REPORT #874

TAX SECTION

New York State Bar Association

Letter on the Social Security

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April 26. 1996

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Commissioner of Taxation and Finance
Department of Taxation and Finance
W.A. Harriman Campus Albany,
New York 12227

John Sweeney
Commissioner of Labor
New York State Department of Labor
State Campus, Building 12, Room 500
Albany, New York 12240

Dear Commissioner Urbach and Commissioner Sweeney:

The Social Security Domestic Employment Reform Act of 1994 (P.L. 103-387) significantly reduced the federal tax compliance burdens of employers of domestic service employees. Effective for calendar year 1995, tax returns (and payments) with respect to FICA, FUTA and voluntarily withheld income taxes are made in a single annual filing on Schedule H of the domestic employer's Form 1040. (See Section 3510 of the Internal Revenue Code.) Previously, the domestic employer was required to make quarterly reports and payments on Form 942 with respect to FICA taxes and voluntarily withheld income taxes, and to make annual reports and payment of unemployment taxes on Form 940. This dramatic simplification in the tax compliance requirements for dometic employers was based on the realization that compliance burdens that are appropriate for most businesses are not appropriate in the domestic employment context. Consistent with that realization was the expectation that a simplified system that was understandable by the affected taxpayers would lead to greater compliance with the law.

Although New York's domestic employers have benefitted from the federal simplification, they continue to bear a significant compliance burden under New York State law. Currently, under New York State's unemployment insurance law (Article 18 of the Labor Law, Sections 500-643), domestic employers are required to make quarterly filings and payments (Form WRS) to the Department of Labor. In addition, if the domestic employer and employee voluntarily agree to the withholding of income taxes, the employer is required to make quarterly filings and payments to the New York State Department of Taxation and Finance with respect to those amounts as well (Forms WT-4-A or WT-4-AEZ, WT- 4-B).

Furthermore, a recent change in New York law increases rather than diminishes the filing burdens, by requring, effective January 1, 1996, a domestic employer to make quarterly filings of Form WT-4-B with the New York State Department of Taxation and Finance even if no income tax is withheld from the employee's pay (Chapter 302 of the Law of 1995). Accordingly, a New York domestic employer must now file from eight to twelve forms each year, just to comply with the requirements of New York's labor and income tax laws.*

We believe that simplification in reporting and payment of employment taxes for domestic employers will bring higher levels of compliance to New York State. Accordingly, we urge New York to enter into an agreement with the Secretary of the Treasury, as authorized by Section 3510(f) of the Internal Revenue Code,

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* This new law, which is intended to transform New York State from a "wage request" to a "wage reporting" system with respect to unemployment insurance, is stated to bring efficiencies and economies to both employers and unemployment insurance claimants. (See Memorandum in Support, New York State Senate.) Although we cannot be certain, it would seem that any efficiencies realized by the Department of Labor in the processing of unemployment claims by the small sub-category of domestic worker claimants cannot possibly outweigh the significant compliance burdens that are being imposed on domestic employers. As the United States Congress finally realized in enacting Section 3510 of the Internal Revenue Code, any system that treats domestic employers like miniature IBMs is a system with which too many domestic employers - either purposefully or innocently - will fail to comply.

whereby the U.S. Treasury will act as New York State's agent in collecting the State's unemployment insurance contributions. By coordinating the collection of employment taxes in this manner, the need for the domestic employer to make quarterly filings and tax payments will be eliminated. We also recommend repeal of the new law which requires quarterly filings of Form WT-4-B for a domestic employee even if no income tax is withheld. For the large number of domestic employers who do not enter into agreements to withhold income taxes, the elimination of this filing would eliminate the need for any New York State employment tax filings.

For those domestic employers and domestic employees who voluntarily agree to withhold income taxes, and who otherwise would be required to make quarterly filings and payments on Form WT-4-A or WT- 4-AEZ and Form WT-4-B, we recommend that New York conform its employment tax laws to the federal law, thus allowing domestic employers to file and pay income tax withholdings and wage reports on an annual basis as part of the employer's New York State personal income tax return (Form IT-201). We note that legislation to conform the New York law to the federal law in the filing and payment of unemployment insurance contributions has been introduced in the New York State Assembly (New York State Assembly Bill 5846). If for any reason, New York determines not to enter into the Section 3510(f) agreement with the U.S. Treasury Department, we recommend enactment of this bill, modified to include reporting and payment of voluntarily withheld income taxes and any required wage reporting.

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By enacting the Social Security Domestic Employment Reform Act of 1994, Congress recognized the benefit to taxpayers and government of a simple, streamlined regime for collecting domestic employment taxes. We urge New York State to follow this lead in lessening the tax compliance burdens on New Yorkers, while at the same time fostering an increase in tax compliance.

Very truly yours,

Richard L. Reinhold
Chair