



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 Pisem
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 Warnke

Employee Benefits

Regina 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
Irwin 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

December 20, 2010

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

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

The Honorable Michael Mundaca
Assistant Secretary
(Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Gentlemen:

I am pleased to enclose the New York State Bar Association Tax Section's Report on Uncertain Tax Positions in the Context of Mergers, Acquisitions and Spin-offs.

The Tax Section agrees with the Service's goal of consistency between the decision to record a reserve for an uncertain tax position on audited financial statements and the obligation to disclose the position on Schedule UTP. We believe that this approach generally operates soundly in the context of mergers, acquisitions and spin-off.

The Report discusses how we believe the requirements of Schedule UTP apply in the context of mergers, acquisitions and spin-offs and identifies areas where guidance would be helpful. We discuss acquisitions of a standalone target corporation, as well as acquisitions of a target that is a member of a selling consolidated group. We also briefly discuss the impact of the new requirements on the Service's policy of restraint in seeking tax accrual workpapers in the context of mergers, acquisitions and spin-offs.

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

FORMER CHAIRS OF SECTION:

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

Hon. Michael Mundaca, Hon. Douglas H. Shulman, Hon. William J. Wilkins
December 20, 2010
Page 2

We appreciate your consideration of our comments. Please let us know if you would like to discuss these comments or if we can be of assistance in another way.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter H. Blessing", with a long, sweeping flourish extending to the right.

Peter H. Blessing
Chair

Hon. Michael Mundaca, Hon. Douglas H. Shulman, Hon. William J. Wilkins
December 20, 2010
Page 3

cc: Deborah A. Butler
Associate Chief Counsel (Practice and Procedure)
Internal Revenue Service

Heather Maloy
Commissioner, Large and Mid-Size Business Division
Internal Revenue Service

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

Steven T. Miller
Deputy Commissioner for Services and Enforcement
Internal Revenue Service

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

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

Christopher B. Sterner
Deputy Chief Counsel (Operational)
Internal Revenue Service

Jeffrey Van Hove
Acting Tax Legislative Counsel
Department of the Treasury

Kathryn Zuba
Special Counsel
Office of Associate Chief Counsel (Practice and Procedure)