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January 7, 2004

The Honorable Pamela F. Olson
Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3120 MT
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Dear Secretary Olson and Commissioner Everson:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1045 providing recommendations concerning proposed regulations under Sections 168(k) and 1400L of the Internal Revenue Code, relating to additional first year depreciation allowances ("bonus depreciation").

The proposed regulations provided needed guidance regarding the statutory requirements relating to, among other things, the types of depreciable property that qualify for bonus depreciation, the circumstances in which the original use of property commences with the taxpayer, the time periods within which depreciable property must be acquired and placed in service, and the definition of New York Liberty Zone property.

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We are generally in accord with the approach taken in the proposed regulations. However, in a number of specific areas, we believe that the proposed regulations can be made more consistent with the relevant statutory provisions, resulting in greater clarity and reducing unnecessary uncertainty.

The recommendations made in the report include the following:

- Rules relating to the determination of whether the original use of property commences with the taxpayer should be clarified. Specifically, the interplay between the rules concerning sale-leasebacks and syndication transactions should be clarified; and it should be made clear that the proposed rule to treat the purchasers of fractional interests as the original user under certain circumstances will apply without regard to whether the purchasers of fractional interests are related to each other.
- Revisions are suggested to the rules for determining when the construction of self-constructed property is considered to begin.
- Clarification is sought to make clear that "qualified leasehold improvement property" eligible for bonus depreciation under Code section 168(k) includes any improvements made which are permitted by a lease, regardless of whether the lease requires that such improvements be made.

- With respect to bonus depreciation for qualified New York Liberty Zone property, clarification is requested that a taxpayer may elect not to apply section 168(k) to its property of a particular class not located within the New York Liberty Zone, while still being entitled to the benefits of section 1400L(b) for its property of the same class that is located within the New York Liberty Zone.

Respectfully submitted,

A handwritten signature in black ink that reads "Andrew N. Berg". The signature is written in a cursive style with a large, stylized initial "A".

Andrew N. Berg
Chair

cc: Helen M. Hubbard (Tax Legislative Counsel)
Michael S. Novey (Associate Tax Legislative Counsel)
Emily A. Parker (Acting Chief Counsel)
Eric Solomon (Deputy Assistant Secretary for Regulatory Affairs)