

REPORT #829

TAX SECTION

New York State Bar Association

ANNUAL REPORT

For the Year Ended

January 24, 1995

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NEW YORK STATE BAR ASSOCIATION

TAX SECTION

ANNUAL REPORT

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January 24, 1995

NEW YORK STATE BAR ASSOCIATION  
Tax Section Executive Committee for 1994-1995

OFFICERS

MICHAEL L. SCHLER Chair	CAROLYN JOY LEE First Vice-Chair	RICHARD L. REINHOLD Second Vice-Chair	RICHARD O. LOENGARD, JR. Secretary
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COMMITTEE CHAIRS

Bankruptcy Elliot Pisen Joel Scharfstein Basis, Gains & Losses David H. Brockway Edward D. Kleinbard Compliance, Practice and Procedure Robert S. Fink Arnold Y. Kapiloff Consolidated Returns Dennis E. Ross Dana Trier Continuing Legal Education and Pro Bono Damian Hovancik Deborah H. Schenk New York City Taxes Corporations Yaron Z. Reich Steven C. Todrys Cost Recovery Katherine M. Bristor Stephen B. Land Estates and Trusts Kim E. Baptiste Steven M. Loeb U.S. Activities of Foreign Financial Instruments David P. Hariton Bruce Kayle	Financial Intermediaries Richard C. Blake Stephen L. Millman Foreign Activities of U.S. Taxpayers Diana M. Lopo Philip R. West Individuals Victor F. Keen Sherry S. Kraus Multistate Tax Issues Arthur R. Rosen Sterling L. Weaver Net Operating Losses Stuart J. Goldring Robert A. Jacobs  Tax Exempt Bonds Robert J. Levinsohn Robert Plautz New York State Income Taxes Paul R. Comeau James A. Locke New York State Sales and Miscellaneous E. Parker Brown, II Maria  Nonqualified Employee Benefits Stephen T. Lindo Loran T. Thompson	Partnerships Andrew N. Berg William B. Brannan Pass-Through Entities Roger J. Baneman Thomas A. Humphreys Qualified Plans Stuart N. Alperin Kenneth C. Edgar, Jr. Reorganizations Patrick C. Gallagher Mary Katherine Wold Tax Accounting Jodi J. Schwartz Esta E. Stecher  Linda L. D'Onofrio Patti T. Wu Tax Exempt Entities Franklin L. Green Michelle P. Scott Tax Policy Reuven S. Avi-Yonah Robert H. Scarborough T. Jones  Taxpayers Michael Hirschfeld Charles M. Morgan, III
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MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE

M. Bernard Aidinoff Geoffery R. S. Brown Robert E. Brown Harvey P. Dale Harry L. Gutman Harold R. Handler	Charles I. Kingson Richard M. Leder Erika W. Nijenhuis Kevin J. O'Brien Ann-Elizabeth Purintun	Mikel M. Rollyson Stanley I. Rubenfeld Eugene L. Vogel David E. Watts Joanne Wilson
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FORMER SECTION CHAIRS

Edwin M. Jones Hon. Hugh R. Jones Peter Miller John W. Fager John E. Morrissey, Jr. Charles E. Heming Richard H. Appert Ralph O. Winger Hewitt A. Conway	Martin D. Ginsburg peter L. Faber Hon. Renato Beghe Alfred D. Youngwood Gordon D. Henderson David Sachs j. Roger Mentz Willard B. Taylor Richard J. Hiegel	Dale S. Collinson Richard G. Cohen Donald Schapiro Herbert L. Camp William L. Burke Arthur A. Feder James M. Peaslee John A. Corry Peter C. Canellos
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12:00 p.m. DUTCH TREAT RECEPTION – Broadway Ballroom  
Foyer, 6th Floor  
12:30 p.m. LUNCHEON – Broadway Ballroom, 6th Floor

ANNUAL REPORT TO THE TAX SECTION

MICHAEL L. SCHLER  
Chair, Tax Section

LUNCHEON SPEAKER:  
HONORABLE MARGARET M. RICHARDSON  
Commissioner  
Internal Revenue Service  
Washington, DC

2:30-4:00 p.m. THE CONTRACT WITH AMERICA AND OTHER  
LEGISLATIVE PROSPECTS

SPEAKERS:

WILLIAM L. BURKE	HAROLD R. HANDLER
Winthrop, Stimson, Putnam & Roberts	Simpson Thacher & Bartlett
New York City	New York City

LINDA Z. SWARTZ  
Milbank, Tweed, Hadley & McCloy  
New York City

NEW YORK STATE BAR ASSOCIATION

TAX SECTION

ANNUAL REPORT

For the Year Ended January 24, 1995

It is my pleasure to present the Annual Report for the 46th year of the Tax Section of the New York State Bar Association.

