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May 26, 2004

Mr. Gregory F. Jenner
Acting Assistant Secretary (Tax Policy)
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The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Dear Acting Assistant Secretary Jenner and Commissioner Everson:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1061 on Temporary Regulations §1.368-2T Relating to "A" Reorganizations Involving Disregarded Entities. We applaud the IRS and Treasury for issuing the Temporary Regulations and believe they have significantly improved and clarified the rules regarding reorganizations. The widespread use of disregarded entities and the importance of mergers and acquisitions to our economy make this an important subject on which guidance is extremely valuable.

Our report provides a few comments and suggested clarifications with respect to the Temporary Regulations, including how these regulations might be coordinated with recent guidance on post-reorganization asset transfers.

Our report suggests that you clarify that the prohibition on transfers of transferor assets or liabilities to transferee foreign disregarded entities (Temp. Regs. §1.368-2T(b)(iii)) applies to assets and liabilities held by the transferor corporation *or* any of its disregarded

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-2-


May 26, 2004

entities, but that the prohibition does not apply to transfers of transferor unit assets and liabilities to foreign disregarded entities *after* the merger, whether or not planned or anticipated at the time of the merger.

Our report also suggests a modification to the election to apply the Temporary Regulations retroactively (Temp. Regs. §1.368-2T(b)(1)(v)). We recommend that (1) the election to apply the Temporary Regulations retroactively be available only if made jointly by the target and acquiring and (2) where it is made, (a) all shareholders of both corporations must treat the transaction consistently and (b) the corporations must take reasonable efforts to notify the target shareholders who participated in the transaction that such an election has been made. We believe that these modifications will prevent the Government from being whipsawed by the corporations involved taking one position as to the taxability of the merger and the target shareholders taking the opposite position.

We appreciate your consideration of our comments. If you have any questions or comments regarding this report, please feel free to contact us and we will be glad to discuss or assist in any way.

Respectfully submitted,



Lewis R. Steinberg
Chair

cc: Eric Solomon, Deputy Assistant Secretary, Regulatory Affairs,
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