

REPORT #722

TAX SECTION

New York State Bar Association

Nexus and State Taxation of Partnerships

June 4, 1992

Table of Contents

Cover Letter:.....i

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June 4, 1992

Simon G. Salas, Esq.
Deputy Commissioner for Legal Affairs
345 Adams Street
Brooklyn, New York 11201

Dear Mr. Salas:

We have reviewed the proposed amendments to Sections 11-03, 11-04 and 11-06 of Title 19 of the New York City General Corporation Tax Rules ("Amended Rules"). We write to set forth our preliminary comments, which principally relate to the differences between the Amended Rules and the New York State corporate franchise tax regulations ("State Regulations") with respect to nexus and taxation of partnerships and corporate partners, as found in Reg. §§ 1-3.2 and 3-13.1.

We commend the goal, as stated in the Commissioner's statement of the basis and purpose of the proposed amendments, of bringing the City's rules into conformity with the State's rules, and in general we find the substance of the Amended Rules to be in conformity with the State Regulations. The Amended Rules, however, differ from the State Regulations with respect to the taxation of corporate partners in limited partnerships. The State Regulations, § 1-3.2(a)(6), contain the so called "one million dollar or 1% test" to preclude the taxation of corporations with

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minimal limited partnership interests, as well as additional criteria to determine whether a corporation that is a limited partner in a partnership doing business in New York State will be subject to corporate franchise tax if it does not otherwise have taxable nexus with New York State.

The Amended Rules do not follow the analysis with respect to this issue contained in the State Regulations and instead continue to provide, in § 11-06, that all corporations are deemed to be doing business in the City if they own a limited partnership interest in a partnership that is doing business, etc., in the City, subject only to the existing exemption for publicly-traded partnerships, and a newly added provision that corporate limited partners in "portfolio investment partnerships" will not be deemed to be doing business in the City. Such an exemption appears in § 1-3.2(a)(6)(i) and (iii) (f|) of the State Regulations, except that the Amended Rules would incorporate exceptions similar to those now applying to the City's exemption for corporate limited partners in publicly-traded partnerships. We have no objection to the inclusion of such exceptions in the Amended Rules.

We support and urge adoption of the major portion of the Amended Rules that conform with the State Regulations. However, in view of the virtually identical statutory authority, we urge that further steps be taken to conform the Amended Rules to the State Regulations with respect to corporate limited partners, in particular to add an exemption, subject to appropriate limitations, for corporations whose only City contact is a limited partnership interest of less than 1% with a basis of not more than \$1,000,000. In general, we think the goal should be that, to the extent feasible, a foreign corporate limited partner should not be subject to New York City general corporation tax solely because of its partnership interest if it is - not taxable under the State Regulations.

In addition, while not directly relevant to the issues of nexus covered in the Amended Rules, we urge that early consideration be given to conforming the City Rules to the State Regulations which provide (a) the election by a foreign corporate limited partner for a separate accounting of New York State income from the partnership contained in § 3-13.1, and (b) detailed guidance with respect to allocation of income and capital by a corporate partner contained in § 4-6.5.

As matters of minor detail, we suggest the following corrections in the Amended Rules:

In § 11-03(f)(2), add the following at the end of the last sentence: ",except as provided in § 11-04(b)(6)."

In § 11-04(c)(2)(ii), on the first line change "share" to "shares".

We reserve the right to furnish additional comments after we have had the opportunity to make a more detailed study of the Amended Rules.

Yours very truly,

Robert J. Levinsohn
Co-Chair, Committee on
New York City Tax Matters

bcc: John A. Corry, Esq.
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August 10, 1994

Michael L. Schler, Esq.
Chair, Tax Section
New York State Bar Association
825 Eighth Avenue
New York, NY 10019

Dear Mr. Schler:

I thought you might be interested in reviewing the enclosed legislation I recently introduced before the New York City Council.

Introduction 417 would establish a temporary Advisory Commission on City-State Tax Conformity and Administration. The Commission, comprised of seventeen volunteer members, would make recommendations for improving coordination between the City's and the State's tax laws. The objective would be to cut red tape, reduce compliance costs, and improve New York City's fragile business climate.

I welcome your comments on, and support for, this initiative.

With best wishes,

Sincerely,

Andrew S. Eristoff
Council Member

By Council Member Eristoff

A LOCAL LAW

To create a temporary Advisory Commission on City-State Tax Conformity and Administration.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent. The Council finds that the economic and social well-being of the people of the City of New York is clearly related to the tax policies of both the City and State of New York, the manner in which those policies are administered by the City and State, the adjudication of disputes relating to city and state taxes, and the degree to which the City and State coordinate such policies, administrative procedures and adjudicatory functions. Accordingly, the Council finds it appropriate to establish a temporary Advisory Commission on City-State Tax Conformity and Administration, which shall be charged with: (1) analyzing and comparing the City's tax policies, administrative procedures and adjudicatory functions with those of the State; (2) identifying those instances in which a lack of conformity and/or coordination between city and state tax policies, administrative procedures and adjudicatory functions impose unnecessary burdens upon taxpayers in the City and upon the government agencies responsible for the administration of the city and state tax laws; and (3) making specific recommendations for enhancing the conformity of and/or coordination between city and state tax policies, administrative procedures and adjudicatory functions in order to avoid or mitigate such burdens, consistent with the traditional tax policy objectives of equity and

efficiency, while remaining substantially neutral with respect to city and state tax revenues.

