



NEW YORK STATE BAR ASSOCIATION

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

TAX SECTION

2013-2014 Executive Committee

DIANA L. WOLLMAN

Chair
Sullivan & Cromwell
125 Broad Street
New York, NY 10004-2498
212/558-4055

DAVID H. SCHNABEL

First Vice-Chair
212/909-6336

DAVID R. SICULAR

Second Vice-Chair
212/373-3082

STEPHEN B. LAND

Secretary
212/692-5991

COMMITTEE CHAIRS:

Bankruptcy and Operating Losses

Stuart J. Goldring
Linda Z. Swartz

Compliance, Practice & Procedure

Elliot Pisem
Bryan C. Skarlatos

Complexity and Administrability

Edward E. Gonzalez
Joel Scharfstein

Consolidated Returns

Andrew H. Braiterman
Kathleen L. Ferrell

Corporations

Lawrence M. Garrett
Vadium Mahmoudov

Cross-Border Capital Markets

S. Douglas Borisky
Andrew Walker

Cross-Border M&A

Ansgar A. Simon
Yaron Z. Reich

Employee Benefits

Eric Hilfers
Andrew L. Oringer

Estates and Trusts

Alan S. Halperin
Laura M. Twomey

Financial Instruments

Michael S. Farber
William L. McRae

"Inbound" U.S. Activities of Foreign Taxpayers

Lee Allison
Peter J. Connors

Individuals

Sherry S. Kraus
Joseph Septimus

Investment Funds

Marcy G. Geller
Amanda Nussbaum

New York City Taxes

Maria T. Jones
Irwin M. Slomka

New York State Taxes

Paul R. Comeau
Arthur R. Rosen

"Outbound" Foreign Activities of U.S. Taxpayers

Peter F.G. Schuur
Philip Wagman

Partnerships

John T. Lutz
Eric Sloan

Pass-Through Entities

James R. Brown
Matthew Lay

Real Property

Robert Cassanos
Elizabeth T. Kessenides

Reorganizations

Joshua Holmes
Eric Solomon

Securitized and Structured Finance

Jiyeon Lee-Lim
Lisa A. Levy

Spin Offs

Deborah L. Paul
Karen Gilbreath Sowell

Tax Exempt Entities

Stuart Rosow
Richard R. Upton

Treaties and Intergovernmental Agreements

David R. Hardy
Andrew P. Solomon

MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE

Janet A. Andolina

Robert E. Brown

Steven A. Dean

Charles I. Kingson

Robert J. Levinsohn

Charles M. Morgan

David M. Schizer

Stephen E. Shay

Jack Trachtenberg

Gordon Wanke

May 22, 2013

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

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

Daniel I. Werfel
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: New York State Bar Association Tax Section Report on Proposed Regulations Regarding the Tax Treatment of Noncompensatory Partnership Options

Dear Messrs. Mazur, Werfel and Wilkins:

I am pleased to submit the enclosed New York State Bar Association Tax Section report on the proposed regulations regarding the tax treatment of noncompensatory partnership options ("NCOs") issued by the Treasury Department and the Internal Revenue Service on February 5, 2013 (the "Proposed Regulations").

The Proposed Regulations were issued concurrently with final regulations (the "Final Regulations") which provide that, upon the occurrence of an event that is a "measurement event" under the Final Regulations (such as a transfer of the NCO), the NCO will be tested (under the "Characterization Test" set out in the Final Regulations) to determine if the NCO should be treated as a partnership interest rather than as an NCO for all tax purposes.

FORMER CHAIRS OF SECTION:

John E. Morrissey, Jr.

