



# New York State Bar Association

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February 28, 2003

The Honorable Pamela F. Olson  
Assistant Secretary (Tax Policy)  
Department of the Treasury  
Room 3120 MT  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Robert E. Wenzel  
Acting Commissioner  
Internal Revenue Service  
Room 3000 IR  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Dear Assistant Secretary Olson and Acting Commissioner Wenzel:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1029, which provides comments and recommendations for addressing the extent to which a member of a consolidated group should be allowed a loss on the disposition of subsidiary stock. This report addresses losses resulting from both the "loss duplication" issue and the "Son of Mirror" transaction. The Tax Section recognizes the complexities in dealing with these problems and generally believes that the government should adopt specific targeted approaches to both problems.

The Tax Section appreciates the importance of issuing regulatory guidelines in temporary or final form with respect to the loss duplication issue on or before March 15, 2003. Earlier drafts of this report attempted to identify technical problems with Treas. Reg. 1.1502-35 (the " -35 Regulations") and make appropriate recommendations. Ultimately, however, we concluded that the proposed -35 Regulations were sufficiently complex and potentially

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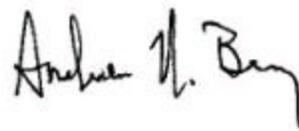
unadministrable that we did not believe satisfactory changes could be made to those regulations prior to March 15. We have doubts about whether the approach taken in the -35 Regulations, even with significant reworking, is the proper way to address the loss duplication problem, although we express no view at this time.

But we do believe the -35 Regulations cannot be made to work satisfactorily by March 15. For that reason, we believe the prudent course at the moment would be to adopt an interim anti-abuse rule that focuses on loss duplication and acceleration. That would solve the March 15 deadline problem and permit a more considered undertaking. As always, we stand ready to assist you in any way we can.

To address the Son of Mirror problem, our report suggests two approaches, either of which we believe should be satisfactory. One approach similar to the approach of the former loss disallowance rules in Treas. Regs. § 1.1502-20 would be based on certain presumptions. The other approach would incorporate the concepts of Treas. Regs. § 1.337(d)-2T and initially disallow the loss but allow taxpayers to demonstrate that the loss should be allowed. In addition, the report recommends that future guidance include limited rules to address Son of Mirror transactions resulting from stock basis increases from assets that are consumed in the subsidiary's business. Finally, the report recommends that the government consider adopting a limited

approach to address the potential for understated gain due to stock basis increases in Son of Mirror transactions.

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 "B" at the end.

Andrew N. Berg  
Chair

cc: The Honorable B. John Williams, Chief Counsel,  
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