

REPORT #601

TAX SECTION

New York State Bar Association

ANNUAL REPORT

For The Year Ended January 19, 1989

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This is the Annual Report of the Tax Section of the New York State Bar Association for its 40th year.

This year is your Section's 40th year of service to the profession. I am pleased to report that the Section has continued to perform ably its principal functions, the preparation of reports on Federal, state and local tax matters for issuance to tax authorities, and the holding of programs on topics of interest to tax practitioners.

Over the years many of us have repeatedly marveled not only at the high quality of the output of the Tax Section - one could hardly expect anything else given the personnel involved - but also at the ability of Tax Section members to put aside short-term client interests in the pursuit of the longer term good of the tax system. There is no doubt in my mind that the Tax Section's product, whether measured by volume, or technical merit, or breadth of judgment, sets the standard - as it has for forty years - for enlightened and balanced commentary in the tax field.

And for that I give thanks where it belongs, to the Executive Committee of the Tax Section and the Section members whose efforts contributed this year to an outstanding body of work.

Most members of the Tax Section know how the Tax Section operates, but some may not and I will take this opportunity to explain. Our Executive Committee has 106 members, consisting of the four Section officers, 60 co-chairs of our thirty standing committees, 15 members- at-large, and 27 former chairs of the Section.

During the past year we identified more than eighty separate report topics, which were assigned to one or more committees or to members-at-large. Committee co-chairs then usually enlisted members of their committees to prepare draft reports for consideration by the Executive Committee. That generally occurs at our monthly luncheon meetings, during which we typically consider three or four major reports; and as warranted we have special meetings as well. Many if not most reports are the subject of lively debate, and Executive Committee members' comments are frequently reflected in the final reports. It is a source of great strength in the Tax Section that these monthly meetings are so well attended and that such a broad spectrum of the Executive Committee members contribute so heavily to the reports under consideration. And finally, the Administrative Committee of the Tax Section, consisting of

officers and recent past chairmen, will consider and issue the report in final form.

Our other major activity is the programs at our Mid-Year and Annual meetings, and in some years, on special occasions to consider new tax legislation or other significant developments. This year, at our Mid-Year Meeting in Lake George, New York, we were privileged to have four panel discussions. The first was on Current Issues in Capital Markets: Foreign Currency and New Financial Products. It was chaired by Edward D. Kleinbard, and his panelists were Randall K.C. Kau and Peter J. Rothenberg, from private practice, and David M. Crowe, Associate International Tax Counsel, Treasury Department, and Alice Armitrage Neff, Special Assistant, Office of Chief Counsel, Internal Revenue Service. It was an impressive examination of a very complex subject.

Second was a panel called Structuring Corporate Acquisitions in the United States by Foreign Persons - Review of Significant U.S. Tax Consequences. The moderator was Charles M. Morgan, III, and the panel was Matthew O.F. Hill, an English solicitor, Leonard B. Terr, International Tax Counsel, Treasury Department, and William L. Burke. It too was an excellent panel, on a very timely subject.

Third was a panel on consumption taxes, chaired by Willard B. Taylor. His panelists were C. Eugene Steuerle,

Deputy Assistant Secretary of the Treasury for Tax Analysis, Dana L. Trier, Tax Legislative Counsel, Treasury Department, and Alan Schenk, Professor of Law, Wayne State University. This panel was particularly interesting since it was on a subject that, while potentially very important, had not yet been examined by most of our members.

Finally, William M. Colby chaired a panel on Contesting New York State Tax Assessments. The panel members were E. Parker Brown, II, and three representatives of the New York State Department of Taxation and Finance, Barry Bressler, Director, Conciliation and Mediation Services, William F. Collins, Deputy Commissioner and Counsel, and John P. Dugan, President of the Tax Appeals Tribunal. That panel was specially enlightening for our members, given the newness of practice before the Tribunal.

I thank each panelist and moderator for participating. Their work was excellent.