Peter L. Faber

Hon. Renato Beghe

Alfred D. Youngwood

Gordon D. Henderson

David Sachs

J. Roger Mentz

Willard B. Taylor

Richard J. Hiegel

Dale S. Collinson

Richard G. Cohen

Donald Schapiro

Herbert L. Camp

William L. Burke

Arthur A. Feder

James M. Peaslee

John A. Corry

Peter C. Canellos

Michael L. Schler

Carolyn Joy Lee

Richard L. Reinhold

Richard O. Loengard

Steven C. Todrys

Harold R. Handler

Robert H. Scarborough

Robert A. Jacobs

Samuel J. Dimon

Andrew N. Berg

Lewis R. Steinberg

David P. Hariton

Kimberly S. Blanchard

Patrick C. Gallagher

David S. Miller

Erika W. Nijenhuis

Peter H. Blessing

Jodi J. Schwartz

Andrew W. Needham

The Proposed Regulations would add: (i) three additional “measurement events,” and (ii) rules addressing the tax consequences to the partnership that issued the NCO when the NCO lapses or is repurchased by the partnership. The Proposed Regulations are proposed to have the same effective date as the Final Regulation (February 5, 2013).

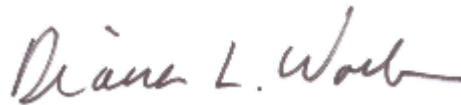
Our principal recommendations are as follows:

1. We generally support the addition of the new measurement events subject to two recommendations:
 - a. We recommend that the Internal Revenue Service and the Treasury Department clarify that (i) the deemed events that occur pursuant to a technical termination of a partnership under Section 708(b)(1)(B) do not themselves give rise to a measurement event, and (ii) those events do not include a deemed issuance or transfer of any NCO issued by the terminated partnership or any lower-tier partnership;
 - b. We recommend that some guidance be provided regarding one element of the new measurement events (what we refer to in the report as the “Principal Purpose of Reduction Test”) and suggest that the Internal Revenue Service and the Treasury Department provide a list of relevant factors that should be considered in determining if the Principal Purpose of Reduction Test is met in the case of events involving transfers, issuances or modifications of partnership interests in upper-tier entities; we also suggest some factors that might be appropriate;
2. In response to the preamble’s request for comments, we discuss in detail whether Section 751(a) should apply to the lapse, repurchase, sale, or exchange of an NCO, and conclude that it should not. We recommend that the Internal Revenue Service rely on its carefully drafted Characterization Rule to ensure that NCO holders are treated as partners (subject to Section 751) when appropriate. In the event that our recommendation is not taken, we suggest how regulations could apply Section 751(a) to transfers of NCOs;
3. In response to a request for comments in the preamble, we recommend that the Internal Revenue Service and the Treasury Department not provide rules regarding notification of partners or partnerships upon the occurrence of a measurement event, but rather that such notification procedures be left to the partners to determine; and
4. We support the proposal that the Proposed Regulations have the same effective date as the Final Regulations.

Mr. Mazur
Mr. Werfel
Mr. Wilkins
May 22, 2013
Page 3

We very much appreciate your consideration of our recommendations and would be happy to discuss them with you or provide additional assistance.

Respectfully submitted,

A handwritten signature in dark ink, reading "Diana L. Wollman". The signature is fluid and cursive, with the first name "Diana" being more prominent than the last name "Wollman".

Diana L. Wollman
Chair

Enclosure

cc: Craig Gerson
Attorney Advisor (Tax Legislative Counsel)
Department of the Treasury

David Haglund
Branch 1 Chief (Office of Associate Chief Counsel (Passthroughs
and Special Industries))
Internal Revenue Service

James Hogan
Chief Branch 4 (Office of the Associate Chief Counsel (Passthroughs
and Special Industries))
Internal Revenue Service

Lee Kelley
Deputy Tax Legislative Counsel (Office of Tax Policy)
Department of the Treasury

David H. Kirk
Attorney (Office of Associate Chief Counsel (Passthroughs and
Special Industries))
Internal Revenue Service

Emily McMahon
Deputy Assistant Secretary (Tax Policy)
Department of the Treasury

Joy Spies
Attorney-Adviser (Office of Associate Chief Counsel (Passthroughs and

Mr. Mazur
Mr. Werfel
Mr. Wilkins
May 22, 2013
Page 4

Special Industries))
Internal Revenue Service

Curtis G. Wilson
Associate Chief Counsel (Passthroughs and Special Industries)
Internal Revenue Service

Lisa Zarlenga
Tax Legislative Counsel
Department of the Treasury