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April 22, 2005

Mr. Eric Solomon
Acting Deputy Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3104 MT
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

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

Dear Acting Deputy Assistant Secretary Solomon and Commissioner Everson:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1085, which comments on recently proposed regulations dealing with disguised sales of partnership interests. The proposed regulations approach the relevant issues in a thoughtful way and are generally consistent with the treatment of disguised sales of property between partners and partnerships. However, we believe that significant changes should be made to better reflect the intent of Congress (and of the Treasury and the IRS, as noted in the relevant preamble) not to recharacterize nonabusive transactions as disguised sales.

The proposed regulations would effectively recharacterize a transaction as a disguised sale of a partnership interest if a distribution to a partner would not have occurred (*e.g.*, would not have been possible) "but for" a contribution to the partnership by another partner. As we have stated in prior reports, however, we believe that this is too broad a standard, and if it was

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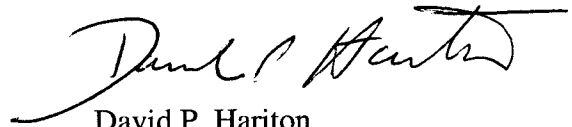
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literally applied, it would result in the improper recharacterization of routine business transactions. We do not think a contribution and a distribution should be recharacterized as a disguised sale unless they are “directly related” to each other, as more fully described in our Report. Likewise, we think the presumption that transfers made within two years of each other constitute a sale of all or a portion of a partnership interest should be limited to situations in which certain additional factual circumstances are present.

For similar reasons, we believe that the proposed expansion of various disclosure requirements to encompass contributions and distributions made over a seven-year period is overbroad and onerous. We also recommend special rules for investment partnerships and for nonsimultaneous transfers, and we make additional technical recommendations.

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 our Report or to assist you in any way.

Respectfully submitted,



David P. Hariton
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