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January 3, 2007

Mr. Eric Solomon
Assistant Secretary for Tax Policy
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Room 3120 MT
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Report on Differences in Tax Treatment of Domestic and Foreign Partnerships

Dear Assistant Secretary Solomon and Commissioner Everson:

I am pleased to submit New York State Bar Association Tax Section Report No. 1124 on differences in the tax treatment of domestic and foreign partnerships. The Report reviews a wide variety of cases in which foreign and domestic partnerships are treated differently under the Code, and provides a recommended approach for each. In some cases, our recommended approach would require that the Code be amended, but in other cases we believe the recommended approach could be implemented by administrative action.

As a general proposition, the Tax Section is of the view that the nationality of a partnership should not have any substantive tax impact absent a compelling reason for treating domestic and foreign partnerships differently. This view reflects our belief that, for most purposes of the Code, a partnership is and should be treated as an aggregate of its partners, and not as a separate entity in its own right.

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We acknowledge, however, that where the Code provision at issue is simply an administrative rule having little or no impact upon a partner's substantive tax liability, entity treatment may be appropriate, avoiding unnecessary complexity.

Thus, for example, the Report recommends that domestic and foreign partnerships be treated identically for purposes of subpart F's definitions of "United States shareholder" and "controlled foreign corporation" as well as a variety of other Code provisions discussed in the Report. Instances in which the Report recommends treating domestic and foreign partnerships differently, based on their entity-level status, include determination of the parties eligible to act as a "tax matters partner." In between these cases, the Report discusses and analyzes the differing rules that apply to inversions under Section 7874, to loans by controlled foreign corporations under Section 956 and to determine the source of income from notional principal contracts and the source of interest paid by partnerships. It further reviews the deductibility of payments to related partnerships under Section 267, the eligibility of partnerships and their partners to make "QEF" elections under the passive foreign investment company rules and the treatment of partnerships under the stapled stock rules of Section 269B.

We appreciate your consideration of our recommendations. If you have any questions or comments regarding this report, please feel free to contact us and we will be glad to discuss or assist in any way.

Respectfully submitted,



Kimberly S. Blanchard
Chair

Enclosure

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