The Tax Section is dedicated to the promotion of a fair and equitable tax system and the development of sound tax policy and administration. The primary activity of the Section is submitting letters and reports to government tax officials that provide advice and comments (mostly of a technical nature) on proposed and pending regulations, legislation and administrative matters.

The Section's reports are designed to provide advice to tax officials that is objective and that reflects the extensive experience of our members in various areas of the tax law. The Section is proud of the fact that its reports are often very influential in the development of the tax law.

Each report by the Tax Section represents the collective input of many members of our Executive Committee and often other members of our substantive committees. Drafts of reports are reviewed at the monthly lunches of our Executive Committee which are attended by 30-50 people, and many reports are the subject of extensive debate and discussion at these meetings. I believe the quality of our reports is due in large part to this extensive review process, which is unique among bar associations as far as I know.

During the past year the Section submitted over 40 letters and reports on a variety of subjects. Of these, approximately 3/4 involved Federal tax matters and the remainder involved New York State and New York City tax matters.

Forty reports may not seem like that much. But it is almost one a week, all done voluntarily by very busy people in their spare time, and almost all subject to our elaborate review process. As far as I know, the only other professional groups to submit more than a few reports a year are the ABA and the Tax Executives Institute.

Most of the Section's activities during 1994 at the Federal level were devoted to regulatory and other administrative matters, since the only significant Federal tax legislation during the year was the GATT legislation. However, the Section did submit comments on a number of legislative matters that may be taken up by the 104th Congress that convened in January 1995, and the Section has reports on other such matters currently in progress. Most of the Section's activities at the State and City level were on budget, regulatory and administrative matters.

A more detailed summary of the Section's activities for the year follows. The great breadth of those activities is readily apparent from the summary.

#### I. Federal Tax Legislation

The Section provided technical comments on draft FASIT legislation relating to asset-backed securitization. It later provided, on extremely short notice, comments on a provision in the GATT bill that was later enacted relating to partnership distributions of marketable securities.

The Section officers met with John Buckley, then the Chief of Staff of the Joint Committee on Taxation, and his staff to discuss pending legislative matters on which the Section could be helpful. Because of the possibility that the Tax Simplification and Technical Correction Bill that passed the House in early 1994 would be reconsidered in 1995, the Section (1) submitted extensive comments on the provisions in the bill for large partnerships, (2) submitted comments on a proposed technical correction concerning the section 356 "principal amount" rule, and (3) is currently working on extensive comments on the foreign tax simplification provisions of the bill. Moreover, because the Health Care legislation that died in 1994 contained provisions relating to the self-employment tax treatment of owners of various kinds of pass-through entities, the Section submitted a report setting forth policies it believed should be taken into account in future legislation of this type.

The Republican control of both houses of Congress as a result of the 1994 election led to other Section activities. Even before Congress convened in January, Republican leaders proposed a freeze on all Federal regulations. The Section responded promptly with a letter strongly urging that any such freeze not apply to tax regulations. When the Republican "Contract With America" was released in early January with provisions (in H.R. 9) that would severely burden the issuance of all regulations, and separate bills were introduced in Congress to freeze the issuance of all regulations (and suspend the effectiveness of regulations already issued since the November election), the Section strongly reiterated its view that none of these provisions should apply to tax regulations.

The Contract With America also contained a provision for indexing

10:45 a.m. -12:00 p.m.

FINANCIAL PRODUCTS: THE CONTINGENT DEBT  
REGULATIONS AND OTHER DEVELOPMENTS

**SPEAKERS:**

ERIKA W. NUENHUIS  
Cleary, Gottlieb, Steen & Hamilton  
New York City

RICHARD L. REINHOLD  
Cahill Gordon & Reindel  
New York City

CLARISSA POTTER  
Attorney Advisor  
Office of Tax Legislative Counsel  
United States Treasury Department  
Washington, DC

DAVID WEISBACH  
Attorney Advisor  
Office of Tax Legislative Counsel  
United States Treasury Department  
Washington, DC

9:00-10:00 a.m.

