

REPORT #910

TAX SECTION

New York State Bar Association

Letter on Legislation on New York S Corporations

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July 31, 1997

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Re: Legislation Relating to New York S Corporations
(QSSS Legislation) S 5522-A: A 8592 and S 5618; A
8593

Gentlemen:

On behalf of the Tax Section of the New York State Bar Association, I write to urge the prompt enactment into law of the two above referenced bills relating to the New York State tax treatment of S corporations

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and their subsidiaries (the "QSSS Legislation"). We understand that these bills have passed the Senate and are awaiting action by the Assembly.

This legislation amends New York State income tax treatment of S corporations to reflect recent changes in federal income tax treatment of these entities. In brief, the 1996 Small Business Jobs Protection Act included new rules permitting a S corporation to own a subsidiary corporation known as a Qualified Subchapter S Subsidiary ("QSSS"). For federal tax purposes, a QSSS is not considered to be a separate corporation but is included on the parent's tax return. The QSSS Legislation, drafted by the New York State Department of Taxation and Finance, is required in order to conform the New York State tax law to the federal changes where possible, and to prescribe the New York State tax treatment where conformity is not appropriate.

The Tax Section urges passage of the QSSS Legislation in order to achieve to the fullest extent possible, federal-state conformity in the tax treatment of S corporations and their subsidiaries. Without this legislation, there will be considerable uncertainty for taxpayers and the New York State Department of Taxation and Finance as to how to properly tax these entities as existing law is not adequate to accommodate to the federal changes. In addition, taxpayers will not have the flexibility to include in the tax return of a New York entity, non New York QSSS' or S corporation parents. This will increase the tax burden for New York taxpayers.

We commend the New York State Department of Taxation and Finance for taking the lead among the states in reacting promptly to the changes in the federal tax law by proposing to achieve as much conformity to the federal tax regime as is appropriate. Although the experiences over time of taxpayers and tax administrators with the federal changes and this QSSS Legislation may result in the identification of problems requiring additional legislative changes, the present proposal provides the guidance needed immediately. Failure to enact the QSSS Legislation now will result in tax compliance problems and burdens for both taxpayers and tax administrators. Consequently, we urge the Assembly to move as quickly as possible to pass the QSSS Legislation so that the tax treatment of S corporations and their subsidiaries will be clear for the current tax year.

If the Tax Section can be of any further assistance with regard to this legislation, please contact me.

Very truly yours,

Richard O. Loengard, Jr.

cc: Hon. George E. Pataki
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