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Sweeping Section 752 Rule Changes for Recourse and Nonrecourse Partnership Liability Allocation

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WEDNESDAY, APRIL 2, 2014

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**Stafford CLE Webinar on April 2, 2014
Sweeping Section 752 Rule Changes for Recourse
and Nonrecourse Partnership Liability Allocation**

Presented by Robert A.N. Cudd
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April 2, 2014

Major Features of Proposed Regulations

- Proposed Regulations affecting the allocation of partnership liabilities were proposed by the Treasury Department on January 29, 2014.
- The Proposed Regulations contain 2 major provisions:
 - The first set and arguably the most important changes of the Proposed Regulations amend the allocation of recourse partnership liabilities under Section 752 of the Code and Treas. Reg. Section 1.752-2.
 - The second set of provisions relate to the allocation of excess nonrecourse liabilities under Treas. Reg. Section 1.752-3(a)(3) replacing the current provisions based on profits with one based on a liquidation value percentage.

Reasons for Changes to Regulations on Allocation of Recourse Partnership Liabilities

- This presentation will address the dramatic changes made by the Proposed Regulations to the treatment of recourse debt obligations.
- The Proposed Regulations provide that the effective date is when the Proposed Regulations become final but provide a 7 year transition period under certain conditions.
- In response to perceived abuses regarding distributions by leveraged partnerships such as those discussed in Canal Corporation v. Commissioner, 135 T.C. No. 9 (August 5, 2010), in which the court imposed penalties on a leveraged distribution of cash by a partnership because of a lack of substance, the Internal Revenue Service proposed Treasury Regulations under Section 752 of the Code which dramatically change the treatment of partnership recourse liabilities.

Reasons for Changes to Regulations on Allocation of Recourse Partnership Liabilities

- The Internal Revenue Service is actively pursuing those distributions by leveraged partnerships which it believes result in disguised sales.
- Transactions involving debt financed distributions by leveraged partnerships often rely on a guarantee by the distributee partner of a partnership liability, the proceeds of which are distributed. Under Section 752 this causes the debt to be recourse debt allocable to the distributee partner which in turn increases its basis. The guarantee may be a “bottom dollar” guarantee or a “vertical slice” of a partnership liability.
- Leveraged transactions also rely on the deemed satisfaction rule of Treas. Reg. Section 1.752-2(b)(6) and the anti-abuse rule of Section 1.752-2(j) for the proposition that the economic ability of a partner to make a payment obligation, such as a guarantee, is not relevant in determining whether the payment obligation should be respected.

Current Treatment of Recourse Liabilities

- Under Treas. Reg. Section 1.752-2(b)(1), recourse partnership liabilities are allocated to the partner which bears the risk of loss based on the constructive liquidation of the partnership to the extent the partner is not entitled to reimbursement.
- A partner bears the risk of loss if its payment obligation is recognized under Treas. Reg. Section 1.752-2(b)(3) and satisfied under Treas. Reg. Section 1.752-2(b)(6).

Current Treatment of Recourse Liabilities

- All contractual and statutory requirements are taken into account to determine whether the partner's obligation to make a payment on the partnership liability is recognized. Thus, a contractual arrangement outside of the partnership or a statutory or other regulatory provision which could reduce or eliminate this payment obligation must be taken into account in determining whether the partner's payment obligation should be recognized. Treas. Reg. Section 1.752-2(b)(3).
- Under Treas. Reg. Section 1.752-2(b)(6) a payment obligation is generally deemed satisfied regardless of the actual net worth of the partner, except in the case of a plan to avoid or circumvent the obligation.

Overview of Proposed Regulations

- Proposed Treasury Regulations retains the constructive liquidation approach of the current Regulations 1.752-2(b)(1) but new recognition and net value requirements are imposed by Proposed Treas. Reg. Section 1.752-2(b)(3)(ii) and (iii).
- The Proposed Regulations require additional conditions to be satisfied for a partner's obligation to be recognized. The obligation must contain arm's length terms, and the obligation must be a "first dollar" payment obligation. Those were the two principal provisions of the current Regulations which were viewed as potentially abusive.
- The deemed satisfaction rule of the current Regulations is replaced with a net value rule. The Proposed Regulations require that the partner demonstrate it has sufficient net value to support its payment obligation.

