REPORT #830

TAX SECTION

New York State Bar Association

Letter in Opposition

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New York State Bar Association

March 27, 1995

BY FEDERAL EXPRESS

The Honorable Don Nickles
United States Senate
133 Hart Senate Office Building
Washington, D.C. 20510

The Honorable David M. McIntosh
House of Representatives
1208 Longworth House Office Building
Washington, D.C. 20515

Re: 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 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