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October 25, 2007

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

The Honorable Linda E. Stiff
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Report on Proposed Section 901 Regulations Relating to Compulsory Payments of Foreign Taxes

Dear Assistant Secretary Solomon and Acting Commissioner Stiff:

I am pleased to enclose the New York State Bar Association Tax Section's Report No. 1135. The report comments on the proposed amendments to the compulsory payment rules of Treasury Regulation § 1.901-2(e)(5).

The report concludes that the portion of the proposed regulations treating members of certain groups of U.S.-owned foreign entities as a single taxpayer for purposes of the compulsory payment rules is appropriate insofar as it provides such treatment in the case of 80 percent owned groups. However, the report questions the proposal to limit this rule to situations in which the 80 percent affiliation test is met. Instead, it recommends that the regulations be amended to provide that group relief and similar elections do not violate the compulsory payment rules except in narrowly defined situations that have the potential for abuse. In the event our recommended approach is not adopted, the report suggests modifications to the 80 percent affiliation test.

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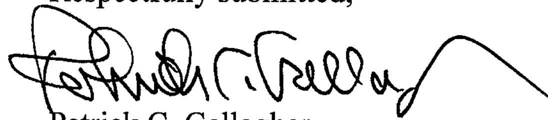
With respect to the portion of the proposed regulations that addresses structured passive investment arrangements ("SPIAs"), the report supports the general approach of applying essentially objective tests for purposes of identifying transactions with respect to which foreign tax credits should be disallowed. The report does recommend refinements of the six conditions for SPIA treatment, which we believe are too broad in some respects and too narrow in others. The report also concludes that the proposed rule denying all otherwise allowable foreign tax credits attributable to an SPIA, as opposed to only credits with respect to foreign taxes that would otherwise result in duplicative benefits under U.S. and foreign tax law, is harsh and should be modified.

Regarding the effective date, the report recommends that the regulations apply only to foreign taxes paid or accrued during taxable years beginning on or after the date the regulations are finalized. In addition, the report recommends that the effective date provision be clarified so that it is determined by reference to the taxable year of the entity that is liable for the foreign taxes, as opposed to the taxable year of the U.S. taxpayer in which the credit is claimed. This distinction is relevant where, for example, a foreign subsidiary of a U.S. taxpayer pays foreign taxes in one year and the U.S. taxpayer claims a credit in a later year in which the subsidiary's earnings are distributed.

We appreciate your consideration of our comments. We would be pleased to discuss these matters with you further or to provide any other assistance that you would find helpful.

Respectfully submitted,



Patrick C. Gallagher
Chair

Enclosure

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