

September 22, 2008

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Internal Revenue Service  
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Re: AICPA Draft Form 1041NR, U.S. Income Tax Return for Foreign Estates and Trusts, and Relevant Schedules, for Consideration by the IRS

Dear Ms. Morgan:

The American Institute of Certified Public Accountants (AICPA) has prepared the attached draft Form 1041NR, U.S. Income Tax Return for Foreign Estates and Trusts, and relevant schedules for consideration by the IRS. The draft form and relevant schedules were developed by the Foreign Trust Task Force and approved by the Trust, Estate, and Gift, Tax Technical Resource Panel and the International Taxation Technical Resource Panel and Tax Executive Committee. In addition, we have shared these draft forms and schedules with the American Bar Association Tax Section's International Tax Planning Committee and International Estate Planning Committee, which has also reviewed and approved the attached draft form and schedules.

A separate, similar cover letter from the Chair of the ABA's International Tax Planning Committee, Ms. Leigh-Alexandra Basha, with her comments may also be submitted to you. We are generally in agreement with her and her committee member comments, which are incorporated in the latest draft versions being sent with this letter.

As we have discussed previously, the AICPA suggested that a draft Form 1041NR be developed tailored specifically to foreign trusts. We suggested this in our comments to IRS on foreign trust reporting (see <http://tax.aicpa.org/Resources/Trust+Estate+and+Gift/Regulation+and+Administration/>) on March 3, 2008, and January 31, 2007, and on Forms 3520 and 3520-A on June 17, 2003, and the IRS previously responded on May 12, 2008, March 5, 2008, and May 25, 2007, with interest that the AICPA develop and share with IRS such a draft form for IRS consideration.

As we stated in our January 31, 2007 letter, <http://tax.aicpa.org/Resources/Tax+Advocacy+for+Members/Trust+and+Estate+and+Gift/AICPA+Comments+on+Foreign+Trust+Reporting+Forms.htm>, we recommended the issuance of a Form 1041NR, specifically tailored to foreign trusts, as there does not currently appear to be clear guidance as to how to properly complete Form 1040NR for a foreign nongrantor trust earning U.S. source or effectively connected income. The instructions to Forms 1041, *U.S. Income Tax Return for Estates and Trusts*, and Form 1040NR currently explain that Form 1040NR is the correct form to

file, but do not provide sufficient guidance as to the mechanics of completing such form for a trust. Specifically, there is not a section to calculate the DNI and the distribution deduction, nor a designated Schedule K-1(s) for the beneficiary(ies). Form 1041-T could be changed to include back-up federal tax withholding for the trust by the payor (section 643(d)). The AICPA offered and was asked to assist the IRS in the development of a new form.

Accordingly, for IRS consideration, please see the attached draft Form 1041NR and relevant schedules, including:

- Pages 1-5 of draft Form 1041NR, U.S. Income Tax Return for Foreign Estates and Trusts, including sections on:
  - Type of entity,
  - Income and Deductions,
  - Tax and Payments,
  - Creation of the Trust,
  - Classification of the Trust,
  - Information concerning the Trustee,
  - Schedule A: Charitable Deduction,
  - Schedule B: Income Distribution Deduction, and Other Information,
  - Schedule C: Computation of the Tax,
  - Schedule D: Foreign Exchange Transactions, and
  - Schedule E: Identification of Distributions to Income Beneficiaries
- Page 6 of draft Form 1041NR, U.S. Income Tax Return for Foreign Estates and Trusts, Tax on Income Not Effectively Connected with a US Trade or Business
- Page 7, Income from Foreign Sources, and Capital Gains and Losses from Sales or Exchanges of Property
- Page 9, Schedule K: Alternative Minimum Tax, including:
  - Part I: Estate's or Trust's Share of Alternative Minimum Taxable Income,
  - Part II: Income Distribution Deduction on a Minimum Tax Basis,
  - Part III: Alternative Minimum Tax, and
  - Part IV: Line 52 Computation using Maximum Capital Gains Rates

(Please note that the main body of the draft Form 1041NR includes on page 4 a Schedule D for foreign exchange transaction details. This schedule follows the alphabetical coding used throughout the main body of the draft Form 1041NR. Also included is a Schedule D for capital gain and loss transactions, which follows the current Form 1040/1041 schedule titles.)

