BRIEF SUMMARY OF OZONE FINAL REGULATIONS HIGHLIGHTS FOR PARTNERSHIPS AND PARTNERS

A rule is added that if a “significant purpose” of the use of a partnership is to avoid the rules of the Ozone statute and regulations, then it is disregarded. Compare this rule to §1.701-2 which uses the term “a principal purpose”.

The tracing of disposed of partnership interests is not allowed except for mixed funds investments. Does this create an inference generally for so-called “partnership tracking interests”?

The Ozone system is not a nonrecognition provision; it is an income deferral system.

The offsetting positions rule only applies to section1092 straddles. No illustration of section 1092(d)(4)(C) (partnership positions are partner positions-but partner positions are not partnership positions). This may create differences in what is “eligible gain” if the election is made by the partnership or by a partner.

The new section 1231 rule only applies to gross amounts. Very taxpayer favorable.

Section 721 transactions of a qualifying investment is not an inclusion event. Assets over mergers are also excluded. There is no express exception for partnership divisions. The rule on exempting transfers of fund interests to partnerships under 721(a) could, however, run afoul of the assignment of income rule of RR 84-115, which requires a business purpose for a transfer of a partnership interest holding hot assets to another partnership in a section 721 transfer or otherwise there is gain recognition. That must mean that the section 721 transfers in the Ozone regulations need a business purpose if the partnerships hold hot assets.

With the exception for gain from the sale of inventory in the ordinary course of business, all gain from the sale of property by a QOF partnership or by a qualified opportunity zone business that is a partnership is eligible for exclusion if held for at least 10 years. But there is a potential issue with the fund interest step-up where section 751(c) assets are held (see below).

Master-feeder structures and aggregator fund structures are not allowed to qualify as QOFs.

There is a potential Issue of what happens on a fund interest sale with section 751(c) items. The issue arises because both reg. §1.751-1(a)(2) and the special Ozone regulation rule about a deemed section 743(b)-type inside asset adjustment both use the term “immediately prior” to the sale of the fund interest. The special Ozone rule must occur first in time to avoid section 751(a) applying if the fund partnership holds section 751(c) assets. There is no problem with holding inventory.

Inside basis adjustments to partnership assets are not limited to capital gain as the 2019 proposed regulations stated, but include all gains other than from inventory in the ordinary course of business by the QOF partnership.

Does it matter if the assets up form is adopted for a partnership merger to obtain the favorable treatment for partnership mergers under the Ozone regulations? Partnership divisions are not exempted in any event.