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March 29, 2010

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Gentlemen:

I am pleased to enclose the New York State Bar Association Tax Section's Report on Announcement 2010-9, regarding proposed changes to reporting requirements involving uncertain tax positions.

The Tax Section agrees with the objectives of efficiency, certainty and consistency in enforcing the tax law, and strongly supports the goal of increased transparency sought by the Announcement. At the same time, we recognize the significant issues raised by an initiative as transformative as the proposal.

After providing some background, the Report briefly discusses certain policy and practical considerations relevant to the proposal. Specifically, we note that the proposal will affect communications regarding financial statement reserves between taxpayers and their auditors and advisors; we ask whether the Service is prepared to make effective and prudent use of this information and recognize its limitations; we note the additional burden that would be borne by taxpayers in preparing the schedule inconsistencies in coverage and inconsistencies among taxpayers in the determination whether to

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take a reserve and the amount thereof and the interaction of the schedule with privileges and immunities.

A pivotal issue is whether the step of linking the Schedule's disclosure to taxpayers' financial statements is so burdened with complicating factors that it should not be taken. A clear majority of the Tax Section, while mindful of the serious concerns raised, believes that linkage of tax disclosure to financial statement reporting along the lines proposed in the Announcement can be, if properly and sensitively applied, an appropriate means to achieve the goals described in the Announcement. A significant minority of the Tax Section would advocate exploration of other approaches to greater disclosure as an alternative to linking tax disclosure to financial statement disclosure.

We set forth a number of recommendations, including the following:

(i) We suggest that the Service, if it has not already, conduct a study involving selected participants, if available (*e.g.*, from the Compliance Assurance Program) to field test the Schedule using the 2009 tax year.

(ii) We suggest that the Service establish a centralized unit at the National Office to monitor and administer the proposal, information collected on the Schedules, and issues of taxpayer compliance, as well as to train agents in the proper use of the information (and impede its misuse).

(iii) We ask for guidance on what will satisfy the requirement to provide a concise statement of the uncertain tax position, the rationale for the position and the reason for uncertainty. We ask that the Internal Revenue Service provide examples in the Schedule and Instructions to guide taxpayers.

(iv) We recommend eliminating the requirement for taxpayers to provide the maximum amount of the potential tax liability. Instead, we recommend three alternatives that use baskets to indicate relative materiality of issues.

(v) We recommend that the Internal Revenue Service provide a materiality threshold so that taxpayers are not burdened with disclosing immaterial items.

(vi) We ask for clarification and provide recommendations on the requirements of related parties and pass-throughs to disclose uncertain tax positions.

(vii) We recommend that the scope for this proposal match the scope for the Schedule M-3 so that the schedule targets taxpayers consistently.

(viii) We recommend that the Internal Revenue Service provide guidance on whether current penalties will apply to the failure to disclose uncertain tax positions and we recommend that any specific penalties as may be enacted legislatively apply only to intentional failures.

A number of other requests for clarification are made.

In the end, we all must recognize that there is no perfect solution to the issues raised in and by the Announcement.

We appreciate your consideration of our comments. Please let us know if you would like to discuss these comments or if we can be of assistance in another way.

Respectfully submitted,



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