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Subject: New York State Regulations Defining and Providing Disclosure Requirements for Reportable Transactions

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To Our Clients and Friends:

New York State has promulgated regulations defining reportable transactions and setting forth disclosure requirements for taxpayers participating in such transactions. The regulations are applicable to tax years beginning on or after January 1, 2006.

By way of background, reportable transactions generally constitute those with the potential for tax avoidance or evasion. Entering into a so-called abusive tax transaction, and/or failing to comply with the disclosure requirements, can result in significant penalties as well as an extension of the statute of limitations on assessments.

Reportable transactions include: (1) listed transactions; (2) confidential transactions; and (3) transactions with contractual protection. A listed transaction is a transaction that is the same or substantially similar to one of the types of transactions that the Commissioner has determined to be a tax avoidance transaction and identified by notice or other form of published guidance as a listed transaction (as of this writing, no published guidance has been issued). A confidential transaction is a transaction offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a fee. A transaction with contractual protection is a transaction for which the taxpayer or a related party has the right to a full or partial refund of fees if all or part of the intended tax consequences from the transaction are not sustained. A transaction with contractual protection is also a transaction for which fees are contingent on the taxpayer's realization of tax benefits from the transaction.

A taxpayer that has participated in a reportable transaction during its taxable year is required to disclose its participation with its tax return for that taxable year. If a transaction becomes a listed transaction after the filing of a taxpayer's tax return and before the end of the period of the statute of limitations for the tax return, then a taxpayer must disclose the listed transaction with the tax return next filed after the date the transaction is listed regardless of whether the taxpayer participated in the transaction in that tax year.

A taxpayer may (on or before the date that disclosure would otherwise be required) submit a request for a determination as to whether a transaction is subject to the disclosure requirements. Moreover, if a taxpayer is uncertain whether a transaction must be disclosed, the taxpayer may disclose the transaction on a protective basis.

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If you have any questions regarding the within, or any other state and local tax matters, please do not hesitate to contact me.

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