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memorandum

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to:
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(Large Business & International)

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subject: Partner's Assignment of Interest in Partnership to Charity

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Partnership =

Partner =

Product =

DE =

Partner 2 =

Organization =

Trust =

Corp =

Attorney =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Year 1 =

Year 2 =

State =

State 2 =

Country 1 =

Country 2 =

%1 =

N1 =

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N4 =

N5 =

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N8 =

N9 =

N10 =

N11 =

N12 =

N13 =

N14 =

ISSUES

1. Whether Transaction (as described in Section II of the facts) should be recast under the substance over form doctrine.

2. Whether Organization was a bona fide partner of Partnership.

3. Whether the partnership anti-abuse provision under § 1.701-2 applies to disregard Organization as a partner of Partnership.

CONCLUSIONS

1. It is appropriate to recast Transaction under the substance over form doctrine.

2. Organization was not a bona fide partner in Partnership.

3. The partnership anti-abuse provision under § 1.701-2 applies to disregard Organization as a partner of Partnership.

FACTS

I. Description of Relevant Parties

Partnership

Partnership is a State limited liability company. Partnership has filed a Form 1065, U.S. Return of Partnership Income, since its inception. Partnership is the producer of a

popular consumer product (Product). Partnership has enjoyed exponential growth in sales and profits since introduction of Product in Year 1. At the time of the transaction described in Section II below (Transaction), Partnership was governed by the partnership agreement of Partnership (Partnership Agreement) dated Date 1.

Ownership of Partnership is represented in units. Partnership is authorized to issue two classes of units, Class A and Class B. There are N6 Class A units issued and N7 Class B units issued.

Class A units are entitled to one vote per unit on matters over which the Class A unit holders are entitled to vote. Class A unit holders can vote on certain significant transactions, such as mergers, encumbrances, or liquidations. Partner determines when Partnership will make distributions. Distributions with respect to Class A units, when made, are made pro-rata based on the percentage of Class A units held by the partner and are subordinated to the distributions made with respect to Class B units.

Class B units can only be held by Partner. Class B units entitle Partner to a preferred return determined by reference to Partnership's EBITDA. Partnership Agreement provides that Class B units do not represent a capital interest. Class B units are nonvoting.

Each member grants to Partnership, the right to call all of its units at any time. Upon the exercise of a call, the member is immediately removed as a member of Partnership. The call price is the fair market value of the unit as determined by the Partnership. The fair market value call price does not apply if the removed member attempted to transfer its units without Partner's approval.

Partner and Partner 2 are described below. Partnership has other minority partners but they are only tangentially relevant to Transaction.

Partner

Partner is one of Partnership's founding members, its manager (Manager), and its tax matters partner. Partner is a U.S. citizen. The fair market value of Partner's interest in Partnership is significant while his basis in his interest is nominal. At the time of the Transaction, Partner held N8 Class A units directly and N9 Class A units through DE, a disregarded entity of Partner.

Partner 2

Partner and Partner 2 have known each other for decades. Partner 2 is a citizen of Country 1 and also possibly a citizen of Country 2. Partner 2 maintains a residence in Country 2 and travels from time to time to the United States. Partner and Partner 2 share many business and personal connections. While the parties maintain that Partner

and Partner 2 are unrelated, Partner has acted as Partner 2's power of attorney and records show that they share the same address in the United States and Country 2.

Partner 2 was offered membership in Partnership by Partner. Partner 2 contributed an unestablished amount of cash and received N10 Class A units in Year 2. Partner 2 assigned N12 of these units to fund Organization as Organization's initial funding.

Partner also sold Partner 2 N11 Class A units in Partnership for $1 which Partner 2 reacquired from Partner 2 via DE, in exchange for a promissory note with a 20- year balloon payment of $N13. Partner and Partner 2 took the position that, as a non-US resident, Partner 2 did not have to report any income for U.S. tax purposes related to this transaction. As a result of this transaction, Partnership stepped up Partner's basis in Partnership's goodwill under § 743(b) by $N13. The step up in basis from this transaction yields Partner a significant amortization deduction.

