

TAX SECTION

New York State Bar Association

Tax Section Annual Report

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Tax Report #784

NEW YORK STATE BAR ASSOCIATION

TAX SECTION

ANNUAL REPORT

January 27, 1994

NEW YORK STATE BAR ASSOCIATION
Tax Section Executive Committee for 1993-1994
OFFICERS

PETER C. CANELLOS Chair	MICHAEL L. SCHLER First Vice-Chair	CAROLYN JOY LEE Second Vice-Chair	RICHARD L. REINHOLD Secretary
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COMMITTEE CHAIRS

Bankruptcy Stuart J. Goldring Dennis E. Ross	Individuals Prof. Deborah H. Schenk Sherry S. Kraus	Reorganizations Andrew N. Berg Richard M. Leder
Compliance and Penalties Robert S. Fink Arnold Y. Kapiloff	Net Operating Losses Robert A. Jacobs Kenneth H. Heitner	Sales, Property and Miscellaneous E. Parker Brown, II Paul R. Comeau
Consolidated Returns Patrick C. Gallagher Irving Salem	New York City Tax Matters Robert J. Levinsohn Robert Plautz	State and Local Taxation Arthur R. Rosen Sterling L. Weaver
Continuing Legal Education Victor F. Keen Thomas V. Glynn	New York State Tax Matters Robert E. Brown James A. Locke	Tax Accounting Matters Locke Elliot Pisem Mary Katherine Wold
Corporations Yaron Z. Reich Steven C. Todrys	Nonqualified Employee Benefits Stephen T. Lindo Loran T. Thompson	Tax Exempt Bonds Linda L. D'Onofrio Patti T. Wu
Estates and Trusts Kim E, Baptiste Steven M. Loeb	Partnerships Joel Scharfstein Stephen L. Millman	Tax Exempt Entities Harvey P. Dale Franklin L. Green
Financial Instruments Jodi J. Schwartz Esta E. Stecher	Pass-Through Entities Roger J. Baneman Thomas A. Humphreys	Tax Policy Reuven S. Avi-Yonah Robert H. Scarborough
Financial Intermediaries Bruce Kayle Richard C. Blake	Practice and Procedure Richard J. Bronstein Stuart E. Seigel	Tax Preferences and AMT Katherine M. Bristor Stephen B. Land
Foreign Activities of U.S. Taxpayers Philip R. West	Qualified Plans Stuart N. Alperin Kenneth C. Edgar, Jr.	U.S. Activities of Foreign Taxpayers Michael Hirschfeld Kenneth R. Silbergleit
Income from Real Property William B. Brannan Michelle P. Scott		

MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE

M. Bernard Aidinoff
Anne L. Alstott
Harold R. Handler
David P. Hariton
Charles I. Kingson

Edward D. Kleinbard
Richard O. Loengard, Jr.
Charles M. Morgan, III
Ronald A. Pearlman
Mikel M. Rollyson

Matthew A. Rosen
Stanley I. Rubenfeld
Dana Trier
Eugene L. Vogel
David E. Watts

FORMER SECTION CHAIRS

Edwin M. Jones
Hon. Hugh R. Jones
Peter Miller
John W. Fager
John E. Morrissey, Jr.
Charles E. Heming
Richard H. Appert
Ralph O. Winger
Hewitt A. Conway

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

2:30 p.m. Cocktail Reception and Luncheon - Ziegfeld Dining Room

Speaker:

Leslie B. Samuels, Assistant Secretary (Tax Policy)
United States Department of the Treasury Washington,
D.C.

:30 p.m. Cocktail Reception - Waterside Terrace

:30 p.m. Dinner and Dancing - Waterside Room

SUNDAY, JULY 25

:00 a.m. Registration - Concierge Desk in the Lobby

:30 a.m. Executive Committee Breakfast Meeting - Ziegfeld Dining Room
Open to all attorneys and guests

0:00 a.m. GENERAL SESSION - Waterside Room
PANEL DISCUSSION: ISSUES AND DEVELOPMENTS IN THE
CREATION AND OPERATION OF PARTNERSHIPS

Panelists:

Joel Scharfstein
Fried, Frank, Harris,
Shriver & Jacobson
New York City

Jose L. Berra
Attorney-Advisor
United States Department
of the Treasury
Washington, D.C.