Recognition of Payment Obligations

- Proposed Treas. Reg. Section 1.752-2(b)(3)(ii) requires the partner or related person to satisfy 7 requirements for a payment obligation to be recognized. The first 5 requirements are designed to ensure that the partner is treated the same as an unrelated third party under the same obligations and are generally referred to as the “commercial requirements.”
- The remaining 2 recognition requirements under Proposed Treas. Reg. Section 1.752-2(b)(3)(ii)(F) and (G) address partial guarantees.

Recognition of Payment Obligations

- Proposed Treas. Reg. Section 1.752-2(b)(3)(ii)(A)-(E) sets forth the five commercial requirements.
 - A. The partner or related person is:
 - Required to maintain a commercially reasonable net worth throughout the term of the payment obligation; or
 - Subject to commercially reasonable contractual restrictions on transfers of assets for inadequate consideration.
 - B. The partner or related person is required periodically to provide commercially reasonable documentation regarding the partner's or related person's financial condition.

Recognition of Payment Obligations

- C. The term of the payment obligation cannot end prior to the term of the partnership liability.
 - D. The payment obligation cannot require that the primary obligor or any other obligor with respect to the partnership liability directly or indirectly hold money or other liquid assets in an amount that exceeds the reasonable needs of such obligor.
 - E. The partner or related person received arm's length consideration for assuming the payment obligation.
- The 5 commercial requirements are designed to ensure that terms of the guaranty or payment obligation has economic substance to be respected as a meaningful obligation imposing burdens and benefits on the partner.

Recognition of Payment Obligations

In addition to the commercial requirements, other requirements apply to guarantees and indemnities to ensure that any guarantees are “first dollar” obligations.

- Proposed Treas. Reg. Section 1.752-3(b)(ii)(F) and (G) are directed at partial guarantees, such as “bottom dollar” and “vertical slice” guarantees and indemnities, and these provisions are the heart of the Proposed Reg. Section 752 of the Code.
 - It was the “bottom dollar” guarantee which made partners comfortable in guarantee partnership liabilities knowing there was little or no risk.

Recognition of Payment Obligations

- Under Proposed Treas. Section 1.752-3(b)(ii)(F) and (G) a guarantee or indemnity and/or reimbursement agreement will be recognized if and to the extent ANY amount of the partnership liability is not otherwise satisfied. This means that if any part of the obligation subject to the guarantee or indemnity can be satisfied from any other source the guarantee or indemnity will not be recognized and the partnership liability would then be viewed as a nonrecourse liability.
- The “ANY amount” rule seems too broad since it would apply in any part of a partnership is guaranteed even if the guarantee is for a small investor or is a “bottom tier” guarantee with little value.
- There is a limited exception from this rule for rights of contribution running between partners or related persons who are co-obligors with respect to a payment obligation for which each of them is jointly and severally liable.

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Net Value Requirement

- The deemed satisfaction rule of the current Treasury Regulations Section 1.752-2(b)(6) applies irrespective of the actual net worth of the partner. This provision of the current Treasury Regulations was viewed as capable of abuse and causing recourse obligations to lack economic substance.
- For example, in many projects a parent corporation would form a subsidiary to guarantee partnership liabilities when the subsidiary did not have the net worth to support the guarantee. This was part of the fact pattern in the Canal case.
- Proposed Treas. Section 1.752-2(b)(3)(iii)(B) amends and supplements the deemed satisfaction rule of Treas. Reg. Section 1.752-2(b)(6) by adding a net value requirement similar to the current rule for disregarded entities under Treas. Reg. Section 1.752-2(k) to determine whether the partner bears the risk of loss other than a trade payable.

Net Value Requirement

- Thus, except for an individual or a decedent's estate, a payment obligation of a partner or related person will only be respected as causing the partner to bear the risk of loss to the extent of the partner's net value.
- The net value requirement will apply to the payment obligation of a disregarded entity owned by an individual or decedent's estate.

Net Value Requirement

- Under Treas. Reg. Section 1.752-2(k), the net value of an entity is the fair market value of the entity's assets including its enforceable rights to contributions and the fair market value of any partnership interest (other than the partnership for which net value is being determined) reduced by all obligations other than the recourse payment obligations.
 - The valuation date is generally the allocation date which is the earlier of the date when a partner's share of partnership liabilities is determined or the end of the partnership's taxable year in which the requirement to determine the net value arises.

