



NEW YORK STATE BAR ASSOCIATION

TAX SECTION

ANNUAL REPORT

January 27, 1998

**NEW YORK STATE BAR ASSOCIATION
Tax Section Executive Committee for 1997-1998
OFFICERS**

RICHARD O. LOENGARD, JR.

Chair

HAROLD R. HANDLER

Second Vice-Chair

STEVEN C. TODRYS

First Vice-Chair

ROBERT H. SCARBOROUGH

Secretary

COMMITTEE CHAIRS

Bankruptcy Linda Zan Swartz Lary S. Wolf	Fundamental Tax Reform Peter v.Z. Cobb Deborah L. Paul	Pass-Through Entities Kimberly S. Blanchard Marc L. Silberberg
Basis and Cost Recovery Elliot Plsem Deborah H. Schenk	Individuals Sherry S. Kraus Ann F. Thomas	Qualified Plans Stephen T. Lindo Loran T. Thompson
Compliance, Practice and Procedure Robert S. Fink Arnold Y. Kapiloff	Multistate Tax Issues Robert E. Brown Paul R. Comeau	Real Property Michael Hirschfeld Alan J. Tarr
Consolidated Returns Joel Scharfstein	Net Operating Losses David S. Miller Ann-Elizabeth Purinton	Reorganizations Eric Solomon Lewis R. Steinberg
Continuing Legal Education and Pro Bono James A. Locke Victor Zonana	New York City Taxes Robert J. Levinsohn William B. Randolph	Tax Accounting Dickson G. Brown Stephen B. Land
Corporations Patrick C. Gallagher Robert A. Jacobs	New York State Franchise and Income Taxes Maria T. Jones Arthur R. Rosen	Tax Exempt Bonds Linda L. D'Onofrio Patti T. Wu
Estates and Trusts Sherwin Kamin Carlyn S. McCaffrey	New York State Sales and Miscellaneous William F. Collins Hollis L. Hyans	Tax Exempt Entities Stuart L. Rosow Michelle P. Scott
Financial Instruments Samuel J. Dimon Bruce Kayle	Nonqualified Employee Benefits Stuart N. Alperin Kenneth C. Edgar, Jr.	Tax Policy David H. Brockway Dana Trier
Financial Intermediaries Erika W. Nijenhuis Andrew P. Solomon	Partnerships Andrew N. Berg William B. Brannan	U.S. Activities of Foreign Taxpayers Peter H. Blessing Yaron Z. Reich
Foreign Activities of U.S. Taxpayers Reuven S. Avi-Yonah David P. Hariton		

MEMBERS AT LARGE

Dianne Bennett	Charles I. Kingson	Leslie B. Samuels
Benjamin J. Cohen	Lisa A. Levy	Robert T. Smith
John P. Dugan	James Ross MacDonald	Eugene L. Vogel
Kenneth H. Heitner	Charles M. Morgan, III	David E. Watts
Thomas A. Humphreys	Ronald A. Morris	Mary Katherine Wold

FORMER SECTION CHAIRS

Hon. Hugh R. Jones	Alfred D. Youngwood	Herbert L. Camp
Peter Miller	Gordon D. Henderson	William L. Burke
John W. Fager	David Sachs	Arthur A. Feder
John E. Morrissey, Jr.	J. Roger Mentz	James M. Peaslee
Charles E. Heming	Willard B. Taylor	John A. Corry
Ralph O. Winger	Richard J. Hiegel	Peter C. Canellos
Martin D. Ginsburg	Dale S. Collinson	Michael L. Schler
Peter L. Faber	Richard G. Cohen	Carolyn Joy Lee
Hon. Renato Beghe	Donald Schapiro	Richard L. Reinhold



NEW YORK STATE BAR ASSOCIATION

TAX SECTION

ANNUAL REPORT

January 27, 1998

**New York State Bar Association
Tax Section
Preliminary Annual Report
For the Year Ended January 27, 1998**

It is my honor and privilege to present the Annual Report of the Tax Section of the New York State Bar Association for the year ended January 27, 1998, the 49th year of the Section.

