

GUIDELINES FOR THE PREPARATION OF TAX SECTION REPORTS

New York State Bar Association Tax Section Guidelines for Preparing Reports

1. Topics

Most of the Section's reports comment on proposed legislation and regulations. Some of the most useful and influential reports, however, instead bring to the government's attention areas of the law in need of reform or clarification.

The number of potential topics for reports is far greater than the number that Executive Committee members can prepare and review. In picking topics for reports, it is important to focus on those that are of greatest importance to the tax system and on which the Section can have particular influence.

2. Initiating Reports

Generally either the chairs of the relevant committee(s) or the Administrative Committee initiate reports. Committee chairs should monitor proposed legislation and regulations to determine when a report should be considered. Other members of the Executive Committee sometimes suggest report topics to the relevant chairs or to the Administrative Committee.

The Chair should be consulted before work starts on a report, both to discuss whether the proposed report is a good use of resources, and also to ensure that two committees do not begin work on reports on similar topics without coordination. The Chair should be kept informed of progress on a report so that it can be scheduled for consideration at the appropriate monthly meeting of the Executive Committee.

3. Responsibility for Preparation

Generally one or two member(s) of the Executive Committee are responsible for coordinating preparation of a report. Typically these are the chairs of the committee(s) responsible for the area of the law to be addressed. Occasionally, however, the person responsible is another Executive Committee member appointed by the Chair.

The responsible members generally begin by convening a "kick-off" meeting to gather comments, determine the approach to be taken and determine drafting responsibility. They send a notice of meeting to (a) all members of the Executive Committee (including former Chairs), (b) members of the working group. The responsible member or members will have discretion as to whether to invite all members of the relevant committee or committees to this kick-off meeting. It may also be appropriate to notify the "young lawyers" of the Section. The New York State Bar Association's office in Albany will provide each committee chair with the email addresses of the members of the relevant committee (and the "young lawyers").

It is important to try to involve members of the Section who are not members of the Executive Committee in preparing reports. Sometimes Section members have commented that they would like to participate in reports, but do not know when their committee is preparing one. With e-mail, it is easier and cheaper to keep committee members informed than when this could be done only by fax or mailing.

Executive Committee members responsible for preparing a report often draft it themselves, taking into account comments from Section members who came to the meeting or otherwise indicated

interest. Alternatively, the member or members responsible may be able to assign parts of the report to others for drafting, and then review and assemble them.

4. Conflicts and Disclosure of Client Interests

Executive Committee members should be sensitive to potential conflicts of interest. Because the Section's credibility depends on its reputation for objectivity, it is very important to avoid any appearance that reports are a form of client lobbying. The Executive Committee has not adopted a formal written policy on conflicts. The Executive Committee has, however, recognized the following principles (as described in the minutes of its April 1996 meeting): "(i) disclosure of conflicts by reason of client responsibilities and (ii) non-participation in Section projects where an Executive Committee member or the member's firm (to the member's knowledge) has been engaged by a client to influence a government policy." In the latter case, however, the member can "provide information and analysis to members of the Committee who are preparing reports."

5. Drafting

A report generally should begin with a clear summary of the key provisions of the proposed legislation or regulations or problem addressed and a summary of the report's recommendations. A report should be self-contained, and should be written in such a way that the reader can understand it without referring to other materials. The Section's reports benefit from comments from all members of the Executive Committee (including those who are not familiar with the issues discussed in the report). Therefore, reports should be accessible to a tax lawyer or government official who is not already familiar with the issues addressed and is not a specialist in the area. Obviously, the density and complexity of a report will vary depending on the subject matter. However, reports should be written in such a way that they are no more complicated and technical than required. Other things being equal, shorter is better.

Reports that deal with a single issue sometimes take the form of a letter for signature by the Chair on behalf of the Section.

Reports are most useful to government readers if they consider possible alternative resolutions of the issues addressed and present the arguments pro and con each alternative. Often the best way to convince readers of the recommended approach is to acknowledge its flaws, but to show by comparison that it is the best available alternative. Government officials also frequently are more interested in the Section's analysis of issues and alternatives than in its conclusions.

6. Review Prior to Executive Committee Consideration

Report drafts generally should be circulated for comment to the Chair and Section members who came to the meeting or otherwise indicated an interest before circulating them to the full Executive Committee. In general, a draft is not ready to be circulated to the Executive Committee until at least four or five people other than the author have read it and had a chance to comment.

7. Confidentiality

Without clearance from the Administrative Committee, draft reports should not be sent to or shared with people other than (a) Section members involved in preparation of the draft and (b) Executive Committee members. Under no circumstance should drafts of reports be sent to journalists, clients, IRS or Treasury lawyers, or other government officials. A report cannot be released publicly until it has been approved by the Executive Committee and revised to reflect the Executive Committee's decisions.

8. Consideration at Executive Committee Meeting

Once a draft is ready for consideration by the Executive Committee, it should be circulated (including to former Chairs) no later than close of business on the Wednesday before the meeting at which it is to be considered. It is generally most efficient to distribute drafts by e-mail. Some members do not have e-mail addresses, however, and drafts should be sent to them by other means. Executive Committee members are encouraged to engage in e-mail dialogue prior to the Executive Committee meeting. Including the entire Executive Committee in these e-mail exchanges is strongly encouraged. This will facilitate a more focused discussion at the meeting.

The Executive Committee member(s) responsible for the report describe the report's recommendations at the Executive Committee meeting and lead discussion. If another Section member significantly participated in the drafting, it is appropriate to invite him or her to the meeting in recognition of his or her work.

Typically, but not always, the Executive Committee approves a report subject to changes agreed to at its meeting. A draft report that has been approved is then revised by its author (in coordination with the Administrative Committee) to reflect the Executive Committee's discussion.

9. Submission

After a report has been revised, it is submitted to appropriate government officials. Unless the report is itself a letter, the report's author and/or the Chair draft a cover letter, which the Chair signs on behalf of the Section.

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