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January 13, 2004

Honorable Andrew J. Eristoff
Commissioner
NYS Department of Taxation and Finance
W.A. Harriman State Office Campus, Building 9
Albany, New York 12227

Dear Commissioner Eristoff:

I am pleased to submit for your consideration the New York State Bar Association Tax Section's Report No. 1047 regarding possible changes to New York's personal income tax withholding requirements. This report focuses on employers with nonresident employees who work, wholly or partly, in New York.

An employer is presently required to withhold an amount approximating an employee's expected New York State tax liability. In many circumstances, the amount of tax an employee will owe, or even whether there will be any New York liability at all, may not be known until the tax year is over. For example, issues can arise in determining an employee's residence status or in applying New York's "convenience rule". The report suggests clarification of the rules in these areas.

The report also discusses the need for a *de minimis* standard and addresses several areas where an employer's liability to withhold is unclear under existing regulations and audit guidelines.

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We appreciate the opportunity to make this submission. If we can be of any further assistance, we would be happy to work with your staff.

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 "B" at the end.

Andrew N. Berg
Chair

cc: Barbara G. Billett, Executive Deputy Commissioner,
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Department of Taxation & Finance

Holly Chamberlin, Special Assistant to the Commissioner-Business,
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