During the past year the Tax Section has preserved its reputation as one of the principal commentators on our tax laws, Federal, State and City. The Section has long had a well-deserved reputation for producing reports which are both technically of a high order - well considered and carefully crafted - and disinterested, reflecting the public policy views of its members, not necessarily consistent with the short term parochial interests of the Bar or its clients. This reputation has been created over those 49 years and is a credit to the membership - both past and present - of the Tax Section: to its abilities, to its energy and to its integrity. I feel strongly that, as the Chair, one of my principal obligations was the maintenance and, if possible, the enhancement of this reputation.

Tax Section Activity

The Tax Section's activities are many and varied. It attempts to comment on new legislative initiatives, proposed regulations, and administrative practices, as well as to suggest ways in which both the substantive law and its administration can be improved.

Activity With Respect to Federal Tax Matters
Legislation

In the Federal area, the principal activity of the Tax Section during the past year was responding to legislative initiatives. First, in early August, Congress enacted and the President signed the so-called Taxpayer Relief Act of 1997. Subsequently, Congressional attention turned to the Internal Revenue Service Restructuring and Reform Bill of 1997. This latter legislation passed the House last fall and is awaiting hearings before the Senate Finance Committee.

The Tax Section was active in commenting on both pieces of legislation as they worked their way through Congress. First, the Section again urged rejection of a proposal to index the cost basis of certain assets. I suspect my successors will have an opportunity to do so again in the future. The Section also reported on the provisions relating to constructive sales which were eventually incorporated in the Relief Act. Anecdotally, I was told that when the House Ways and Means Committee considered that portion of the bill, the staffs paid close

attention to the Section's technical criticisms of the proposal. I would like to be able to say that Congress paid equal attention to the doubts the report expressed about the wisdom of some parts of the legislation, but that was not the case. The Section also prepared extensive comments on the anti-Morris Trust proposal incorporated in the Relief Act. Again, some of our comments of a more technical nature were reflected in the law as enacted, but our broader criticism of the proposal was not heeded.

While the response to our comments is not all that we might hope, our work does not go unrecognized. In July, shortly after the House had completed its work on the Relief Act, Congressman Rangel, the ranking Democrat on the House Ways & Means Committee, wrote the Section:

"I am writing to thank you and the other members of the New York State Bar Association who participated in the preparation of your organization's analysis of proposals to index the basis of capital assets. Your recent letter and your prior reports on that issue contain a useful and thorough analysis of the many problems that would result if such a proposal became law.

I also want to take this opportunity to thank your organization for the many other reports on tax issues that you have submitted to the Congress and to the Treasury. The reports made a positive contribution to our tax laws and their administration. I am very appreciative of the considerable time and effort spent in the preparation of the reports."

I think the members of the Section, past and present, can take pride in this comment on its work.

The Section also submitted comments on the Administration's proposals for simplification of the tax law. While some of the proposals for simplification were enacted as part of the Relief Act, I think it is universally agreed that the impact of that Act on the Internal Revenue Code was not simplification but additional complexity — a truly disappointing result. Ever since I began practicing tax law in the late 1950s, each major tax change has been called an "accountants' relief act", but the Taxpayer Relief Act of 1997 may be more deserving of that epithet than any legislation in recent years. Certainly the capital gains provision, with its multiplicity of rates depending on the nature of the item being sold, the time for which it was held, and the income of the seller, is an example of greatly increased complexity.

Each of these reports was the product of extensive effort - including work on nights and weekends - by members of the Section, busy professionals all, who by donating their labor, experience and judgment, created a product of which the Tax Section can be proud. Moreover, each report is reviewed by the Section's Executive Committee, leading practitioners who meet monthly and whose review and critique of the reports presented to them are invaluable.

The Section was, if anything, even more active in connection with the Restructuring Act than with respect to the Relief Act. In August, the Section praised much of the report of the Restructuring Commission headed by Senator Kerry and Congressman Portman but criticized its recommendations to establish an independent board, consisting largely of private citizens, which would appoint the Commissioner of Internal Revenue and the Chief Counsel, review the IRS budget, and perform other supervisory functions but would have no role, at least in theory, in shaping tax policy or law enforcement. Our letter expressed our concern that the Service would become bifurcated, reporting on some issues to the Secretary of the Treasury and on other issues to the board. Furthermore, we noted that we believed it unrealistic to try to separate policy and enforcement issues from the selection of personnel and preparation of the budget.

