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March 8, 2016

The Honorable Jerry Boone
Commissioner
New York State Department of Taxation and Finance
W.A. Harriman Campus, Building 9
Albany, NY 12227

Re: *Report No. 1339 on Draft Business Apportionment Factor Regulations*

Dear Commissioner Boone:

I am pleased to submit this report of the Tax Section of the New York State Bar Association commenting on draft regulations under Article 9-A relating to the apportionment of receipts from the provision of "other services and other business activities" and sales and licenses of digital products. The draft regulations provide guidance regarding provisions in the 2014 and 2015 New York State budget legislation, which went into effect for tax years beginning on or after January 1, 2015.

The report makes various recommendations regarding the draft regulations, including in the following areas: (1) the due diligence and document retention requirements; (2) application of the sourcing hierarchies where there is a presumption; (3) commingled receipts; (4) the rules for using reasonable approximations to determine where a customer receives the benefit of a service; (5) individual versus business customers; (6) the rules for using the apportionment fraction from a preceding taxable year; (7) intermediary

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transactions; (8) the definition of digital product; and (9) the rules for primary use location and where digital products are received.

We commend the Department of Taxation and Finance on preparing generally clear and comprehensive guidance for businesses and practitioners in this entirely new area of the Tax Law. Our comments and recommendations are aimed at helping the Department administer a workable corporate income tax by providing clear rules, presumptions and safe harbors that taxpayers can rely upon in preparing their returns. We believe this is particularly important in light of the shift to a market-based receipts factor sourcing regime. This new regime will require taxpayers to fulfill their reporting obligations based on information regarding their customers, which may not be readily available or known to the taxpayer.

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

Respectfully submitted,



Stephen B. Land
Chair

cc: Nonie Manion
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