NEW YORK STATE AND CITY TAX DEVELOPMENTS

**SPEAKERS:**

ROBERT E. BROWN  
Boylan, Brown, Code, Fowler, Vigdor &  
Wilson, LLP  
Rochester

PAUL R. COMEAU  
Hodgson, Russ, Andrews, Woods &  
Goodyear  
Buffalo

MARINA WOOLCOCK  
Director  
Administration, Regulation  
and Review Commission  
New York State Senate

JONATHAN ROBIN  
Assistant Commissioner  
Audit & Enforcement Div.  
New York City

ELLEN HOFFMAN  
Director  
Tax Law Division  
New York City

SENATOR MARY LOU RATH  
New York State Senate

GLENN NEWMAN  
Roberts & Holland  
New York City

BRIAN BACKSTROM  
Change, NY

10:00-11:00 a.m.

CURRENT DEVELOPMENTS IN EMPLOYEE BENEFITS

**SPEAKERS:**

KENNETH C. EDGAR, JR.  
Simpson Thacher & Bartlett  
New York City

LORAN T. THOMPSON  
Whitman Breed Abbott  
& Morgan  
New York City

J. MARK IWRY  
Deputy Benefits Tax  
Counsel  
United States Treasury  
Department  
Washington, DC

11:00 a.m.-12:00 p.m.

INDIVIDUAL AND SMALL BUSINESS TAX ISSUES

**SPEAKERS:**

SHERRY S. KRAUS  
Rochester

JAMES A. LOCKE  
Phillips, Lytle, Hitchcock,  
Blaine & Huber  
Buffalo

EUGENE L. VOGEL  
Rosenman & Colin  
New York City



SUNDAY, OCTOBER 2

- 8:00 a.m. Registration-Conference House Lobby  
8:30 a.m. Executive Committee Breakfast Meeting-West Dining Room  
Open to all attorneys and guests  
10:00 a.m. GENERAL SESSION - CONFERENCE HOUSE  
*CURRENT DEVELOPMENTS IN FEDERAL TAXATION*  
Speakers: Peter C. Canellos Sherry S. Kraus  
Wachtell, Lipton, Rosen & Katz Rochester  
New York City  
Cynthia G. Beerbower Steven C. Todrys  
Deputy Assistant Secretary Kramer, Levin, Naftalis, Nessen,  
(Tax Policy) Kamin & Frankel  
United States Treasury Department New York City  
Washington, DC  
Glen A. Kohl Philip R. West  
Tax Legislative Counsel Steptoe & Johnson  
United States Treasury Department Washington DC  
Washington, DC  
12:00 p.m. Lunch-Main Dining Room or outdoors at the Granary  
(weather permitting)  
2:00 p.m. Departure

B. ANNUAL MEETING, NEW YORK MARRIOTT MARQUIS  
NEW YORK CITY, JANUARY 24, 1995

MICHAEL L. SCHLER  
TAX SECTION CHAIR, PRESIDING  
Cravath, Swaine & Moore  
New York City

- 8:30-8:45 a.m. BUSINESS MEETING AND ELECTION OF OFFICERS  
9:00-10:30 a.m. PARTNERSHIP DEVELOPMENTS: THE ANTI-ABUSE  
REGULATION and LLCs

**SPEAKERS:**

ANDREW N. BERG  
Debevoise & Plimpton  
New York City

WILLIAM B. BRANNAN  
Cravath, Swaine & Moore  
New York City

GLEN A. KOHL  
Tax Legislative Counsel  
United States Treasury Department  
Washington, DC

MONTE A. JACKEL  
Deputy Associate Chief Counsel  
(Domestic-Technical)  
Internal Revenue Service  
Washington, DC

MICHAEL D. THOMSON  
(Acting) Deputy Tax Legislative Counsel  
Washington, DC

the basis of capital assets for inflation. The Section had strongly opposed a similar provision relating to capital gains in 1990 on the grounds of complexity and the potential for abuse. We strongly reiterated that opposition. We also opposed for similar reasons a provision indexing tax basis for depreciation purposes so as to create the equivalent of expensing of the cost of equipment.

At the request of the staff of the House Ways and Means Committee, I testified before the Committee on January 25. I reiterated our strong opposition to capital gains indexing, depreciation indexing, and burdens on the issuance of tax regulations. I am also scheduled to testify against capital gains indexing before the Senate Finance Committee on February 16.