Largely as a result of this letter, the Section was asked to give testimony to the House Ways and Means Committee at a hearing on September 17, 1997 dealing with the Bill embodying the Commission's proposals. While our testimony largely reiterated what was said in the letter, the legislation, which had been introduced in the interim, differed from the Commission's recommendation in that the Chief Counsel would continue to be appointed by the President. However, we pointed out in our testimony that since the Commissioner would continue to be appointed by the board, the Chief Counsel would ultimately be reporting to two masters, with all of the attendant difficulties to which that historically has given rise. Fortunately, the bill as finally passed by the House also changed the process by which the Commissioner is to be appointed and that position too will continue to be filled by the President (after consultation with the Board).

Hence, the Restructuring Commission's proposal has been significantly modified, with the Treasury Secretary's authority substantially enhanced over that originally proposed by the Commission. The Section is now studying the resulting, modified version found in the House bill. It will be interesting to see what the Senate Finance Committee does with this legislation and especially the extent to which the principal function of the board is changed from one providing overall supervision of the IRS to that of a super ombudsman, attempting to insure that taxpayers will not be unfairly and arbitrarily treated.

While the Restructuring Bill was making its way through the House, it had added to it a provision transferring the burden of proof from the taxpayer to the Secretary under certain circumstances. The Tax Section was asked to comment on this proposal, and while it was not possible to call the Executive Committee together in the short time available, a letter was sent to the House Ways and Means Committee suggesting that the provision, even though it was circumscribed, would send the wrong message. Furthermore, the letter pointed out that the scope of the provision was uncertain; for example, it did not make clear what responsibility the taxpayer had to preserve records. Notwithstanding these comments, the provision was included in the bill passed by the House. Again, it will be interesting to see its fate in the Senate.

Regulations

As usual, the Section commented on a wide variety of IRS proposed regulations; a complete list of these is annexed to this report. These reports included, for example, comments on proposed regulations under Section 467 relating to the timing of income and deductions, on proposed regulations relating principally to payments from foreign trusts and other entities, and on regulations providing for the taxation of U.S. income derived by hybrid entities in the treaty context. In addition, the Section gave comments on a wide variety of proposed regulations dealing with subchapter C of the Code: the treatment of warrants, the determination of whether there has been a sufficient continuity of shareholder interest in a reorganization, and the application of the continuity of business enterprise requirements where assets are transferred downstream to partnerships and other entities after a reorganization. Quite controversial was the Tax Section report on proposed regulations relating to self-employment tax on owners of pass-through entities. While the Section to a substantial extent endorsed the concepts embodied in the regulations, such support was rare, and the Treasury's proposal ran into a heated challenge in Congress and has not been finalized. In another effort to throw light onto the difficult area of employment taxes, the Section will soon submit a report on the appropriate approach to be used in differentiating employees and independent contractors.

The Section has recently begun preparation of comments on Notice 98-5, which announced the IRS' intention to issue regulations, retroactive to December 23, 1997, limiting taxpayers' foreign tax credits in certain situations which the Treasury claims to be abusive.

Not all of the Section work responds to Congressional or Treasury initiatives. During the past year for example we did a report on possible regulations to implement the FASIT legislation and also suggested changes in Code Section 514(c)(9)(E), or, as a less favored alternative, the regulations issued under it, to

remove what the Section regarded as an unnecessary barrier to real estate investments by tax exempt organizations. We now are working on two projects: a study of possible changes which might be made to simplify the reorganizations provisions and an analysis of the issues involved in the taxation of contingent swap payments. Neither of these reports is likely to be finished within the next few weeks, but I believe that both of them will prove to make a significant contribution to the analysis of these difficult areas of the tax law.

Activity With Respect to New York State and City Tax Matters

The Section has commented on several State initiatives. On an informal basis members of the Section commented on proposed QSSS legislation, designed to conform New York law to changes made in 1996 to the Federal rules applicable to Subchapter S corporations, specifically permitting such a corporation to own a subsidiary. In July the Section wrote to the legislature urging enactment of this legislation, which was subsequently passed. The Section also urged the legislature to enact a bill allowing credits to certain individuals resident in more than one state, a bill which reflected an agreement entered into by the Commissioners of the States in the North Eastern State Tax Officials Association to mitigate a significant problem of double taxation. The bill was not enacted this past year, but the Section is preparing a report commenting at greater length on the merits of the proposal, and we hope that 1998 will see it enacted.

