

REPORT #624

TAX SECTION

New York State Bar Association

Administrative Adjudication of
Disputes Involving New York City Taxes:
Tax Tribunal Proposals

October 18, 1988

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August 31, 1989

Gordon D. Henderson, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10153

Dear Gordon:

I am writing to set forth for you the position taken by the Tax Section's Executive Committee and Committee on New York City Tax Matters on the question of New York City conformity to New York State.

Our consistent position has been - and continues to be - that the City tax laws should be interpreted and applied in a manner consistent with the comparable State tax laws. Our most recent statement in this area is found in the May 31, 1989 Report of the New York City Tax Matters Committee, as approved by the Executive Committee, on the Legislation Proposed to Implement the New York City Tax Tribunal. You will note that the Report carries the conformity position on to the recommendation (highlighted in both the Report and my transmittal letter) that the City Tax Tribunal be required to treat as binding precedent prior decisions of the State Tax Appeals Tribunal. These recommendations reiterate recommendations made last year in our Report on the City Charter amendment (copy of the Summary of Recommendations enclosed).

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Lest anyone be misled, this year's City Tribunal Report, like the views we expressed previously on the City Charter amendment, were directed primarily at the creation of a tribunal that would function, in public perception as well as in fact, independently of the City tax administration. The question of precedential value of State Tax Tribunal decisions was only one of a number of serious concerns we had, some of which we felt were more critical to the primary focus of insuring actual and perceived independence of the City Tribunal. Our comments in that Report calling attention to those other concerns should not be taken as lessened or changed support for the conformity of city provisions to comparable state provisions.

I have spoken with Kathleen Grimm at the City Department of Taxation and Finance, and she understands our position to be as set forth in this letter.

With best regards,

Sincerely,

WLB/JAPP
Enclosures

Wm. L. Burke

cc(w/o encl.): Kathleen Grimm, Esq.

NEW YORK STATE
BAR ASSOCIATION

TAX SECTION

Administrative Adjudication of
Disputes Involving New York City Taxes:
Tax Tribunal Proposals

By The
Committee on New York City
Tax Matters

October 18, 1988

Summary of Recommendations.

The Tax Section strongly supports the establishment of an independent dispute resolution process, and believes that the adoption of the Charter Revision Commission proposal by popular vote would be a very important start toward providing an independent forum for the resolution of disputes involving New York city taxes. The Tax Section further believes, however, that the procedures outlined in the Charter proposal do not meet all of the goals of an independent dispute resolution process. Therefore, when the State Legislature considers the enabling legislation necessary to implement the Charter proposal, the Tax Section recommends that the Legislature revise the Charter proposal procedures. Specifically:

1. The dispute resolution process should be more in line with the existing State Division of Tax Appeals process, so that taxpayers would first engage in a conciliation conference with the Department of Finance, then proceed to a full evidentiary hearing before an administrative law judge who is expert in city tax matters and is independent of the Department of Finance, and then proceed to a review of legal issues by the Tribunal commissioners;

2. Taxpayers should not be required to pay the disputed tax or post a bond before they can present their case to the City Tribunal;

3. The City Tribunal should be required to follow as precedent prior unreversed decisions of the State Tribunal; and

4. To minimize confusion, the procedures and rules of the City Tribunal should, to the greatest extent possible, be the same as those of the State Division of Tax Appeals.