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January 19, 2010

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Re: Report on Proposed Regulations on Varying Partnership
Interests Under Section 706

Dear Sirs:

We write to comment on the proposed regulations under Section 706 of the Internal Revenue Code that were issued on April 14, 2009. The proposed regulations provide rules for determining a partner's distributive share of partnership items of income, gain, loss, deduction, and credit when the partner's interest in the partnership varies during the taxable year of the partnership. The proposed regulations amend and expand the scope of current regulations under Section 706 that address determinations of a partner's distributive share of partnership items for a taxable year of the partnership, where there is a sale, exchange or liquidation of the partner's entire interest in a partnership during the taxable year.

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The proposed regulations provide methods (the “interim closing method” and the “proration method”) for allocating partnership items if a partner’s interest varies during the taxable year of the partnership, and conventions (including the “semi-monthly convention” and the “calendar day convention”) for determining when the variation is deemed to take place. The proposed regulations apply if a partner’s interest in the partnership varies during the taxable year as a result of (i) a sale, exchange or liquidation of the partner’s entire interest in the partnership, (ii) a sale or exchange of part of the partner’s interest in the partnership, (iii) the death of the partner, or (iv) any other reduction in the partner’s interest in the partnership. The proposed regulations generally provide that a partnership can only use one method and only one convention for all variations in its partners’ interests occurring within each partnership taxable year.

While we welcome the guidance provided by the proposed regulations, we believe that partnerships should have considerably more flexibility in selecting and combining methods and conventions than would be permitted by the proposed regulations, subject to certain limitations in order to prevent abuse. We also believe that a number of special rules should apply to certain extraordinary items, such as cancellation of indebtedness income, in order to avoid unfairness and prevent tax abuse. The remainder of this letter sets forth a summary of specific recommendations regarding the proposed regulations.

1. *Use of Multiple Methods During a Taxable Year.* We recommend that the final regulations allow a partnership to use different methods for separate variations in partners’ interests during the partnership’s taxable year, provided that the overall combination of methods is reasonable based on the overall facts and circumstances. Alternatively, this approach could be modified by providing that if the interim closing method is used for any variation during a partnership’s taxable year, the date of that variation would be treated for proration purposes as though it were the end of a partnership taxable year with a new taxable year deemed to begin on the next date.
2. *Clarification on Availability of the Proration Method.* It has been reported that the IRS does not believe that under the proposed regulations the proration method is available to a partnership in a taxable year if the partnership has any extraordinary items during that year. We assume that this is not the case, but if it is, then we would urge a reversal of that position.
3. *Use of Any Reasonable Method.* We recommend that the IRS and the Treasury consider designating the proration method and the interim closing method as safe harbors, rather than as exclusive methods, and that the final regulations provide, as a general rule, that a partnership may use as a method any reasonable hybrid of the interim closing method and proration method, provided that (i) such method is reasonable based on the overall facts and circumstances, (ii) the consequences of using such

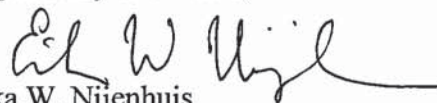
method are consistent with the principles of Section 706, and (iii) a significant purpose of the use of such method is not tax avoidance.

4. *Use of Multiple Conventions for When a Variation in a Partner's Interest is Deemed to Take Place.* We recommend that the final regulations allow a partnership that uses the interim closing method to use a combination of the provided conventions as long as the combination is reasonable and a significant purpose of the use of the combination of conventions is not tax avoidance.
5. *Semi-Monthly Convention & "Super Extraordinary Items."* We recommend that a partnership using the semi-monthly convention that has "super extraordinary items" be permitted to adopt a convention under which such items are allocated using the calendar day convention, while the semi-monthly convention is used for all other items. If this approach is adopted, the definition of "super extraordinary items" should be set at a high amount, which may be determined by reference to the gross value or gross income of the relevant partnership. The IRS and the Treasury should consider whether to require this approach in other cases where the use of the semi-monthly convention results in tax avoidance, with a possible exception for publicly traded partnerships.
6. *Timing of Extraordinary Items.* We recommend that the final regulations provide that extraordinary items that are properly allocable to the portion of a day after a variation in partnership interests has occurred would, for purposes of applying the methods of the proposed regulations, be treated as taken into account by the partnership at the beginning of the following day.
7. *Small Item Exception.* To avoid undue administrative burdens when applying the proration method, we recommend that the final regulations provide a "small item" exception from the special treatment of extraordinary items.
8. *Process for Choosing a Method or Convention.* We recommend that the Example of Prop. Reg. § 1.706-4(c)(3) be modified to remove any implication that a partnership may not use a method or convention that is not specifically referenced in the partnership agreement.
9. *Scope of Segments as Separate Distributive Share Periods.* We recommend that the final regulations include a rule that would generally disregard any special limitations on the timing of deductions or income inclusions for purposes of determining allocations to segments, provided that the conditions for deductibility or income inclusion are satisfied by the end of the partnership's taxable year.

10. *Contemporaneous Partner Exception.* The IRS should consider expanding the contemporaneous partner exception of the proposed regulations to cover amendments to allocations (i) among persons that were contemporaneous partners during segments of a taxable year (even if they were not contemporaneous partners during the entire taxable year) and (ii) that involve only items allocable to such segments.
11. *Coordination with Section 704(b).* We recommend that the final regulations be coordinated specifically with the Section 704(b) regulations so as to confirm that Section 706(d) applies to allocations of Section 704(b) book items (rather than tax items). The allocation of tax items would then follow the allocation of book items in the usual manner, subject to Section 704(c) principles.
12. *Tiered Partnerships.* We recommend that the final regulations provide at least temporary basic guidance on tiered partnership arrangements.

We appreciate your consideration of our comments. Please let us know if you would like to discuss these matters further or if we can assist you in any other way.

Respectfully submitted,



Erika W. Nijenhuis
Chair

Enclosure

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