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July 22, 2003

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Commissioner – Taxation and Finance
NYS Department of Taxation and Finance
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Albany, New York 12227

Honorable Andrew J. Eristoff
Executive Deputy Commissioner
NYS Department of Taxation and Finance
W.A. Harriman State Office Campus, Building 9
Albany, New York 12227

Report on Trust Fund Liability for Collection of Sales Tax

Dear Commissioner Roth and Commissioner Eristoff:

I am pleased to submit for your consideration the enclosed report on recommended legislative changes to Section 1131(1) of the New York State Tax Law (“Section 1131(1)”). This section provides for assessments against individuals for unpaid sales taxes of a business.

The report analyzes the policies underlying personal liability assessments for unpaid trust fund taxes of a business. The report compares the Section 1131(1) sales tax provisions to the analogous trust fund tax provisions of Section 165(g) of the New York State Tax Law and Section 6672 of the Internal Revenue Code, both of which impose personal liability for unpaid withholding taxes of a business. The report analyzes the “absolute liability” provisions of Section 1131(1) which impose personal liability for any unpaid sales taxes of a business upon any member of a partnership

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without regard to whether the member was a general partner or a limited partner and upon any member of a limited liability company without regard to whether the member had an active role or a significant involvement in the financial affairs or management of the company.

The report concludes by recommending that Section 1131(1) be amended to conform the statutory language to the related trust fund liability provisions of Section 165(g), thereby limiting individual responsibility for unpaid sales taxes to those persons who bear responsibility for the default.

I am writing to you on behalf of the Tax Section to urge your support for this legislative change.

Respectfully submitted

A handwritten signature in black ink that reads "Andrew N. Berg". The signature is written in a cursive style with a large, stylized initial 'A'.

Andrew N. Berg
Chair

cc: Barbara G. Billet
John Bartlett
Robert C. Gola