



NEW YORK STATE BAR ASSOCIATION

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

TAX SECTION

2010-2011 Executive Committee

PETER H. BLESSING

Chair
Shearman & Sterling LLP
599 Lexington Avenue
11th Floor
New York, NY 10022
212/848-4106

JODI J. SCHWARTZ

First Vice-Chair
212/403-1212

ANDREW W. NEEDHAM

Second Vice-Chair
212/474-1440

DIANA L. WOLLMAN

Secretary
212/558-4055

COMMITTEE CHAIRS:

Bankruptcy and Operating Losses

Stuart J. Goldring
Russell J. Kestenbaum

Compliance, Practice & Procedure

Elliot Pisman
Bryan C. Skarlatos

Consolidated Returns

Lawrence M. Garrett
Edward E. Gonzalez

Corporations

David R. Sicular
Karen Gilbreath Sowell

Cross-Border Capital Markets

Andrew Walker
Gordon Warrick

Employee Benefits

Hegina Olshan
Andrew L. Oringer

Estates and Trusts

Amy Heller
Jeffrey N. Schwartz

Financial Instruments

Michael S. Farber
William L. McRae

"Inbound" U.S. Activities of Foreign

Taxpayers

Peter J. Connors
David R. Hardy

Individuals

Paul R. Comeau
Sherry S. Kraus

Investment Funds

David H. Schnabel
Marc L. Silberberg

New York City Taxes

Maria T. Jones
Irvin M. Slomka

New York State Taxes

Robert E. Brown
Arthur R. Rosen

"Outbound" Foreign Activities of

U.S. Taxpayers

Andrew H. Braiterman
Yaron Z. Reich

Partnerships

David W. Mayo
Joel Scharfstein

Pass-Through Entities

James R. Brown
John Lutz

Real Property

Robert Cassanos
Jeffrey Hochberg

Reorganizations

Deborah L. Paul
Linda Z. Swartz

Securitizations and Structured

Finance

Jiyeon Lee-Lim
W. Kirk Wallace

Tax Exempt Entities

Elizabeth T. Kessenides
Richard R. Upton

S. Douglas Borisky
Kathleen L. Ferrell
Marcy G. Geller
Charles I. Kingson
Stephen Land

MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE

Robert J. Levinsohn
Lisa A. Levy
Vadim Mahmoudov
Gary B. Mandel
Douglas McFadyen

Charles M. Morgan
David M. Schizer
Peter F. G. Schuur
Ansgar Simon
Eric Sloan

Andrew P. Solomon
Eric Solomon

May 28, 2010

Honorable Michael Mundaca
Assistant Secretary
(Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

The enclosed report recommends that the Internal Revenue Service and Treasury develop a program of providing guidance on generic issues that arise under U.S. income tax treaties. The guidance would be unilateral, limited to issues that are determined under U.S. tax law. Given the relatively limited guidance today, we believe that further guidance, whether in regulations or rulings, would be extremely useful.

The report sets out a number of areas that we believe should be considered as candidates, including (1) the ability of taxpayers to rely on technical explanations of treaties, (2) the ownership of shares of stock through disregarded and other fiscally transparent entities, (3) the effect of reorganizations on the 12 month holding period required for the zero rate of withholding on subsidiary-parent dividends, (4) the treatment of business profits of fiscally transparent entities, (5) the "consistency" rule set out in Rev. Rul. 84-17, (5) the attribution of business profits to a permanent establishment under both more recent treaties that expressly incorporate the OECD Transfer Pricing Guidelines and "older" treaties that do not, (6) limitation on benefit articles and (6) treaty articles dealing with income of sportsmen and entertainers.

FORMER CHAIRS OF SECTION:

Edwin M. Jones
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
Lewis R. Steinberg
David P. Hariton

Kimberly S. Blanchard
Patrick C. Gallagher
David S. Miller
Erika W. Nijenhuis

We would be pleased to discuss these or any other treaty guidance issue with you if that would be helpful in formulating such a program.

Very truly yours,



Peter H. Blessing
Chair

cc: Michael Caballero
Deputy International Tax Counsel
Department of the Treasury

Manal Corwin
International Tax Counsel
Department of the Treasury

Michael A. DiFronzo
Deputy Associate Chief Counsel (International)
Internal Revenue Service

Emily S. McMahon
Deputy Assistant Secretary (Tax Policy)
Department of the Treasury

Steven A. Musher
Associate Chief Counsel (International)
Internal Revenue Service

Clarissa C. Potter
Deputy Chief Counsel (Technical)
Internal Revenue Service

Stephen E. Shay
Deputy Assistant Secretary
(International Tax Affairs)
Department of the Treasury

Lon B. Smith
National Counsel to the Chief
Counsel for Special Projects
Internal Revenue Service