- Form 1041NR, Schedule D: Capital Gains and Losses, including:
  - Part I: Short-Term Capital Gains and Losses – Assets Held One Year or Less,
  - Part II: Long-Term Capital Gains and Losses – Assets Held More Than One Year,
  - Part III: Summary of Parts I and II,
  - Part IV: Capital Loss Limitation, and

- Part V: Tax Computation Using Maximum Capital Gain Rates
- Form 1041NR, Schedule J, Accumulation Distribution for Certain Complex Foreign Trusts, including:
  - Part I: Accumulation Distribution in 2007,
  - Part II: Ordinary Income Accumulation Distribution,)
- Form 1041NR, Schedule K-1, Beneficiary's Share of Income, Deductions, Credits, Etc., including:
  - Part I: Information About the Estate or Trust
  - Part II: Information About the Beneficiary
- Form 1041NR-T, Allocation of US Tax Payments to Beneficiaries (Under IRC section 643(d) and (g)) (pages 1-2)
- Form 4970FT, Tax on Accumulation Distribution of Foreign Trusts
  - Part I: Average Income and Determination of Computation Years
  - Part II: Tax Attributable to the Accumulation Distribution
  - Part III: Calculation of Interest Charge

As the IRS reviews these draft forms, the AICPA Foreign Trust Task Force is available to discuss and explain any or all of these drafts to IRS personnel. In addition, the AICPA Foreign Trust Task Force is available to assist the IRS in the instructions phase of the project with possible worksheets, etc. and would be available to assist with developing draft instructions if that is requested. Members of the American Bar Association Tax Section International Tax Planning Committee have also offered to assist with possible draft instructions.

As the draft Form 1041NR progresses, the AICPA Foreign Trust Task Force is willing to assist with any testing of transactions to ensure that the data flows correctly.

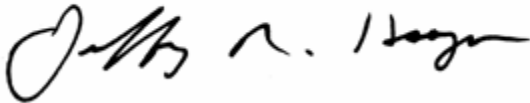
We note that on page 1 of the draft Form 1041NR, a form number (or new form) will need to be incorporated related to the new 30 percent Federal withholding associated with the new expatriate exit tax under newly enacted IRC section 877A.

The AICPA is the national, professional organization of certified public accountants comprised of approximately 350,000 members. Our members advise clients on federal, state, and international tax matters, and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

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We thank you for the opportunity to draft and share with you for IRS consideration this new proposed form and relevant schedules and welcome the opportunity to discuss and comment on further drafts as this project progresses. Please feel free to contact me at 212-773-2858 or [jeffrey.hoops@ey.com](mailto:jeffrey.hoops@ey.com); Justin P. Ransome, Chair of the AICPA Trust, Estate, and Gift Tax Committee, at 202-521-1520 or [justin.ransome@gt.com](mailto:justin.ransome@gt.com); Karen A. Brodsky, Chair, AICPA Foreign Trust Task Force, at 212-436-3025 or [kbrodsky@deloitte.com](mailto:kbrodsky@deloitte.com); or Eileen R. Sherr, AICPA Technical Manager, at 202-434-9256 or [esherr@aicpa.org](mailto:esherr@aicpa.org), to discuss any of the above items or if you require any additional information.

Sincerely,



Jeffrey R. Hoops  
Chair, AICPA Tax Executive Committee

cc: Eric Solomon, Assistant Secretary for Tax Policy

Michael Mundaca, , Treasury Department, Deputy Assistant Secretary for Tax Policy – International, Treasury Department

John Harrington, International Tax Counsel, Treasury Department

Gretchen Sierra, Attorney Advisor, Office of the International Tax Counsel, Office of Tax Policy, Treasury Department

Steven A. Musher, Associate Chief Counsel (International), Room 4619 IR, CC:INTL

Michael A. DiFronzo, IRS Deputy Associate Chief Counsel (International – Technical), Office of the Chief Counsel

John J. Merrick, IRS Special Counsel to Associate Chief Counsel (International), Room 3052 IR, CC:INTL

Leigh-Alexandra Basha, Chair of the American Bar Association Real Property Probate and Trust Section International Tax Planning Committee

Duncan E. Osborne, Chair of the American Bar Association Tax Section International Estate Planning Committee