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December 13, 2007

The Honorable Eric Solomon
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

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

Re: Report on Final Regulations Regarding Allocation of
Basis under Section 358 and Related Matters

Dear Assistant Secretary Solomon and Acting Commissioner Stiff:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1137 addressing final Treasury regulations issued under sections 356 and 358 of the Internal Revenue Code (the "Code") in Treasury Decision 9244 (January 26, 2006), regarding the determination of the basis of stock or securities received in exchange for, or with respect to, stock or securities in certain transactions to which section 354, 355 or 356 of the Code applies.

We welcome the clarification of issues raised by the proposed regulations under section 358 of the Code that were published on May 3, 2004 (REG-116564-03), including issues that were discussed in our previous comments (our Report No. 1088). The proposed regulations

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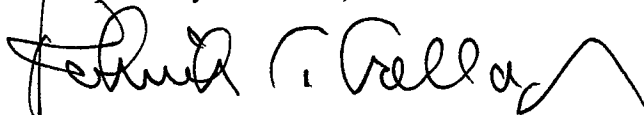
required that the basis of shares or securities received in transactions to which the regulations applied (certain exchanges and distributions governed by section 354, 355 or 356 of the Code) be determined by reference to the particular shares or securities in exchange for which (or, in a distribution, with respect to which) such shares or securities were received. The final regulations generally continue the tracing approach of the proposed regulations and extend that regime to receipt of “boot” governed by Section 356 of the Code.

As noted in the preamble to the final regulations, such extension raises certain technical questions, including the proper treatment of losses realized with respect to stock or securities exchanged solely for boot in the context of a reorganization. The enclosed report contains our recommendations for the treatment of such losses, which a substantial majority of our Executive Committee believed should be deferred and a minority believed should be immediately recognized. The report also discusses some remaining technical issues and suggests areas in which additional clarification would be helpful. In particular, the report recommends clarification in the following areas:

- i) The allocation of basis from multiple classes of surrendered shares or securities to a lesser number of shares or securities;
- ii) The ability of taxpayers to make designated allocations in public exchanges;
- iii) The scope of the rules governing “stockless” reorganizations;
- iv) The determination of basis in triangular reorganizations;
- v) The scope of the rules governing the allocation of boot;
- vi) The determination of basis in certain split-off transactions;
- vii) The determination of which share or securities are surrendered when less than all shares or securities are surrendered; and
- viii) The determination of basis in certain consolidated return transactions.

We appreciate your consideration of these comments. Please do not hesitate to contact us if you wish to discuss the report, or if we can assist you in any other way.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patrick C. Gallagher", with a stylized flourish at the end.

Patrick C. Gallagher
Chair

cc:

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