Example 3 of Recourse Debt Rules under Proposed Treas. Reg. Sec. 1.752-2(f)

- Example 3 illustrates the operation of the basic rules of an allocation of a recourse loan under the constructive liquidation rules for a general partnership. Under the constructive liquidation rule, all of the contractual and statutory provisions must be taken into account in determining whether there is a payment obligation.
 - Under state law applicable to general partnerships, the general partner is liable for the recourse liabilities of the partnership upon liquidation.
 - Both the general partner and the limited partner are business entities, and the general partner meets the net value test.
 - Under this example all of the recourse loan is allocated to the general partner even though the limited partner guarantees the loan and is allocated 80% of the losses until its capital account is reduced to zero.

Example 3 of Recourse Debt Rules under Proposed Treas. Reg. Sec. 1.752-2(f)

- In example 3, the terms of limited partner's guarantee provide that it is limited to the amount the lender cannot recover from the partnership or the general partner.
 - If the limited partner's guarantee provided that a payment obligation existed without regard to the general partner's statutory obligation it should be recognized. However, it is not clear that even such a guarantee could supersede the statutory provision.
- Under state law, the general partner would be required to make a contribution to the partnership equal to the \$15,000 principal amount of the loan. Since the general partner satisfies the net value test all of the \$15,000 liability is allocated to the general partner.

Example 3 of Recourse Debt Rules under Proposed Treas. Reg. Sec. 1.752-2(f)

- It should be noted that the general partner would not be allocated the \$15,000 liability if it failed the net value test even if it were required to make a capital contribution under state law.
- Even if the general partner did not satisfy the net value test, none of the \$15,000 liability would be allocated to the limited partner because its guarantee would fail the recognition requirement of Proposed Treas. Reg. Section 1.752-2(b)(3)(ii)(F).

Information Reporting

- Under Proposed Treas. Reg. Section 1.752-2(b)(3)(iii)(C), a partner treated as bearing the economic risk of loss for a partnership liability, other than an individual or decedent's estate, must provide information regarding its net value that is appropriately allocable to the partnership's liabilities on a timely basis.
 - The reporting obligation presents many administrative and technical issues as to how often such information must be provided and how net value is to be allocated to a specific partnership liability.

Example 10 of Recourse Debt Rules under Proposed Treas. Reg. Sec. 1.752-2(f)

- Example 10 illustrates the difference between a guarantee of first and last dollars by A and a bottom tier guarantee by B, members of a three member limited liability company. It is assumed that A and B waive contribution rights, the net value test is met, and the commercial requirements are satisfied.
- A guarantees \$300 of \$1,000 liability if any amount of the full \$1,000 liability is not recovered by the lender.
- A's guarantee is recognized under the recognition rules since A is required to pay \$300 if the lender does not recover the full \$1,000 principal amount.
- B guarantees payment of \$200 but only if the bank recovers less than \$200.

Example 10 of Recourse Debt Rules under Proposed Treas. Reg. Sec. 1.752-2(f)

- B's guarantee is not recognized under the 1.752-2(b)(3)(ii)(F) because it is a partial or bottom tier guarantee. This means that the partnership assets could decline by \$800 before B's guarantee would be triggered.
 - \$700 of the \$1,000 loan which is not guaranteed by A is treated as non-recourse and allocated under Proposed Reg. Section 1.752-3. B's guarantee is ignored.

Example 11 of Recourse Debt Rules under Proposed Treas. Reg. Sec. 1.752-2(f)

- Example 11 has the same facts as example 10 and illustrates the effect of an indemnification by one member (C) of another member's (A) guarantee. The example assumes the net value test and the commercial requirements are satisfied by both A and C.
- A guarantees \$300 of \$1,000 liability and C agrees to indemnify A up to \$50 and to indemnify B fully with respect to its \$200 guarantee.
- The example states that C's indemnity must be analyzed separately from its effect on A's guarantee. Thus, C's indemnity could be recognized even if it would adversely affect A's guarantee.

Example 11 of Recourse Debt Rules under Proposed Treas. Reg. Sec. 1.752-2(f)

- Example 11 concludes that C's indemnify should be recognized under Proposed Treas. Reg. Section 1.752-2(b)(3)(ii)(G) because A's guarantee obligation would be recognized but for C's indemnity and because C is obligated to pay A on its indemnity if A pays any amount on its guarantee.
 - C's indemnity of A's guarantee is recognized because A's guarantee meets the requirements of Proposed Treas. Reg. Section 1.752-2(b)(3)(ii)(G). Since C's indemnity is recognized it is treated as modifying A's guarantee.