Partner's Control of Partnership:

As Manager, Partner has exclusive and complete discretion to manage and control all decisions affecting Partnership's business and affairs. Partner makes decisions related to the day-to-day operations of Partnership, including hiring, firing, and decisions related to investments and finances. Partner also has authority to determine all aspects of distributions from Partnership, including the timing and amount of distributions.

Partnership Agreement's Provisions Regarding Transferability

An article of Partnership Agreement provides that no member shall be permitted to transfer all or any part of such member's units, or any fraction or beneficial interest therein, without the prior written consent of the Manager, which may be granted or withheld in the Manager's sole discretion, and without the written consent of the Class A members owning, in the aggregate at least 75% of the Class A units then outstanding. Without permission from Partner and 75% of the Class A unit holders, an assignment of any units is not valid or effective and neither Partnership, Partner, nor any member is required to recognize the assignment for any purpose under the Partnership Agreement.

If a member attempts voluntarily or involuntarily to transfer all or any portion of its units without obtaining the aforementioned consents, the Partnership will immediately exercise its option to purchase such member's units, and that member (the removed member), and all other members consent upfront to Partnership's exercise of that option. The call price in this situation (Special Call Price) is equal the removed member's capital contributions less any offset appropriate to satisfy all obligations of the removed member owing to Partnership and costs of the Partnership for having to effect the call. The Special Call Price is paid by the delivery a promissory note.

Further, under Partnership Agreement, if a member transfers units with permission, such transfer does not entitle the assignee to become a member of Partnership. Nor does it entitle the assignee to exercise or receive any rights powers and benefits of a member other than the right to receive distributions to which the assigning member would have been entitled. Any subsequent transfer by a permitted assignee is subject to the restrictions described above. An assignment of units occurs as of the close of the business day of the assignment.

Organization

Organization was formed on Date 3. Partner 2 is the grantor and trustee of the trust used to form Organization. The initial funding for Organization came from Partner 2's assignment of N12 Class A units in Partnership and the subsequent sale of Organization's right with respect to these Units to DE in exchange for DE's promissory note.

On Date 4, approximately one year after its formation, Organization filed Form 1023, Application for Recognition of Exemption. Organization's Form 1023 sought recognition as a § 509(a)(3) Type I supporting organization -- a public charity, not a private foundation. Organization's address is the same as Partnership's address. On its Form 1023, Organization represented it would not enter into partnerships or limited liability companies treated as partnerships in which it would share profits and losses with partners other than exempt organizations.

With the exception of one cash donation, all funding of Organization has resulted from payments made by Partner on promissory notes given to Organization by DE. The promissory notes were purportedly given to Organization in exchange for its rights in units in Partnership assigned to Organization by partners of Partnership. In all prior transactions, Organization did not solicit buyers for the assigned units other than Partner.

For each of these assignments and purported sale transactions, a basis-step up was effectuated by Partnership under § 743(b) with respect to the assigned units and allocated to goodwill, the amortization of which Partner deducts against its share of ordinary income from Partnership.

Corp

Corp was incorporated on Date 5 in State 2 as a for-profit corporation. On the date of its incorporation, Corp had no assets, liabilities, or capital. Corp's Articles of Incorporation identify the daughters of Partner 2 as the directors of Corp. Partner was named as Corp's president and CEO. Partner became the sole director of Corp on the day after its incorporation. Additionally, Partner holds key offices in Corp. He has authority to hire and dismiss employees, and he sets parameters for their positions. Partner makes investment decisions on behalf of Corp. Partner has control over Corp's

accounts. When asked about Partner's role during Partner's interview, Partner indicated Partner is "unsure" what Partner's official role is at Corp but Partner knows that Partner is "in charge."

On its Form 1120, U.S. Corporation Income Tax Return, for the tax year ended Date 7, Corp reported its business activity as "investments." On that return, Corp indicates that its sole shareholder is Trust.

While the entities have informed the Service that Trust is the sole shareholder of Corp, the parties could not provide evidence or details of a transaction in which Trust acquired the shares of Corp.