I also give special thanks to our Summer Meeting luncheon speaker, Ronald A. Pearlman, Chief of Staff, Joint Committee on Taxation, for his very interesting presentation.

At our 1989 Annual Meeting on January 21, 1989, our principal speaker will be Professor Michael Graetz, Yale Law School, and there will be five excellent panels: one on taxable corporate acquisitions chaired by Richard L. Reinhold and Michael L. Schler, with Dana L. Trier, Tax Legislative

Counsel; second, a panel on passive activities losses and interest allocation, chaired by Peter C. Canellos and Michael Hirschfeld, with Michael J. Grace, Attorney Advisor in the Passthroughs and Special Industries Division, Internal Revenue Service, and John H. Parcell, Attorney Advisor, Office of Tax Legislative Counsel, Treasury Department; third, a panel on important current international issues, chaired by Cynthia G. Beerbower and Charles M. Morgan, III, with D. Kevin Dolan, Associate Chief Counsel, Technical, Internal Revenue Service, and Steven Lainoff, Associate Chief Counsel, Technical, Internal Revenue Service; fourth, a panel on New York State and City issues, chaired by William M. Colby and Carolyn Joy Lee Ichel, with Stanley Grayson, outgoing New York City Commissioner of Finance and Deputy Mayor Designate for Finance and Economic Development, and James W. Wetzler, Commissioner, New York State Department of Taxation and Finance; and fifth, a panel on I.R.S. Rulings, chaired by Richard D'Avino, James S. Halpern and Richard O. Loengard, Jr., with I.R.S. officials James L. Dahlberg, Branch Chief, Paul F. Kugler, Assistant Chief Counsel, Passthroughs and Special Industries Division, and Steven Lainoff, Associate Chief Counsel, Technical. Those panels will no doubt be interesting and timely. I thank the participants in advance.

Turning now back to Tax Section Reports, I would like to mention some that were produced during the past year. A complete list of our reports for the year is attached.

### Federal Taxes

In February, 1988, we filed reports on qualified non-recourse indebtedness under the at-risk rules of Section 465(b)(6) of the Internal Revenue Code and a supplemental report on Section 382, dealing with net operating loss carryovers. The latter supplements (although it may be an understatement to call a 175-page report a supplement) the Tax Section's 1986 report on the same subject.

In March, Steven C. Todrys submitted the Tax Section's views at an Internal Revenue Service hearing on proposed Section 163 interest allocation regulations. That testimony reflected positions set forth in the Tax Section's November, 1987 report on the same subject.

In April, we submitted a report on proposed Tax Court rules changes concerning partnership actions.

In June, our report on the Omnibus Taxpayer Bill of Rights was filed, as well as our report on Publicly Traded Partnerships.

In July, we filed our report on Shareholder Rights (or "Poison Pill") Plans, and a Preliminary Report on Temporary and Proposed Regulations under Section 469, dealing with passive activity losses.

In August, we submitted a report on the Jurisdiction of the Tax Court, a report on S.E.C. Regulation S and a report on IRS Advance Notice 87-69, concerning the private business tests in Section 141(b) for tax-exempt bonds.

In October, we filed a report on temporary and proposed regulations under Section 892, dealing with the exemption from gross income of income of foreign governments.

In December, we filed a report on developing country debt-equity swaps, a report on temporary branch tax regulations, a report on the allocation of interest and other expense under Section 861, a report on Section 1446, concerning partnership withholding, and a report on Real Estate Mortgage Investment Conduits.

In January, we will submit reports on FIRPTA Section 897(d) and (e) regulations and a report on Section 954 concerning various important subpart F definitions. We are also currently formulating comments to be presented to the House Ways and Means Committee and the Senate Finance Committee concerning leveraged buyouts and the effect of interest deductions on corporate takeovers.