Example 11 of Recourse Debt Rules under Proposed Treas. Reg. Sec. 1.752-2(f)

- A’s modified guarantee is then viewed as an obligation to make a payment only if the lender recovers less than \$250. Thus, A’s guarantee is not recognized because a portion of the partnership liability could be satisfied by C’s indemnity which is something other than A’s guarantee.
- This is a disturbing result because a relatively small indemnity by C of \$50 destroys all of A’s \$300 guarantee. The result of this rule is that a guarantee or payment obligation is not recognized if ANY amount can be paid by another person.
- Example 11 also concludes that C’s indemnity of B’s guarantee is not recognized because B’s “bottom-dollar” guarantee is not recognized.

Example 12 of Recourse Debt Rules Under Proposed Treas. Reg. 1.752-2(f)

- Example 12 disallows recognition of a partial guarantee in which is a vertical slice of a partnership liability as opposed to a bottom-dollar guarantee. The member guarantees 25 percent of each dollar of the \$1,000 liability not recovered by the lender. The example assumes that all of the commercial requirements of Proposed Treas. Reg. Section 1.752-2(b)(3)(iii)(A)-(E) and the net value requirement are met.
 - A, B and C are equal members of limited liability company ABC. ABC borrows \$1,000 from a bank and A guarantees 25% of each dollar not recovered by the bank.
 - This is not a “bottom dollar” guarantee but a “vertical slice “ of the \$1,000 liability.
 - The example concludes that the payment obligation of A will not be recognized and that the partnership liability is treated as a nonrecourse liability.

Anti-Abuse Provisions of Proposed Treas. Reg. 1-752-2(j)(4)

- Proposed Treas. Reg. Section 1.752-2(j)(4) expands the anti-abuse rule to prevent arrangements designed to convert a single liability with more than one liability to avoid the rules of Proposed Treas. Reg. Section 1.752-2(b)(3)(ii)(F) and (G).
 - The proposed anti-abuse rule is expanded to prevent taxpayers from structurally dividing a single partnership liability into multiple liabilities so that the payment recognition rules can be satisfied on a tranche by tranche basis.
 - For example, the use of tiered partnerships or intermediaries will not be permitted to create a separate partnership liability. However, it is unclear whether the use of a securitization to “tranche” a partnership liability would be permitted. The scope of this rule remains unclear.

Effective Dates and Transitional Rules on Recourse Debt

- A special transitional rule applies to the changes made to the allocation of recourse liabilities under Proposed Treas. Reg. Section 1.752-2(l)(2). A 7-year transition period from the date the Regulations become final applies, if elected by the Transition Partner and the Transition Partnership but only to the extent of the Transition Partner's Grandfathered amount.
 - The Grandfathered Amount is the amount of the Transition Partner's share of liabilities immediately prior to the effective date in excess of its adjusted basis in its partnership interest under Section 705 of the Code.
 - This transition rule will help Transition Partners to avoid the immediate recognition of gain on this effective date as a result of a deemed distribution under Section 752(b) from a reduction in liabilities.

Effective Dates and Transitional Rules on Recourse Debt

- Commentators have expressed confusion over the 7-year rule because it would appear to be unnecessary given the general effective date rule for liabilities issued or assumed prior to the effective date.
- It appears that the drafters may have omitted language to the effect that any change in a partnership liability or payment obligation after the effective date would vitiate the general effective date provision and therefore require reliance on the 7-year transition rule.

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Section 752 Proposed Treasury Regulations: Treatment of Partnership Nonrecourse Liabilities

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- On January 29, 2014, Treasury issued proposed regulations under section 752 regarding the treatment of partnership recourse and nonrecourse liabilities.
- The proposed regulations drastically alter the current rules under section 752 regarding the allocation of partnership recourse and nonrecourse liabilities.
- These slides address the proposed regulations related to the allocation of partnership nonrecourse liabilities.

- Section 752(a) provides that any increase in a partner's share of partnership liabilities (or an increase in a partner's individual liabilities by reason of the assumption by the partner of partnership liabilities) will be considered a contribution of money by the partner to the partnership.
- Section 752(b) provides that any decrease in a partner's share of partnership liabilities (or a decrease in a partner's individual liabilities by reason of the assumption by the partner of partnership liabilities) will be considered a distribution of money to the partner by the partnership.

