



# New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>

## TAX SECTION

### 2002-2003 Executive Committee

#### SAMUEL J. DIMON

Chair  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017  
212/450-4037

#### ANDREW N. BERG

First Vice-Chair  
212/909-6288

#### LEWIS R. STEINBERG

Second Vice-Chair  
212/474-1656

#### DAVID P. HARTON

Secretary  
212/558-4248

#### COMMITTEE CHAIRS:

##### Bankruptcy and Operating Losses

Lawrence M. Garrett  
Stuart J. Goldring

##### Capitalization and Cost Recovery

David W. Mayo  
Alan J. Tarr

##### Character, Gains & Losses

Lisa A. Levy  
Erica W. Nijenhuis

##### Compliance, Practice & Procedure

Robert S. Fink  
Arnold Y. Kapieloff

##### Consolidated Returns

Jonathan Kustner  
Joel Scharfstein

##### Corporations

Kathleen I. Ferrell  
Jodi J. Schwartz

##### Employee Benefits

David A. Pratt  
Andrew W. Stumpff

##### Estates and Trusts

T. Randolph Harris  
Jeffrey N. Schwartz

##### Financial Instruments

Michael S. Farber  
David M. Schizer

##### Financial Intermediaries

Peter H. Blessing  
Andrew P. Solomon

##### Foreign Activities of U.S. Taxpayers

Kimberly S. Blanchard  
David R. Sicular

##### Individuals

Barbara T. Kaplan  
Sherry S. Kraus

##### Multistate Tax Issues

Robert E. Brown  
Paul R. Comeau

##### New York City Taxes

Robert J. Levinson  
William B. Randolph

##### New York State Franchise and Income Taxes

Maria T. Jones  
Arthur R. Rosen

##### New York State Sales and Misc.

Hollis L. Hyans  
Steven U. Teitelbaum

##### Partnerships

William B. Brannan  
Patrick C. Gallagher

##### Pass-Through Entities

Janet B. Korins  
Gary B. Mandel

##### Real Property

David E. Kahen  
Elliot Pisem

##### Reorganizations

Dale L. Ponikvar  
Diana L. Wolfman

##### Securitizations and Structured Finance

Robert T. Smith  
Paul R. Wysocicki

##### Tax Accounting

Yaron Z. Reich  
Marc L. Silberberg

##### Tax Exempt Bonds

Linda L. D'Onofrio  
John T. Lutz

##### Tax Exempt Entities

Dickson G. Brown  
Michelle P. Scott

##### Tax Policy

M. Carr Ferguson  
David S. Miller

##### U.S. Activities of Foreign Taxpayers

Stuart E. Leblang  
Emily McMahon

## MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE

Katherine M. Bristol  
William G. Cavanagh  
Benjamin J. Cohen  
Gary M. Friedman  
Karen Gibreath

Edward E. Gonzalez  
Alyse Grossman  
Kenneth H. Heitner  
Thomas A. Humphreys  
Sherwin Kamin

Charles I. Kingson  
James A. Locke  
Donald C. Lubick  
James Ross Macdonald  
Charles Morgan

Deborah L. Paul  
Ells L. Reemer  
Stuart L. Rosow  
Leslie B. Samuels  
David H. Schnabel

Elizabeth A. Smith  
Dana L. Trier  
Eugene L. Vogel

Gordon Warnke  
David E. Watts  
Victor Zonana

May 24, 2002

Honorable Pamela F. Olson  
Acting Assistant Secretary (Tax Policy)  
Department of the Treasury  
Room 1334 MT  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Honorable Charles O. Rossotti  
Commissioner  
Internal Revenue Service  
Room 3000 IR  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Dear Ms. Olson and Mr. Rossotti:

I am pleased to enclose the New York State Bar Association Tax Section Report No. 1014 which discusses some of the tax considerations relating to the recent series of "inversion" transactions and also comments on pending proposed legislation regarding these transactions.

We are of the view that some of the recent publicly announced outbound transactions which involve largely formalistic restructurings and are initiated to reduce U.S. tax are inappropriate. These transactions erode the U.S. corporate tax base and also diminish public perception of the fairness of the U.S. tax system, which is essential to our current voluntary compliance regime. Accordingly, even though we do not usually favor targeted legislative responses to specific transactions, we believe that a legislative response shutting down these transactions is appropriate.

## FORMER CHAIRS OF SECTION:

Samuel Brodsky  
Thomas C. Plowden-Wardlaw  
Edwin M. Jones  
Hon. Hugh R. Jones  
Peter Miller  
John E. Morrissey, Jr.  
Charles E. Heming

Ralph O. Winger  
Marlin D. Ginsburg  
Peter L. Faber  
Hon. Renato Baghe  
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. Canellis  
Michael L. Schler  
Carolyn Joy Lee

Richard L. Reinhold  
Richard O. Loengard  
Steven C. Todrys  
Harold R. Handler  
Robert H. Scarborough  
Robert A. Jacobs

We also think the inversion phenomenon highlights the need to examine certain aspects of our current tax system, particularly the rules for determining U.S. tax residency, the taxation of multi-national corporations and the rules relating to inbound and outbound investments. We believe a proper long-term response to the current troublesome transactions would involve a thorough review and some revision of these rules.

A thorough review will take time. We believe some of the recently announced public transactions are sufficiently troubling, however, that an immediate legislative solution is appropriate as an interim measure. Accordingly, we are generally supportive of S. 2119 introduced by Senators Baucus and Grassley on April 11, at least insofar as it deals with corporations which are more than 80% owned by their former shareholders. With respect to the portion of the legislation dealing with situations where former shareholders own between 50% and 80% we have some concerns, which are expressed in the Report.

We have serious doubts, however, whether the current proposed legislation is necessarily an appropriate permanent solution. For this reason, we recommend that any legislation enacted have a three-year sunset. This would provide sufficient time for a thoughtful consideration of the current system of U.S. taxation of multinationals, which we believe could result in more comprehensive legislation that would subsume the current proposed legislation.

We commend the Treasury for its thoughtful May 20 report on corporate inversion transactions, with due note that it was presented as a "Preliminary Report". We recommend that any legislation should be accompanied by a directive to the Secretary that the Treasury continue its study and reach some specific conclusions or alternative recommendations relating to the matters covered in the Preliminary

Report. As always, the New York State Bar Association Tax Section is prepared to assist this effort any way it can.

Respectfully submitted,

A handwritten signature in blue ink that reads "A. N. Berg". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

Andrew N. Berg  
First Vice Chair

cc:: Honorable B. John Williams, Jr.  
Honorable Eric Solomon  
Dale Collinson  
Robert P. Hanson

Enclosure