William B. Brannan
Cravath, Swaine & Moore
New York City

Michael Hirschfeld
Winston & Strawn
New York City

2:00 p.m. Departure

.ANNUAL MEETING, NEW YORK MARRIOTT MARQUIS, NEW YORK CITY, JANUARY
27, 1994

PETER C. CANELLOS
TAX SECTION CHAIR, PRESIDING
Wachtell, Lipton, Rosen & Katz
New York City

MORNING PROGRAM
Westside Ballroom South, 5th Floor

30-8:45 a.m. BUSINESS MEETING AND ELECTION OF OFFICERS

00-10:30 a.m. REVENUE RECONCILIATION ACT OF 1993

PANEL CHAIR:

VICTOR F. KEEN

Cohen, Shapiro, Polisher, Shiekman and Cohen
Philadelphia, PA

SPEAKERS:

WILLARD B. TAYLOR
Sullivan & Cromwell
New York City

KENNETH C. EDGAR, JR.
Simpson Thacher & Bartlett
New York City

PETER v.Z. COBB
Deputy Chief of Staff
Joint Committee On Taxation
Washington, D.C.

This deliberative process resembles the editorial review of articles in major law reviews, a spirited college debate, or a judicial conference in chambers related to pending cases. I am as proud of our deliberative process as I am of the products of our efforts.

FEDERAL TAX LEGISLATION

A high priority for the new Clinton Administration was the enactment of major changes in the Internal Revenue Code. These changes were contained in the Revenue Reconciliation Act of 1993, which was considered during the Spring and Summer of 1993 and was passed by Congress in August of 1993.

In response to the requests of federal tax policy makers, including the speaker at the Annual Meeting, Leslie B. Samuels (Assistant Secretary, Tax Policy Treasury Department), the Section prepared reports on three critical sets of provisions contained in the Act:

1. Provisions dealing with capital gains and losses;
2. Compensation-related provisions; and
3. The International aspects of the Act.

These efforts were certainly facilitated by the close relationship between the Tax Section and Mr. Samuels, formerly an active participant in Tax Section matters. We are also proud of the fact that another of our active former members, Cynthia Beerbower, is now functioning as the Treasury Department's International Tax Counsel.

The reports dealing with the Revenue Reconciliation Act were highly critical of certain provisions. Some of these were abandoned in the course of consideration of the Act. Others were substantially modified to reflect the comments of the Tax Section and others. We have also worked with the Treasury Department to make sure that some of the provisions which were enacted – in particular the so called \$1 million cap on deductible compensation – are construed in such a way as to facilitate compliance and to be consistent with other regulatory schemes, such Securities Exchange Commission disclosure rules.

FEDERAL REGULATIONS

The Tax Section issued reports dealing with a number of proposed treasury regulations. These include two extensive reports dealing with original issue discount, one focusing on the basic taxing scheme outlined in proposed regulations and the other dealing with the complex subject of contingent payments. I believe that both reports made a major contribution to this difficult and important area. Other reports dealt with consolidated return

investment basis adjustments and Section 382 option attribution rules.

OTHER FEDERAL REPORTS

The Tax Section issued a number of reports dealing with important issues which were not the subject of pending regulation projects. These include a review of the numerous troublesome issues involved in bankrupt and troubled partnerships. This was a particularly timely subject, which benefited from the clear analytical approach which has been a trademark the Tax Section's activities.

Appendix II

Programs

A. *SUMMER PROGRAM, MONTAUK YACHT CLUB, JULY 23-25, 1993*

FRIDAY. JULY 23

4:00 p.m. Registration - Concierge Desk in the Lobby
6:30 p.m. Welcoming Reception - Waterside Terrace
7:30 p.m. Dinner - Waterside Room

SATURDAY. JULY 24

8:00 a.m. Breakfast - Ziegfeld Dining Room
8:00 a.m. Registration - Concierge Desk in the Lobby
9:00 a.m. GENERAL SESSION - Waterside Room

Welcoming Remarks

PETER C. CANELLOS

Section Chair

9:15 a.m.

**PANEL DISCUSSION: RECENT DEVELOPMENTS IN NEW YORK
TAXATION**

Panelists:

Arthur R. Rosen
Morrison & Foerster
New York City

Patricia L. Brumbaugh
Associate Attorney
New York State
Department of Taxation
and Finance Albany

Robert J. Levinsohn
Proskauer Rose Goetz &
Mendelsohn
New York City

Paul R. Comeau
Hodgson, Russ, Andrews,
Woods & Goodyear
Buffalo

Glenn Newman
Commissioner of Finance
New York City Department of Finance

10:30 a.m. Coffee Break

10:45 a.m. **PANEL DISCUSSION: *FEDERAL TAX LEGISLATION AND
OTHER RECENT DEVELOPMENTS***

Panelists:

Dana Trier
Cleary, Gottlieb, Steen &
Hamilton
New York City

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Howard, Darby & Levin
New York City

Robert H. Scarborough
Sidney & Austin
New York City

Esta Stecher
Sullivan & Cromwell
New York City

Philip R. West
Steptoe & Johnson
Washington, D.C.

