



New York State Bar Association

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

TAX SECTION

2004-2005 Executive Committee

LEWIS R. STEINBERG

Chair
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 8th Avenue
New York, NY 10019
212/474-1656

DAVID P. HARTON

First Vice-Chair
212/558-4248

KIMBERLY S. BLANCHARD

Second Vice-Chair
212/310-8799

PATRICK C. GALLAGHER

Secretary
212/446-4998

COMMITTEE CHAIRS:

Bankruptcy and Operating Losses

Lawrence M. Garrett
Stuart J. Goldring

Compliance, Practice & Procedure

Barbara T. Kaplan
Ellis W. Reemer

Consolidated Returns

Jonathan Kushner
Linda Z. Swartz

Corporations

Kathleen L. Ferrell
Jodi J. Schwartz

Employee Benefits

Karen G. Krueger
Max J. Schwartz

Estates and Trusts

T. Randolph Harris
Jeffrey N. Schwartz

Financial Instruments

Michael S. Farber
Erika W. Nijenhuis

Financial Intermediaries

David M. Schizer
Andrew P. Solomon

Foreign Activities of U.S.

Taxpayers

Peter H. Blessing
David R. Sicular

Multistate Tax Issues

Robert E. Brown
Paul R. Comeau

New York City Taxes

Robert J. Levinsohn
Irwin M. Slomka

New York State Franchise and

Income Taxes

Maria T. Jones
Arthur R. Rosen

Partnerships

William B. Brannan
David H. Schnabel

Pass-Through Entities

Gary B. Mandel
Andrew W. Needham

Real Property

David E. Kahen
Elliot Pisem

Reorganizations

Karen Gilbreath
Diana L. Wollman

Securitized and Structured

Finance

David S. Miller
Charles M. Morgan, III

Tax Accounting

David W. Mayo
Marc L. Silberberg

Tax Exempt Bonds

Margaret C. Henry
Stuart L. Rosow

Tax Exempt Entities

Dickson G. Brown
Michelle P. Scott

U.S. Activities of Foreign

Taxpayers

Yaron Z. Reich
Andrew Walker

MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE

William G. Cavanagh
Edward E. Gonzalez
Alyse Grossman
David R. Hardy

Jeffrey D. Hochberg
Sherwin Kamin
Arnold Y. Kapiloff
Charles I. Kingson

Janet B. Korins
Sherry S. Kraus
Jiyeon Lee-Lim
Deborah L. Paul

Matthew A. Rosen
Seth L. Rosen
Joel Scharfstein
Bryan C. Skarlatos

Gordon Warnke
David E. Watts
Paul R. Wysocki

January 11, 2005

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Commissioner Everson:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1076 on Proposed Regulations under Section 752 of the Internal Code issued by the Treasury Department and the Internal Revenue Service on August 12, 2004. The Proposed Regulations provide rules for taking into account obligations of disregarded entities for purposes of characterizing and allocating partnership liabilities under Treasury Regulation §1.752-2. The Proposed Regulations also make corresponding changes to the rules relating to pledges under that regulation.

The Proposed Regulations provide that for purposes of determining the extent to which a partner bears the economic risk of loss with respect to a partnership liability, payment obligations of a disregarded entity are taken into account only to the extent of the "net value" of the disregarded entity. As noted in the report, we support the approach of the Proposed Regulations.

Our comments are mainly technical in nature and/or constitute suggestions for clarifications. In response to a specific request in the preamble to the Proposed Regulations, the report does not recommend generally extending the rules of the Proposed Regulations relating to

FORMER CHAIRS OF SECTION:

Samuel Brodsky
Edwin M. Jones
Peter Miller
John E. Morrissey, Jr.
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
Michael L. Schler
Carolyn Joy Lee
Richard L. Reinhold
Richard O. Loengard
Steven C. Todrys
Harold R. Handler

Robert H. Scarborough
Robert A. Jacobs
Samuel J. Dimon
Andrew N. Berg

Do the Public Good • Volunteer for Pro Bono

disregarded entities to other business entities. However, the report does recommend expanding the anti-abuse rule of Treasury Regulation §1.752-2(j) specifically to cover certain cases involving substantially undercapitalized consolidated subsidiaries or pass through entities.

If you have any comments regarding this report, please do not hesitate to contact us.

Respectfully submitted,



Lewis R. Steinberg
Chair

Eric Solomon, Deputy Assistant Secretary (Regulatory Affairs)
Acting Deputy Assistant Secretary (Tax Policy)
Department of the Treasury

Robert Carroll, Deputy Assistant Secretary (Tax Analysis)
Department of the Treasury

Helen M. Hubbard, Tax Legislative Counsel
Department of the Treasury

Donald L. Korb, Chief Counsel, Internal Revenue Service
Nicholas J. De Novio, Deputy Chief Counsel (Technical)
Internal Revenue Service

Heather Maloy, Associate Chief Counsel (Passthrough & Special Industries)
Internal Revenue Service

William D. Alexander, Associate Chief Counsel (Corporate)
Internal Revenue Service