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One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>

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March 25, 2003

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

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

Dear Assistant Secretary Olson and Commissioner Wenzel:

I am pleased to enclose the New York State Bar Association Tax Section Report No. 1031 commenting on proposed regulations (the "Proposed Regulations"), published in the Federal Register on December 19, 2002, regarding the treatment of expenditures made in connection with acquiring, creating or enhancing intangible assets. We previously submitted Report No. 1017 regarding the request for comments set forth in the advance notice of proposed rulemaking (the "Notice") which also related to the capitalization of such expenditures. As we did in the prior report, we commend the Treasury on undertaking this important project to provide guidance on the treatment of such expenditures. We expect this guidance will bring clarity to an area of significant controversy and uncertainty.

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Part I of this report sets forth a summary of our significant comments. Part II provides general comments regarding the Proposed Regulations. Part III discusses the treatment of expenditures incurred in connection with business acquisitions. Part IV addresses certain other areas about which comments were requested, as well as other issues raised by the Proposed Regulations.

We believe that the general approach of the Proposed Regulations provides a practical solution to many difficult conceptual problems relating to capitalization and will create clarity and reduce litigation and administrative costs associated with capitalization issues. Although in formulating workable rules, the Treasury and the IRS arguably departed in some instances from what might be the theoretically correct result, we view this as a wise decision, given the benefit of significantly enhanced clarity in this difficult area.

We endorse the overall approach of the Proposed Regulations of identifying specific categories of expenditures that must be capitalized and we view the addition of a procedure to expand the categories of expenditures required to be capitalized as a material improvement over the proposal described in the Notice. We believe, however, that the Final Regulations should make clear that those categories of expenditures identified as requiring capitalization be construed broadly. To do otherwise could invite taxpayers to take aggressive positions based on relatively insignificant distinctions from the expenditures for which capitalization is required.

We generally support the approach taken by the Proposed Regulations in the treatment of business acquisition costs. We recommend, however, that a mechanism be created to provide for the recovery of target's costs in a taxable stock acquisition at an appropriate time earlier than its liquidation, in particular at the time the stock of target is sold. We believe that transaction costs of tax-free and partially tax-free reorganization transactions, as well as costs in Section 351 transactions and tax-free spin-offs, should not be added to the basis of either the stock or assets acquired, and therefore no recovery,

except possibly on liquidation of the corporation incurring the costs, would be available for such costs.

Respectfully submitted,

A handwritten signature in blue ink that reads "A. N. Berg". The signature is written in a cursive style with a large, stylized "A" and "B".

Andrew N. Berg
Chair

cc: Jeffrey H. Paravano (Senior Advisor to Assistant Secretary)
Eric Solomon (Deputy Assistant Secretary for Regulatory Affairs)
B. John Williams, Jr. (Chief Counsel)
Gary B. Wilcox (Deputy Chief Counsel-Technical)
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