

REPORT #720

TAX SECTION

New York State Bar Association

Estate and Gift Tax Conformity and
Technical Corrections Bill

May 20, 1992

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May 20, 1992

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Re: Estate and Gift Tax Conformity and
Technical Corrections Bill
(1992 Tax Department Legislative
Proposal No. 3)

Dear Sirs:

The purpose of this letter is to advise you of the Tax Section's support for the Tax Department's Estate and Gift Tax Conformity and Technical Corrections Bill. The primary purpose

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of this bill is to make technical revisions to the Tax Law to conform the New York estate and gift tax laws to the Internal Revenue Code of 1986, as amended, through amendments made by the Revenue Reconciliation Act of 1990 as enacted by P.L. 101-508.

Through our Committee on Estates and Trusts, we have reviewed the proposed Bill and the report of the Trusts and Estates Law Section of the New York State Bar Association dated May 4, 1992 and we endorse the recommendations of that Section as contained in its report - to approve the Bill as written.

If the Bill is not enacted, the lack of conformity with Federal law will cause continued hardship for many taxpayers and practitioners because of the differing results that may occur under the two tax laws, as illustrated below, and the uncertainty of when conformity will occur.

Of particular concern is the lack of conformity between the Federal estate freeze provisions of Chapter 14 of the Internal Revenue Code (enacted in 1990) and the New York estate freeze provisions of Section 2036(c). Section 2036(c) had been the subject of much criticism, and was considered to be unduly burdensome on small business owners. In response to these criticisms, the Federal law was amended to repeal Section 2036(c) with respect to transfers made after December 17, 1987. As a result of this lack of conformity, intra-family transfers may now be subject to Federal gift tax pursuant to the new Chapter 14 provisions but for New York purposes the same transaction would not be subject to gift tax but instead may be subject to estate tax upon the death of the transferor. Taxpayers and practitioners generally believe that New York will eventually repeal Section 2036(c) but, in the interim, lack of conformity creates significant planning difficulties and uncertainty.

We strongly recommend that the Bill be enacted into law.

Very truly yours,

John A. Corry
Chair