

TAX SECTION

New York State Bar Association

ANNUAL REPORT

January 29, 1987

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NEW YORK STATE BAR ASSOCIATION
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CHAIRMAN'S REPORT
NEW YORK STATE BAR ASSOCIATION
TAX SECTION
January 29, 1987
RICHARD G. COHEN

FEDERAL TAXATION - LEGISLATIVE

The period covered by this report, February 1, 1986 through January 31, 1987, saw the enactment of the Internal Revenue Code of 1986, with its sweeping changes from the 1954 Code rules. In an attempt to rationalize a rickety federal income tax structure, Congress lowered federal individual and corporate tax levels by approximately one-third. Simultaneously, it cut back on tax dispensations that had greatly reduced the number of taxpayers subject to the former high rates.

In 1985, the tax bill passed the House. During 1986, as the tax bill wended its way through Senate and Conference proceedings, the Tax Section filed a steady stream of reports, commenting on the bill's provisions. During this period, the Tax Section filed more than 20 reports with legislators, Congressional staff and Treasury officials. Commenting on pending legislation is an uncertain process, but it seems fair to say that the Section's comments received substantial attention, both from Congress and Treasury. And, while much of the Section's impact was on the nitty-gritty of the final legislation, the Section also had an impact on broad policy issues as well.

The Section's work included reports on the alternative minimum tax proposals - individual and corporate - on *General Utilities* repeal, on net operating loss rules, and on the branch level tax; all these reports had a measurable impact on the details of the final legislation.

A Tax Section report on the proposed disallowance of deductions for interest paid to certain related foreign parties hopefully played a role in killing that unreasonable legislative proposal. The Section's report on the proposed book income preference under the corporate alternative

minimum tax provided a significant analysis of that proposal. Our passions roused by Senator Moynihan, who addressed our Summer Meeting at Lake George, we supported the bill provisions restricting passive losses. The enactment of those restrictions hammered an important nail into the tax shelter coffin.

These are but a few of the reports filed on the legislation that became the Internal Revenue Code of 1986. During this busy year for comments on federal legislation, the Tax Section also found time to oppose a federal amnesty program for delinquent taxpayers on the grounds that it would have been unproductive and self-defeating, and to oppose a proposal, introduced in the Senate, that would have denied tax-exempt status to organizations that supported abortions.

FEDERAL TAXATION - ADMINISTRATIVE

During the past year, the Tax Section wrote to the Internal Revenue Service on the effective dates of Revenue Rulings 86-7 and 86-8, relating to commodities and financial futures. In late 1986 we wrote Assistant Secretary Mentz urging that state legislators be provided with federal tax data needed to revise state tax laws in light of the 1986 federal legislation.

The Section filed a report on the use of "mirror subsidiaries" and related techniques for minimizing federal income tax costs of certain corporate acquisitions. We recommended that the use of mirror subsidiaries be permitted, while noting that a strong dissenting group in the Tax Section opposed use of mirror subsidiaries. We also recommended that the consolidated return regulations be amended to eliminate acquisition techniques which would evade *General Utilities* repeal and permit a stepped-up basis with no corporate level tax. On January 6, 1987 Treasury announced that the consolidated return regulations would be amended to eliminate these techniques.

More recently, the Section filed a report discussing issues to be addressed in regulations on the branch level tax. And we filed a massive report commenting on proposed regulations on original issue discount and related time-value of money issues. That report was printed in the January 26, 1987 issue of *Tax Notes*, 800 copies of which were distributed to those attending Annual Meeting seminars.

NEW YORK STATE TAX MATTERS

Capping already distinguished careers as co-chairmen of the New York Tax Matters Committee, Paul Comeau and Arthur Rosen had the pleasant task this year of preparing a letter to Governor Cuomo, recommending that he sign legislation establishing a New York State tax tribunal, a concept which the Section had supported for many years.

A special committee headed by Gordon Henderson involved itself in New York State's response to federal tax reform, work that is still ongoing. To further enhance an already cordial working relationship with state tax officials, the Tax Section's Administrative Committee, together with Paul Comeau, Arthur Rosen and others, met with Commissioner Chu and Deputy Commissioner Dugan during the summer to discuss areas in which the Tax Section could work usefully with New York State tax officials.