## II. Federal Tax Regulatory Matters

The Section commented on numerous proposed regulations during the year. By far the most well publicized and controversial regulation we considered was the so-called partnership anti-abuse regulation. After lengthy discussion at a meeting devoted solely to that topic, the Executive Committee approved (by a 33-18 vote) an extensive report strongly supporting the concept of a partnership anti-abuse regulation and supporting the proposed regulation subject to a number of detailed suggestions for modifications to clarify its scope. Moreover, I testified at the IRS public hearing to the same effect.

Every other bar association to comment, and most other commentators, opposed the regulation, and few made constructive suggestions for changes. Most in fact opposed the regulation quite strongly, many with quite vituperative comments. In fact,

in the midst of the controversy, Carr Ferguson, the Chair of the ABA Section of Taxation, paid us a great compliment by stating in the ABA newsletter that "despite the best efforts of the Committee on Government Submissions, we rarely speak in the urbane, dispassionate tones which emanate from the New York Bar's Tax Section."

The regulation was adopted in final form at the end of 1994 and incorporated almost all of the suggestions for change that we had made. In fact, the few suggestions that were not adopted were mostly incorporated into the subsequently proposed regulations under Section 707 and 737 issued in January 1995. We are pleased that the government took our suggestions seriously, and we believe this is due in no small part to our measured and balanced approach to the proposal.

Other items on which we responded to requests for comments during the year included, in the domestic area, (1) proposed hedging regulations, (2) a proposed OID anti-abuse regulation, (3) proposed Section 704(c) regulations, (4) the final OID regulations, on which we made suggestions for changes, (5) proposed regulations under Section 305, (6) proposed deferred intercompany transaction consolidated return regulations, and (7) a Notice proposing changes in the treatment of "inversion transactions", and a related Revenue Procedure suspending the issuance of private rulings on mergers between two corporations where one owns a less-than-80% interest in the other. In the employee benefits area we commented on proposed regulations under Section 162(m) (the million dollar compensation limit). In the foreign area we commented on (1) the Section 6662(e) regulations (relating to penalties for transfer pricing errors), (2) a Notice proposing changes to the Section 367(a) regulations, and (3) proposed conduit financing regulations.

The Tax Section often comments on new statutory provisions before proposed regulations are issued, making suggestions as to what the proposed regulations should provide. Comments in this category included suggestions for regulations under (1) Section 475 (the mark-to-market rule for securities dealers), (2) Section 108(c) (forgiveness of real property debt), and (3) Section 197 (amortization of intangibles).

The Tax Section also comments on long-standing issues under preexisting statutory provisions that, based on the experience of its members, should be resolved by the government by regulations or rulings. Our proposals in this category related to (1) a proposed special PFIC election for preferred stock, (2) the assumption of contingent liabilities in asset acquisitions, (3) the application of the Yoc Heating case following a qualified stock purchase, (4) a number of tax issues relating to professionals forming LLCs or LLPs, and (5) the comparability of the New York limited partnership law to the uniform partnership act, which is relevant for Federal entity classification purposes.

The Section also submitted a letter urging the adoption of final regulations on securities lending transactions, and a letter suggesting a number of issues that should receive the highest priority on the 1995 IRS Business Plan.

Officers and other members of the Section often meet informally with government officials to discuss pending projects. As is customary, the officers met with Assistant Secretary Samuels and his staff to discuss pending Treasury projects. Because of the absence of a permanent IRS Chief Counsel during most of the year, the customary meeting at the IRS was not held.

Members also attended a number of meetings with Treasury and IRS officials to discuss specific projects, including withholding

1994-95 Tax Section Programs

A. FALL PROGRAM, MOHONK MOUNTAIN HOUSE,  
SEPTEMBER 30 - OCTOBER 2, 1994

FRIDAY. SEPTEMBER 30

4:00 p.m. Registration - Lake Lounge  
6:30 p.m. Welcoming Reception - West Lounge  
7:30 p.m. Dinner - West Dining Room

SATURDAY. OCTOBER 1

8:00 a.m. Breakfast - West Dining Room  
8:00 a.m. Registration - Outside Upstairs Parlor  
8:55 a.m. GENERAL SESSION - UPSTAIRS PARLOR

Welcoming Remarks  
Michael L. Schler  
Section Chair

9:00 a.m. NEW YORK STATE AND CITY COMBINED REPORTING

Speakers: Honorable James W. Wetzler Maria T. Jones  
New York State Commissioner of Rosenman & Colin  
Taxation and Finance New York City  
Albany Ellen E. Hoffman  
Honorable John P. Dugan Director, Tax Law Division  
President New York City Department of  
New York State Tax Appeals Brooklyn  
Tribunal Troy