The foregoing illustrates plainly the depth and breadth of the Tax Section's expertise in Federal tax matters. As you can see, that expertise extends from corporate taxation (loss carryforwards, "poison pills", LBOs), to individual taxation



(interest allocation, at-risk, passive activity losses), to partnerships (publicly traded partnerships), to the foreign area (Regulation S, Section 892, debt-equity swaps, branch taxes, interest allocation, partnership withholding, FIRPTA, Subpart F), to procedural matters (Tax Court rules and jurisdiction, Taxpayer Bill of Rights), and to specialized financial products (tax-exempt bonds, REMICs). Each of those reports made its important contribution to the tax field, and I am grateful to the various authors for the work they put in and proud of them and the Tax Section for the high quality of the result.

#### New York State and City Matters

The Tax Section also has an important obligation in the State and City tax area, and I can report that during the past year the Tax Section was very active in fulfilling that obligation.

In March, 1988, we wrote to staff of the New York State Senate Finance Committee concerning the administration of the Division of Tax Appeals.

In June, Robert J. Levinsohn testified before the New York City Charter Revision Committee in favor of a City Tax Appeals Tribunal.

In August, we wrote the Governor's office to urge the appointment of a third member on the State Tax Appeals Tribunal, and to the State Department of Taxation and Finance concerning sales tax exemption certificates.

In October, we submitted a report on combined reporting for state franchise tax purposes, and a report on a possible Tax Tribunal for New York City.

In December, we submitted our report on regulations under the New York City Real Property Transfer Tax.

Finally, we have currently under examination a report on regulations dealing with State franchise taxation of investment income and capital.

I thank those whose efforts produced the above reports.

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I emphasize again the extraordinary resource that the tax system has in the abilities of the members of your Executive Committee. They have done this past year a superb job on a variety of subjects, and have further enhanced the reputation of the Tax Section for, as I said earlier, enlightened and balanced commentary in the tax field.

It is not the custom at this point to single out Executive Committee members for their work - but if it were, I would thank by name every principal author of this year's Tax Section reports, as well as each panel moderator at our

mid-year and annual meetings. Each deserves individual mention.

I will mention with particular thanks the work of the other officers this past year, William L. Burke, Arthur A. Feder and James M. Peaslee, as well as the officers with whom it was my privilege to serve in the prior three years, Dale S. Collinson, Richard G. Cohen and Donald Schapiro.

Your Chair leaves office confident of the healthy state of the Tax Section. I can assure you that, with Bill Burke as your Chair, and with the help of Arthur Feder, Jim Peaslee and your new Secretary, John A. Corry, the good work of the Tax Section will continue.

Respectfully submitted,

Herbert L. Camp  
Chair

NEW YORK STATE BAR ASSOCIATION

TAX SECTION

1988-1989 Reports

A. Federal Tax Matters.

1) Qualified Nonrecourse Financing--Report on Selected Issues to be Addressed in Regulations, by the Committee on Income from Real Property (February 22, 1988);

2) Supplemental Report on Section 382, by the Committee on Net Operating Losses (February 22, 1988);

3) Testimony of Steven C. Todrys at the Internal Revenue Service hearing on Proposed Regulations Relating to Allocation of Interest Expense among Expenditures (March 1, 1988);

4) Letter to Mr. Gayle E. Noving of the Internal Revenue Service concerning elections by qualifying electing funds under Section 1295 (March 4, 1988);

5) Report on Proposed Amendments in Tax Court Rules for Partnership Actions, by the Committee on Partnerships (April 15, 1988);

6) Letter to Martin I. Slate, Director, Employee Plans Technical & Actuarial Division, Internal Revenue Service, from the Committee on Employee Benefits concerning the "same desk" rule (April 15, 1988);

7) Report on the Omnibus Taxpayer Bill of Rights (June 1, 1988);

8) Report on Issues concerning the Definition of Publicly Traded Partnerships, by the Committee on Partnerships (June 15, 1988);

9) Report on the Taxation of Shareholder Rights Plans, by the Committee on Corporations (July 25, 1988);

10) Preliminary Report on Temporary and Proposed Regulations under Section 469, by the Committees on Income from Real Property and Personal Income (July 28, 1988);