The Section also commented at length on draft regulations designed to improve the State offer-in-compromise program. The report urged that this program be made more flexible, helping additional hard pressed taxpayers to reach a fair settlement with the State, without material cost to the State.

Meetings With Government Officials

The officers of the Tax Section this year continued their practice of meeting with government officials. Meetings were held in Washington with Acting Assistant Treasury Secretary Donald Lubick and his staff and with the IRS Chief Counsel Stuart Brown and members of his staff. Furthermore, there were two meetings with Kenneth Kies, Chief of Staff of the Joint Committee of Congress. The first of these was a general discussion, focusing largely on issues raised by the then recent IRS notice targeted at so-called "step down preferred". The second meeting, in September, was devoted solely to the proposals of the Restructuring Commission. The officers also met that day with members of the Restructuring Commission's staff. We also had meetings with members of the staffs of the House Ways and Means Committee and the Senate Finance Committee. All of these meetings were useful in keeping the officers informed as to the agendas at the Treasury and in Congress.

In May, the officers of the Section and interested members of the Executive Committee met in Albany with Commissioner Michael Urbach of the New York State Department of Taxation and Finance and Steven Teitelbaum, its Chief Counsel, and members of their staff. Again, this meeting was informative and helped set the agenda for the relevant committees of the Tax Section. In September, the officers and interested members of the Executive Committee met with New York City's Acting Commissioner of Finance Adam Barsky and his staff. Again, this meeting illuminated the issues which were uppermost in the minds of the City tax officials, including the possibility of reconciling the unincorporated business tax and the tax on Subchapter S type corporations.

Arnold Kapiloff and Sherry Kraus represented the Tax Section at the annual Northeast Region IRS Liaison meeting in April. That month the Chair, Bob Smith, and Arnold Kapiloff were guests at the Tax Court's Judicial Conference at the Kingsmill resort in Virginia. During 1997 Rick Reinhold has represented the Tax Section on Commissioner Urbach's New York State Taxpayer Advisory Council. Rick has now decided to relinquish that position and, at the request of the Executive Committee, Carolyn Joy Lee has agreed to succeed him.

I want to take this opportunity on behalf of the Section not only to thank all these government officials and their staffs for the time spent with us on these occasions but also for the wonderful cooperation they give us at both our Annual Meeting and our Summer Meeting. Their willingness to appear on various panels, giving not only their time and effort but also their wisdom, is greatly appreciated. In addition, at both the Summer and Annual meetings, numerous State and City tax officials were kind enough to join us at breakfast to talk with members of our State and City Committees about matters of common concern.

Educational Programs

In June, for the first time, the Treasury Department and the Tax Section joined together to put on a public program, focused principally on the 1996 amendments to the trust provisions. Representatives of the IRS and Treasury as well as members of the Tax Section, appeared on the various panels. The program was well received and very successful and, I hope, sets a precedent for similar cooperative programs in the future.

Similarly, in November, the Section ran a successful program on New York City and State tax issues which included active participation by officials of both City and State. It was the third such program, which is rapidly becoming an annual institution of the Section.

Section Meetings

The Summer Meeting in Saratoga in late July was blessed with excellent speakers - a copy of the program is attached - and fine weather. The result was a successful mixture of intellectual stimulation and a good time, supplemented for some by a visit to the track and for others a trip to the golf course. Unfortunately, the meeting coincided with the height of the Administration's negotiations with the Congress on the Taxpayers Relief Act. This cost us Assistant Secretary Lubick's presence, but Ken Krupsky, the Deputy Assistant Secretary, was kind enough to join us as our luncheon speaker - flying to Saratoga in the morning and back to Washington in the afternoon. It was a truly extraordinary effort.

Our loss this summer has been made up at the Annual Meeting with the appearance of Assistant Secretary Lubick as our Luncheon Speaker. As usual, this is an interruption in his hectic schedule, and it is greatly appreciated. We also have an excellent series of panels: there are three panels in the morning on Federal Income Tax topics, recent developments in Subchapter C, the tax treatment of equity derivatives, and recent developments in available IRA formats. In addition, Carolyn Joy Lee is chairing a morning panel on developments in New York State tax audits and litigation, including recent developments in the coordination of Federal and State audits. In the afternoon, there will be a panel on recent developments in the international tax area, of which there have been many. As usual, we are fortunate in having State and Federal tax officials joining us on each of these panels.

