REPORT #895

TAX SECTION

New York State Bar Association

Letter on Transitional Relief for Certain of the Tax Law Changes Proposed by the President's 1998 Budget

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TAX SECTION

New York State Bar Association

March 13, 1997

Hon. Donald C. Lubick
Acting Assistant Secretary (Tax Policy)
Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Lubick:

We write to urge that the Treasury Department promptly give guidance as to the transitional relief to be accorded certain of the business tax changes proposed in the 1998 Budget. We believe this step is required in order to prevent the uncertainty as to what those rules will be from having a serious adverse impact on important business transactions during the period prior to first Congressional action on the Budget proposals.

The 1998 Budget proposed by the President on February 6 includes a number of amendments to the Internal Revenue Code, carried over from changes proposed in 1996 but not adopted as part of the 1997 Budget legislation. Some of these proposals would radically affect a wide range of business transactions, such as the proposed repeal of the favorable tax treatment of the so-called “Morris Trust” form of transaction, the treatment of certain limited-term preferred stock as taxable boot, the restriction of the interest deductions on various types of debt instruments and the revision of the treatment of certain like kind exchanges.

In 1996 the President's proposals were to be effective on the date of his announcement of them but with extensive transitional provisions to protect pending transactions. In response to the proposed immediate effective date, Richard Reinhold, then Chair of the Tax Section, wrote to the President on March 22, 1996, requesting deferral of the effective date until there was meaningful likelihood of enactment reflected, for example, in approval of the tax-writing Congressional committees.

The current proposals would defer effectiveness to the date of Congressional action, and we welcome this attempt to prevent business disruption by deferring the effective date of the new proposals. However, this benefit may be lost because of the failure to incorporate transition relief provisions similar to those included in the 1996 proposals, coupled with the fact that these types of transactions frequently take months to consummate even after binding contracts are executed or documents are filed with government agencies (such as the Justice Department, the SEC or the IRS). Hence, in order to effectuate the policy we believe was reflected in the recent Budget proposals and to allow pending transactions to proceed freely, we urge that the Treasury promptly issue an announcement of those transitional relief provisions which it believes appropriate under the circumstances.

We would be happy to work with the Treasury Department and Congressional staffs to develop such provisions.

Very truly yours,

Richard O. Loengard, Jr.
Chair