

REPORT #830

TAX SECTION

New York State Bar Association

Letter in Opposition

Table of Contents

Cover Letter:..... i

TAX SECTION

1995-1996 Executive Committee

CAROLYN JOY LEE

Chair
Worldwide Plaza
825 Eighth Avenue
New York City 10019
212/903-8761

RICHARD L. REINHOLD

First Vice-Chair
212/701-3672

RICHARD O. LOENGARD, JR.

Second Vice-Chair
212/820-8260

STEVEN C. TODRYS

Secretary
212/715-9331

COMMITTEE CHAIRS

BankruptcyJoel Scharfstein
Linda Z. Swartz**Basis, Gains & Losses**Stephen B. Land
Robert H. Scarborough**CLE and Pro Bono**Damian M. Hovancik
Deborah H. Schenk**Compliance, Practice & Procedure**Robert S. Fink
Arnold Y. Kapiloff**Consolidated Returns**Ann-Elizabeth Purinton
Dennis E. Ross**Corporations**Katherine M. Bristol
Deborah L. Paul**Cost Recovery**Geoffrey R.S. Brown
Elliot Pisem**Estate and Trusts**Carlyn S. McCaffrey
Georgiana J. Slade**Financial Instruments**David P. Hariton
Bruce Kayle**Financial Intermediaries**Richard C. Blake
Thomas A. Humphreys**Foreign Activities of U.S. Taxpayers**Reuven S. Avi-Yonah
Philip R. West**Individuals**Victor F. Keen
Sherry S. Kraus**Multistate Tax Issues**Robert E. Brown
Paul R. Comeau**Net Operating Losses**Stuart J. Goldring
Robert A. Jacobs**New York City Taxes**Robert J. Levinsohn
Robert Plautz**New York State Franchise and****Income Taxes**James A. Locke
Arthur R. Rosen**New York State Sales and Misc.**Maria T. Jones
Joanne M. Wilson**Nonqualified Employee Benefits**Stuart N. Alperin
Kenneth C. Edgar, Jr**Partnership**Andrew N. Berg
William B. Brannan**Pass-Through Entities**Roger J. Baneman
Stephen L. Millman**Qualified Plans**Stephen T. Lindo
Loran T. Thompson**Real Property**Alan J. Tan
Lary S. Wolf**Reorganizations**Patrick C. Gallagher
Mary Kate Wold**Tax Accounting**Erika W. Nijenhuis
Jodi J. Schwartz**Tax Exempt Bonds**Linda D'Onofrio
Patti T. Wu**Tax Exempt Entities**Michelle P. Scott
Jonathan A. Small**Tax Policy**David H. Brockway
Peter V. Cobb**U.S. Activities of Foreign Taxpayers**Michael Hirschfeld
Charles M. Morgan, III**TAX SECTION****New York State Bar Association****MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE**M. Bernard Aidinoff
Dickson G. Brown
E. Parker Brown, IIScott F. Cristman
Harold R. Handler
Walter HellersteinSherwin Kamin
Charles I. Kingson
Richard M. LederYaron Z. Reich
Stanley I. Rubinfeld
David R. SicularEsta E. Stecher
Eugene L. Vogel
David E. Watts

March 27, 1995

BY FEDERAL EXPRESSThe Honorable Don Nickles
United States Senate
133 Hart Senate Office Building
Washington, D.C. 20510The Honorable David M. McIntosh
House of Representatives
1208 Longworth House Office Building
Washington, D.C. 20515Re: H.R. 450 and S. 219 and
Treasury Regulation SI.701-2

Dear Senator Nickles and Congressman McIntosh:

A few weeks ago the Chicago Bar Association wrote to you urging that a recently promulgated Treasury regulation relating to partnership anti-abuse rules specifically be made subject to a retroactive moratorium on federal regulations. The Executive Committee of the New York State Bar Association's Tax Section met last week, and authorized me to write to you to express a different point of view on that subject.

Initially, it is our strong view that all tax regulations should be exempt from any federal moratorium on regulations. We have expressed this comment in two separate letters over the past few months, and we are pleased to note that these concerns were recognized in the

FORMER CHAIRS OF SECTIONHoward O. Colgan
Charles L. Kades
Samuel Brodsky
Thomas C. Plowden-Wardlaw
Edwin M. Jones
Hon. Hugh R. Jones
Peter Miller
John W. FagerJohn E. Morrissey Jr.
Charles E. Heming
Richard H. Appert
Ralph O. Winger
Hewitt A. Conway
Martin D. Ginsburg
Peter L. Faber
Hon. Renato BegheAlfred D. Youngwood
Gordon D. Henderson
David Sachs
J. Roger Mentz
Willard B. Taylor
Richard J. Hiegel
Dale S. Collinson
Richard G. CohenDonald Schapiro
Herbert L. Camp
William L. Burke
Arthur A. Feder
James M. Peaslee
John A. Corry
Peter C. Canellos
Michael L. Schler

recent legislative proposals (H.R. 450 and S. 219).

Going further, however, a targeted application of a legislative moratorium to one specific, existing regulation, as proposed by the Chicago Bar, raises particularly troubling issues. Clearly the regulation in question is controversial. Some have expressed opposition to the regulation. Others, like this Tax Section, generally support the anti-abuse rules, but commented extensively on the regulation in its proposed form. Many, if not most, of our comments were in fact incorporated in the final regulation.

Whatever one's views of the regulations, however, we believe it is not appropriate as a matter of process for Congress simply to step in and override one existing Treasury regulation through the imposition of a targeted, retroactive moratorium. The tax policy and tax compliance fallout of a targeted suspension of a particular regulation would be most unwelcome, as well as unfair to taxpayers who do strive to comply with the law. We therefore strongly disagree with the proposal made by the Chicago Bar Association.

Should you or your staff wish to discuss this further, please do not hesitate to call me.

Very truly yours,

Carolyn Joy Lee
Chair

CJL/md
Enclosures