Comments

As the foregoing indicates, this has been a year in which there has been great focus on the Internal Revenue Service and the manner in which it functions. The work of the Restructuring Commission focused attention on the management problems at the Service, especially on the failure of the Service to effectively computerize its operation. The hearings before the Senate focused attention on the collection practices of the Internal Revenue Service, and subsequent internal investigations have corroborated that there have been excesses in that area of the Service's activities. The result of this scrutiny is almost certain to be an increased oversight of the Service's activities, and I personally think this may be for the good. The concern is, as expressed in our submissions to the Restructuring Commission and Congress, that authority over and responsibility for the functioning of the Internal Revenue Service will be diluted and the efficiency of the Service will suffer. While there is legitimate concern that the power of the Internal Revenue Service is great and its exercise needs to be carefully monitored and controlled, not all those who clash with the Internal Revenue Service are innocent and noble of motive; the Service is constantly faced with

persons attempting to escape their legal obligations, and it is critical that any effort to rein in the Service's excesses leave it able to enforce the law - a delicate balancing act.

If the Service's ability to function and its reputation have been tarnished during the year 1997, a great deal of the responsibility for this must be laid to Congress. I think one can charge the Congress, with some help from administrations past and present, with several sins. One is the complexity of the Code; it has become a series of rules, often contradictory and frequently subject to detailed limitations. The result is that neither taxpayers nor the Internal Revenue Service can master the Code's intricacies and both, especially taxpayers, are increasingly frustrated. Furthermore, I think that the increased complexity leads to cynicism about the Code on the part of the average taxpayer, to the belief that it must be filled with loopholes which he or she is unable to find and utilize.

In addition to the difficulties which the complexity of the Code has brought to the Internal Revenue Service, the fact that the Service is understaffed makes its task substantially more difficult. From our practice, we know of the difficulty which the Service has in staffing the Chief Counsel's office and in retaining its qualified personnel. In addition, we know that the number of audits is steadily decreasing which in turn encourages taxpayer non-compliance, testing the audit lottery. As that attitude increases, it becomes harder and harder for the honest taxpayer not to conclude that he is being taken advantage of. Finally, the reaction of the Congress has been to meet these problems, and to raise revenue, by increasing interest charges and penalties levied on taxpayers who are found not to have paid their taxes. The result is a system which catches only a few taxpayers who avoid their taxes and penalizes those few harshly - a system which is both unfair and unjust.

I recognize that this does not make a happy picture, but I am an optimist and do not think it is a hopeless situation. I think the Code can be simplified, steps can be taken (including increased pay) to make the Service a more attractive place for people of ability to work, the number of audits can be increased, and the interest and penalties on deficiencies reduced and rationalized so that the system would regain some, if not all, of the respect which it once had. Reducing the Service's ability to enforce the law in an even handed, fair fashion is not helpful, and for that reason I would hope that the burden of proof in tax litigation remains on the taxpayer. I do not think any of the foregoing is inconsistent with increased supervision and review of the Service's activities to increase its efficiency and to insure that it does not abuse its powers.

Closing Remarks

As I close out my year as Chair, I do so with some regret. It is a fascinating if not always easy job, but it is made more interesting, more pleasant and more productive because of the excellent people that I have had the opportunity to work with. Obviously, one is especially thankful to one's fellow officers, both those with whom I had an opportunity to serve before becoming Chair - Mike Schler, Carolyn Lee and Rick Reinhold, each of whom set standards which I found difficult to match - and the three officers who gave me so much support during the past year, Steve Todrys, Harold Handler and Robert Scarborough. With these officers for next year, supplemented by Bob Jacobs, the Tax Section is in good hands for the future.

However, while I owe a special debt of gratitude to the officers, I wish to close by emphasizing the importance of the contribution of all of the members of the Executive Committee and all of the other members of the Tax Section who have contributed to its work during the past year. The willingness of the Executive Committee membership to review reports and to give meaningful and incisive comments on them is invaluable to the work of the Tax Section. So is the willingness of many other members of the Section, who make valuable contributions to the reports as they are considered by the various committees of the Section. So I would like to close by encouraging all of you, especially the younger members of the Section, to join a committee of the Tax Section and to participate in its work. I think you will find many benefits: a chance to meet your peers, a chance to participate in discussions of reports which are at the cutting edge of the law, and a chance to contribute to the product of the Tax Section, a product which commands respect in Washington, in Albany and in this City.

