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January 6, 2006

Mr. Eric Solomon
Acting Deputy Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3112 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

Re: Sections 362(e) and 334(b)

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. 1101, which comments on various issues relating to recently enacted Sections 362(e) and 334(b) of the Internal Revenue Code of 1986, as amended. The Report urges the Treasury Department and the Internal Revenue Service to issue additional guidance and sets forth several recommendations.

In general, Section 362(e) provides basis adjustment rules for property transferred to a corporate recipient in a tax-free corporate reorganization or a Section 351 transaction. These rules are designed to prevent importation of a net built-in loss into the U.S. tax system or the duplication of such a loss within the U.S. tax system. Section 334(b) provides similar rules in the context of inbound subsidiary liquidations. Among other things, the Report recommends the following:

- In measuring a net built-in loss in the context of property transfers by multiple transferors, an aggregate approach should be applied under Section 362(e)(1), but a transferor-by-transferor approach should be applied under Section 362(e)(2).

- The regulations should include a safe harbor that taxpayers may rely on in determining the values of transferred properties for purposes of applying Sections 362(e) and 334(b).

- Relevant values of properties should be determined as of the time that the parties commit to the relevant transaction.

- Specific methods should be prescribed for apportioning the property transferred by a partnership among various partners in order to determine whether such property was subject to U.S. tax prior to being transferred. A possible method might be to apportion the transferred property to each partner in proportion to such partner's share, under the terms of the relevant partnership agreement, of the taxable gain or loss from a hypothetical cash sale of the transferred property for an amount equal to its fair market value.

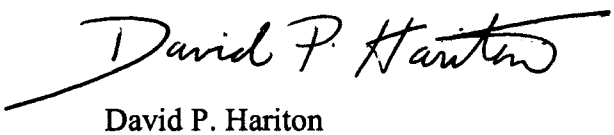
- S corporations either should not be subject to Section 362(e)(1) or should benefit from the same look-through rule as is applicable to partnerships.

- For purposes of applying Section 362(e)(1), the regulations should treat gain or loss in respect of property as subject to U.S. federal income tax in the hands of the transferor or transferee only if the holder is subject to U.S. federal income tax on a net-income basis in respect of such property. For this purpose, CFCs that are not engaged in a trade or business in the United States should not generally be treated as subject to U.S. federal income on a net-income basis, but RICs and REITs should be treated as subject to U.S. federal income tax on a net-income basis.

- Issues of coordination between the consolidated return rules and section 362(e)(2) should be addressed in the forthcoming proposed consolidated return regulations. In the interim, guidance should be issued to clarify that the stock basis adjustment rules of the consolidated return regulations do not give rise to the complete elimination of a loss.

We appreciate your consideration of our proposals and the issues we have addressed in the Report. As always, we would be pleased to discuss these matters with you further or provide any other assistance that you would find helpful.

Respectfully submitted,



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Chair

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