10:00 a.m. LIMITED LIABILITY COMPANIES

Speakers: Thomas A. Humphreys Bruce Kayle Hadley & McCloy  
Brown & Wood Milbank, Tweed, New York City  
Monte A. Jacket  
Deputy Associate Chief Counsel  
(Domestic-Technical)  
Internal Revenue Service  
Washington, DC

10:45 a.m. Coffee Break

11:00 a.m. THE PARTNERSHIP ANTI-ABUSE REGULATION

Speakers: Andrew N. Berg Glen A. Kohl  
Debevoise & Plimpton Tax Legislative Counsel  
New York City United States Treasury Department  
Washington, DC  
William B. Brannan Dennis E. Ross  
Cravath, Swaine & Moore Davis Polk & Wardwell  
New York City New York City  
Monte A. Jackel  
Deputy Associate Chief Counsel  
(Domestic-Technical) Internal  
Revenue Service  
Washington, DC

12:15 p.m. Cocktail Reception and Luncheon - Conference House

Spouses and guests are invited to attend.

Speaker: Cynthia G. Beerbower, Deputy Assistant Secretary (Tax  
Policy)

United States Treasury Department Washington, DC

7:00 p.m. Cocktail Reception - West Lounge

7:45 p.m. Dinner and Dancing - West Dining Room

Memorandum and report regarding Report on "Excess Principal Amount" of Securities Under Section 356 from Michael Schler dated January 31, 1995 to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Dept, of the Treasury, Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service, Kenneth J. Kies, Chief of Staff, Joint Committee on Taxation, Mark Prater, Chief Tax Counsel, Senate Finance Committee, Joseph H. Gale, Minority Tax Counsel, Senate Finance Committee, James B. Clark, Chief Tax Counsel, House Ways & Means Committee and John Buckley, Minority Tax Counsel, House Ways & Means Committee

Report on Notice 94-93 ("Inversion Transactions") and Rev. Proc. 94-76 ("Downstream Reorganizations") prepared by the Committee on Corporations together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael Schler dated January 31, 1995.

Checks should be made payable to New York State Bar Association Tax Section and report request directed to:

Barbara J. Mahan  
Tax Section Liaison  
New York State Bar Association  
One Elk Street, Albany, New York 12207

There is no charge for reports for New York State Bar Association Tax Section members.

taxes on foreigners, mediation of tax disputes, and the model income tax treaty.

Finally, in the administrative area, the Section submitted a draft proposal for IRS mediation of unagreed cases in Appeals. Shortly thereafter the IRS came out with its own proposal with many similarities to ours, and we will continue to make suggestions to the Service on its proposal.

### III. New York State and City Legislation

The Section gave extensive comments, as it does every year, on the State budget bill, which traditionally includes numerous tax proposals. The Section also continued its long-standing active support for New York limited liability company legislation, which was finally enacted into law in 1994. The Section also expressed its continuing support for conformity between State and City tax legislation (and regulations) to the extent possible.

The Section was also active in opposing, at the NYSBA level, a proposal by the Trusts and Estates Law Section that the NYSBA recommend an amendment to the New York Estates, Powers and Trusts Law to limit a spouse's right of election against the will of a decedent. The issue involved in part the availability of a charitable contribution deduction for Federal purposes. In light of our opposition (as well as that of other sections), the proposal was not adopted.

At the New York City level, the Section continued its support for a bill amending the Unincorporated Business Tax, and is actively involved in a working group considering further amendments.



#### IV. Other State and City Matters

The Section commented on several proposed State tax regulations, including regulations relating to (1) commodity investment partnerships, and (2) real property gains taxes and transfer taxes. The officers of the Tax Section also met with then-Commissioner Wetzler to discuss the then-pending revised nonresident audit guidelines in light of our criticism of the prior guidelines; new guidelines were subsequently issued, and we submitted a letter praising them as a marked improvement over the earlier version. The Section also wrote a letter suggesting that the state permit business trusts to be classified in the same manner that they are classified for Federal purposes, a position that the State subsequently adopted.

We also submitted two rounds of comments on proposed rules of practice before the Division of Tax Appeals, and urged again that hearings be held throughout the State rather than only in Troy.

The Section is also participating in a City task force dealing with attribution of expenses, and is coordinating with the State on a similar project.