- Treas. Reg. § 1.752-1(a) provides that a partnership liability is a recourse liability to the extent that any partner or related person bears the economic risk of loss for that liability under Treas. Reg. § 1.752-2.
- To the extent that no partner or related person bears the economic risk of loss for a liability, the liability is nonrecourse.

Treatment of Nonrecourse Liabilities: Current Treas. Reg. § 1.752-3(a)(3)

- Treas. Reg. § 1.752-3 provides rules for determining a partner's share of nonrecourse liabilities.
- Excess nonrecourse liabilities are currently allocated under Treas. Reg. § 1.752-3(a)(3) in accordance with a partner's interest in partnership profits, taking into account all the facts and circumstances relating to the economic arrangement of the partners.
- The regulation currently provides three methods for determining a partner's share of excess nonrecourse liabilities: (i) the significant item method, (ii) the reasonably expected nonrecourse deductions method, and (iii) the section 704(c) method.

Treatment of Nonrecourse Liabilities: Current Treas. Reg. § 1.752-3(a)(3)

- Under the “significant item method,” allocations of excess nonrecourse liabilities are in accordance with a partner’s interest in partnership profits if such interest is consistent with allocations of some other significant item of partnership income or gain (provided such allocation has substantial economic effect under section 704(b) and the regulations thereunder).
- Under the “reasonably expected nonrecourse deductions method,” allocations of excess nonrecourse liabilities are allocated in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated.

Treatment of Nonrecourse Liabilities: Current Treas. Reg. § 1.752-3(a)(3)

- Under the “section 704(c) method,” a partnership may first allocate an excess nonrecourse liability to a partner up to the amount of built-in gain that is allocable to the partner on section 704(c) property or property for which reverse section 704(c) allocations are applicable where such property is subject to the nonrecourse liability to the extent that such built-in gain exceeds the gain allocated to such partner under Treas. Reg. § 1.752-2(a)(2).
- The IRS and Treasury believe that the allocation of excess nonrecourse liabilities under the significant item method and the reasonably expected nonrecourse deductions method may not properly reflect a partner’s share of partnership profits actually used to repay such liabilities.

Treatment of Nonrecourse Liabilities: Proposed Treas. Reg. § 1.752-3(a)(3)

- Proposed Treas. Reg. § 1.752-3(a)(3) retains the first two sentences of the current regulation, which provides that allocations of partnership excess nonrecourse liabilities are determined by a partner's interest in partnership profits, and that a partner's interest in partnership profits is determined by taking into account all facts and circumstances relating to the economic arrangement of the partners.
- The proposed regulation also retains the section 704(c) method.
- The proposed regulation, however, provides that allocations of excess nonrecourse liabilities based on a partner's interest in partnership profits may be in accordance with the partner's liquidation value percentage.
- The IRS and Treasury believe that using a partner's liquidation value percentage is an appropriate proxy of a partner's interest in partnership profits.

Treatment of Nonrecourse Liabilities: Proposed Treas. Reg. § 1.752-3(a)(3)

- A partner's "liquidation value percentage" is the ratio of the liquidation value of the partner's interest in the partnership divided by the aggregate liquidation value of all the partners' interests in the partnership.
- The liquidation value percentage is determined upon formation of the partnership, and is redetermined upon any capital account revaluation event described in Treas. Reg. § 1.704-1(b)(2)(iv)(f)(5), whether or not the capital accounts of the partners are adjusted under Treas. Reg. § 1.704-1(b)(2)(iv)(f).
- Treas. Reg. § 1.704-1(b)(2)(iv)(f)(5) describes adjustments made principally for a substantial non-tax business purpose, including contributions, distributions, liquidation of the partnership, or grant of a partnership interest for services.

Treatment of Nonrecourse Liabilities: Proposed Treas. Reg. § 1.752-3(a)(3)

- The liquidation value percentage is the amount of cash a partner would receive with respect to the interest if, immediately after formation of the partnership or the occurrence of a revaluation event described in Treas. Reg. § 1.704-1(b)(2)(iv)(f)(5), the partnership sold all of its assets for cash equal to the fair market value of such property, satisfied all of its liabilities, paid a third party to assume all of its Treas. Reg. § 1.752-7 liabilities in a fully taxable transaction, and liquidated.