§2. Temporary A Advisory commission on city-state tax conformity and administration. a. There is hereby established a temporary advisory commission on city-state tax conformity and administration, which shall advise the mayor and the council on measures that can improve the coordination of tax policies and practices of the City and State of New York.

b. The commission shall consist of seventeen voting members, who shall serve without compensation, to be appointed as follows within thirty days of the effective date of this law:

- (1) three members appointed by the mayor;
- (2) three members appointed by the speaker;
- (3) one member appointed by the comptroller;
- (4) five members appointed jointly by the mayor and the speaker as follows:

(i) two members upon recommendation of the governor of the state of New York:

(ii) one member upon recommendation of the majority leader of the senate of the state of New York:
and

(iii) one member upon recommendation of the speaker of the assembly of the state of New York: and

- (5) five public members appointed jointly by the mayor and the speaker, none of whom shall be elected officials.

One member shall be designated jointly by the mayor and the speaker to serve as chairperson.

c. Vote of the commission: delegates. The commission shall be authorized to vote on any motion properly before it when a quorum, consisting of more than one-half of its members, is present. A motion shall be adopted if a majority of the commission vote thereon. Each member may designate a representative who may vote on behalf of such member and who shall be counted as a member for the purposes of determining the existence of a quorum. The designation of a representative shall be made in a prior written notice served upon the chairperson of the commission.

d. Mandates of the commission. The commission is hereby mandated to:

(1) analyze and compare the city's tax policies, administrative procedures and adjudicatory functions with those of the state:

(2) identify those instances in which a lack of conformity and/or coordination between city and state tax policies, administrative procedures and adjudicatory functions impose unnecessary burdens upon city and/or state taxpayers and the agencies responsible for the administration of the tax laws: and

(3) make specific recommendations for enhancing the conformity of and/or coordination between city and state tax policies, administrative procedures and adjudicatory functions in order to avoid or mitigate such burdens, consistent with the traditional tax policy objectives of equity and efficiency, while

remaining substantially neutral with respect to city and/or the state's tax revenues.

(e) Duties and powers of the commission. The commission shall:

(1) meet at such times as it shall deem necessary;

(2) convene at least one public hearing at which public testimony shall be taken; and

(3) utilize the best expertise available as it proceeds with its work, seeking both the advice and the active participation of tax professionals, economists and fiscal analysts, who shall act as advisors and/or paid consultants.

(f) Reports. The commission shall issue a final report to the mayor and the council no later than twelve months from the effective date of this local law and shall recommend city and/or state legislation and other causes of action to the mayor and the council.

(g) Staff. The commission may employ an executive secretary and shall utilize department of finance and other mayoral staff, and appropriate council staff, to assist with the preparation of analyses, recommendations, reports and proposed legislation that it deems necessary to effectuate its purposes.

§3. This local law shall take effect immediately.

TPW:bg

DG-LL

LS#533

5/19/94

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OF
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NEW FROM
COUNCIL MEMBER
ANDREW S. ERISTOFF

For Immediate Release
August 4, 1994

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ERISTOFF INTRODUCES BILL TO CREATE
CITY-STATE TAX ADVISORY COMMISSION

In an effort to cut red tape and improve New York City's business climate, Council Member Andrew S. Eristoff (R-L, East Side) today introduced legislation that would create a temporary Advisory Commission on City-State Tax Conformity and Administration. The Commission, comprised of seventeen volunteer members, would be charged with making recommendations for improving the interaction and coordination between the City's and the State's respective tax laws.

"The City and State both maintain highly complex systems of taxation that are in many ways theoretically or structurally

similar but functionally independent" noted Council Member Eristoff, a former tax lawyer in private practice. "For example, the city and the State both tax corporate income and hotel occupancy on substantially the same bases, yet minor differences in regulations must independently assess, collect, audit, and jurisdictions must adjudicate tax liabilities. The result is a double-barreled bureaucratic morass that wastes government administrative resources and drives up taxpayers' accounting and legal fees, making it more difficult and expensive for businesses to do business and create jobs in New York City. Better alternative already exist. For example, the State Department of Finance already collects and administers the City's personal income tax."

"Our business already labor under confiscatory tax rates," added Council Member Eristoff. "If in the current fiscal climate we can't reduce tax rates, we can at least try to make it simpler and cheaper for businesses to pay their taxes. In May discussions with tax professionals, I have received enthusiastic support for the notion of having a Commission of experts study our tax laws to find ways to eliminate the unnecessary duplication and waste that pervades the current system."

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