

TAX SECTION

New York State Bar Association

Application of Proposed Regulatory
Freeze to Tax Regulations

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December 19, 1994

President Bill Clinton
The White House
Washington, D.C.

Application of Proposed Regulatory Freeze to Tax Regulations

Dear President Clinton:

I am writing on behalf of the Tax Section of the New York State Bar Association in connection with the immediate moratorium on federal regulations recently proposed in a letter sent to you by Senator Dole, Representative Gingrich and others. I understand you have rejected the proposal, but I am writing to express our views in case the same issue arises in the future.

We urge in the strongest possible terms that any moratorium on regulations not apply to tax regulations issued by the Internal Revenue Service and the Treasury Department. This position was adopted by a unanimous vote of our Tax Section Executive Committee at a meeting attended by 37 tax lawyers of all political persuasions. We took the same position in 1992 when President Bush was considering a moratorium on regulations. (A copy of our prior letter is attached.) Moreover, we note that the Dole/Gingrich letter contemplates the possibility of exceptions to the moratorium, although it does not mention tax regulations specifically.

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There are several reasons for our position. The Internal Revenue Code, which is the statute interpreted by tax regulations, is not a simple statute. It is well described in a GAO Report requested by Representative Houghton (Ranking Minority Member of the Oversight Subcommittee of the House Ways and Means Committee) and released this past week:

"Business officials and tax experts told us that, overall, the federal tax code is complex, difficult to understand, and in some cases indecipherable More specifically, they said businesses have difficulty with the code because of numerous and unwieldy cross-references and overly broad, imprecise, and ambiguous language."^{1/}

As a result of this complexity, taxpayers are extremely dependent upon tax regulations to tell them the tax consequences of their activities and transactions. An absence of regulations often results in great uncertainty about the tax consequences of proposed actions, even if the actions are ordinary and routine. The risk of unexpected tax liability resulting from tax uncertainties creates economic disincentives for normal commercial activity (and even burdens routine personal tax planning). The consequence is considerable economic inefficiency and dislocation. This effect applies to the entire spectrum of taxpayers, including large corporations, small businesses, real estate owners and individuals. An absence of regulations also results in increased tax litigation, because of differing interpretations of the Internal Revenue Code by IRS agents and taxpayers.

Taxpayers and taxpayer groups therefore spend an enormous amount of time and energy requesting (sometimes even begging) the IRS and Treasury to issue regulations in a variety of

^{1/} Tax System Burden: Tax Compliance Burden Faced by Business Taxpayers (GAO/T-GGD-95-42, December 9, 1994). The Appendix to the study states that the companies studied were mostly medium-sized, and that the results concerning the sources of tax compliance burden were consistent with the literature that was reviewed.

areas. The overwhelming complaint among taxpayers and taxlawyers is that the IRS and Treasury take too long to issue regulations, and that there are too few rather than too many regulations.

This again is confirmed by the GAO report quoted above. The report discusses at length problems that businesses have with the complexity of the Internal Revenue Code itself, but its only discussion of tax regulations is that the lack of regulations makes things worse:

"Of those [business officials and tax experts] who cited difficulties with IRS, problems identified were the amount of time IRS takes to issue regulations For many tax provisions businesses depend upon IRS regulations for guidance in complying with the code and correspondingly reducing their burden. Without timely regulations, according to some respondents, businesses must guess at the proper application of the law and then at times amend their decisions when the regulations are finally issued."

As a result, a freeze on tax regulations would be extremely costly and disruptive. An immediate freeze would already have precluded the issuance on December 15 of long-awaited (and taxpayer-favorable) proposed regulations concerning the tax treatment of an employer's reimbursement of travel expenses of the spouse of an employee. Solely for illustrative purposes, taxpayers are currently awaiting regulatory guidance from the IRS on such matters as environmental settlement funds, real estate mortgage workouts, purchases of computer software and other intangibles, and the substantiation requirements for charitable contribution deductions.

The situation involving tax regulations should be contrasted with the reasons for a regulatory moratorium stated in the Dole/Gingrich letter: that overregulation imposes costly burdens and slows economic growth and job creation. We have no particular expertise outside the tax area and pass no judgment on the merits of a moratorium generally. However, we do believe as tax lawyers that the stated reasons have little or no application to tax regulations, and that the

economic benefits of issuing tax regulations far outweigh any disadvantages. As a result, we strongly oppose a moratorium on tax regulations.

We are sending a substantially identical letter to Senator Dole and Representative Gingrich.

Very truly yours,

Michael L. Schler
Chair, Tax Section

cc: Hon. Lloyd Bentsen
Hon. Leslie B. Samuels
Hon. Cynthia G. Beerbower
Hon. Margaret M. Richardson
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December 19, 1994

Senator Bob Dole
United States Senate
Washington, D.C. 20510Representative Newt Gingrich
House of Representatives
Washington, D.C. 20515Application of Proposed Regulatory
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Michael L. Schler
Chair, Tax Section

cc: Senator Thad Cochran
Senator Trent Lott
Senator Daniel Patrick Moynihan
Senator Don Nickles
Senator Bob Packwood

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January 22, 1992

President George Bush
The White House
Washington, D.C.

Dear President Bush:

On behalf of the Tax Section of the New York State Bar Association, I strongly urge that any moratorium on regulations you announce not apply to regulations issued by the Internal Revenue Service.

Representatives of the Internal Revenue Service have announced that a significant number of regulations on which they are working are likely to be issued in proposed or final form during the next three months. A number of these regulations interpret provisions of the Internal Revenue Code that were enacted more than five years ago. United States taxpayers, including corporations, need the interpretative assistance these regulations will provide.

Press reports indicate that the goal of a regulatory moratorium is to stimulate the economy by removing costly and burdensome regulations that affect U.S. businesses. Issuance of these tax regulations, however, would for the most part benefit U.S. businesses, by resolving uncertainties that inhibit productive activity.

The 1981 moratorium ordered by President Reagan specifically excluded regulations issued by the Internal Revenue

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Edwin M. Jones
Hon. Hugh R. Jones
Peter Miller

Service. Any moratorium you order should do likewise.

Respectfully submitted,

James M. Peaslee
Chair

cc: Hon. Kenneth W. Gideon
Hon. Fred T. Goldberg, Jr.
Abraham N.M. Shashy, Jr., Esq.