NEW YORK CITY TAX MATTERS

An effort was also made to enhance the Tax Section's relationship with New York City. Incoming Chairman Donald Schapiro intends to establish a standing committee on New York City Tax Matters.

An important report on the unincorporated business tax was filed by the Section. In addition, during the year, the Section's committee on Income from Real Property, chaired by Martin B. Cowan and Arthur A. Feder, filed a number of reports on the troublesome New York City real property tax.

SUBCHAPTER C REFORM

The 1986 tax legislation directed Treasury to report back to Congress by January 1, 1988 with proposals for amending the corporate reorganization rules. To assist Treasury in that process, this Tax Section,

together with the American Bar Association Tax Section, is sponsoring an invitational conference on Subchapter C reform, to be held in Reston, Virginia, this Spring. At the Conference, academics and private practitioners will present papers before a group of their colleagues and government officials. The conference should further advance the already substantial contribution by private practitioners and academics to Subchapter C reform.

MID-YEAR MEETING

Our mid-year meeting was held at The Sagamore Hotel on Lake George, Bolton's Landing, New York, on July 18-20. We were fortunate to have as our luncheon speaker Senator Daniel P. Moynihan, United State's Senate.

Panelists at meeting seminars included David G. Glickman, former Deputy Assistant Secretary for Tax Policy; Donald C. Lubick, former Assistant Secretary for Tax Policy; Mark L. McConaghy, former Chief of Staff, Joint Committee on Taxation; Ronald Pearlman, former Assistant Secretary for Tax Policy; Paul B. Coburn, Secretary to the New York State Tax Commission; John P. Dugan, Deputy Commissioner and Counsel, New York State Department of Taxation and Finance; Dean Fuleihan, Deputy Secretary of the Assembly Ways and Means Committee; Abraham Lackman, Director of Fiscal Studies, New York State Senate Finance Committee; Frank Mauro, Secretary to New York State Assembly Ways and Means Committee; and Philip Pinsky, First Assistant Counsel to New York State Senate Majority.

Sydney R. Rubin served as program chairman. A distinguished group of speakers discussed federal and New York state issues. Tax Section members who served as panel chairmen included Paul R. Comeau and James S. Halpern.

ANNUAL MEETING

At the Annual Meeting in New York City on January 29, 1987, Senator Bob Packwood, our distinguished luncheon

speaker, provided valuable insights into the legislative process that produced the 1986 Code.

Panel speakers at Annual Meeting seminars included Richard D'Avino, Deputy Tax Legislative Counsel, Treasury; D. Kevin Dolan, Associate Chief Counsel (International), Internal Revenue Service; John P. Dugan, Deputy Commissioner and Counsel, New York State Department of Taxation and Finance; Neil D. Kimmelfield, Attorney Advisor, Treasury; Irwin A. Leib, Branch Chief, Corporation Tax Division, Internal Revenue Service; Robert J. Mason, Section Chief, Reorganization Branch, Corporation Tax Division, Internal Revenue Service; Frank J. Mauro, Secretary to New York State Assembly Ways and Means Committee; Donald E. Osteen, Division Director, Legislation and Regulations Division, Internal Revenue Service; Philip C. Pinsky, First Assistant Counsel to the New York State Senate Majority; Stephen E. Shay, International Tax Counsel, Treasury; LaBrenda G. Stodghill, Legislation Attorney, Joint Committee on Taxation; Eugene S. Sunshine, Deputy Commissioner for Tax Policy, New York State Department of Taxation and Finance.

Members of the Tax Section appearing as panel chairmen or panelists included William L. Burke, Herbert L. Camp, Paul R. Comeau, John A. Corry, Peter L. Faber, James S. Halpern, Gordon D. Henderson, Edward D. Kleinbard, Michael L. Schler, and Willard B. Taylor.

SEMINARS

To help our Tax Section membership keep up with the pace of tax law change, we sponsored a series of six seminars on the Tax Reform Act of 1986. These seminars, organized by a committee consisting of Richard Hiegel, Ruth Schapiro and Charles Morgan, were held in New York City in six consecutive weeks in October and November. Each session, lasting about two hours, presented a panel, generally consisting of one government official and three members of our

Executive Committee. We discussed the effect of the 1986 Act on:

- (a) business and investment activities of individuals;
- (b) disposition of wealth and compliance rules;
- (c) qualified retirement plans;
- (d) corporate acquisitions;
- (e) corporate tax base;
- (f) foreign activities of U.S. taxpayers and foreign taxpayers.

