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One Elk Street, Albany, New York 12207 PH 518.463.3200 www.nysba.org

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June 14, 2016

The Honorable Mark J. Mazur
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: *Report No. 1350 on Proposed and Temporary Regulations on United States Property Held by Controlled Foreign Corporations in Transactions Involving Partnerships*

Dear Messrs. Mazur, Koskinen, and Wilkins:

I am pleased to submit the attached report of the Tax Section commenting on proposed and temporary regulations published by Treasury and the Internal Revenue Service (the "IRS") on September 2, 2015, regarding the treatment of United States property held by a controlled foreign corporation (a "CFC") under Section 956 in connection with certain transactions involving partnerships (the "Proposed Regulations" and "Temporary Regulations", respectively).

The Proposed Regulations include an "obligation rule", dealing with the application of Section 956 to an obligation of a foreign partnership to a CFC, which adopts an aggregate approach to an obligation of a foreign partnership. We considered whether to recommend that Treasury and the

FORMER CHAIRS OF SECTION:

IRS adopt regulations that apply an entity approach to an obligation of a foreign partnership, with anti-abuse rules that would subject the obligation to Section 956 in circumstances where the proceeds of the obligation are made available to U.S. partners that are related to the CFC. A substantial minority of our members supported a recommendation that the regulations adopt an entity approach in this context. We concluded that the concerns identified by Treasury and the IRS in the preamble to the Proposed Regulations, that failing to treat an obligation of a foreign partnership as an obligation of its partners could allow deferral of U.S. tax on CFC earnings and profits in a manner inconsistent with the purposes of Section 956, constitute an appropriate basis for the general aggregate approach of the Proposed Regulations. However, we recommend adding a new *de minimis* exception to the regulations, pursuant to which an obligation of a foreign partnership would not be treated as an obligation of a U.S. partner if the U.S. partner (and its related persons) owns less than a specified percentage of the profits and capital interests in the foreign partnership.

The Report also makes the following additional recommendations regarding the Proposed and Temporary Regulations:

1. We recommend that the regulations apply a liquidation value approach to determine the partners' shares of a partnership obligation, rather than the approach based on the partners' interests in partnership profits in the Proposed Regulations.

2. A partner's share of partnership obligations should be measured on an annual basis, subject to a rule requiring quarterly determinations if a principal purposes of structuring the obligation through a partnership is to avoid quarterly determinations.

3. We support the Proposed Regulations' liquidation value approach for determining a partner's attributable share of partnership property for purposes of Section 956. We note that determining a partner's share of partnership property based on a special allocation may give rise to results that are inconsistent with the general liquidation value approach of the Proposed Regulations because special allocations inherently reflect future allocations of profit and loss, which may be different than the partners' current liquidation value in the relevant property.

4. We recommend that a partner's attributable share of partnership property should be measured on an annual basis, subject to a rule requiring quarterly determinations if the principal purpose of holding property through a partnership is to avoid quarterly determinations.

5. The anti-avoidance rule in the Temporary Regulations relating to acquisitions of property by a partnership controlled by a CFC should apply only with respect to property held indirectly through a partnership by one or more foreign corporations that are controlled by the funding CFC. Property that is acquired by a partnership in which the funding CFC is a partner

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should not be the subject of the anti-avoidance rule because this property is subject to the general property rules in the Proposed Regulations.

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

Respectfully submitted,



Stephen B. Land
Chair

cc: Emily S. McMahon
Deputy Assistant Secretary (Tax Policy)
Department of the Treasury

Thomas C. West, Jr.
Tax Legislative Counsel
Department of the Treasury

Krishna P. Vallabhaneni
Deputy Tax Legislative Counsel
Department of the Treasury

Marjorie A. Rollinson
Associate Chief Counsel (International)
Internal Revenue Service

Barbara E. Rasch
Senior Technical Reviewer, Branch 2
Office of Associate Chief Counsel (International)
Internal Revenue Service

Rose E. Jenkins
Attorney-Advisor, Branch 2
Office of Associate Chief Counsel (International)
Internal Revenue Service