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June 6, 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

Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Dear Assistant Secretary Olson and Commissioner Everson:

I am pleased to enclose New York State Bar Association Tax Section Report No. 1033 concerning regulations on potentially abusive tax shelters.

The New York State Bar Association Tax Section has consistently supported efforts to curb corporate tax shelters and commends the Internal Revenue Service and Treasury on their continued efforts in the regard. We note that the regulations address a number of concerns previously raised by the Tax Section and we continue to support the structure and approach of the regulations. While the report comments on each of the provisions in the regulations, the main focus of the report is on the provisions relating to "confidentiality".

Since the issuance of these regulations it has been the universal experience of private practitioners that, as currently drafted, the

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confidentiality provisions are unworkably overbroad. They touch almost every regular business transaction. Further, the safe harbor presumption language provided in the regulation, through which registration can be avoided, requires a much broader waiver of confidentiality than is necessary for tax purposes. Therefore, many taxpayers are avoiding application of the presumption and, in general, either (i) crafting their own confidentiality language, without certainty whether it is adequate or (ii) registering straightforward, and, from the Service's perspective, thoroughly uninteresting, transactions.

The report makes some suggestions on how to address the confidentiality language. As always, we would be pleased to provide constructive assistance in any way we can.

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: Jeffrey H. Paravano (Senior Advisor to Assistant Secretary)
Eric Solomon (Deputy Assistant Secretary for Regulatory Affairs)
B. John Williams, Jr. (Chief Counsel)
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William P. O'Shea (Acting Associate Chief Counsel-Passthroughs
(and Special Industries)