Trust

Trust was formed on Date 2. What purports to be the governing document for Trust (Trust Agreement) identifies Attorney as the grantor and trustee of Trust. Trust started with a corpus of $10 cash. Its bank account was opened in Date 6. The first deposit came from Corp in that month in the amount of $N14. Partner has signature authority over both the bank accounts and brokerage accounts of Trust. Trust appears to be the sole shareholder of Corp.

Trust Agreement indicates that Trust is intended to be a qualified medical research organization described in section 170(b)(1)(A)(iii). To this end, the Trust Agreement does not identify any beneficiaries of Trust. Trust Agreement provides that Trust is created for the purpose of directly engaging in the continuous and active conduct of medical research in conjunction with one or more hospitals. During the calendar year in which any contributions are made to Trust, it commits to spend such contributions for medical research before January 1 of the 5th calendar year which begins after the date such contributions are made. On the date of Trust's formation and during Transaction, Partner was the sole board member.

Although Trust Agreement indicates an intent for Trust to qualify as a qualified medical research organization described in section 170(b)(1)(A)(iii), correspondence from Attorney indicates that Trust does not qualify for tax exempt status under § 501(a), 501(c)(3), or 509(a). Nor has it sought tax exempt status under any of these provisions. Additionally, Trust is not a charitable trust which claimed a deduction under §§ 170 or 642(c). Trust files its returns as a taxable trust on Form 1041.

Accordingly, because Trust is not being administered pursuant to the terms of its governing document, little weight is to be given the terms of Trust Agreement for the purpose of characterizing Trust for federal income tax purposes.

Partner's control of the bank account and brokerage account, as well as Partner's position as the sole director, and the lack of any named beneficiaries, indicates that, although Partner has directly or indirectly transferred assets to Trust, there has been no

meaningful change in Partner's control over the assets of Trust as a result of the transfer. As such, there appear to be good arguments for not respecting Trust as an entity separate from Partner for federal tax purposes. See also Zmuda v. Commissioner, 79 T.C. 714 (1982), aff'd 731 F.2d 1417 (9th Cir. 1984); Markosian v. Commissioner, 73 T.C. 1235 (1980); Zachman v. Commissioner, T.C. Memo. 1999-391 (1999). If Trust is not respected as a separate taxable entity, Partner is treated as the owner of the assets of Trust.

Alternatively, if Trust is treated as an entity for tax purposes, Partner is treated as the owner of Trust under § 671 because of Partner's retained control over Trust. See §§ 674 and 675, and also potentially §§ 673, 676, and 677. Because Partner is treated as the owner of Trust, Partner is considered to be the owner of Trust's assets, including stock in Corp, for federal income tax purposes. Rev. Rul. 85-13, 1985-1 C.B. 184.

Accordingly, based on the above analysis, at the time of Transaction, Corp is treated as wholly owned, directly or indirectly, by Partner.

II. Transaction

(1) Partner's Assignment of Interest to Organization

Partner entered into an Assignment of Membership Interest Agreement (Assignment Agreement) with Organization. The Assignment Agreement provides that the assignment is made on Date 2 and is effective Date 2. The Assignment Agreement identifies Partner as the assignor. The Assignment Agreement provides that assignor assigns to Organization as assignee N1 Class A units (Units), or approximately N2% of the issued and outstanding Class A units in Partnership, and that Organization accepts the assignment. The Assignment Agreement provides that Partnership and its partners have consented to the assignment. Partner 2 signed the agreement on behalf of Organization.

(2) Corp's Purchase Agreement for Units.

Partner also executed a Membership Interest Purchase Agreement (Purchase Agreement) between Partnership, Corp, and Organization on behalf of Corp (as Purchaser) and Partnership. The Purchase Agreement is dated Date 5, or the day after the assignment of Units became effective under the Partnership Agreement. Organization is identified as the seller. Partner 2 signed the Purchase Agreement on behalf of Organization. The Purchase Agreement provides that, upon the terms and conditions described in the agreement, Organization sells, conveys, transfers, and assigns Units to Purchaser, and Purchaser purchases Units. The price of the Units is equal to $N3, the appraised fair market value of Units as determined by Partnership's accountant. The Purchase Agreement notes that, concurrent with the execution of the Purchase Agreement, Corp has delivered a promissory note (Note) to Organization in full payment for the Units. The Purchase Agreement includes an "Earnout" provision

whereby Organization becomes entitled to additional sums, payable in cash, or with additional notes, at Corp's discretion, if the earnings of Partnership achieve certain levels. The Purchase Agreement also provides that Partnership shall make a section 754 election with respect to both the original purchase of the interest as well as for any additional amounts paid by Corp under the Earnout. The Purchase Agreement also provides that Partnership's counsel drafted the Purchase Agreement on behalf of Partnership and Corp, and not on behalf of any other party, and advises Organization of a possible conflict of interest by counsel.

