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**Subject: Reversal in New York Treatment of Sale of Subsidiary Included
in Combined Report**
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To Our Clients and Friends:

The filing of returns on a combined basis in New York presents many issues related to the computation of the franchise tax. Many computational issues center on whether the combined group should be treated as a single corporation ("the single company theory") or as separate corporations ("the separate company theory"). This issue, which can greatly impact the tax liability, is central to the just released New York State Tax Appeals Tribunal determination, Petition of Bausch & Lomb, Inc. and Affiliates, December 20, 2007.

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 rationale implicit in the taxpayer's position was to treat the combined group as a single corporation (so that the loss on the sale was not attributable to subsidiary capital, and an add back of the loss to entire net income was not required).

The Tax Appeals Tribunal examined the relationship between the relevant statutory provisions, and found in favor of the taxpayer. In doing so, the Tribunal reversed the May 18, 2006 ruling of the Administrative Law Judge that applied the rationale of the separate company theory in denying the taxpayer's claim to the benefit (and carry back) of the loss. The Administrative Law Judge previously held that the entire net incomes of the individual members of the combined group were to be computed and then added together when calculating combined entire net income. In performing the computation in this manner, the loss on the sale of the subsidiary was added back to the individual member of the combined group that sold the subsidiary.

There have been many determinations that have hinged on whether a combined group is viewed as a single company or as separate corporations. If you have any questions on combined reporting computational issues, or any other state and local tax matters, please do not hesitate to contact me.

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