

REPORT #871

TAX SECTION

New York State Bar Association

Letter on S. 942, Small Business Regulatory
Enforcement Fairness Act of 1996 Small

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March 10, 1996

Hon. Robert J. Dole,
Senator
United States Senate
Room 141, Hart Senate
Office Building
Washington, D.C. 20510

Re: S. 942, Small Business Regulatory
Enforcement Fairness Act of 1996

Dear Senator Dole:

S. 942, reported by the Senate Small Business Committee, would make the Regulatory Flexibility Act applicable to interpretive regulations issued by the Internal Revenue Service. As a result, the Service would be required to publish detailed analyses of each interpretive regulation demonstrating that the adverse impact on "small entities" has been minimized. Affected entities also would be afforded the right to judicial review of compliance with the measure.

We oppose the extension of the Regulatory Flexibility Act to interpretive regulations of the IRS. Rather than having the desired effect of reducing burdens on small business, we think the change would reduce the amount of guidance interpreting the tax law, thereby increasing the difficulty and "expense of taxpayers, especially small business, in complying with the law.

Compliance with the requirements of the Regulatory Flexibility Act would unquestionably bog down the IRS and Treasury's process of issuing regulations: it would substantially increase the paperwork involved in promulgating regulations and require the shifting of personnel from the drafting

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of regulations to the procedural aspects of promulgating them.

Unlike some types of government regulation, taxpayers welcome interpretive tax regulations. Tax obligations are imposed by statutory rules. In many cases, the precise meaning or application of the statutes is unclear and interpretive guidance of the statutory rules is therefore necessary. With clarification of these rules, business tax-payers save time and expense in determining their tax obligations, and avoid time-consuming, expensive disputes on audits of their tax returns. Such guidance also reduces the opportunity for taxpayers to take aggressive positions minimally supported by the statute.

We note that the IRS is already required to take into account the needs of small business in writing interpretive regulations. IRC § 7805(f) mandates submission of tax regulations to the Small Business Administration for review and comment. Apart from any requirement imposed by law, however, it is our experience as practitioners that tax regulations generally are written in a way that makes compliance with statutory requirements simpler and more practical. This benefits taxpayers -- especially small business, for which the cost of obtaining professional tax advice may be disproportionately expensive -- but also benefits government by increasing voluntary compliance with the tax law.

We think application of the Regulatory Flexibility Act to interpretive tax regulations would be especially unfortunate given the IRS's substantial backlog of unissued regulations. Since the early 1980s, material tax changes have been enacted almost every year. Many of the changes are highly complex, and a delay of five years or more in the issuance of needed interpretive regulations is not uncommon. For the reasons set forth above, all taxpayers, and especially small business, would be ill-served by burdens on the regulation-writing process that slow the flow of interpretive regulations.

We would be pleased to provide any additional information you may require.

Respectfully submitted,

Richard L. Reinhold
Chair

cc: Hon. Christopher Bond,
Chairman
Committee on Small Business
United States Senate

Hon. Leslie B. Samuels,
Assistant Secretary
(Tax Policy)
Department of Treasury