#### V. Continuing Legal Education

Members of the Section's CLE and Pro Bono Committee organize and participate in a number of programs providing continuing legal education to members of the Bar. A number of programs were offered around the State this year, including several dealing with limited liability companies, and others dealing with State and City tax audits and tax litigation. The Section also co-sponsored with the Association of the Bar of the

City of New York an evening program discussing issues that arise when professional organizations wish to become LLCs or LLPs; this program was free to the public and was attended by hundreds of persons.

## VI. Tax Section Meetings

The Section had its "Summer" meeting at Mohonk the weekend of October 1-2. A copy of the program is attached. We had panels on State and City combined reporting, limited liability companies, and the partnership anti-abuse regulation. The luncheon speaker was Cynthia Beerbower, the Deputy Assistant Secretary for Tax Policy and a former member of our Executive Committee. She requested that we help solve a number of pending issues before the end of my term in office. These problems were (1) the debt/equity problem, particularly in light of new financial products, (2) the problem of determining the owner of property for tax purposes, when legal ownership is separated from economic risk, (3) distinguishing between return of capital and income, such as in stripping or contingent interest transactions, (4) problems relating to entity classification in light of the expansion of LLCs and the failure of many provisions of the Code (and tax treaties) to deal with business conducted through partnerships, (5) tax rules for changing technology, such as computer software, and (6) different existing tax rules for different types of financial service entities whose activities are becoming more and more similar. I regret to announce that we have not yet completely solved any of these problems. We will keep trying, but first have to solve some serious technical issues arising under the Rule Against Perpetuities.

At the Annual Meeting on January 24, 1995, our luncheon speaker was The Honorable Margaret M. Richardson, Commissioner of

Internal Revenue. We had an expanded set of morning programs, with programs in two rooms running simultaneously. This was possible because we changed our meeting date from Thursday to Tuesday, and we hope that

Division of Tax Appeals prepared by the Committee on New York State Income Taxes together with a cover letter to Ms. Roberta Mosely Nero, Secretary to the Tax Appeals Tribunal from Michael Schler dated December 19, 1994.

- 817            2.00            Report on Certain Issues Under Code Section 108(c) together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael Schler dated January 10, 1995.
- 818            3.50            Report on Issues to be Addressed in Regulations Under Section 197 prepared by the Committee on Cost Recovery together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael Schler dated January 13, 1995.
- 819            2.50            Memorandum regarding Comments by the Tax Section on Proposed New York Estates. Powers and Trusts Law Amendment from Michael Schler dated April 5, 1994 together with a cover

memos to John A. Williamson, Jr., Associate Executive Director, New York State Bar Association and cover memo to New York State Bar Association Tax Section Executive Committee dated January 13, 1995.

- 820 1.50 Letter dated January 19, 1995 to Hon. Bob Dole, United States Senate and Hon. Newt Gingrich, Speaker of the House, House of Representatives from Michael Schler regarding Legislative Restrictions on Tax Regulations.
- 821 2.50 Letter dated January 19, 1995 to Hon. Bill Archer, House of Representatives from Michael Schler regarding Tax Basis Indexing Provisions of H.R. 9.  
  
Committee on Taxation from Michael Schler dated December 9, 1994
- 812 5.50 50 Report on Large Partnership Provisions of the Tax Simplification Bill together with a cover memo to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury, Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service, Joseph H. Gale, Chief Tax Counsel, Senate Finance Committee, Mark Prater, Minority Chief Tax Counsel, Senate Finance

Committee, Don Longano, Chief Tax Counsel, House Ways & Means Committee, Janies B. Clark, Minority Tax Counsel and John L. Buckley, Chief of Staff, Joint Committee on Taxation from Michael Schler dated December 16, 1994.

- 813            3.00            Report on Proposed Intercompany Transaction Consolidated Return Regulations together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael Schler dated December 16, 1994.
- 814            2.00            Report on Proposed Regulations Issued Under Section 7701(1) of the Internal Revenue Code together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael Schler dated December 16, 1994.
- 815            1.00            Letter dated December 19, 1994 to President Bill Clinton from Michael Schler regarding Application of Proposed Regulatory Freeze to Tax Regulations.

Report on Proposed Amendments to the  
Rules of Practice and Procedure of  
the

the expanded programs were of interest to a more diverse group of members of the Bar. Our morning programs discussed partnerships (particularly the anti-abuse regulation and LLC ruling guidelines), financial products (particularly the proposed contingent debt regulation), state and city taxes, employee benefits, and individual and small business tax issues. Our afternoon program discussed tax provisions of the Contract With America, particularly capital gains indexing. A copy of the program for the meeting is attached.

