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December 3, 2015

The Honorable Jerry Boone
Commissioner
New York State Department of Taxation and Finance
Harriman Campus, Building 9
Albany, NY 12227

Re: Report #1334 on Draft Amendments to Regulations
Regarding Corporations Subject to Article 9-A Tax

Dear Commissioner Boone:

I am pleased to submit this report of the Tax Section of the New York State Bar Association commenting on draft amendments to regulations under Tax Law Article 9-A relating to activities that subject a corporation to tax. The amendments provide guidance regarding provisions in the 2014 and 2015 New York State budget legislation, principally regarding corporate nexus, which went into effect for tax years beginning on or after January 1, 2015.

The report makes various recommendations regarding the scope of the draft economic nexus provisions, including: (1) when "economic nexus" is deemed to exist in a current or subsequent taxable year; (2) identifying receipts that are not considered in computing the \$1 million New York receipts threshold for "economic nexus"; (3) the effect of the inclusion of the receipts of unitary affiliates not taxable under Article 9-A by reason of Public Law 86-272; and (4) those activities deemed insufficient to subject a foreign corporation to tax.

A significant part of the report offers comments on the draft provisions relating to the taxation of foreign corporate general partners in light of the \$1 million nexus threshold, and the taxation of foreign corporate members of a limited liability

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Jerry Boone, Commissioner
December 3, 2015

company (“LLC”) taxable as a partnership. With regard to the former, the draft amendments apply the \$1 million threshold at the partnership level for general partners, even where the partner derives less than \$1 million of New York receipts from the partnership. The report presents different approaches, one where the threshold is measured at the partner level, rather than at the partnership level, and the other applying the threshold at the partnership level, but with an additional *de minimis* receipts rule at the corporate partner level to ease compliance for partners having substantially less than \$1 million of New York receipts.

The draft amendments also subject to Article 9-A all foreign corporate members of an LLC taxable as a partnership. The report recommends that the nexus rules for corporate members be made to conform to the existing rules regarding the taxation of corporate partners, with a managing member of an LLC generally treated as a general partner for nexus purposes.

We appreciate your consideration of these recommendations. If you have any questions or comments regarding the report, please feel free to contact us and we will be pleased to discuss our comments or assist in any other way we can.

Respectfully submitted,

David R. Sicular
Chair

cc: Nonie Manion
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