It has been a pleasure and an honor for me to serve as Chair. I commend my successor, Steve Todrys, to you and I wish him, and his fellow officers, success and the best of luck for the coming year, and for the Section, a successful fiftieth anniversary year.

**NEW YORK STATE BAR ASSOCIATION
1997 TAX SECTION REPORTS**

<u>REPORT NUMBER</u>	<u>PRICE</u>	<u>REPORT</u>
891	2.00	Report regarding <u>Suggestions for Review of New York Nonresident Audit Guidelines</u> together with a cover letter to Michael H. Urbach, Commissioner of Taxation and Finance, Department of Taxation and Finance from Richard L. Reinhold dated January 14, 1997.
892	7.00	Report on <u>Suggested FASIT Regulations</u> together with a cover letter to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Richard L. Reinhold dated February 7, 1997.
893	3.50	Report on <u>Proposed Regulations under IRC §467 (IA-292-84)</u> together with a cover letter to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Richard L. Reinhold dated February 14, 1997.
894	2.50	Report on <u>Section 514 (c) (9) (E) Concerning Investments in Leveraged Real Estate Partnerships by Pension Trusts and Other Qualified Organizations</u> together with a cover letter to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury from Richard L. Reinhold dated February 14, 1997.

895	.50	Letter dated March 13, 1997 to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of Treasury from Richard O. Loengard, Jr. <u>relating to transition rules in respect of certain of the tax law changes proposed by the President in his 1998 budget.</u>
896	2.00	Report on <u>Proposed Regulations on Definition of Limited Partner for Self-Employment Tax Purposes Under Section 1402</u> dated March 11, 1997 together with a cover letter to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Richard O. Loengard, Jr. dated March 17, 1997.
897	1.50	Report on <u>Proposed Regulations Relating to a Special Preferred Stock QEF Election</u> together with a cover letter to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Richard O. Loengard, Jr. dated March 17, 1997.
898	2.00	Report on <u>Proposed Regulations Dealing with the Treatment of Stock Rights Under Sections 354, 355 and 356 of the Internal Revenue Code</u> prepared by the Committee on Reorganizations together with a cover letter to Hon. Donald C. Lubick, Assistant Secretary for Tax Policy, Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Richard O. Loengard, Jr. dated April 15, 1997.

- | | | |
|-----|------|--|
| 899 | 1.00 | Letter dated April 15, 1997 to Jonathan Talisman, Tax Legislative Counsel, United States Treasury from Richard O. Loengard, Jr. <u>suggesting possible additions to the Treasury's 1997 business plan.</u> |
| 900 | 1.00 | Letter dated May 19, 1997 to Hon. Bill Archer, U.S. House of Representatives from Richard O. Loengard, Jr. <u>regarding Proposed Legislation which would improve tax on certain spin-off transactions (principally those known as Morris Trust transactions).</u> |
| 901 | 3.50 | Report on <u>Comments on H.R. 846</u> together with a cover letter to Hon. Barbara B. Kennelly, United States House of Representatives, House Ways & Means Committee from Richard O. Loengard, Jr. dated May 21, 1997. |
| 902 | 1.50 | Report on <u>Proposed Regulations on Continuity of Shareholder Interest</u> together with a cover letter to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Richard O. Loengard, Jr. dated May 19, 1997. |
| 903 | 1.00 | Letter dated May 21, 1997 to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Margaret M. Richardson, Commissioner, Internal Revenue Service from Richard O. Loengard, Jr. <u>regarding proposed regulations relating to the documentation required to support a claim for the foreign tax credit.</u> |

- 904 1.50 Report **containing comments submitted by members of the Tax Section on the Simplification Proposals announced by the Treasury Department on April 14, 1997** together with a cover letter to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury from Richard O. Loengard, Jr. dated May 22, 1997.
- 905 3.50 Letter dated June 23, 1997 with attachments to Hon. Bill Archer, Chairman, House Committee on Ways & Means from Richard O. Loengard, Jr. **regarding Provisions of Section 312 of the Revenue Reconciliation Act of 1997.**
- 906 3.50 Report regarding **Section 355 of the Internal Revenue Code and Relating to Morris Trust Transactions and Revenue Reconciliation Bill of 1997** prepared by the Committees on Corporations and Reorganizations together with a cover letter to Hon. Bill Archer, Chairman House Committee on Ways and Means from Richard O. Loengard, Jr., dated July 2, 1997.
- 907 2.50 Report on **Proposed Regulations Addressing The Remote Continuity and Continuity of Business Enterprise Doctrines** together with a cover letter to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury and Michael P. Dolan, Esq., Acting Commissioner, Internal Revenue Service from Richard O. Loengard, Jr., dated July 24, 1997.