(3) Note and Security Agreement.

Corp, with no assets or equity at the time of the alleged sale transaction, purchased the membership interest in Partnership for a promissory note (Note). No cash or other property was transferred to Organization.

Note provides that the principal amount shall be paid on or before the expiration of 20 years. Interest on the outstanding principal amount shall be at a rate of %1 with interest due quarterly on the first day of each quarter.

In general, a default occurs under Note if Corp fails to make payments as scheduled, becomes insolvent, or otherwise breaches the terms of Note. Nonetheless, Note provides that Corp will not be considered to be in default if, in lieu of the interest payments required under Note, Corp pays Organization the aggregate net distributions made to Corp by Partnership pursuant to the Units held by Corp. The difference between the stated interest amount and the amount actually paid becomes part of principal and will accrue interest until the Note matures.

Corp also entered into a Pledge and Security Agreement with Organization whereby Corp granted Organization a first priority security interest in Units.

(4) Parties Reporting Positions.

As a result of the above transaction, Partner reported a $N3 charitable deduction under § 170 on Partner's Form 1040 for the tax year ended Date 7. Pursuant to the transaction and its § 754 election, Partnership increased its inside basis in Partnership's goodwill by $N3 under § 743(b), allowing Corp an amortization deduction of $N4 on its Schedule K-1 for the tax year ended Date 7. Corp also claimed a $N5 interest deduction related to Note for the tax year ended Date 7. No party recognized any gain on the transfer of Units.

LAW AND ANALYSIS

I. Substance Over Form

Section 170(a)(1) of the Code provides the general rule that, subject to certain limitations, there shall be allowed as a deduction any charitable contribution (as defined in § 170(c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary. See also section 1.170A-1 of the Income Tax Regulations.

Rev. Rul. 68-174, 1968-1 C.B. 81, provides that a debenture bond or a promissory note issued and delivered by the obligor to a charitable organization described in § 170(c) represents a mere promise to pay at some future date and is not a payment for purposes of deducting a contribution under section 170. Cf. Rev. Rul. 78-38, 1978-1 C.B. 67.

In the present case, Partner has claimed a deduction under § 170 for a donation of Units to Organization. However, after Transaction, and within a day of Partner's assignment of Units to Organization, Organization does not hold any rights to Units. Organization holds Note. Further, Partner, through Partner's power to approve of Partnership distributions to Corp, controls when in fact "interest payments" will be made on Note. Had Partner or Corp contributed Note directly to Organization, a deduction under § 170 would not be allowed because payment of the donation would not have been made within the year and, under Rev. Rul. 68-174, Note would have been treated as a promise to make a donation, but not an actual donation.

Courts in determining the tax consequences of a particular transaction look to the objective economic realities of a transaction rather than to the particular form the parties employed. The simple expedient of drawing up papers does not control for tax purposes when the objective economic realities are to the contrary. In the field of taxation, administrators of the laws and the courts are concerned with substance and realities, and formal written documents are not rigidly binding. Nor is the parties' desire to achieve a particular tax result necessarily relevant. See Commissioner v. Court Holding Co., 324 U.S. 331, 334 (1945) ("to permit the true nature of a transaction to be disguised by mere formalisms, which exists solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress"); Gregory v. Helvering, 293 U.S. 465, 469 (1935) (refusing to give effect to transactions that complied with formal requirements for nontaxable corporate reorganization; "the question for determination is whether what was done, apart from the tax motive, was the thing which the statute intended").

