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ESTATE PLANNING MEMORANDUM

TO: **CPAs, Clients & Associates**

FROM: **David L. Silverman, Esq.
Shirlee Aminoff, Esq.**

DATE: **April 7, 2010**

RE: **Legal Basis for Seeking Abatement of New York State Tax Penalties**

20 NYCRR § 536.1(c), entitled “Penalties and interest,” provides for waiver of penalties if a taxpayer’s failure to pay “was due to reasonable cause and not due to willful neglect. 20 NYCRR § 2392.1(g) provides that a taxpayer has acted with reasonable cause when he has acted in reliance on “professional advice... provided such reliance was reasonable and the taxpayer had no knowledge of circumstances which should have put the taxpayer upon inquiry as to whether such [advice was] erroneous.” According to 20 NYCRR § 2392.1(g), circumstances that indicate reasonable cause also include “an honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge and education of the taxpayer. In addition to the specific examples of reasonable cause provided in 20 NYCRR § 2392.1(g), 20 NYCRR § 2392.1(d)(5) provides a general test. 20 NYCRR § 2392.1(d)(5) provides the following general test for determining whether the failure of a taxpayer to pay sales tax was due to reasonable cause: “Any other ground for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be a reasonable cause.” Finally, 20 NYCRR § 2392.1(b) provides that a taxpayer’s past compliance with the Tax Law is probative of whether his failure to pay a sales tax liability was due to reasonable cause: “In determining whether reasonable cause exists, in addition to an evaluation of [other] facts, the taxpayer’s previous

compliance record with respect to all of the taxes imposed pursuant to the Tax Law may be taken into account."