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March 30, 2010

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Re: Report on Definition of "Traded on an Established Market" within the
Meaning of Section 1273 and Related Issues

Gentlemen:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1209 on the definition of public trading within the meaning of Section 1273 and certain related issues. This report updates and supplements our prior report on the same topic submitted on August 12, 2004 (Report 1066).

The definition of public trading under Section 1273 is a critical factor in determining the tax treatment of exchanges of outstanding debt instruments for new debt instrument. In the context of debt-for-debt exchanges, there are three significant tax consequences that depend, in significant part, on whether the old debt instrument or the new debt instruments is publicly traded. For the issuer, if the new debt instrument is publicly traded at a discount to its adjusted issue price, the issuer may recognize cancellation of indebtedness income; or, if the new debt instrument is publicly traded at a premium, the

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excess will be treated as repurchase premium, which is deductible by the issuer in the year of the exchange. To the holder, the amount of gain or loss recognized on a debt-for-debt exchange may differ if either the new debt instrument or the outstanding debt instrument is publicly traded. Thirdly, the new debt instrument may be treated as having been issued with original issue discount or bond premium upon a debt-for-debt exchange if either the new debt instrument or the outstanding debt instrument is publicly traded.

As explained in Report 1066 and as further supplemented and updated in this Report, the trading market for debt instrument has developed significantly since the current regulations under Section 1273 were issued. The current definition neither adequately reflects current market conditions nor fulfills its intended purpose. Taxpayers are faced with numerous difficulties and ambiguities in applying the current definition.

At the same time, the tax issues related to debt-for-debt exchanges have been exacerbated during the economic down turn for the past couple of years as many issuers were forced to amend the terms of their debt instruments and the trading value of debt instruments have plummeted. While Congress enacted Section 108(i) that provided a partial relief, Section 108(i) is temporary and will expire at the end of 2010.

While our Report contains a number of recommendations, I wish to emphasize two in this letter. One recommendation is that Treasury and the Internal Revenue Service exercise authority under Section 446(b) to permit issuers in a debt-for-debt exchange to amortize any cancellation of debt income (or any repurchase premium) over the term of the new instrument, or, alternatively, exercise authority under Section 1275(d) to provide that the issue price of the new debt instrument in a debt-for-debt exchange is equal to the lesser of the issue price determined under Section 1274 and the adjusted issue price of the old debt instrument. A second principal recommendation is that the definition of public trading be amended to provide that a debt security be treated as "publicly traded" if (i) recent trading prices are available, (ii) firm (executable) quotes are readily available from a broker, dealer or pricing service, or (iii) soft quotes are readily available from a broker, dealer or pricing service and provide a reasonable basis for the issuer to determine the fair market value of the debt instrument, subject to certain de minimis exceptions.

We appreciate your consideration of our recommendations. If you have any questions or comments regarding this report, please feel free to contact us and we will be glad to discuss or assist in any way.

Sincerely,



Peter H. Blessing
Chair

cc: William E. Blanchard
Senior Technical Reviewer, Branch 3
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