



# NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 PH 518.463.3200 www.nysba.org

## TAX SECTION

### 2018-2019 Executive Committee

#### KAREN GILBREATH SOWELL

Chair  
Ernst & Young LLP  
1101 New York Ave. N.W.  
Washington, DC 20005  
202/327-8747

#### DEBORAH L. PAUL

First Vice-Chair  
212/403-1300

#### ANDREW H. BRAITERMAN

Second Vice-Chair  
212/837-6315

#### GORDON E. WARNKE

Secretary  
212/997-0500

#### COMMITTEE CHAIRS:

##### Bankruptcy and Operating Losses

Stuart J. Goldring  
David W. Mayo

##### Compliance, Practice & Procedure

Elliot Pisem  
Bryan C. Skarlatos

##### Consolidated Returns

William Alexander  
Richard Nugent

##### Corporations

Michael T. Mollerus  
Linda Z. Swartz

##### Cross-Border Capital Markets

David M. Schizer  
Andrew R. Walker

##### Cross-Border M&A

Yaron Z. Reich  
Ansgar A. Simon

##### Employee Benefits

Robert C. Fleder  
Andrea K. Wahlquist

##### Estates and Trusts

Alan S. Halperin  
Joseph Septimus

##### Financial Instruments

Lucy W. Farr  
Jeffrey Maddrey

##### "Inbound" U.S. Activities of Foreign

Taxpayers  
Peter J. Connors  
Peter F. G. Schuur

##### Individuals

Megan L. Brackney  
Steven A. Dean

##### Investment Funds

John C. Hart  
Amanda H. Nussbaum

##### Multistate Taxation

Arthur R. Rosen  
Jack Trachtenberg

##### New York City Taxes

Sherry S. Kraus  
Irwin M. Slomka

##### New York State Taxes

Paul R. Comeau  
Joshua E. Gewolb

##### "Outbound" Foreign Activities of

U.S. Taxpayers  
Andrew P. Solomon  
Philip R. Wagman

##### Partnerships

Phillip J. Gall  
Eric B. Sloan

##### Pass-Through Entities

James R. Brown  
Edward E. Gonzalez

##### Real Property

Robert Cassanos  
Marcy Geller

##### Reorganizations

Neil J. Barr  
Peter A. Furci

##### Securitized and Structured

Finance  
Daniel M. Dunn  
John T. Lutz

##### Spin Offs

Lawrence M. Garrett  
Joshua M. Holmes

##### Tax Exempt Entities

Stuart Rosow  
Richard R. Upton

##### Treaties and Intergovernmental

Agreements  
Lee E. Allison  
David R. Hardy

## MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE:

Daniel Z. Altman  
William A. Curran  
Tijana J. Dvornic  
Pamela L. Endreny  
Jason R. Factor

Kathleen L. Ferrell  
Elizabeth T. Kessenides  
Shane J. Kiggen  
Stuart E. Leblang  
William L. McRae

Kara L. Mungovan  
Joel Scharfstein  
Stephen E. Shay  
Michael B. Shulman  
Eric Solomon

Jonathan R. Talansky  
Eric Wang  
Sara B. Zablotny

Report No. 1388

February 6, 2018

The Honorable David J. Kautter  
Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable David J. Kautter  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

The Honorable William M. Paul  
Principal Deputy Chief Counsel and  
Deputy Chief Counsel (Technical)  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Re: *Report No. 1388 on Section 965*

Dear Messrs. Kautter and Paul:

We are pleased to submit New York State Bar Association Tax Section Report No. 1388. This Report makes recommendations for guidance addressing the application of section 965 of the Internal Revenue Code of 1986, as amended by "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," P.L. 115-97 (the "Act"). Section 965 requires U.S. shareholders that own 10 percent of the voting stock of controlled foreign corporations and all foreign corporations in which a domestic corporation owns a 10 percent voting interest to include in their income their shares of the undistributed post-1986 earnings and profits of such corporation, as specially determined.

## FORMER CHAIRS OF SECTION:

Peter L. Faber  
Alfred D. Youngwood  
Gordon D. Henderson  
David Sachs  
J. Roger Mentz  
Willard B. Taylor  
Richard J. Hiegel

Herbert L. Camp  
William L. Burke  
Arthur A. Feder  
James M. Peaslee  
Peter C. Canellos  
Michael L. Schler  
Carolyn Joy Lee

Richard L. Reinhold  
Steven C. Todrys  
Harold R. Handier  
Robert H. Scarborough  
Robert A. Jacobs  
Samuel J. Dimon  
Andrew N. Berg

Lewis R. Steinberg  
David P. Hariton  
Kimberly S. Blanchard  
Patrick C. Gallagher  
David A. Miller  
Erika W. Nijenhuis  
Peter H. Blessing

Jodi J. Schwartz  
Andrew W. Needham  
Diana L. Wollman  
David H. Schnabel  
David R. Sicular  
Stephen B. Land  
Michael S. Farber

This Report also addresses Notice 2018-07 (issued December 29, 2017) and Notice 2018-13 (issued January 19, 2018) (the “Notices”). Each of the Notices announced that the Department of the Treasury (the “Treasury”) and the Internal Revenue Service (the “Service”) intend to issue regulations for determining amounts required to be included in gross income by United States shareholders under section 951(a)(1) pursuant to section 965. We commend Treasury and the Service for taking these thoughtful and significant first steps in providing guidance under section 965.

In this Report, we suggest some improvements and recommend areas in which we believe additional guidance is required.

We appreciate your consideration of our recommendations. If you have any questions or comments regarding this Report, please feel free to contact us and we will be glad to assist in any way.

Respectfully submitted,



Karen G. Sowell  
Chair

Enclosure

Cc:

Dana L. Trier  
Deputy Assistant Secretary (Tax Policy)  
Department of the Treasury

Lafayette “Chip” G. Harter III  
Deputy Assistant Secretary (International Tax Affairs)  
Department of the Treasury

Douglas L. Poms  
International Tax Counsel  
Department of the Treasury

Brian Jenn  
Deputy International Tax Counsel  
Department of the Treasury

Marjorie A. Rollinson  
Associate Chief Counsel (International)  
Internal Revenue Service

Daniel M. McCall  
Deputy Associate Chief Counsel (International)  
Internal Revenue Service

Raymond J. Stahl  
Senior Counsel, Office of Associate Chief Counsel (International)  
Internal Revenue Service

John J. Merrick  
Special Counsel, Office of Associate Chief Counsel (International)  
Internal Revenue Service

