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August 27, 2002

The Honorable Max Baucus
Chair
Senate Finance Committee
United States Senate
511 Hart
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Senate Finance Committee
United States Senate
135 Hart
Washington, DC 20510

Dear Chairman Baucus and Ranking Member Grassley:

I am pleased to enclose the New York State Bar Association Tax Section's Report No. 1019, which comments on certain provisions in the Tax Shelter Transparency Act (S. 2498) and the American Competitiveness and Corporate Accountability Act (H.R. 5095) (collectively, the "Bills") that relate to tax shelters.

The Tax Section supports the overall approach taken in the Bills, and the comments in the enclosed Report are mostly technical in nature. As we have written previously, the Tax Section is deeply concerned about the growing use of tax shelters. The recent alarming proliferation of tax avoidance transactions threatens both the fisc and the public trust that undergirds our self-assessment system. We believe that the Bills' proposed heightened penalties and enhanced disclosure requirements for taxpayers and tax shelter promoters and advisors are appropriate tools to combat tax abuse.

The Tax Section generally supports the goal of simplifying the definitions of "Reportable Transactions" and "Listed Transactions" compared

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For reasons explained in detail in the Report, the Tax Section does not support the proposals in H.R. 5095 to impose a separate penalty on deficiencies attributable to transactions that lack economic substance and to codify a definition of economic substance. Generally speaking, we believe that the economic substance doctrine, as it has developed in the common law, is a fluid, fact-specific inquiry into the purpose and effect of numerous different kinds of transactions and events that cannot be effectively distilled into a specific statutory test.

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The Report also notes practical considerations and suggests technical refinements with respect to other aspects of the Bills which we support, including the proposed disclosure requirements for “material advisors,” the proposed narrowed “reasonable cause” exception to penalties for Listed Transactions and tax-avoidance motivated Reportable Transactions, and the proposed changes to Subchapter K. We also recommend that the

enforcement of all fees-based penalties follow standard deficiency procedures.

In conclusion, the Tax Section generally supports S. 2498 and H.R. 5095 and Congress's and Treasury's continuing efforts to clamp down on abusive tax shelter activity. Tax shelter transactions present a serious and complex challenge, and the proposed legislation is an important step in the right direction. As always, the Tax Section welcomes the opportunity to assist your efforts in any way it can.

Respectfully,



Samuel J. Dimon
Chair

cc: Lindy L. Paull
Chief of Staff
Joint Committee on Taxation

Russ Sullivan
Majority Chief Tax Counsel
Senate Finance Committee

Mark Prater
Republican Chief Tax Counsel
Senate Finance Committee



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August 27, 2002

The Honorable William M. Thomas
Chair
House Ways & Means Committee
U.S. House of Representatives
2208 Rayburn
Washington, DC 20515

The Honorable Charles B. Rangel
Ranking Member
House Ways & Means Committee
U.S. House of Representatives
2354 Rayburn
Washington, DC 20515

Dear Chairman Thomas and Ranking Member Rangel:

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Respectfully,



Samuel J. Dimon
Chair

cc: Lindy L. Paull
Chief of Staff
Joint Committee on Taxation

James D. Clark
Majority Chief Tax Counsel
House Ways & Means Committee

John Buckley
Democratic Chief Tax Counsel
House Ways & Means Committee



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August 27, 2002

The Honorable Pamela F. Olson
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
Room 1334 MT
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

The Honorable Charles O. Rossotti
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Dear Ms. Olson and Commissioner Rossotti:

I am pleased to enclose the New York State Bar Association Tax Section's Report No. 1019, which comments on certain provisions in the Tax Shelter Transparency Act (S. 2498) and the American Competitiveness and Corporate Accountability Act (H.R. 5095) (collectively, the "Bills") that relate to tax shelters.

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Respectfully,

A handwritten signature in black ink, appearing to read 'SJD', with a long horizontal flourish extending to the right.

Samuel J. Dimon
Chair

cc: Eric Solomon
Robert P. Hanson
The Honorable B. John Williams, Jr.
Gary B. Wilcox
Heather C. Maloy