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February 13, 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 Ms. Olson and Acting Commissioner Wenzel:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1027, which responds to the request in Notice 2001-64, I.R.B. 2001-41, for comments on the scope and substance of proposed regulations that may be issued relating to disguised sales of partnership interests, including any applicable safe harbors and exceptions.

Our report recommends that the proposed regulations adopt the same basic framework used under the existing regulations governing disguised sales of property between partners and partnerships. Accordingly, the report suggests that the proposed regulations prescribe a general rule that applies based on "all of the facts and circumstances" and a variety of presumptions and safe harbors.

The report acknowledges, however, that there are important differences between transactions that might be characterized as a disguised sale of property between a partner and a partnership under the existing regulations

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and transactions that might be characterized as a disguised sale of a partnership interest between partners under the proposed regulations. In light of these differences, the report recommends that the general rule applicable under the proposed regulations governing when a transaction will be considered a disguised sale be narrower in certain respects than the general rule applicable under the existing regulations. Specifically, the report recommends that the proposed regulations require, as a predicate to disguised sale treatment, that a transfer by a partner to a partnership and a transfer from that partnership to another partner be “directly related”.

The report discusses the treatment of deemed contributions and deemed distributions under Section 752 and concludes that such deemed contributions and distributions generally should be disregarded in determining whether there has been a disguised sale of a partnership interest. However, if a disguised sale is found without regard to such liabilities, the amount of such liabilities should be taken into account in determining the amount realized on such sale under normal Subchapter K principles. Further, the report recommends that the proposed regulations include a limited anti-abuse rule to cover certain debt-financed distributions.

The report recommends, among other things, a variety of presumptions and safe harbors and the inclusion of certain examples that illustrate the application general rule to certain routine partnership transactions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew N. Berg". The signature is written in a cursive, slightly slanted style.

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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