

REPORT # 580

TAX SECTION

New York State Bar Association

ANUAL REPORT

DONALD SCHAPIRO

January 28, 1988

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NEW YORK STATE BAR ASSOCIATION

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NEW YORK STATE BAR ASSOCIATION
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CHAIRMAN'S REPORT
NEW YORK STATE BAR ASSOCIATION
TAX SECTION
January 28, 1988
DONALD SCHAPIRO

I am pleased to deliver the Annual Report of the Tax Section of the New York State Bar Association covering the period from February 1, 1987 to January 31, 1988.

OVERVIEW

During the past twelve months I have had the extraordinary privilege and pleasure of working with an absolutely outstanding group of tax professionals in a common effort to improve the tax law. The task which we addressed was not easy. The law is complex, and the obligation to separate one's work for the bar from one's work for clients frequently requires careful thought and steadfast devotion to the bar.

I believe that the Tax Section has earned a unique reputation for its ability to produce tightly written reports that analyze and effectively guide its audience through the thicket of complex tax rules. The Executive Committee and its hardworking committees and committee chairs characteristically respond promptly, effectively, and without bias to requests for analytical assistance from the Treasury, the Revenue -Service and Congressional tax-writing committees.

Let me single out a few of the areas in which the Tax Section has, over the last twelve months, submitted reports and analyses which, in my judgment, offer ground-breaking discussions of complex and frequently contentious areas—

—Our report on sentencing proposals relating to tax offenses spoke unambiguously on the role of incarceration as a deterrent to tax fraud.

—Our report on proposed lobbying regulations affecting charities dealt in a balanced manner with the values of open public discussion of controversial topics, on the one hand, and the importance of not permitting the

tax system to subsidize unrestricted attempts to influence legislation, on the other hand.

- Our report on proposed regulations concerning the corporate alternative minimum tax book income adjustment considered in some detail how to draw a rational line between a need for revenue and a statute that was marred with imperfections in concept and difficulties in drafting.
- The testimony I was authorized to give before the House Ways and Means Subcommittee on Select Revenue Measures Dealing with the Taxation of Master Limited Partnerships, taken together with our report commenting on Code section 469(k)(3) dealing with application of the passive activity loss provisions to limited partnerships, represented a thoughtful and coherent analysis of difficult issues, and contained concepts ultimately adopted by the Congress in the 1987 revenue legislation.
- Our report on so-called "Subsidiary Tracking Stock" prepared in response to a specific request by the Revenue Service gave thoughtful consideration to the taxation of shares of stock that represent, an interest in specific corporate assets.

One of the most important problems that the Tax Section addressed was the current procedural rules the City of New York applies in the administration of its tax system. Most practitioners agree that we do not have a fair and workable administrative procedure for the assessment and collection of City taxes. I call for a concerted effort to attempt to encourage adoption of a system of law for the assessment and collection of City taxes, under which disputes can be adjudicated in a fair and open manner with consistent rules applied to comparable cases. I believe it is essential that disputes be adjudicated by an independent tribunal, as is the case of the state and federal governments. The State Tax Tribunal could assume jurisdiction, or some other independent tribunal could be constituted, to deal with these matters. But some independent treatment is essential.

I will summarize below some of the other important reports and activities of our Tax Section during the past year:

FEDERAL TAX MATTERS

1987 has seen the implementation of the Tax Reform Act of 1986, and toward this end we have been working diligently with IRS and Treasury people in Washington, issuing the following reports in this connection in addition to those discussed above: Comments on Code § 469(k)(3); Override of U.S. Tax Treaty Provisions by Amendments to the Internal Revenue Code; Proposed Regulations under § 163 of the Internal Revenue Code dealing with allocation of interest expense; Proposed Regulations under § 864(e) Relating to the Allocation of Interest and Other Expenses for Foreign Tax Credit and Certain Other purposes.

On April 10, 11 and 12, 1987 the Tax Section participated in an invitational conference on Subchapter C co-sponsored by the American Bar Association and the New York State Bar Association Tax Section, which was chaired by Herb Camp and Peter Faber. The purpose of this conference was to stimulate discussion and debate on a wide range of corporate tax reform issues.

In response to a request from J. Roger Mentz, then Assistant Secretary (Tax Policy), Treasury Department, we informally surveyed the Executive Committee as to issues meriting priority consideration by the Treasury in providing taxpayer guidance and submitted to him a summary of the responses.

On April 2, 1987, Herb Camp, Bill Burke, Arthur Feder and I met with staff members of the Internal Revenue Service, the Senate Finance Committee, the Joint Committee on Taxation and the House Ways and Means Committee to discuss topics to be developed as to which the Tax Section could provide useful input by way of reports.

Along these same lines, D. Kevin Dolan, Associate Chief Counsel (Technical and International) of the Internal Revenue Service on September 9, 1987 requested that our members provide information and suggestions, on an informal basis, to the Service in connection with its rulings program. Data are currently being collected and will be forwarded to the Service as part of an ongoing program.

