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November 28, 2006

Mr. Eric Solomon
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3120 MT
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Response to Notice 2006-14 on Section 751(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. 1122, responding to Notice 2006-14's (the "Notice") request for comments on the treatment of partnership distributions under Section 751(b).

The Notice proposes two new approaches to applying Section 751(b). We support both approaches because they would, as compared with the current Section 751(b) regulations, further the purpose behind Section 751(b) and make Section 751(b) easier to apply.

We believe that if the approaches proposed in the Notice are adopted, it would be appropriate and helpful for guidance to be provided as to how various provisions of Subchapter K would operate in applying Section 751(b). Moreover, as identified in the Notice and

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discussed in greater detail in the Report, we believe that implementing regulations would need to coordinate the new approaches with certain provisions of Subchapter K which might otherwise undermine the Notice's objective of preserving each partner's share of hot-asset gain.

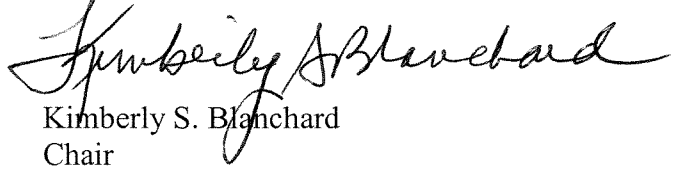
We believe that Section 751(b) would continue to be extremely complicated to apply even if the approaches proposed in the Notice are adopted. As a result, we recommend that Treasury and Congress consider revising Section 751(b) so that it operates more as an anti-abuse rule. Alternatively, Treasury and Congress may wish to consider more modest revisions to Section 751(b) that further the Notice's objectives of targeting shifts in hot-asset gain and reducing complexity.

As discussed in the report, our other principal recommendations are:

- In light of the importance of reverse 704(c) principles under the approaches proposed in the Notice, Treasury should issue additional guidance as to how to apply reverse 704(c) principles in a variety of contexts.
- Special rules generally are not needed for cases where a partner's reverse 704(c) hot-asset gain exceeds the partner's interest in capital. However, Treasury may wish to clarify how Section 751(a) would apply to a sale of the partner's partnership interest in such a case. In addition, Treasury should consider a special rule for cases where a partner's reverse 704(c) hot-asset gain vastly exceeds the partner's interest in capital.
- Implementing regulations should afford partnerships a fair degree of latitude in identifying which hot assets are involved in the sale that is deemed to occur under the so-called "hot asset sale approach" proposed in the Notice. In addition, similar to the manner in which an asset with recapture is bifurcated under Section 751, we recommend that the hot-asset gain inherent in the relinquished property be treated as a separate zero basis asset and that the selling partner be treated as receiving and selling that separate asset under the hot asset sale approach.
- Partnerships should be required to make adjustments so that Section 734(b) adjustments that would otherwise be made in connection with a partnership distribution do not undermine the "hypothetical sale approach" proposed in the Notice or the hot asset sale approach. Partnerships should have some latitude in making these adjustments.
- Treasury should consider, as an alternative to the hot asset sale approach, a "deemed gain approach" whereby the distributing partnership would be deemed to recognize gain in its hot assets equal to the aggregate reduction in the partners' shares of hot asset gain and allocate that gain to the appropriate partners.

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

Respectfully submitted,



Kimberly S. Blanchard
Chair

Enclosure

Cc: Christopher T. Kelley, Attorney Advisor,
U.S. Treasury Department
Charlotte Chyr, Office of Associate Chief Counsel,
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