#### VII. Conclusion

In closing, I would like to say that I found my year as Chair to be extremely stimulating and rewarding, as well as educational. This is in large part due to the opportunity to work closely with my fellow officers and friends Carolyn Lee, Rick Reinhold, and Dick Loengard, as well as with all the hard-working members of our Executive Committee. I am very grateful for the hard work of everyone. The Tax Section obviously could not produce quality work on all the subjects described above without enormous efforts by many very dedicated and talented persons.

I sincerely hope that everyone involved in these projects found the effort as rewarding as I did. I also urge those who have not been active in Tax Section activities to get involved. I am often told by members of our Executive Committee that working on our reports is the most interesting thing they do.

Going forward into next year, I know from personal experience that the Section is in good hands with Carolyn and the other officers, including the new Secretary, Steve Todrys, as well as next year's Executive Committee. Carolyn is tied with Peter Faber as the youngest person ever to be Chair of the Section. There will obviously be no shortage of work, given the extensive legislative activity that now appears to be in prospect in Albany as well as in Washington, and given the enormous number of proposed regulations issued by the IRS around the end of 1994. I am confident that Carolyn and the others will continue the good work of the Section.

Michael L. Schler



NEW YORK STATE BAR ASSOCIATION  
1994-1995 TAX SECTION REPORTS  
REPORT

<u>REPORT NUMBER</u>	<u>Price</u>	<u>Report</u>
780	1.00	Letter dated February 25, 1994 to Hon. James W. Wetzler, Commissioner of Taxation and Finance, from Michael L. Schler <u>regarding Proposed Franchise Tax Regulation Relating to Commodity Investment Partnerships.</u>
781	2.50	Report on <u>Section 475 Mark to Market Regulations</u> prepared by the Committee on Financial Instruments dated February 28, 1994 together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael L. Schler dated February 28, 1994.
782	6.50	Report on <u>Proposed and Temporary Regulations on Character and Timing of Gains and Losses from Hedging Transactions</u> together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury from Michael L. Schler dated March 4, 1994.

783                    2.00            Report on Proposed Regulations under Section 162(m) - the \$1 Million Limitation on Deductible Compensation prepared by the Committee on Nonqualified Employee Benefits and Committee on Qualified Plans dated March 4, 1994 together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael L. Schler dated March 4, 1994.

Internal Revenue Service from Michael Schler regarding 1995 Priorities.

808                    1.50            Report on Proposed Regulation Section 1.305-5 Relating to Constructive Distributions on Preferred Stock together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael Schler dated November 3, 1994.

809                    2.50            Report on The Conformity of New York's Revised Limited Partnership Act to the R.U.L.P.A. for Purposes of Entity, Classification Under Treasury

Regulation 301.7701-2 prepared by the Committee on Partnerships together with a cover letter to Hon. Stuart L. Brown, Chief Counsel, Internal Revenue Service from Michael Schler dated November 9, 1994.

810                    1.50            Letter dated December 9, 1994 to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael Schler regarding Tax Issues for Professional LLCs and LLPs.

811                    2.00            Report on Uniform Self-Employment Tax Treatment of Owners of Interests in Pass-Through Entities together with a cover memo to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury, Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service, Joseph H. Gale, Chief Tax Counsel, Senate Finance Committee, Mark Prater, Minority Chief Tax Counsel, Senate Finance Committee, Don Longano, Chief Tax Counsel, House Ways & Means Committee, James B. Clark, Minority Tax Counsel and John L. Buckley, Chief of Staff, Joint

- 801 1.50 Letter dated August 18, 1994 to Andrew S. Eristoff, Council member, Fourth District from Michael Schler regarding Introduction 417.
- 802 1.00 Letter dated August 19, 1994 to Hon. James W. Wetzler, Commissioner of Taxation and Finance from Michael Schler regarding State/Federal Conformity in Trust Classification.
- 803 1.00 Draft Technical Comments on GATT Revenue Provision Taxing Partnership Distributions of Marketable Securities together with a cover memo to Glen Kohl and John Buckley from Michael Schler dated September 9, 1994.
- 804 1.00 Letter dated September 29, 1994 to Stuart L. Brown, Associate Chief Counsel (Domestic), Internal Revenue Service from Michael Schler regarding Mediation of Unagreed Audit Cases.
- 805 1.50 Report on Business Plan; Yoc Heating Following Section 338 Qualified Stock Purchase together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal

Revenue Service from Michael Schler dated October 14, 1994.

