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May 27, 2005

Mr. Eric Solomon
Acting Deputy Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3104 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 Deputy Assistant Secretary Solomon and Commissioner Everson:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1088 addressing proposed Treasury regulations (REG-116564-03) (the "Proposed Regulations") issued by the Internal Revenue Service and the Treasury Department on May 3, 2004 regarding the determination of the basis of stock or securities received in exchange for, or with respect to, stock or securities in certain transactions to which section 354, 355 or 356 of the Internal Revenue Code of 1986, as amended (the "Code") applies.

Where a taxpayer exchanges, or receives a distribution with respect to, blocks of stock or securities acquired at different times or at different prices, the Proposed Regulations generally adopt a "tracing" approach, rather than an "averaging" or "split-basis" approach, to determining the basis of the stock or securities received by the taxpayer in the transaction. In light of the inconsistent authorities addressing this determination under current law and the

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ambiguity of the current Regulations, the Proposed Regulations are a welcome clarification and we agree with the approach that they take. In particular, we agree with the Proposed Regulations to the extent that they (i) require tracing of basis from particular shares of stock or securities surrendered in a reorganization to those received, (ii) permit the identification of shares or securities upon a subsequent sale, and (iii) apply a first-in/first-out convention where no identification is made.

The Report recommends clarifications of certain technical issues, as well as issues that arise from applying the regime when multiple classes of stock or securities are exchanged or received or when stock or securities are retained (as in a transaction under section 355 of the Code). The Report also makes several suggestions intended to increase consistency among different basis-determination regimes that may apply to similar transactions. First, the Report considers whether the tracing approach should be extended to apply to all exchanges of stock or securities for stock or securities under section 351 of the Code, even where other property is transferred or liabilities are assumed. Second, in the case of a reorganization in which no stock is issued, the Report recommends that basis be determined in the same manner as if there had been an issuance of stock followed by a recapitalization. Third, the Report recommends that the basis allocation rules for transactions governed by Section 1036 of the Code be conformed to those for reorganizations. Finally, the Report notes that it may be appropriate to apply special rules in the consolidated return context.

Applying the tracing regime in the Proposed Regulations to any exchange in which boot is received requires an allocation of that boot to the various properties surrendered. The Proposed Regulations do not offer guidance on that allocation. The Report recommends that guidance be issued at some point and considers possible approaches but recommends that finalization of the Proposed Regulations not be delayed pending such guidance.

Please do not hesitate to contact us if you have comments regarding this report or if we can be of assistance.

Respectfully submitted,



David P. Hariton
Chair

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