Emily S. McMahon
Attorney-Advisor
United States Department
of the Treasury
Washington, D.C.

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Sidney & Austin
New York City

Esta Stecher
Sullivan & Cromwell
New York City

Philip R. West
Steptoe & Johnson
Washington, D.C.

Emily S. McMahon
Attorney-Advisor
United States Department
of the Treasury
Washington, D.C.

778 2.50 Report on issues to be addressed by Regulations under Sections 1.63(j) and 770(1) prepared by an ad hoc committee of the Tax Section dated January 24, 1994 together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary of the Treasury and Hon. Margaret Richardson, Commissioner, Internal Revenue Service from Peter C. Canellos dated January 25, 1994.

779 2.00 Report on Proposed Regulation § 1.1001-3 Relating To Modification of Debt Instruments prepared by the Committee on Tax Accounting Matters dated January 20, 1994 together with a cover letter to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret Richardson, Commissioner, Internal Revenue Service from Peter C. Canellos dated January 26, 1994.

Checks should be made payable to New York State Bar Association Tax Section and report request directed to:

Barbara J. Coluccio
Tax Section Liaison
New York State Bar Association
One Elk Street, Albany, New York 12207

NEW YORK STATE AND CITY LEGISLATION

As in the case of the federal legislation, state and city legislation required the Tax Section to respond to proposals on very short notice.

A lengthy report was filed dealing with the multitude of changes in state taxation reflected in the Governor's budget proposals. The report favored most of these proposals but criticized some on the grounds of fairness and administrability.

The Tax Section also worked with New York State officials to develop a sound tax regime for limited liability companies. Many states have adopted the LLC entity, and we are pleased to note that Governor Cuomo has commented favorably upon the LLC vehicle in his recent message to the legislature. Comments were also made in New York City legislation, including technical changes in the unincorporated business tax.

STATE REGULATIONS AND ADMINISTRATIVE ACTIONS

During 1993, the Tax Section filed two lengthy reports dealing with the content and administration of New York State's Residency Audit Guidelines. These reports were intended to permit essential audit activity to be conducted in a fair and efficient manner but without undue harassment of taxpayers. The State tax administrators and practitioners share the goal of dispelling taxpayer concerns over the residency audit program, which have caused some taxpayers to avoid contacts with New York. Such taxpayer concerns, whether or not warranted, can have an adverse economic impact on New York. We believe this subject remains one of great importance to the state and city and to taxpayers and practitioners.

CONTINUING LEGAL EDUCATION

The Continuing Legal Education Committee organized and presented a series of programs throughout the state dealing with the Revenue Reconciliation Act of 1993. Those programs were geared to individual practitioners, and were designed to facilitate compliance by small taxpayers. We believe they rendered a valuable service to the New York Bar and to tax payers.

PRO BONO ACTIVITIES

The commitment of the Tax Section to provide assistance to those in need is reflected both in the establishment of a formal committee to deal with these matters and in certain projects in which the Section is actively engaged at present. In particular, an ad hoc committee of the Tax Section is preparing an extensive report dealing with recent legislation imposing tax penalties on lobbying activities. Many advocacy groups which act for the poor and underprivileged are concerned that their activities may be hampered by the new legislation. Among the issues which are being considered in connection with this pending project are the Constitutional and legal implications of applying the new rules to such advocacy groups.

TAX SECTION MEETINGS

As in prior years, the Tax Section held a weekend summer meeting, which this year was sited at the Montauk Yacht Club on Long Island. In this wonderful setting, participants were able to gain valuable insights into federal and New York taxation. A copy of the program for the summer meeting is attached as Appendix II.

Instruments Under Proposed Regulation Section 1.1275-4 dated November 5, 1993 prepared by the New York State Bar Association Tax Section and members of the American Bar Association Tax Section Committee on Financial Transactions together with a cover memo to Leslie B. Samuels, Margaret Richardson and Harry L. Gutman from Peter C. Canellos dated November 9, 1993.

776 1.00 Report on Proposed Regulation 1.704 3 Relating to Allocations Under Section 704(c) of the Internal Revenue Code prepared by the Committee on Partnerships together with a cover memo to Leslie B. Samuels and Margaret Richardson from Peter C. Canellos dated December 15, 1993.