The seminars were offered free of charge and without advance registration. A total of over 4,200 interested practitioners attended.

CONCLUSION

My year as Chairman of the Tax Section has been a busy one. They say that there are two great moments in a man's life - when he buys a country house and when he sells it. Much the same can be said of being Chairman of the Tax Section. It's a great job to begin and a great one to end.

My special thanks go to Sydney R. Rubin, who organized the Summer meeting and assisted throughout the year in the substantial Continuing Legal Education activities of the Tax Section, and to Charles M. Morgan, who assisted Sydney in this work in the latter part of the year. I have already mentioned Paul Comeau's significant contributions to the Tax Section work, but I should mention here my gratitude for his assistance on numerous New York State tax projects in which he was an invaluable guide.

While it is difficult to single out individual members of a hard-working Executive Committee, in addition to those mentioned I am particularly grateful for the effort put in by (in alphabetical order) John A. Corry, Peter L. Faber, James S. Halpern, Gordon D. Henderson, Robert A. Jacobs, Edward E. Kleinbard, Richard O. Loengard, James M. Peaslee, James H. Peters, Richard L. Reinhold, Arthur R. Rosen,

Michael L. Schler, Willard B. Taylor, and Eugene L. Vogel, all of whom labored mightily on behalf of the Tax Section.

I have had the pleasure of serving on the Administrative Committee with three wonderful chairmen, Willard B. Taylor, Richard J. Hiegel and Dale S. Collinson, all of whom provided wisdom and assistance to me throughout this past year. And I have had the joy of working closely throughout this past year with my fellow Administrative Committee members, Donald Schapiro, Herbert L. Camp and William L. Burke. With the support of the new Tax Section Secretary, Arthur A. Feder, the Executive Committee and the Tax Section members, the coming year should be an exciting and fruitful one for the Tax Section.

Respectfully submitted,

RICHARD G. COHEN
Chairman

January 29, 1987

**NEW YORK STATE BAR ASSOCIATION
TAX SECTION**

Reports and Other Submissions during the
1986-1987 Year

I. Federal Taxes - Legislation

- A. Report of a Special Committee regarding Effective Dates of H.R. 3838 (February 19, 1986).
- B. Report of the Committee on Alternative Minimum Tax regarding Individual Alternative Minimum Tax Provisions of H.R. 3838 (April 1, 1986).
- C. Report of the Reorganizations Committee regarding H.R. 3838 Provisions Relating to General Utilities Repeal (April 15, 1986).
- D. Report of the Corporations Committee regarding Miscellaneous Corporate Provisions of H.R. 3838 (April 16, 1986).
- E. Letter of Committee on Unreported Income and Compliance to J. Roger Mentz, Assistant Secretary (Tax Policy) regarding a federal amnesty program for delinquent and errant taxpayers (April 18, 1986).
- F. Report of the Net Operating Losses Committee regarding pending legislative proposals for the treatment of net operating loss carryovers (May 13, 1986).
- G. Letter to J. Roger Mentz, Assistant Secretary (Tax Policy) concerning a proposed modification in the taxexempt bond arbitrage provisions (May 21, 1986).
- H. Report of the Tax-Exempt Bonds Committee on Subsection 802(e) of H.R. 3838, regarding deductibility of interest paid by financial institutions acquiring qualified tax-exempt obligations (May 30, 1986).
- I. Report of Committee on U.S. Activities of Foreign Taxpayers on proposed Branch Level Tax Proposals of H.R. 3838 (May 30, 1986).