11) Letter to Senators Lloyd Bentsen and Bob Packwood and Congressmen Dan Rostenkowski and Bill Archer concerning Section 902 of Senate Bill 1511, a proposed amendment to Section 274(n) (August 2, 1988);

12) Report on Jurisdiction of the United States Tax Court, by the Committee on Practice and Procedure (August 10, 1988);

13) Report on Regulation S, by the Committees on Foreign Activities of U.S. Taxpayers, Financial Institutions and U.S. Activities of Foreign Taxpayers (August 11, 1988);

14) Report on IRS Advance Notice 87-69, by the Committee on Tax-Exempt Bonds (August 12, 1988);

15) Letter to Messrs. Bentsen, Packwood, Rostenkowski and Archer concerning Tax Court jurisdiction (September 26, 1988);

16) Report on Temporary and Proposed Regulations Under Section 892 of the Code, by the Committee on U.S. Activities of Foreign Taxpayers (October 14, 1988);

17) Letter to Senator Bill Bradley concerning Child Care Credit (November 1, 1988);

18) Report on Service Contracts for Qualifying Facilities, by the Committee on Depreciation and Amortization (November 4, 1988);

19) Report on Developing Country Debt-Equity Swaps (December 1, 1988);

20) Supplemental Memorandum on Regulation S (December 6, 1988);

21) Report on Temporary Branch Profits Tax Regulations, by the Committees on Financial Institutions and U.S. Activities of Foreign Taxpayers (December 8, 1988);

22) Report on Temporary Section 861 Regulations Concerning Allocation of Interest and Other Expense, by the Committee on Foreign Activities of U.S. Taxpayers (December 21, 1988);

23) Report on Section 1446, by the Committee on U.S. Activities of Foreign Taxpayers (December 21, 1988);

24) Report on the Federal Income Tax Treatment of Real Estate Mortgage Investment Conduits, by the Committee on Financial Instruments (December 30, 1988);

25) Report on Temporary and Proposed Regulations under Section 897(d) and (e), by the Committee on U.S. Activities of Foreign Taxpayers (January, 1989) ; and

26) Report on Section 954, by the Committee on Foreign Activities of U.S. Taxpayers (January, 1989).

B. New York State and City Tax Matters.

1) Letter to Maria T. Jones, Deputy Commissioner, New York City Department of Finance, concerning publication of decisions of the Commissioner of Finance (February 4, 1988);

2) Letter to Abraham Lackman, Director, Fiscal Studies, Senate Finance Committee, concerning administration of the Division of Tax Appeals (March 3, 1988);

3) Letter to Paul Coburn, Secretary to the Tax Appeals Tribunal, commenting on proposed procedural regulations (May 3, 1988);

4) Testimony of Robert J. Levinsohn at a hearing of the New York City Charter Revision Committee, concerning the need for a City Tax Tribunal (June 30, 1988);

5) Letter to Evan Davis, Counsel to the Governor, regarding appointment of a third member of the Tax Appeals Tribunal (August 4, 1988);

6) Letter to James J. Morris, Jr., New York State Department of Taxation and Finance, commenting on draft

proposed regulations on sales tax exemption certificates and related matters (August 23, 1988);

7) Letter to Arthur J. Katzman, Chairman, Committee on Governmental Operations, concerning publication of decisions of the New York City Commissioner of Finance (September 27, 1988);

8) Report on Combined Reporting for New York Corporate Franchise Tax Purposes, by the Committee on New York State Tax Matters (October 14, 1988);

9) Report on Administrative Adjudication of Disputes Involving New York City Taxes: Tax Tribunal Proposals, by the Committee on New York City Tax Matters (October 18, 1988);

10) Letter to Louis Etlinger, Department of Taxation and Finance, concerning income tax preparation services (November 22, 1988);

11) Report on Proposed Amendments to Regulations Relating to the New York City Real Property Transfer Tax, by the Committee on New York City Tax Matters (December 5, 1988); and

12) Letter to Mr. Davis concerning confirmation of a third member of the Tax Appeals Tribunal (December 12, 1988).