

REPORT #726

TAX SECTION

New York State Bar Association

Letter in Support of Establishment

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May 21, 1992

Re: New York City Tax Appeals Tribunal

The Honorable Carol O'Cleireacain
Commissioner of Finance
City of New York
New York, New York 10007

Dear Commissioner O'Cleireacain:

On August 21, 1991, James M. Peaslee, my immediate predecessor as chair of the Tax Section of the New York State Bar Association, wrote you regarding the City's then latest proposal for establishing a tax tribunal. That letter strongly emphasized the importance of the establishment "in the near future" of a functioning tribunal for City taxes. It then stated that, in part because it would result in automatic conformity of interpretation, the Tax Section supported legislation providing for a single tribunal with jurisdiction over both New York State and City taxes. It further stated, however, that if such agreement was not imminent,

the most expeditious way to achieve a fair and rational system for adjudicating New York City tax disputes would be to press for the City's Tax Tribunal Bill...

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subject to three changes recommended earlier in that letter. The most important of these changes was that the tribunal "follow" rather than merely "take into consideration as precedent" prior un-reversed decisions of the New York State Tax Appeals Tribunal.¹

The support for a single tribunal expressed in our August 21, 1991 letter was based on the assumption that the State would resolve its budget difficulties in such a way that all hearings before the State tribunal would no longer be held in Troy, so that all hearings involving City taxpayers could be held in New York City. However, State budget legislation adopted to date has not provided the funds that would make this possible.

At its April 16, 1992 meeting, the Tax Section's Executive Committee reaffirmed its strong preference for a single tribunal, but at the same time expressed its belief that continued deadlock over which tribunal will adjudicate City tax disputes is a disservice to the community.

We have very recently been advised that the City, while strongly reiterating its view as to the necessity of a separate tribunal, has agreed, in order to break the current deadlock, that a separate City tribunal would follow State tribunal decisions. We further understand that the City would be willing to have appointees to a separate City tribunal screened pursuant to procedures that are generally applicable to judges.²

¹ The other two conditions were that the State enabling legislation for the corporate and unincorporated business taxes be specifically amended to contain provisions with respect to the tribunal and that a taxpayer's time in which to file a petition, had it not expired as of the effective date of the legislation, would be extended by 90 days.

² We assume that the City would have no objection to the two amendments referred to in footnote 1 above.

The Tax Section's Executive Committee will not meet until next month and hence will be unable to consider this revised proposal until that time. In the interest of expeditious consideration of the matter by interested parties, however, the Tax Section's officers and the co-chairs of its Committee on New York City Tax Matters have reviewed the changes in the City's proposal that are referred to above. Because we believe that this revised proposal offers the best opportunity for near-term establishment of a tribunal to adjudicate City tax matters, we support that proposal and are prepared to recommend its endorsement next month by the Tax Section's Executive Committee.

Very truly yours,

John A Corry
Chair