The substance of Transaction is that Organization never received an interest in Partnership. The substance of what Organization received through Note was Partner's mere promise to make payments to Organization via Corp, the amount and timing of which for the first 20 years were Partner determined. Accordingly, Partner is not entitled to a deduction under § 170 for what Partner asserts was a contribution of Units to Partnership. Further, because the Units were never transferred to Organization but were in substance transferred to Corp, Partner is treated as directly, or indirectly via Trust, transferring the Units to Corp. (Transaction Recast)

Under the Transaction Recast, Corp is entitled to treat payments under Note as charitable contributions by Corp to Organization when payments are actually made.

Section 743(b) provides, in pertinent part, that, in the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership, with respect to which an election provided in § 754 is in effect, will increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership. Section 743(b) further provides that such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only. Because in substance, Organization never held an interest in Partnership's property and no sale of Units took place between Organization and Corp, Partnership is not entitled to an adjustment under § 743(b) and Corp is not entitled to the corresponding amortization deductions.

This case on the surface may appear to be similar to Palmer v. Commissioner, 62 T.C. 684 (1974), aff'd on another issue, 523 F.2d 1308 (8th Cir. 1975), and similar cases. In Palmer, the taxpayer donated shares of the corporation's stock to a foundation and then caused the corporation to redeem the stock from the foundation. It was the position of the Service that the form of the transaction did not conform to its substance and that the proper ordering of events should have reflected a redemption of shares from the taxpayer followed by a donation to the foundation of the assets received in the redemption. The Tax Court rejected this argument and treated the transaction according to its form because the foundation was not a sham, the transfer of stock to the foundation was a valid gift, and the foundation was not bound to go through with the redemption at the time it received title to the shares. See also, Grove v. Commissioner, 490 F.2d 241 (2nd Cir. 1973); Carrington v. Commissioner, 476 F.2d 704 (5th Cir. 1973). In 1978, the Service issued Rev. Rul. 78-197, 1978-1 C.B. 83, in which the Service stated that it will follow the Palmer case.[1] The revenue ruling provides that the Service will treat the proceeds from a stock redemption in a Palmer-type case as income to the donor only if the donee is legally bound, or can be compelled by the corporation, to surrender the shares for redemption.

The Palmer line of cases is distinguishable from the instant case because Palmer dealt with the issue of an anticipatory assignment of income, and not, as here, with the amount and validity of the charitable deduction. See Ford v. Commissioner, T.C. Memo 1983-556. Also, unlike the taxpayer in Palmer, Partner, at the time of Transaction, had no fiduciary duty to Organization and complete discretion regarding Partner's approval of any transfer of Units.

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[1] The Service also issue an AOD on Palmer in AOD-1977-16

Further, the terms of the Partnership Agreement relating to the transfer of Units bring this case outside the scope Palmer-like cases and Rev. Rul. 78-197. Under the terms of the Partnership Agreement, Organization is required to surrender its right as an assignee of Units to Partner on Partner's terms. Further, under the Partnership Agreement, Organization had to obtain the approval of Partner to transfer its interest in Units. Partner, in Partner's sole discretion, could approve or disapprove any transfer. Partner, in exercising this discretion, had no fiduciary duty at the time of Transaction to Organization. If Organization attempted to transfer its interest in Units to a third party, Partner had the power to nullify the transfer. Further, the Special Call Price would become active and the call price provision limits the call price to Organization's contributions which are zero. Accordingly, Partner had the power to nullify the donation to Organization if Organization attempted to transfer its interest in Units without Partner's approval. Further, Organization could not retain its interest in Units without violating its representations to the Service that it would not hold an interest in a Partnership with nonexempt taxpayers. Partnership could call Organization's interest in Units at any time. Based on the above elements of Transaction, Organization was essentially compelled to engage in Transaction.

II. Organization was never a partner in Partnership

In form, Organization was never a partner in Partnership. Under the terms of the Assignment Agreement and the Partnership Agreement, Organization was solely entitled to any distributions made with respect to Units, the amount and timing of which remained under Partner's control. Partner also retained all other indicia of ownership of Units. As such, Organization was never in form a partner in Partnership.

