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November 21, 2016

The Honorable Mark Mazur
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The Honorable William J. Wilkins
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Re: *Report No. 1358 on Proposed Regulations under Section 2704 of the Code*

Dear Messrs. Mazur, Koskinen and Wilkins:

I am pleased to submit the enclosed New York State Bar Association Tax Section Report No. 1358 (the "Report") providing comments on proposed regulations published August 4, 2016 (the "Proposed Regulations"), relating to the special gift, estate, and generation-skipping transfer tax valuation rules of Section 2704 of the Internal Revenue Code of 1986, as amended (the "Code"). The Report was prepared jointly with the New York State Bar Association Trusts and Estates Section.

Section 2704(b) disregards certain restrictions on liquidation, known as "applicable restrictions," when valuing interests in corporations and partnerships. Under Section 2704(b)(4), the Department of the Treasury may provide that certain other restrictions may likewise be disregarded, if they have the effect of reducing the value of the transferred

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interest for transfer tax purposes but do not ultimately reduce the value of the interest to the transferee. The Proposed Regulations would exercise the Treasury's Section 2704(b)(4) authority for the first time, by defining a new class of restrictions, known as "disregarded restrictions," that would be ignored for gift and estate tax valuation purposes.

Notably, the Proposed Regulations provide that if a restriction is disregarded for valuation purposes, then the property transferred is valued as if the restriction "does not exist," whether in an entity's government documents, local law, or otherwise. The text of the Proposed Regulations, however, leaves unresolved the critical question of how, exactly, an interest in an entity is to be valued on the assumption that a restriction does not exist. Since the Proposed Regulations were issued, Internal Revenue Service ("Service") officials have, in public comments made at meetings of attorneys and accountants, attempted to clarify the effect of the nonexistence assumption. The Report discusses the Service's approach in detail and recommends alternatives that the Service may wish to consider in order to achieve its policy objectives.

The Report's recommendations include the following:

1. The Service should clarify what effect disregarding a restriction under the Proposed Regulations has on the valuation of an interest in an entity.
2. The Service should not adopt a valuation rule that would require the appraiser of a transferred interest to assume a state of legal uncertainty as to whether the holder has liquidation or withdrawal rights.
3. Where a restriction is disregarded, the Service should consider the following approaches: (a) providing clear substitute assumptions that an appraiser must apply when valuing an entity interest; (b) providing that a gift occurs on formation of the entity; or (c) providing that the entity interest is not valued under the traditional willing-buyer-willing-seller test.
4. The Service should provide that, in determining control of a limited partnership, a non-controlling interest in an entity that holds the general partnership interests is not equivalent to holding an interest as a general partner.
5. The Service should clarify that the Proposed Regulations' new rules interpreting Section 2704(a) apply to lapses of voting or liquidation rights as a result of transfers of entity interests occurring after the final regulations are published, regardless of whether the interests were created on or before October 8, 1990.
6. The Service should clarify that, in determining an entity's net value, only the expected value of the entity's obligations, rather than the face amount of any claims that may be asserted against the entity, may be taken into account.

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7. The Service should consider further the effect of Section 2704(b) on the valuation of entity interests transferred by trusts.
8. The Service should clarify that the determination of fair market value for purposes of determining basis under Sections 1014 and 1015 is consistent with the determination of fair market value for gift and estate tax purposes.

We are grateful for your consideration of the Report and its recommendations, and would be happy to discuss them with you or provide additional assistance. We are also grateful to those Service officials who spent considerable time aiding us in understanding the Proposed Regulations and their intended consequences.

Respectfully submitted,



Stephen B. Land
Chair

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