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May 19, 2004

Mr. Gregory F. Jenner
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
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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 Acting Assistant Secretary Jenner and Commissioner Everson:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1060 on Distributions Following Tax-Free Reorganizations. It is quite common that bona fide business exigencies necessitate the redeployment of assets or stock within a corporate group following a tax-free reorganization. This report addresses how we believe the requirements under section 368 of the Internal Revenue Code, as well as regulatory and judicial requirements applicable to tax-free reorganizations, should apply in these circumstances.

The rules governing tax-free reorganizations are designed to allow taxpayers to combine businesses under modified corporate form without requiring corporations or their shareholders to recognize gain or loss. The law in this area has developed to allow taxpayers significant leeway with regard to post-reorganization asset and stock drop-downs. There has been far less focus, however, on the treatment of distributions or push-ups of assets and stock following tax-free reorganizations.

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May 19, 2004

The recommendation of this report is that the principles that allow for transfers of acquired assets or stock by way of contributions should similarly apply to distributions of stock or less than "substantially all" the assets of the acquired corporation. The report recommends that, consistent with general principles of tax-free reorganizations, distributions of such acquired assets or stock should generally be permitted up to, but no further than the issuing corporation. As a means of implementing such recommendation, the report suggests that Treasury regulation section 1.368-2(k), be amended to permit distributions consistent with our recommendations. Specifically, we recommend that distributions be permitted within the "qualified group" as defined under the regulations regarding continuity of business enterprise.

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.

Respectfully submitted,



Lewis R. Steinberg
Chair

cc: Eric Solomon, Deputy Assistant Secretary, Regulatory Affairs,
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