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**Subject: NYS TSB-M on Treatment of Sale of Subsidiary Included
in Combined Report**
Date: March 15, 2008

To Our Clients and Friends:

Attached for your information is New York State Department of Taxation and Finance Technical Services Bureau Memorandum 08(3)C, March 10, 2008. TSB-M-08(3)C sets forth the Department's policy on how to treat the gain or loss on the sale of stock of a subsidiary included in a combined report in light of the recent New York State Tax Appeals Tribunal decision in *Petition of Bausch & Lomb, Inc. and Affiliates*, December 20, 2007.

By way of background, in *Bausch & Lomb*, the taxpayer incurred a loss on the sale (to a third party) of a subsidiary that was a member of the taxpayer's combined group. The taxpayer took the position that when a loss is incurred on the sale of subsidiary assets included in the combined group, such loss is attributable to business capital rather than subsidiary capital. Consequently, the taxpayer reduced the entire net income of the combined group, which produced a loss which the taxpayer carried back to a prior year. The Tax Appeals Tribunal examined the relationship between the relevant statutory provisions, and found in favor of the taxpayer.

The Department's policy as set forth in TSB-M-08(3)C reflects the holding in *Bausch & Lomb*. Thus, while *Bausch & Lomb* involved a loss on the sale of stock of a subsidiary, the holding also applies to gains from the sale of stock of a subsidiary (i.e., the gain is considered business income, and cannot be excluded from the computation of entire net income as gain attributable to subsidiary capital).

The Department's policy applies to all taxable years that remain open under the statute of limitations. Therefore, taxpayers should consider whether to amend any previous filings in light of *Bausch & Lomb* and TSB-M-08(3)C.

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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