



NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 PH 518.463.3200 www.nysba.org

TAX SECTION

2018-2019 Executive Committee

KAREN GILBREATH SOWELL

Chair
Ernst & Young LLP
1101 New York Ave. N.W.
Washington, DC 20005
202/327-8747

DEBORAH L. PAUL

First Vice-Chair
212/403-1300

ANDREW H. BRAITERMAN

Second Vice-Chair
212/837-6315

GORDON E. WARNKE

Secretary
212/997-0500

COMMITTEE CHAIRS:

Bankruptcy and Operating Losses

Stuart J. Goldring
David W. Mayo

Compliance, Practice & Procedure

Elliot Pisem
Bryan C. Skarlatos

Consolidated Returns

William Alexander
Richard Nugent

Corporations

Michael T. Mollerus
Linda Z. Swartz

Cross-Border Capital Markets

David M. Schizer
Andrew R. Walker

Cross-Border M&A

Yaron Z. Reich
Ansgar A. Simon

Employee Benefits

Robert C. Fleder
Andrea K. Wahlquist

Estates and Trusts

Alan S. Halperin
Joseph Septimus

Financial Instruments

Lucy W. Farr
Jeffrey Maddrey

"Inbound" U.S. Activities of Foreign

Taxpayers
Peter J. Connors
Peter F. G. Schuur

Individuals

Megan L. Brackney
Steven A. Dean

Investment Funds

John C. Hart
Amanda H. Nussbaum

Multistate Taxation

Arthur R. Rosen
Jack Trachtenberg

New York City Taxes

Sherry S. Kraus
Irwin M. Slomka

New York State Taxes

Paul R. Comeau
Joshua E. Gewolb

"Outbound" Foreign Activities of

U.S. Taxpayers
Andrew P. Solomon
Philip R. Wagman

Partnerships

Phillip J. Gall
Eric B. Sloan

Pass-Through Entities

James R. Brown
Edward E. Gonzalez

Real Property

Robert Cassanos
Marcy Geller

Reorganizations

Neil J. Barr
Peter A. Furci

Securitized and Structured

Finance
Daniel M. Dunn
John T. Lutz

Spin Offs

Lawrence M. Garrett
Joshua M. Holmes

Tax Exempt Entities

Stuart Rosow
Richard R. Upton

Treaties and Intergovernmental

Agreements
Lee E. Allison
David R. Hardy

MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE:

Daniel Z. Altman
William A. Curran
Tijana J. Dvornic
Pamela L. Endreny
Jason R. Factor

Kathleen L. Ferrell
Elizabeth T. Kessenides
Shane J. Kiggen
Stuart E. Leblang
William L. McRae

Kara L. Mungovan
Joel Scharfstein
Stephen E. Shay
Michael B. Shulman
Eric Solomon

Jonathan R. Talansky
Eric Wang
Sara B. Zablotney

Report No. 1396

June 7, 2018

The Honorable David J. Kautter
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable David J. Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William M. Paul
Principal Deputy Chief Counsel and
Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: *Report No. 1396 on Provisions of the New Tax Law Affecting Tax-Exempt Organizations*

Dear Messrs. Kautter and Paul:

I am pleased to submit Report No. 1396 that addresses several provisions impacting exempt organizations that were added to the Internal Revenue Code of 1986, as amended, by P.L. 115-97 (the "Act") on December 22, 2017. The Report addresses (i) Section 512(a)(6) (concerning the siloing of losses for purposes of calculating unrelated business income tax), (ii) Section 512(a)(7) (which treats certain fringe benefits as unrelated business taxable income ("UBTI")), (iii) certain international provisions of the Act and their impact on the calculation of taxes on net investment income under Sections 4940 and 4968 and the calculation of UBTI, (iv) Section 4960 (which imposes a 21% excise tax on remuneration over \$1 million and "excess parachute payments" paid to certain employees of exempt

FORMER CHAIRS OF SECTION:

Peter L. Faber
Alfred D. Youngwood
Gordon D. Henderson
David Sachs
J. Roger Mentz
Willard B. Taylor
Richard J. Hiegel

Herbert L. Camp
William L. Burke
Arthur A. Feder
James M. Peaslee
Peter C. Canellos
Michael L. Schler
Carolyn Joy Lee

Richard L. Reinhold
Steven C. Todrys
Harold R. Handier
Robert H. Scarborough
Robert A. Jacobs
Samuel J. Dimon
Andrew N. Berg

Lewis R. Steinberg
David P. Hariton
Kimberly S. Blanchard
Patrick C. Gallagher
David S. Miller
Erika W. Nijenhuis
Peter H. Blessing

Jodi J. Schwartz
Andrew W. Needham
Diana L. Wollman
David H. Schnabel
David R. Sicular
Stephen B. Land
Michael S. Farber

organizations), and (v) Section 4968 (which imposes a 1.4% excise tax on the net investment income of certain colleges and universities).

Each of the new provisions raises interpretive issues on which guidance from the Department of the Treasury and the Internal Revenue Service is needed. The report identifies questions with respect to the new statutory language and makes certain recommendations for guidance.

We appreciate your consideration of our recommendations and requests for guidance. If you have any questions or comments regarding this Report, please feel free to contact us and we will be glad to assist in any way.

Respectfully submitted,

A handwritten signature in black ink that reads "Karen G. Sowell". The signature is written in a cursive, flowing style.

Karen G. Sowell
Chair

Enclosure

Cc:

Thomas C. West
Tax Legislative Counsel
Department of the Treasury

Shelley de Alth Leonard
Deputy Tax Legislative Counsel
Department of the Treasury

Elinor Ramey
Attorney-Advisor
Department of the Treasury

Victoria A. Judson
Associate Chief Counsel (TEGE)
Internal Revenue Service

Janine Cook
Deputy Associate Chief Counsel (TEGE)
Internal Revenue Service