776A 1.00 Report on February 17.1993 Residency Audit Guidelines: Practical Experience and Suggested Changes prepared by the Committee on New York State Tax Matters together with a cover letter to Hon. James W. Wetzler, Commissioner of Taxation and Finance from Peter C. Canellos dated December 23, 1993.

777 .50 Letters dated January 4, 1994 to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret Milner Richardson, Commissioner, Internal Revenue Service from Peter C. Canellos regarding the Treasury and the Internal Revenue Service preparing a formal business plan for 1994.

with a cover memo to Harry L. Gutman, Margaret Richardson and Leslie B. Samuels from Peter C. Canellos dated September 2, 1993.

771 2.50 Report on Recommended Guidance Relating to \$1 Million Limitation on Deductible Compensation Under Section 162(m) together with a cover memo to Harry L. Gutman, Margaret Richardson and Leslie B. Samuels from Peter C. Canellos dated September 27, 1993.

772 1.00 Report on Proposed Amendment to Rules Relating to the New York City Real Property Transfer Tax prepared by the Committee on New York City Tax Matters together with a cover letter to Simon G. Salas, Deputy Commissioner for Legal Affairs from Robert J. Levinsohn dated October 15, 1993.

773 .50 Letter dated October 20, 1993 to Hon. Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret Richardson, Commissioner of Internal Revenue, Internal Revenue Service from Peter C. Canellos regarding Equal Value Rule of Proposed Regulation 1.382-2T (f) (18) (i).

774 1.50 Report on Definition of Subsidiary Under New York State Tax Law prepared by the Committee on State and Local Taxes together with a cover letter to Hon. James W. Wetzler, Commissioner of Taxation and Finance from Peter C. Canellos dated October 22, 1993.

75 6.00 Report and recommendations for the Treatment of Contingent Debt

At the annual meeting, there were panels dealing with the Revenue Reconciliation Act of 1993, recent changes in the taxation of capital gains and losses and current developments in New York and federal tax law. Leslie Samuels, the luncheon speaker, described legislative and regulatory developments in 1993 and prospects for 1994. The annual meeting is further described in the program contained in Appendix II.

In closing, I would like to thank my fellow officers and good friends, Michael L. Schler, Carolyn Joy Lee and Richard L. Reinhold, as well as all of the other members of the Executive Committee and the Tax Section for a truly wonderful experience as chair.

Peter C. Canellos

- 765 1.00 Letter dated June 23,1993 to Hon. Daniel P. Moynihan, Chairman, Finance Committee, U.S. Senate from Peter C. Canellos regarding Repeal of the Stock- for-Debt Exception.
- 766 4.00 Report on Certain Issues Relating to Troubled Partnerships prepared by the Committees on Partnership and Bankruptcy together with a cover letter to Margaret Richardson, Commissioner, Internal Revenue Service from Peter C. Canellos dated June 28, 1993.
- 767 2.00 Report on Proposed Original Issue Discount Regulations together with a cover letter to Margaret Richardson, Commissioner, Internal Revenue Service from Peter C. Canellos dated July 1, 1993.
- 768 1.50 Report on Proposed Section 382(1) (5) Regulations prepared by the Committee on Net Operating Losses together with a cover letter to Margaret Richardson, Commissioner, Internal Revenue Service from Peter C. Canellos dated July 28, 1993.
- 769 5.50 Report on Revenue Reconciliation Bill of 1993. Affecting the Taxation of Capital Gain. Provisions Affecting International Business. Compensation-Related Provisions of H.R. 2141 together with a cover letter to Leslie B. Samuels, Assistant Secretary (Tax Policy), U.S. Department of the Treasury from Peter C. Canellos dated June 11, 1993.
- 770 6.50 Report on Proposed Regulations on Consolidated Return Investment Adjustments and Related Matters together

January 26, 1993 together with a cover letter to Hon. Mario M. Cuomo, Governor of the State of New York from John A. Corry dated January 27, 1993.

- 749 .50 Letter dated January 26,1993 to Ellen E. Hoffman, Esq., Director, Tax Law Division, Department of Finance from John A. Corry regarding Comments on Amendments to the Rules relating to New York City Commercial Rent Tax.
- 750 2.00 Report on Regulations to be Issued Under Section 246(c) Restricting the Dividends Received Deduction prepared by the Corporations Committee together with a cover letter to Michael P. Dolan, Acting Commissioner, Internal Revenue Service from Peter C. Canellos dated February 23,1993.
- 751 3.00 Report on Proposed Section 382 Option Attribution Rules dated February 18, 1993 prepared by the Committee on Net Operating Losses together with a cover letter to Michael P. Dolan, Acting Commissioner, Internal Revenue Service from Peter C. Canellos dated February 26, 1993.
- 752 1.50 Report on Proposed Regulations Implementing Notice 89-37 dated March 3, 1993 prepared by the Corporations Committee together with a cover letter to Michael P. Dolan, Acting Commissioner, Internal Revenue Service from Peter C. Canellos dated March 9, 1993.
- 753 1.50 Report on New York City Unincorporated Business Tax dated March 10, 1993 together with a cover letter to

Mr. William Thomas, Deputy Commissioner for Policy, Department of Finance from Peter C. Canellos dated March 18, 1993.

