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July 20, 2004

Mr. Gregory F. Jenner
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3120 MT
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, D.C. 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. 1064, providing comments on the proposed amendments to regulations addressing transfers of assets or stock following a corporate reorganization. We applaud the Treasury and IRS for continuing to issue guidance affording taxpayers flexibility in aligning their businesses following an acquisition that otherwise qualifies as a tax-free reorganization. In light of developments in the area of post-reorganization transfers, we recommend changes to the current regulations to implement better the policies underlying the reorganization provisions and to provide greater certainty for taxpayers.

Our recommendations relate to regulations that address the continuity of business enterprise ("COBE") requirement (Treas. Reg. Section 1.368-1(d)) and the application of the step transaction doctrine to transfers following a putative reorganization (Treas. Reg. Section 1.368-2(k)). In addition to technical comments, we offer two significant recommendations. First, we recommend that the Treasury and IRS expand

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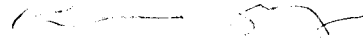
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the definition of “qualified group” for purposes of determining whether there is a sufficient “link” between the target corporation’s business and the target shareholders to include subsidiaries that are controlled within the meaning of Section 1504. Second, we recommend that the COBE rules and the step transaction guidance be aligned so that a reorganization transaction will not be disqualified by subsequent restructurings of the target business as long as COBE is satisfied.

We appreciate your consideration of our comments and recommendations, and would be happy to assist you in thinking about these important issues.

Respectfully submitted,



Lewis R. Steinberg
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