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April 20, 2005

The Honorable Andrew J. Eristoff
Commissioner
New York State 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 the New York State Bar Association Tax Section's Report No. 1084, which discusses New York's nonresident income allocation requirements in connection with certain employment-related compensation. It is our understanding that the Department of Taxation and Finance is currently undertaking a review of its Nonresident Income Allocation Audit Guidelines. We believe that this report will be helpful in that endeavor.

Our report notes certain differences among the regulations, guidelines and the case law. Accordingly, the report offers suggestions for bringing clarity, consistency and simplicity to New York's allocation rules. Among other things, the report recommends that:

- The regulations be amended to state that non-competive payments do not constitute New York source income.
- Additional guidance be provided in the regulations and the guidelines to assist taxpayers in determining whether an item of compensation constitutes a non-competive payment.
- The regulations and guidelines be updated to provide rules for determining when termination pay is not taxable in New York because it is received in exchange for the relinquishment of a right to future employment.

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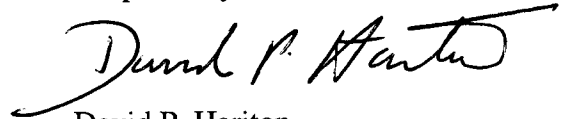
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- The regulations be brought into conformity with Public Law § 104-95, which limits New York’s ability to tax the “retirement income” of a nonresident.
- The regulations and guidelines be amended to adopt a modified multi-year allocation formula that allocates severance and stock option income based on the number of days worked in New York as compared to the total number of days worked both within and without the state during the four year period ending with the year of receipt or the year of retirement.
- The regulations and guidelines be updated to reflect the existence of a “reverse convenience” doctrine.

The Tax Section recognizes the difficulty in clarifying and simplifying New York’s allocation rules. We appreciate your consideration of our comments and wish to emphasize our interest in working with the Department as it prepares regulations and guidelines. If you have any questions or comments regarding this report, or if you would like to discuss a joint effort to address the matter, please contact me.

Respectfully submitted,



David P. Hariton
Chair

cc: Barbara G. Billett, Esq., Executive Deputy Commissioner,
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