- 754 1.50 ANNUAL REPORT of the Tax Section dated January 28, 1993.
- 755 3.00 Report on Governor's 1993-94 Budget Proposals together with a cover letter to Hon. James W. Wetzler, Commissioner of Taxation and Finance from Peter C. Canellos dated March 30, 1993.
- 756 1.00 Letter dated April 14, 1993 to Mr. William Thomas, Deputy Commissioner for Policy, Department of Finance from Peter C. Canellos regarding Unincorporated Business Tax.
- 757 3.00 Report on Generation-Skipping Transfer Tax prepared by the Committee on Estates and Trusts dated April 19, 1993 together with a cover letter to Michael P. Dolan, Acting Commissioner, Internal Revenue Service from Peter C. Canellos dated April 21, 1993.
- 758 3.50 Report on Proposed Treasury Regulation §1.514 (c) -2 dated April 23, 1993 together with a cover letter to Michael P. Dolan, Acting Commissioner, Internal Revenue Service from Peter C. Canellos dated April 27, 1993.
- 759 1.50 Letter dated April 27, 1993 to Harry L. Gutman, Chief of Staff, Joint Committee on Taxation, U.S. House of Representatives from Peter C. Canellos regarding H.R. 13 Anti-Deferral Legislation.

- 760 .50 Letter dated April 27, 1993 to Mr. Patrick J. Bulgaro, Director, New York State Division of the Budget and Mr. Robert L. Gray, New York State Society of CPA's from Peter C. Canellos regarding Limited Liability Companies.
- 761 2.00 Letter dated May 24, 1993 to Mr. William Thomas, Deputy Commissioner for Policy, Department of Finance from Peter C. Canellos regarding the pending unincorporated business tax legislation together with the bill in the form it is to be introduced in the State Legislature and the accompanying Memorandum In Support.
- 762 1.00 Letter dated June 2, 1993 to Hon. Dan Rostenkowski, Chairman, Committee on Ways and Means, U.S. House of Representatives from Peter C. Canellos regarding Effect of the Supreme Court decision in Newark Morning Ledger Co. v. U.S. on proposed legislation on amortization of intangibles.
- 763 1.50 Letter dated June 21, 1993 to Deborah R. Bierbaum, Deputy Commissioner, Office of Tax Policy Analysis, New York State Department of Taxation and Finance and Brien R. Downes, Deputy Counsel, Ways and Means Committee, New York State Assembly from Peter C. Canellos regarding Draft LLC Tax Legislation.
- 764 .50 Letter dated June 21, 1993 to Hon. Mario M. Cuomo, Governor of the State of New York from Peter C. Canellos regarding Limited Liability Companies.

Appendix I

NEW YORK STATE BAR ASSOCIATION

1993 TAX SECTION REPORTS

REPORT

NUMBER	PRICE	REPORT
744	3.00	Report on <u>Audit Guidelines and Regulations Governing New York State Residency Audits: Report and Suggestions for Change</u> prepared by the Committee on New York State Tax Matters dated December 29, 1992 together with a cover letter to Hon. James W. Wetzler, Commissioner, New York State Department of Taxation and Finance from John A. Corry dated January, 4, 1993.
745	3.00	Report on <u>Benefit Issues in Mergers and Acquisitions</u> prepared by the Committee on Qualified Plans and the Committee on Non-Qualified Employee Benefits together with a cover letter to Hon. Shirley D. Peterson, Commissioner, Internal Revenue Service from John A. Corry dated January 8, 1993.
746	1.50	Letter dated December 28, 1992 to Hon. John P. Dugan, President, New York State Tax Appeals Tribunal from John A. Corry on <u>Location of Tax Tribunal Hearings</u> .
747	.50	Letter dated January 11, 1993 to Internal Revenue Service from John A. Corry regarding <u>Proposed Amendments to 31 CFR Part 10 (Circular 230)</u> .
748	3.50	Report on <u>New York Tax Treatment of Limited Liability Companies</u> dated