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January 23, 2008

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, D.C. 20224

Re: NYSBA Tax Section Report on Final Dual Consolidated
Loss Regulations

Dear Assistant Secretary Solomon and Acting Commissioner Stiff:

I am pleased to enclose the New York State Bar Association Tax Section's Report No. 1144, addressing the final dual consolidated loss regulations released by the Treasury on March 19, 2007 (the "Final Regulations").

The report is in three parts. The first part provides an overview of the dual consolidated loss regulations and their evolution, and it summarizes our principal recommendations. The second part identifies certain important aspects of the Final Regulations that we believe merit further development or consideration. The third part of the report responds to the requests for comments by the Internal Revenue Service and the Treasury Department (referred to collectively as "Treasury") regarding the application of the dual consolidated loss rules in certain circumstances.

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As discussed more fully in the report, we recommend that the Treasury consider adopting a rebuttal procedure through which a taxpayer can establish the amount of a dual consolidated loss that has been actually utilized to reduce foreign tax for the purpose of mitigating the application of the so-called “all or nothing” recapture rule. Such a procedure would provide taxpayers with a mechanism for avoiding forfeiture of the full amount of an otherwise available U.S. tax deduction to the extent forfeiture may not be equitable.

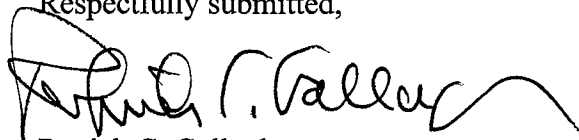
The report also recommends that Treasury enter into, pursuant to the authority granted in Final Regulation §1.1503(d)-6(b), a series of bilateral competent authority agreements (modelled on the recent agreement with the United Kingdom in respect of mirror legislation), through which taxpayers could elect to use a single economic loss in either, but not both, treaty jurisdictions. We believe that a network of bilateral agreements of this kind, available to dual resident taxpayers whether or not subject to the mirror legislation rule, would significantly improve the administrability of the dual consolidated loss regime by providing taxpayers with one secure use of an economic loss.

As described more fully in the report, our other principal recommendations are:

- Given the potentially very expansive scope of “indirect” foreign use, Treasury should provide further guidance regarding circumstances in which it considers indirect foreign use to be present. We also recommend that Treasury supplement this guidance with additional safe harbors or exceptions that are specifically targeted at “indirect” foreign use, as opposed to “direct” foreign use.
- Treasury should establish a Revenue Procedure pursuant to which taxpayers that are required to recapture a dual consolidated loss would be able to reduce the amount of recapture requirement without regard to the separate return limitation year methodology.
- Attribution of parent tax items to both hybrid entity and natural branch separate units should be harmonized to avoid inconsistent treatment of economically equivalent transactions.
- In this connection, the report also questions the result in Example 23 of the Final Regulations, which concludes there is no dual consolidated loss where a U.S. parent loans money to its foreign disregarded entity, and recommends that this result be harmonized with the corresponding case of a natural branch.

I appreciate your consideration of our recommendations and comments. Please let us know if you would like to discuss our report or the Final Regulations further or if we can assist you in any other way.

Respectfully submitted,



Patrick C. Gallagher
Chair

(Enclosure)

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