- 806                    2.00            Report on Notice 94-46 under Section 367(a) together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael Schler dated October 18,1994.
- 807                    .50              Letter dated October 21, 1994 to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner,
- 784                    1.50            ANNUAL REPORT of the Tax Section dated January 27, 1994.
- 785                    1.50            Report on Proposed Qualified Electing Fund Election under Section 1295(a) together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael L. Schler dated March 18, 1994.
- 786                    4.00            Report on Governor's 1994-95 Budget Proposal together with a cover letter

to Hon. James W. Wetzler,  
Commissioner, Department of Taxation  
and Finance from Michael L. Schler  
dated March 22, 1994.

- 787                    1.00            Report on Business Plan: Assumption  
of Contingent Liabilities in Asset  
Acquisitions together with a cover  
letter to Hon. Leslie B. Samuels,  
Assistant Secretary (Tax Policy),  
Department of the Treasury and Hon.  
Margaret M. Richardson, Commissioner,  
Internal Revenue Service from Michael  
L. Schler date April 22, 1994.
- 788                    1.00            Report on OID Anti-Abuse Rule  
together with a cover letter to Hon.  
Leslie B. Samuels, Assistant  
Secretary (Tax Policy), Department of  
the Treasury and Hon. Margaret M.  
Richardson, Commissioner, Internal  
Revenue Service from Michael L.  
Schler date April 22, 1994.
- 789                    .50            Letter dated April 27, 1994 to Hon.  
Leslie B. Samuels, Assistant  
Secretary (Tax Policy), Department of  
the Treasury and Hon. Margaret M.  
Richardson, Commissioner, Internal  
Revenue Service from Michael L.  
Schler regarding Business Plan:  
Substitute Payments in Securities  
Lending Transactions.

- 790                    4.50            Report on Treasury Regulation § 1.704-3T and Certain Other Section 704(c) Matters prepared by the Committee on Partnerships together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael L. Schler dated April 25, 1994.
- 791                    4.00            Report on Proposed Amendments to State Real Property Transfer Tax and Gains Tax Regulations together with a cover letter to Hon. James W. Wetzler, Commissioner of Taxation and Finance from Michael L. Schler dated April 29
- 792                    1.00            Report on Proposed Amendments to the Rules of Practice and Procedure of the Division of Tax Appeals prepared by the Committee on New York State Income Taxes together with a cover letter to Ms. Roberta Mosely Nero, Secretary to the Tax Appeals Tribunal from Michael L. Schler dated May 26, 1994.
- 793                    4.50            Report on Proposed Financial Asset Securitization Investment Trusts ("FASIT") Legislation together with a

cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and John L. Buckley, Chief of Staff, Joint Committee on Taxation from Carolyn Joy Lee dated May 27, 1994.

- 794                    1.50            Report on Proposed Regulations (IL-21-911 Under Section 6662(e) of the Internal Revenue Code. Relating to the Accuracy- Related Penalty Applicable to Certain Section 482 Adjustments together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael L. Schler dated June 16, 1994
- 795                    .50              Letter dated June 23, 1994 to Hon. Mario M. Cuomo, Governor of the State of New York, from Michael L. Schler regarding Limited Liability Companies.
- 796                    1.00            Letter dated June 30, 1994 to Hon. Sheldon Silver, Speaker, NYS Assembly, Hon. Ralph J. Marino, Majority Leader, NYS Senate, Hon. Herman D. Farrell, Jr., Chair, Ways & Means Committee, NYS Assembly, Hon. Ronald B. Stafford, Chair, Finance



Committee, NYS Senate and Hon. Roy M. Goodman, Chair, Investigations, Taxation & Government Operations Committee, NYS Senate from Michael L. Schler regarding New York City Unincorporated Business Tax Reform. Senate Bill No. 1226-B. Assembly Bill No. 8828-A.

- 797                    5.00            Report on Partnership Anti-Abuse Regulation together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Dept, of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael L. Schler dated July 1, 1994.
- 798                    1.50            Report on Final Original Issue Discount Regulations together with a cover letter to Hon Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Michael L. Schler dated August 5, 1994.
- 799                    .50             Letter dated August 18, 1994 to Hon. James W. Wetzler, Commissioner of Taxation and Finance from Michael Schler regarding New York Nonresident Audit Guidelines.

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Letter dated August 18, 1994 to Hon.  
James W. Wetzler, Commissioner of  
Taxation and Finance from Michael  
Schler regarding Tax Policy Study.