REPORT # 593

TAX SECTION

New York State Bar Association

Letter on Child Care Credit

November 1, 1988

Table of Contents

Cover Letter 1: i

TAX SECTION
New York State Bar Association

November 1, 1988

Senator Bill Bradley
Room 731, Hart Senate Office Building
United States Senate
Washington, D. C. 20510

Child Care Credit

Dear Senator Bradley:

I refer to my letter dated September 16, 1988 to you regarding our previous written comments on proposed amendments to $ 274(n). You suggested that we might comment on the proposed phase-out rules applicable to the child-care credit.

As you will recall, we objected to the proposed Section 274(n) amendment because it taxed gross, not net income from business and it fell unevenly on only certain businesses (unincorporated businesses). You will also recall that we had no objection to the existing law 20% cutback on meals and entertainment expense deduction, representing Congress' judgment as to the nondeductible personal element in such expense.

The question of where to draw the line between business and personal expenditures is a difficult one. There are any number of expenses that a taxpayer can incur as a result of engaging in a business, but which are regarded as personal, nondeductible expenses. Among those are commuting expense, extra clothing expense e.g., a business suit rather than casual attire), expense for personal services

(such as household maintenance) that the taxpayer could perform if he or she had free time, educational expense to qualify for a new job, and added meal expense (e.g., non-business lunch in a restaurant rather than at home). The policy behind the treatment of those expenses as non-deductible is that they are materially affected by personal decisions, such as where to live, mode of transport, and so forth.

Child care expenses can well be viewed as essentially similar to the above expenses. That is, they are essentially personal expenses that a taxpayer incurs in order to carry on a business and might not be incurred if the taxpayer were not in business, but which also are incurred because of personal decisions.

That is not to say that Congress should reject a deduction or credit for child care expenses under any circumstances, including, for example, lower income or single parent families. Congress could also conclude in that connection that the deduction or credit should be allowed without an income phase-out. Such a decision would have to rest, however, on social policy as well as pure tax policy determinations.

The expertise of the members of the Tax Section qualifies it to comment on the technical aspects of proposed legislation and regulations and comment on whether proposed changes are consistent with established tax policy. We believe that it would be inappropriate for us as an organization to express views not derived from the exercise of that technical expertise. In an effort to adhere to that philosophy, as a general rule we do not comment even on pure questions of tax policy, such as tax rates or the progressivity thereof, other than to express our overall support for greater simplicity in the tax laws and judicious restraint in injecting the technical and administrative complexity that can arise from use of the tax laws to effect social policy. Accordingly, we believe that it would be inappropriate for us as an organization to express an opinion, favorable or unfavorable, on the wisdom of phasing out the credit for child care expenses (or, generally, on allowing a deduction or credit for any of the matters mentioned in the third paragraph of this letter).

Very truly yours,

Herbert L. Camp
Chair