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October 16, 2003

The Honorable Charles E. Grassley
Chair
Senate Finance Committee
United States Senate
135 Hart
Washington, DC 20510

The Honorable Max Baucus
Ranking Minority Member
Senate Finance Committee
United States Senate
511 Hart
Washington, DC 20510

Gentlemen:

I understand that the Senate Finance Committee will be holding hearings on tax shelters next Tuesday. The Finance Committee Staff has suggested that it would be useful if the Tax Section were to submit materials for use in connection with those Hearings.

The Tax Section has consistently and repeatedly expressed its concern about the corporate tax shelter phenomenon of recent years. Our most recent submissions have been generally supportive of strict liability penalties for taxpayers engaging in tax shelter activities where those taxpayers ultimately lose on the merits. We have also supported, with comments, enhanced disclosure.

In our most recent comment, addressed to Chairman Thomas of the House Ways & Means Committee concerning H.R. 2896, the *American Jobs Creation Act of 2003*, we did express our view that strict liability

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penalties were generally not appropriate for mere disclosure failures. Disclosure rules are necessarily overbroad in order that their intended purpose be achieved. For this reason, while we think penalties should accompany violation of disclosure rules, we believe they should be tempered by some reasonable cause exceptions and the IRS should be given authority to waive penalties. These concerns apply equally to the Chairman's Mark of S.1637 (the "JOBS Act").

I am enclosing the following seven submissions which the Tax Section has previously made to either Treasury or Congress:

1. NYSBA Report No. 1039 (9/24/03):
Letter to Hon. William Thomas on
H.R. 2896, the *American Jobs Creation Act of 2003*
2. NYSBA Report No. 1033 (6/6/03):
Report on Abusive Tax Shelters
3. NYSBA Report No. 1025 (1/7/03):
Report on Proposed Tax Shelter Regulations
4. NYSBA Report No. 1019 (8/27/02):
Report on the Tax Shelter Transparency Act (S. 2498)
and the American Competitiveness and Corporate
Accountability Act (H.R. 5095)
5. NYSBA Report No. 979 (9/18/00):
Letter to Hon. William V. Roth, Jr. concerning proposed
legislation dealing with Corporate Tax Shelters
6. NYSBA Report No. 977 (7/25/00):
Report on Proposal to Codify Economic Substance
Doctrine

7. NYSBA Report No. 950 (4/23/99):
Report on Corporate Tax Shelters

As always, the Tax Section stands ready to assist your efforts in any way we that 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 initial 'A' and a long, sweeping tail on the 'g'.

Andrew N. Berg
Chair

cc: Mark Prater
Russell W. Sullivan
Edgar D. McClellan