a person is deemed to actively participate in the management of the business.
- Guidance regarding §1202, including the definition of an insurance business for purposes of §1202(e)(3)(B) and whether Financial Technology companies are qualified trades or businesses.
- Provide guidance as to in which quarter PPP loan forgiveness is deemed to occur. This applies for purposes of determining basis in a pass-through entity and in determining gross receipts for the employee retention credit.
- Health FSAs are allowed to apply an expanded carryover or extended grace period to the 2020/2021 and 2021/2022 plan year transitions. Although the IRS is clear that participating in a Health FSA disqualifies an individual from making HSA contributions, it would be helpful if the IRS provided the relief listed above.
- Guidance on the circumstances in which an employee will be considered to have an involuntary termination to qualify for the American Rescue Plan Act of 2021 COBRA subsidy, and the process for making the determination on whether a termination is considered involuntary.
- Guidance expanding the types of permissible mid-year amendments to a safe harbor §401(k) plan to include that a sponsor involved in an §410(b)(6)(c) transaction may amend a safe harbor §401(k) plan to cover other members of the newly acquired entity and still retain the protections of safe harbor status.<sup>3</sup>

The Chamber appreciates the opportunity to provide this feedback on Notice 2021-28. The Chamber looks forward to working with Treasury and the IRS to continue to implement the tax laws in a manner that encourages the U.S. economy to achieve its true growth potential. The Chamber looks forward to working with you to address these and other issues of importance to the business community. Thank you for your time and attention.

Sincerely,



Neil Bradley

cc: Charles P. Rettig, Commissioner, Office of the Commissioner, Internal Revenue Service,  
U.S. Department of the Treasury

---

<sup>3</sup> Notice 2016-16, 2016-07 I.R.B. 318 (Feb. 16, 2016) specifically requested comments on additional guidance that may be needed, in particular with respect to mid-year changes to safe harbor plans in cases in which a plan sponsor is involved in a merger or acquisition.

Mark Mazur, Deputy Assistant Secretary (Tax Policy), Office of Tax Policy, U.S.  
Department of the Treasury

William M. Paul, Acting Chief Counsel and Deputy Chief Counsel (Technical), Office of  
Chief Counsel, Internal Revenue Service, U.S. Department of the Treasury