In substance, Organization was never a partner in Partnership. The Supreme Court, in Commissioner v. Culbertson, articulated the standard for determining, under the federal tax laws, whether a person is treated as a partner for federal tax purposes:

> [C]onsidering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise.

337 U.S. 733, 742 (1949).

In Historic Boardwalk, the Third Circuit concluded that a partner who avoids any meaningful downside risk in the partnership, while enjoying a dearth of meaningful

upside potential, was not a bona fide partner. Historic Boardwalk Hall, LLC v. Commissioner, 694 F.3d 425, at 455–60 (3rd Cir. 2012). Following the Second Circuit in TIFD III–E, Inc. v. United States, 459 F.3d 220 (2nd Cir. 2006) (Castle Harbour), the Third Circuit held that, to be a bona fide partner for tax purposes, a party must "have a meaningful stake in the success or failure of the enterprise." Id. at 449.

In the present case, Organization, as an assignee of Partner, was not a full-fledged partner of Partnership. Partner's assignment of Units to Organization entitled Organization to distributions made with respect to Units while Partner retained all other indicia of ownership of Units. Organization was only an assignee of Partner for one day before the Organization transferred it rights in Units to Corporation in exchange for Note. Partner determined the selling price of Units. Organization's momentary rights to distribution (which are totally controlled by Partner) are not sufficient to make Organization a partner in Partnership. Organization had no meaningful right to participate in Partnership's success or failure and as such, was not in substance a partner of Partnership.

Because Organization was never a partner in Partnership, Partner is not entitled to a deduction under § 170 for a contribution of Units to Organization. Further, because Organization was not a partner in Partnership and had no interest in Partnership property, it could not have engaged in a sale with Corp that would entitle Partnership to adjust its basis in its assets under § 743(b).

III. The partnership anti-abuse provision under § 1.701-2 applies to disregard Organization as a partner of Partnership.

For similar reasons to those described above, the partnership anti-abuse provision of § 1.701-2 applies to disregard Organization as a partner of Partnership, and Transaction should be recast as previously described.

Section 1.701-2(a) provides that subchapter K is intended to permit taxpayers to conduct joint business (including investment) activities through a flexible economic arrangement without incurring an entity-level tax. It provides that the following requirements are implicit in the intent of subchapter K:

> 1) The partnership must be bona fide and each partnership transaction or series of related transactions must be entered into for a substantial business purpose.
>
> 2) The form of each partnership transaction must be respected under substance over form principles.
>
> 3) The tax consequences under subchapter K to each partner of partnership operations and of transactions between the partner and the partnership must accurately reflect the partners' economic arrangement and clearly reflect the partner's income (subject to certain exceptions).

Section 1.701-2(b) provides, in part, that the provisions of subchapter K and the regulations thereunder must be applied in a manner that is consistent with the intent of subchapter K. Accordingly, if a partnership is formed or availed of in connection with a transaction a principal purpose of which is to reduce substantially the present value of the partners' aggregate federal tax liability in a manner that is inconsistent with the intent of subchapter K, the Commissioner can recast a transaction for federal tax purposes, as appropriate to achieve tax results that are consistent with the intent of subchapter K. Section 1.701-2(c) provides guidance on the facts and circumstances that are relevant for determining the existence of an impermissible tax reduction purpose.

In this case, Partner purportedly transferred Units in Partnership with a low basis and a high fair market value to Organization, for which Partner took a charitable deduction based on the fair market value of Units on Partner's personal tax return. Subsequently, Partner arranged for Organization to sell those Units to Corp for the Note. As a result of this second purported transfer, Corp takes a deduction for "interest" payments on Note and a goodwill amortization deduction as a result of Partnership's § 743(b) adjustment. In this way, Partner and Partner affiliates take three deductions for one charitable contribution that never in substance occurred. Transaction significantly reduced Partner and Corp's tax liability. The purported transfer of Units to Organization was necessary to achieve that claimed result. Organization, an assignee of Partner with respect to Units, only momentarily had rights to distributions and no other rights to Units.

Accordingly, the Service may apply § 1.701-2 to disregard Organization as a partner in Partnership and to recast Transaction as described in the Transaction Recast.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Frank J. Fisher at (202) 317- if you have any further questions.

Sincerely,

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