

REPORT #760

TAX SECTION

New York State Bar Association

Letter on New York - Liability Companies

Table of Contents

Cover Letter:i

TAX SECTION

New York State Bar Association

OFFICERS

PETER C. CANELLOS
Chair
299 Park Avenue
New York City 10171
212/371-9200

MICHAEL L. SCHLER
First Vice-Chair
299 Park Avenue
New York City 10171
212/371-9200

CAROLYN JOY LEE ICHEL
Second Vice-Chair
Worldwide Plaza
825 Eighth Avenue
New York City 10019
212/474-1588

RICHARD L. REINHOLD
Secretary
80 Pine Street
New York, N.Y. 10005
212/701-3672

COMMITTEE CHAIRS**Bankruptcy**

Stuart J. Golding New York City
Dennis E. Ross, New York City

Compliance and Penalties

Robert S. Fink, New York City
Arnold Y. Kapiloff, New York City

Consolidated Returns

Patrick C. Gallagher, New York City
Irving Salem, New York City

Continuing Legal Education

Thomas V. Glynn, New York City
Victor F. Keen, Phila Pa

Corporations

Yaron Z. Reich, New York City
Steven C. Todrys, New York City

Estate and Trusts

Kim E. Baptiste, New York City
Steven M. Loeb, New York City

Financial Instruments

Jodi J. Schwartz, New York City
Esta E. Stecher, New York City

Financial Intermediaries

Richard C. Blake, New York City
Bruce Kayle, New York City

Foreign Activities of U.S. Taxpayers

Cynthia G. Beerbower, New York City
Philip R. West, New York City

Income from Real Property

William B. Brannan, New York City
Michelle P. Scott, Newark, NJ

Individuals

Deborah Schenk, New York City
Sherry S. Kraus, Rochester

Net Operating Losses

Kenneth H. Heitner, New York City
Robert A. Jacobs, New York City

New York City Tax Matters

Robert J. Levinsohn, New York City
Robert Plautz, New York City

New York State Tax Matters

Robert E. Brown, Rochester
James A. Locke, Buffalo

Nonqualified Employee Benefits

Stephen T. Lindo, New York City
Loran T. Thompson, New York City

Partnerships

Stephen L. Millman, New York City
Joel Scharfstein, New York City

Pass-Through Entities

Roger J. Bronstein, New York City
Thomas A. Humphreys, New York City

Practice and Procedure

Richard J. Bronstein, New York City
Stuart E. Seigel, New York City

Qualified Plans

Stuart N. Alperin, New York City
Kenneth C. Edgar, Jr., New York City

Reorganizations

Andrew N. Berg, New York City
Richard M. Leder, New York City

Sales, Property and Miscellaneous

E. Parker Brown, II, Syracuse
Paul R. Comeau, Buffalo

State and Local

Arthur R. Rosen, New York City
Sterling L. Weaver, Rochester

Tax Accounting Matters

Elliot Pisem, New York City
Mary Kate Wold, New York City

Tax Exempt Bonds

Linda D'Onofrio, New York City
Patti T. Wu, New York City

Tax Exempt Entities

Harvey P. Dale, New York City
Franklin L. Green, New York City

Tax Policy

Reuven Avi-Yonah, New York City
Robert H. Scarborough, New York City

Tax Preferences and AMT

Katherine M. Bristol, New York City
Stephen B. Land, New York City

U.S. Activities of Foreign Taxpayers

Michael Hirschfeld, New York City
Kenneth R. Silbergleit, New York City

MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE

M. Bernard Aidinoff
Anne L. Alstott
Harold R. Handler

David P. Hariton
Charles I. Kingson
Edward D. Kleinbard

Richard O. Loengard, Jr
Charles M. Morgan, III
Ronald A. Pearlman

Mikel M. Rollyson
Matthew A. Rosen
Stanley I. Rubenfeld

Dana Trier
Eugene L. Vogel
David E. Watts

April 27, 1993

Mr. Patrick J. Bulgaro
Director
New York State Division of the Budget
Room 113, State Capitol
Albany, New York 12224

Mr. Robert L. Gray
New York State Society of CPA's
200 Park Avenue
New York, New York 10166

Re: Limited Liability Companies

Dear Messrs. Bulgaro and Gray:

I refer to your memorandum to Governor Cuomo of April 5, 1993, which describes a number of "conclusions" of the Limited Liability Company Working Group, a Group which includes representatives of the Tax Section. Since certain aspects of your memorandum could lead to confusion as to the Tax Section's position, I am writing to clarify our position.

First, the Tax Section's consideration of the New York State and City tax treatment of LLC's has been and will continue to be limited to questions of tax law and policy. Our principal concern has been to avoid the complexities which we believe are inherent in

FORMER CHAIRMEN OF SECTION

Howard O. Colgan
Charles L. Kades
Carter T. Louthan
Samuel Brodsky
Thomas C. Plowden-Wardlaw
Edwin M. Jones
Hon. Hugh R. Jones
Peter Miller

John W. Fager
John E. Morrissey Jr.
Charles E. Heming
Richard H. Appert
Ralph O. Winger
Hewitt A. Conway
Martin D. Ginsburg
Peter L. Faber

Richard G. Cohen
Donald Schapiro
Herbert L. Camp
William L. Burke
Arthur A. Feder
James M. Peaslee
John A. Corry

imposing an income-based tax regime on what, in general, is a pass-through entity for tax purposes. We have not been privy to the computations of potential revenue losses, nor are we qualified to comment on the amounts of revenue loss or gain projected under any particular proposal.

In addition, as a procedural matter, while a Tax Section Task Force has been actively considering New York LLC matters, testifying at the December hearing and issuing an outline of its work through last January, the legislative proposals regarding the tax treatment of LLC's have not yet been formally reviewed by the Executive Committee of the Tax Section. We expect that a formal report dealing with such proposals will be considered by the Executive Committee in the near future, and thereafter will be transmitted to State and City officials. Until that process is completed, however, the Tax Section itself does not have an official position on these matters.

I trust that this clarifies the Tax Section's position. Please call me if you would like to discuss this further.

Very truly yours,

Peter C. Canellos
Chair

PCC/md

cc: Elizabeth D. Moore, Esq.