- J. Supplemental Report of Committee on U.S. Activities of Foreign Taxpayers on Proposed Branch Level Tax of H.R. 3838 (June 20, 1986).
- K. Report of Committee on U.S. Activities of Foreign Taxpayers on Proposed Disallowance of Deductions for Interest Paid to Certain Related Foreign Parties (June 24, 1986).
- L. Report of the Personal Income Committee on Technical Comments on H.R. 3838 as Passed by the United States Senate on June 24, 1986 (July 15, 1986).
- M. Report of the Depreciation and Investment Credit Committee on Technical Comments on H.R. 3838 as Passed by the U.S. Senate on June 24, 1986 (July 15, 1986).
- N. Comments of the Insurance Companies Committee on H.R. 3838 (July 16, 1986).
- O. Comments of the Reorganizations Committee on H.R. 3838 (July 17, 1986).
- P. Report of the Alternative Minimum Tax and Corporations Committees Regarding Proposed Book Income AMT Preference in H.R. 3838 (July 17, 1986).
- Q. Report of the Commodities and Financial Futures Committee regarding Legislative Proposal of the CBOE on the Federal Tax Treatment of Certain Transactions Involving Listed Options Contracts (July 22, 1986).
- R. Letter of the Executive Committee to Senator Bob Packwood regarding Senator Humphrey's Proposal to Deny Tax-Exempt Status to Organizations That Perform, Finance or Provide Facilities for Abortions (July 22, 1986).
- S. Letter of the Executive Committee Supporting the Passive Loss Provisions of the Senate Bill (July 24, 1986).
- T. Letter of the Executive Committee Reaffirming Strong Opposition to Section 984 of the Senate Amendments to H.R. 3838 (August 1, 1986).

- U. Letters to the Hon. Dan Rostenkowski, the Hon. Bob Packwood, the Hon. J. Roger Mentz and the Hon. David H. Brockway, commenting on Section 641 of the House Bill on income inclusion when intangibles are transferred or licensed to related possessions corporations and foreign corporations (September 17, 1986).
- V. Report of the Committee on U.S. Activities of Foreign Taxpayers concerning Branch Profits Tax - Report on Issues to be Addressed in Regulations (January 2, 1987).
- W. Report of a Special Committee concerning Proposed Original Issue Discount Regulations (January 5, 1987).

II. Federal Taxes - Administrative

- A. Letter of the Committee on Commodities and Financial Futures to Commissioner Roscoe L. Egger, Jr. regarding effective dates for Revenue Rulings 86-7 and 86-8 (April 9, 1986).
- B. Letter to J. Roger Metz and David H. Brockway regarding providing State Legislatures with federal tax data (November 17, 1986).
- C. Report of the Corporations Committee on Mirror Subsidiaries and A Related Technique (December 9, 1986).
- D. Letter to J. Roger Mentz supporting the recommendation contained in the Mirror Subsidiaries and a Related Technique Report (dated December 9, 1986) concerning amendment of the consolidated return regulations (December 30, 1986).
- E. Report of the Committee on Foreign Activities of U.S. Taxpayers with respect to Regs. §35a.9999-5(f) on withholding tax on interest paid to certain foreign persons (January 19, 1987).

III. New York State Tax Matters

- A. Letter to Governor Cuomo endorsing removal of a discriminatory rule for pension deductions by professional corporations (March 28, 1986).
- B. Report of the Interstate Commerce Committee regarding S. 1974 and H.R. 3980 prohibiting state taxation on a worldwide unitary basis (April 15, 1986).
- C. Report of the Sales, Property and Miscellaneous Committee regarding the proposed Interstate Sales and Use Taxation Act (May 13, 1986).
- D. Report by Special Committee concerning recommendations regarding New York State's response to Federal tax reform (June 19, 1986).
- E. Letter to the Honorable Evan Davis, Chief Counsel to the Governor, recommending Gov. Cuomo sign Tax Tribunal legislation (July 15, 1986).

IV. New York City Tax Matters

- A. Report by Special Committee commenting on New York City Department of Finance proposal to amend the unincorporated business tax (August 4, 1986).
- B. Report of Income from Real Property Committee on New York City Real Property Transfer Tax (November 20, 1986).

V. Outlines for Legal Education Program on 1986 Tax Reform Act

Outlines were prepared on the effect of the 1986 Act in the following areas:

- 1. Business and Investment Activities of Individuals (October 9, 1986).
- 2. Dispositions of Wealth and Compliance Rules (October 16, 1986).
- 3. Qualified Retirement Plans (October 22, 1986).
- 4. Corporate Acquisitions (October 30, 1986).
- 5. The Corporate Tax Base (November 6, 1986).
- 6. Foreign Activities of U.S. Taxpayers and Foreign Taxpayers (November 13, 1986).