On June 29, 1987 we communicated our support for the Report of the Dorgan Task Force in urging increased funds to restore the Internal Revenue Service's capability to administer and enforce the tax laws adequately.

On November 20 we wrote the Section of Taxation of the American Bar Association supporting their effort to persuade the Congress to defer the enactment of the so-called "Omnibus Taxpayer Bill of Rights" portion of the currently pending tax bill in order to allow full consideration by the Congress after receipt of public comment.

NEW YORK STATE TAX MATTERS

Arthur Rosen, Parker Brown, and Paul Comeau have worked closely with legislative tax staffs and the Department of Taxation and Finance in developing areas for discussion. In this regard, we have submitted reports commenting on proposals to change the New York State Tax Law to return the New York tax "windfall" resulting from the 1986 federal changes, and the New York State Tax Tribunal Legislation and Proposed Regulations. We have also written Commissioner Chu voicing the Tax Section's opposition to the proposed regulation which would limit the exclusion of "annuities" to payments from plans qualified under sections 401, 403 or 408 of the United States Internal Revenue Code.

NEW YORK CITY TAX MATTERS

The New York City Tax Matters Committee was formed in early 1987. The co-chairs of this Committee, members of the ' Administrative Committee, the Chair and a former Chair of the Tax Section met with members of the Department of Finance on March 3 to discuss various topics, i.e., retrieval procedure, dispute resolution procedure and other matters to which I referred above. On November 16, 1987 Robert Levinsohn testified at a hearing of the New York City Tax Study Commission expressing the Tax Section's desire for simplification of tax statutes, fairness in their administration, and conformity in taxes of the same nature imposed by overlapping jurisdictions.

MID-YEAR MEETING

Our mid-year meeting was held at The Sagamore Hotel on Lake George, Bolton's Landing, New York, on July 24-26, 1987. We were fortunate to have as our luncheon speaker Stephen E. Shay, International Tax Counsel, Treasury Department.

Panelists at meeting seminars included Roderick G.W. Chu, Commissioner, New York State Department of Taxation and Finance; R. Wayne Diesel, Director of the Budget, State of New York; John P. Dugan, Deputy Commissioner and Counsel, New York State Department of Taxation and Finance; Katherine Fleischman, Director of Social Programs, Office of Tax Policy, New York City

Department of Finance; Harvey Galper, Associate National Director for Tax Analysis, Peat, Marwick, Main & Co.; Kathleen Grimm, Deputy Commissioner for Audit, New York City Department of Finance; Maria T. Jones, Deputy Commissioner for Legal Affairs, New York City Department of Finance; Kathy L. Sanderson, Acting Principal Attorney, Law Bureau, New York State Department of Taxation and Finance; Bernard A. Schmitt, Chief of Revenue Analysis, Staff of the Joint Committee on Taxation; and Irwin M. Slomka, Director, Tax Law Division, Office of Legal Affairs, New York City Department of Finance.

Victor F. Keen and Sherry S. Kraus served as program co-chairs. Tax Section members who served as panel moderators included Paul R. Comeau, Peter L. Faber, James S. Halpern, Mark L. McConaghy and Ruth G. Schapiro.

ANNUAL MEETING

At the Annual Meeting in New York City on January 28, 1988, David H. Brockway, recently retired Chief of Staff of the Joint Committee on Taxation, will provide valuable and timely insights of interest to all tax practitioners.

Panel speakers at Annual Meeting seminars will include Mary Bennett, Deputy International Tax Counsel, Treasury Department; Marcus B. Blumkin, Associate Director, Corporate Tax Division, Internal Revenue Service; William F. Collins, Deputy Commissioner and Counsel, New York State Department of Taxation and Finance; Bernard Goldstein, Assistant District Counsel, Internal Revenue Service; Michael J. Grace, Attorney Advisor, Internal Revenue Service; Maria T. Jones, Deputy Commissioner for Legal Affairs, New York City Department of Finance; Neil Kimmelfield, former Attorney Advisor, Treasury Department; Gregory J. Marich, Attorney Advisor, Treasury Department; Laurie Matthews, Special Counsel, Joint Committee on Taxation; H. Patrick Oglesby, International Tax Counsel, Joint Committee on Taxation; Howard Schoenfeld, Special Assistant, Exempt Organizations, Internal Revenue Service; Leslie S. Shapiro, Director of Practice, Internal Revenue Service; and Tom Wessel, Attorney Advisor, Treasury Department.

Members of the Tax Section appearing as panel chairs or panelists include Cynthia Beerbower, William L. Burke, John A. Corry, James S. Halpern, Robert J. Levinsohn, Charles M. Morgan, III, Jules Ritholz, Arthur R. Rosen, Michael L. Schler, Willard B. Taylor, Steven C. Todrys, and David E. Watts.

CONCLUSION

I leave this podium and my office with confidence and trust that the high standards of public service which we have tried to carry on will continue. But, as we have heard, the proper motto is "trust but verify" -so I hope to be around for many years to verify that our splendid work goes forward.

