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April 9, 2010

Mr. Robert D. Plattner
Deputy Commissioner
Office of Tax Policy Analysis
Department of Taxation and Finance
State Campus
Bldg. 9, Room 227
Albany, NY 12227

Dear Mr. Plattner:

Thank you for the continued opportunity to provide comments on the corporate tax reform legislative draft provided by the Department in February. A number of member banks of the Association have reviewed the draft and provided comments. However, a very large number of institutions have not had the opportunity to complete their review of the entire document because of its length, complexity and the press of other tax-related matters, including filing deadlines. These comments are therefore preliminary, reflecting the views of only those institutions that have been able to complete their analysis of the bill draft.

We also remain very concerned that advancing this legislative language before the enactment of a 2010-2011 State budget would run the very real risk that corporate tax reform would become a revenue item, rather than the revenue-neutral legislation that the Department has consistently advocated. We therefore continue to believe that the Department should defer transmitting legislation until after budget negotiations are concluded and a new fiscal year 2011 budget is enacted.

With regard to the draft legislation, the New York Bankers Association has three preliminary comments. First, and most importantly, as we have discussed, we are very concerned that the draft legislation would continue to impose a very substantial tax increase on a number of community banks. This increase is the result of a number of changes, most importantly the elimination of the REIT

deduction for smaller community banks. In order to address this concern, we have submitted draft legislation in comments on a previous legislative draft. While we recognize that the Department is committed to creating a new article of tax that would not include “special treatment” for any single group of taxpayers, we continue to strongly urge that a new deduction for residential mortgage lenders who concentrate their lending in New York State and hold their loans in portfolio needs to be provided. Such a deduction is good public policy, good tax policy and would be consistent with the overall goals of corporate tax reform.

The State may be just beginning to emerge from what has been characterized as the “Great Recession,” an extended period of economic slow-down precipitated, at least in large part, from the generation and sale of mortgage loans to investors with no ability to oversee the underwriting of loans by primarily mortgage bankers with neither the willingness nor ability to keep these loans on their books. Many of these loans were made outside the immediate service area of the lending institution. Numerous studies have shown that mortgage loans made by lenders who kept the loans on their books (in portfolio) had lower rates of interest, were far less likely to go into foreclosure and were more likely to be repaid than loans made by lenders who sold their loans into the secondary market. If the loans were made in the lenders’ immediate service areas, they were even more likely to remain well-performing.

Community banks and thrifts are largely portfolio lenders. Their loans have not suffered the rates of delinquency and foreclosure as have some made by non-bank mortgage lenders. This draft legislation would penalize portfolio lenders by requiring that the earnings on loans made to New Yorkers, on the security of New York real estate, and kept in the portfolios of New York banks and thrifts, would be fully allocated to New York with no offset, while those same loans sold into the secondary market and purchased back in the form of mortgage-backed securities (and then marked-to-market) would be subject to only an 8% allocation. We have suggested as an alternative to the language in the bill that real estate loans made by community banks and thrifts in New York held in portfolio be provided a subtraction adjustment. The cost of such a modification, we believe, would be modest, since the total earnings of all such community banks and thrifts are a tiny fraction of the earnings of all real estate lenders which would be taxed under this legislation. We strongly encourage the Department to adjust the language in paragraph (s)(3)(C)(ii) on page 50 to insert the words “or loan secured by residential real estate” between the words “small business loan” and “, the principal amount...” This amendment will ensure fairness of treatment for community banks and thrifts.

We appreciate the opportunity the Department has provided to comment in a preliminary manner on this draft legislative language. We urge that no language be advanced until the 2011 State budget is enacted. And we believe it is very important that the subtraction modification for real estate loans made by

community banks and thrifts be adjusted to include residential real estate loans made on the security on New York real property and held in portfolio.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Smith". The signature is written in a cursive style with a large initial "M" and a distinct "P" and "S".

Michael P. Smith