Treatment of Nonrecourse Liabilities: Proposed Treas. Reg. § 1.752-3(a)(3)

- No Transition Rule. Unlike the proposed changes to the treatment of recourse liabilities under Treas. Reg. § 1.752-2, no transition rules are provided with respect to the proposed changes under Treas. Reg. § 1.752-3(a)(3) with respect to the treatment of nonrecourse liabilities.
- Effective Date. The proposed changes would apply to liabilities that are incurred or assumed by a partnership on or after the date that the regulations are published as final regulations.

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Treatment of Nonrecourse Liabilities: Example 2 of Proposed Treas. Reg. § 1.752-3(a)(c)

- Example 2 of Proposed Treas. Reg. § 1.752-3(a)(c) illustrates a simple allocation of nonrecourse liabilities with a distribution of property that triggers a revaluation event.

Nonrecourse Liabilities: Example 2 of Proposed Treas. Reg. § 1.752-3(a)(c)

- On January 1, 2012, X and Y each contribute \$100 to form XY LLC, in exchange for a 50% interest in the LLC. XY LLC is classified as a partnership for tax purposes. The partnership borrows \$50 from an unrelated person on a nonrecourse basis.
- XY LLC purchases Land A for \$50 and Land B for \$200.
- The partners agree to allocate excess nonrecourse liabilities in accordance with the partners' liquidation value percentages.
- The Example provides that partners X and Y each has a 50% liquidation value percentage ($\$100 \div \200), and therefore, X and Y each has a \$25 share of the \$50 nonrecourse liability.
- Under section 752(a), X and Y each is treated as making a deemed contribution of \$25 to XY LLC.

Nonrecourse Liabilities: Example 2 of Proposed Treas. Reg. § 1.752-3(a)(c)

- On September 1, 2015, XY LLC's assets are as follows:

Asset	Adjusted Tax Basis	Fair Market Value
Land A	\$50	\$40
Land B	\$200	\$800
Land C	\$390	\$400
Total	\$640	\$1,240

- The outstanding principal on the nonrecourse liability is \$40.
- The partnership interest X and Y each owns in XY LLC has a fair market value of \$600 and an adjusted tax basis of \$320.
- The partners continue to agree to allocate excess nonrecourse liabilities in accordance with the partners' liquidation value percentages.

Treatment of Nonrecourse Liabilities: Example 2 of Proposed Treas. Reg. § 1.752-3(a)(c)

- On September 15, 2015, XY LLC distributes Land C to X.
- The Example assumes that for XY LLC's taxable year ending December 31, 2015, the partnership has no items of income, gain, loss, deduction, or credit.
- The distribution of Land C, with a FMV of \$400 and an adjusted tax basis of \$390, is a revaluation event under the proposed regulation, and as a result, X's liquidation value percentage must be redetermined.
- The Example provides that X's redetermined liquidation value percentage is 25% ($\$200 \div \800).

Treatment of Nonrecourse Liabilities: Example 2 of Proposed Treas. Reg. § 1.752-3(a)(c)

- X's share of the \$40 nonrecourse liability is reduced from \$20 to \$10 as of September 1, 2015, while Y's share of the liability increases from \$20 to \$30.
- Under section 752(b), X is treated as receiving a \$10 deemed cash distribution from XY LLC, but recognizes no gain because X's basis in its XY LLC interest is \$320.
 - X's basis in the distributed Land C is \$310, which is the adjusted basis X has in its XY LLC partnership interest after the distribution. See Section 732(a)(2).
- Under section 752(a), Y is treated as making a \$10 deemed cash contribution to XY LLC.

Treatment of Nonrecourse Liabilities: Final Comments

- Under the proposed regulation, a deemed distribution to a partner could result in the recognition of gain by that partner under section 752.
- Use of the liquidation value percentage in the proposed regulation does not necessarily reflect the profits of the partnership.
- There are also practical difficulties in determining the partnership's liquidation value. This would require determining the fair market value of the partnership's assets, which would require a continuous appraisal.
- It is also unclear how an adjustment of the liquidation value percentage could affect capital accounts.
- Because there are no transition rules, if these rules are adopted and become effective, there will be immediate shifts in nonrecourse liabilities.

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