New York State Bar Association

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May 9, 2002

Pamela C. Olson
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
Room 1334 MT
1500 Pennsylvania Ave., N.W.
Washington, DC 20020

Honorable Charles O. Rossotti
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Dear Ms. Olson and Mr. Rossotti:

I am pleased to enclose the New York State Bar Association Tax Section Report No. 1010 which responds to the request for comments made in the November 15, 2001 proposed Treasury Regulations dealing with tax-free mergers involving disregarded entities (the "2001 Proposed Regulations").

Generally, the 2001 Proposed Regulations define the term statutory merger or consolidation in a manner that would permit a merger under U.S. domestic law of a domestic target corporation into a domestic disregarded entity owned by a single domestic corporation to qualify as a statutory merger under § 368(a)(1)(A). In our August 27, 1998 Report on Reorganizations Involving Disregarded Entities, we concluded that this is an appropriate result. Due to the lack of authority regarding mergers involving disregarded entities, Treasury and the IRS may wish to consider permitting taxpayers to elect to apply the 2001 Proposed Regulations with respect to transactions entered into prior to the effective date of the regulations.

The enclosed report reiterates our support for expanding the definition of a statutory merger or consolidation to include transactions effected under foreign law and concludes that doing so would not require significant changes to the regulations under Section 367 or Section 897, and should not raise any serious "proof of foreign law" or collection issues. The report also recommends that any decision to permit transactions effected under foreign law to qualify as a statutory merger or consolidation be accompanied by elimination of the requirement in the 2001 Proposed Regulations that the corporation that merges into the disregarded entity, the disregarded entity, any entity between the disregarded entity and its corporate owner, and the corporate owner of the disregarded entity be organized under U.S. law.

Respectfully submitted,

Samuel J. Dimon
Chair

cc: Eric Solomon
Barbara M. Angus
Robert P. Hanson
Hon. B. John Williams, Jr.
John M. Staples