It is impossible to single out individual members of a hardworking Executive Committee, and I am particularly grateful for the effort put in by this dedicated group.

It has been my pleasure to serve on the Administrative Committee over a four-year period with a group of first rate people. I will treasure the times we spent, arguing, sympathizing and criticizing. My fond regards to this fine group-Richard G. Cohen, Dale S. Collinson and Richard J. Hiegel. I have had the joy of working closely throughout this past year with the Administrative Committee members, Herbert L. Camp, William L. Burke and Arthur A. Feder. Under the leadership of Herb Camp and with the support of the new Tax Section Secretary, James M. Peaslee, the Executive Committee and the Tax Section members, the coming year should once again see the Tax Section at the forefront of the tax arena.

Respectfully submitted,

DONALD SCHAPIRO
Chairman

Appendix

NEW YORK STATE BAR ASSOCIATION TAX SECTION

Reports and Other Activities during the 1987-1988 Year

I. Federal Taxes—Legislation

- A. Co-sponsor of Invitation Conference on Subchapter C with the Section of Taxation of the American Bar Association (April 10-12, 1987)
- B. Report by Committee on Exempt Organizations commenting on Proposed Lobbying Regulations Affecting Charities (May 18, 1987)
- C. Report of the Committee on U.S. Activities of Foreign Taxpayers regarding Branch Profits Tax—Additional Issues to be Addressed in Regulations (July 27, 1987)
- D. Report of the Partnerships Committee on Passive Loss Provisions under Code § 460 (August 21, 1987)
- E. Report of the Alternative Minimum Tax Committee commenting on the Proposed Regulations concerning the Corporate Alternative Minimum Tax Book Income Adjustment (August 27, 1987)
- F. Report of the Committee on U.S. Activities of Foreign Taxpayers commenting on Advance Notice 87-4 relating to Interest Rate Swaps (October 6, 1987)
- G. Report of the Committees on U.S. Activities of Foreign Taxpayers and Foreign Activities of U.S. Taxpayers on the Override of U.S. Tax Treaty Provisions by Amendments to the Internal Revenue Code (October 16, 1987)
- H. Report of the Committee on Personal Income on Proposed Regulations under Section 163 Dealing with the Allocation of Interest Expense (November 30, 1987)

- I. Report of the Committee on Foreign Activities of U.S. Taxpayers on Proposed Regulations under Section 864(e) (December 18, 1987)
- J. Report of the Committees on Corporations and Reorganizations on "Tracking Stock" Arrangements (January 20, 1988)

II. Federal Taxes—Administrative

- A. Letter to Leslie S. Shapiro, Director of Practice, Internal Revenue Code, Department of the Treasury, enclosing comments of the Committee on Practice and Procedures on Proposed Modification of Circular 230 (February 13, 1987)
- B. Summary of a Survey of the Executive Committee regarding issues meriting priority consideration by the Treasury Department in providing taxpayer guidance submitted to The Honorable J. Roger Mentz, Assistant Secretary (Tax Policy), Treasury Department (February 23, 1987)
- C. Letter to United States Sentencing Commission setting forth the view of the Tax Section on application of criminal sanctions to persons found guilty of tax evasion or other crimes relating to Internal Revenue laws (April 3, 1987)
- D. Report of the Partnerships Committee on Issues of Master Limited Partnerships for Federal Income Tax Purposes (June 11, 1987)
- E. Letters to members of Congress in support of the Dorgan Task Force Report recommending that Congress provide substantial additional funding for the Internal Revenue Service (June 29, 1987)
- F. Letter to the Section of Taxation of the American Bar Association supporting their effort to persuade the Congress to defer the enactment of the so-called "Omnibus Taxpayer Bill of Rights" (November 20, 1987)

III. New York State Tax Matters

- A. Report on Proposed Amendments to New York State Tax Law in Response to the 1986 Federal Tax Law (March 5, 1987)
- B. Report of Committee on New York State Tax Matters on Tax Tribunal Legislation and Proposed Regulations (June 9, 1987)
- C. Report of Committee on New York State tax Matters on Proposals to Amend New York Corporate taxation (June 17, 1987).
- D. Letter to New York State Department of Taxation and Finance regarding proposed amendments to regulations which would limit the exclusion of "annuities" to payments from plans qualified under sections 401, 403 or 408 of the United States Internal Revenue Code (November 23, 1987)
- E. Memorandum by the Committee on New York State Tax Matters regarding Proposed New York State TSB-M on Repurchase Transactions (December 3, 1987)
- F. Report of the Committee on New York State Tax Matters on Department of Taxation and Finance's Uniform Procedure Study Bill (January 20, 1988)

IV. New York City Tax Matters

- A. Meeting with New York City Department of Finance Officials and Officers and Chairs of the New York City Tax Matters Committee to discuss the procedures for retrieving decisions and other precedents, the dispute resolution procedure, and the substantive interpretation of the tax statutes and pending proposals for statutory changes (March 3, 1987)
- B. Report of the Committee on New York City Tax Matters on the NYC Unincorporated Business Tax (August 21, 1987)