



**JOINT REPORT OF THE FEDERAL & REGULATORY AFFAIRS COMMITTEES**  
**September 2018**

Below please find a joint report from the Federal and Regulatory Affairs Committees on federal government affairs activities in which MLPA has been engaged over the year. The Committees would like to thank PwC, Hunton Andrews Kurth, Vinson & Elkins, Sidley Austin, Baker Botts, Latham & Watkins, Van Ness Feldman, Deloitte, EY and many of our member companies and their Washington representatives for their work on the issues discussed below. As always, the MLPA and the Committees welcome additional participation.

***FERC ITA Revised Policy Statement***

On March 15, 2018 the Federal Energy Regulatory Commission ("FERC") issued a Revised Policy Statement reversing its long-held policy of allowing an income tax allowance ("ITA") in the calculation of cost-of-service rates for MLPs that own interstate pipelines subject to FERC jurisdiction. Since that time, MLPA has had several meetings on Capitol Hill to educate Members and staff about the negative impact the Revised Policy Statement has had not only on the MLPs directly impacted, but also on the MLP industry generally. In response, several Members of Congress sent letters to the Commission voicing their concerns about the policy reversal, particularly in light of Congress' re-affirmation of its support of and commitment to the MLP structure in the Tax Reform and Jobs Act.

In addition to these efforts, MLPA has made a number of filings related to FERC's Revised Policy Statement on Treatment of Income Taxes. These include the Request for Clarification of the Commission's Revised Policy Statement, filed on April 13, 2018, the Motion for Clarification or Reconsideration of the Commission's Order on Rehearing of the Revised Policy Statement, filed on August 17, 2018, and the Motion to Intervene and Request for Rehearing of the Commission's order in the Enable Mississippi River Transmission, LLC ("MRT") rate proceeding, filed on August 30, 2018. The Commission appears to have taken the April 13, 2018, Request for Clarification into account in issuing its Order on Rehearing of the Revised Policy Statement. MLPA's Motion for Clarification or Reconsideration of the Commission's Order on Rehearing is still pending.

With respect to MRT's rate proceeding, the proceeding was set for settlement procedures before an Administrative Law Judge, but the specific issue on which MLPA requested rehearing relates to the FERC order and is therefore with the Commission itself and not an ALJ. On September 17, 2018 FERC Chief Administrative Law Judge ("Chief Judge") Carmen Cintron issued an order denying MLPA's motion to intervene in the settlement proceeding portion of the MRT rate case, consistent with the Chief Judge's recent actions denying late interventions in other proceedings. As the Chief Judge explained, *"This Order does not address the matter of late intervention in the rehearing docket or the MLPA's request for rehearing, which are reserved for adjudication by the Commission. The denial of the MLPA's late intervention request in the settlement proceeding shall not be construed as a determination one way or another on the Commission's authority to adjudicate those matters related to the rehearing docket."*

MLPA will wait for the Commission to issue an order related to the Motion to Intervene and Request for Rehearing as it relates to rehearing; and will continue to monitor and make additional filings and seek opportunities to engage with the Commission as appropriate going forward.

## ***Tax Reform and Jobs Act Implementation***

Below is an update on several issues upon which MLPA has been working stemming from passage of the 2017 Tax Reform and Jobs Act.

- *Computation of the qualified PTP deduction under section 199A* – On August 8, 2018, the IRS issued proposed regulations on section 199A that include the clarification on losses that MLPA requested during its meeting with Treasury and the IRS earlier this year. Under the regulations: *"if an individual owns an interest in a PTP, and for the taxable year is allocated a distributive share of net loss which is disallowed under the passive activity rules of section 469, such loss is not taken into account for purposes of section 199A."* Thus, losses from an MLP generally will not reduce the amount of income eligible for the section 199A deduction until the taxpayer is permitted to take the loss for purposes of reducing its taxable income.
  - *Tax Reform 2.0* – Tax Reform 2.0 consists of 3 bills including "Protecting Family and Small Business Tax Cuts Act of 2018" (H.R. 6760), which includes, among other things, making section 199A permanent. The bills passed out of the House Ways and Means Committee earlier this month and the House plans to take up the bills soon. Majority Leader McConnell, however, has made it clear he will only bring up each of the three bills if he is sure each can garner 60 votes necessary to pass tax legislation outside of the Budget Reconciliation process.
- *10% withholding requirement on effectively connected income ("ECI") for foreign investors* – In late December, after several conversations with Treasury and the IRS, a temporary stay was issued regarding a provision in the Tax Reform and Jobs Act that would have required withholding of tax on effectively connected income on dispositions of PTP units by foreign holders. As written, the provision would have caused significant disruption in the markets. MLPA has continued to discuss this issue with Treasury and the IRS. Additionally, we are now pursuing on Capitol Hill an exemption from tax on ECI from dispositions of PTP interests by foreign unit holders owning <10% of a PTP. The Securities Industry and Financial Markets Association (SIFMA) is working with MLPA on this effort.
- *Business interest expense limitation issues (including the allocation of interest expense to the partnerships assets and the allocation of excess taxable income and excess business interest among the partners)* – IRS Notice 2018-28, 2018-16 IRB 492 (July 9, 2018), provides that the IRS and Treasury will issue regulations providing that, for purposes of calculating a partner's annual deduction for business interest under section 163(j)(1) (for business interest expense at the partner level, which would be after the partnership has calculated its section 163(j)(1) limit on its business interest expense at the partnership level), a partner cannot include the partner's share of the partnership's business interest income for the taxable year except to the extent of the partner's share of the excess of (i) the partnership's business interest income over (ii) the partnership's business interest expense (not including floor plan financing). Treasury and the IRS have not yet issued proposed regulations under section 163(j). MLPA will respond to those proposed regulations and other guidance when issued.
- *Bonus depreciation issues for PTPs (including the treatment of section 743(b) adjustments and section 704(c) remedial layers)* – On August 3, 2018, Treasury released proposed regulations on bonus depreciation under section 168(k) that responded to requests for clarification that MLPA made in meetings with Treasury and the IRS earlier in the year. Under these proposed regulations, section 704(c) remedial items are not eligible for bonus depreciation. The proposed regulations allow a purchaser of a partnership interest to take bonus depreciation on the portion of a basis step up (the section 743(b) adjustment) allocated to bonus qualified property, but only if, among other requirements, that purchaser is unrelated to the seller of the partnership interest and that purchaser never owned the purchased interest in the past. The proposed regulations also allow a taxpayer to elect out of bonus depreciation on section 743(b) adjustments without electing out of bonus depreciation on newly acquired qualified property.