- 908 1.00 Letter dated July 24, 1997 to Donald C. Lubick, Esq., Acting Assistant Secretary, (Tax Policy), Department of the Treasury and Michael P. Dolan, Esq., Acting Commissioner, Internal Revenue Service **requesting confirmation by the Treasury Department that the "gross up" provisions commonly found in debt obligations will not cause such obligations to be treated as contingent debt under Section 1275 of the Code.**
- 909 1.50 **ANNUAL REPORT** of the Tax Section dated January 21, 1997.
- 910 .50 Letter dated July 31, 1997 to Hon. Sheldon Silver, Speaker, New York State Assembly, Hon. Joseph L. Bruno, Majority Leader, New York State Senate, Hon. Herman D. Farrell, Jr., Chair, Ways and Means Committee, New York State Assembly, Hon. Martin Connor, Minority Leader, New York State Senate and Hon. Thomas M. Reynolds, Minority Leader, New York State Assembly **regarding Legislation Relating to New York S Corporations (QSSS Legislation) S 5522-A; A 8592 and S5618; A8593.**
- 911 .50 Letter dated July 31, 1997 to Hon. Sheldon Silver, Speaker, New York State Assembly, Hon. Joseph L. Bruno, Majority Leader, New York State Senate, Hon. Herman D. Farrell, Jr., Chair, Ways and Means Committee, New York State Assembly, Hon. Martin Connor, Minority Leader, New York State Senate and Hon. Thomas M. Reynolds, Minority Leader, New York State Assembly **regarding Legislation Relating to Dual Resident Taxpayers S 5208; A 8062.**

- 912 1.50 Letter dated August 13, 1997 to Hon. J. Robert Kerrey, Co-Chair, National Commission on Restructuring the Internal Revenue Service **regarding Report of the National Commission on Restructuring the Internal Revenue Service.**
- 913 3.00 Report on **Proposed Regulations for New York State Offers in Compromise** together with a cover letter to Hon. Michael H. Urbach, Commissioner, Department of Taxation and Finance from Richard O. Loengard, Jr., dated October 2, 1997.
- 914 2.50 Report on **Regulations Relating to Withholding on U.S. Source Investment Income Paid to "Fiscally Transparent" Entities** together with a cover letter to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury and Michael P. Dolan, Esq., Acting Commissioner, Internal Revenue Service from Richard O. Loengard, Jr., dated October 2, 1997.
- 915 1.50 Letter dated October 21, 1997 to Hon. Bill Archer, Chairman, Committee on Ways and Means, House of Representatives **with respect to the proposal to shift the burden of proof from taxpayers to the Internal Revenue Service. The shift will occur with respect to individual taxpayers and entities described in Section 7430(c)(4)(A)(ii).**

916

2.00

Report commenting on **Proposed Regulations principally relating to the treatment of payments made to U.S. persons, directly or indirectly, from trusts of which a foreigner is the “grantor”. These regulations were issued under Sections 643(h), 671, and 672(f), which were enacted in the Small Business Job Protection Act of 1996** together with a cover letter to Hon. Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury and Hon. Charles O. Rossotti, Commissioner, Internal Revenue Service from Richard O. Loengard, Jr., dated December 4, 1997.

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

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

Appendix II

**A. SUMMER PROGRAM, THE GIDEON PUTNAM HOTEL,
SARATOGA SPRINGS**

FRIDAY, JULY 25

4:00 p.m. Registration - Hotel Lobby
6:00 p.m. Welcoming Reception - Hotel Patio
7:00 p.m. Dinner - Ballroom located in the Conference Center

SATURDAY, JULY 26

7:30 a.m. Breakfast - On your own
7:30 a.m. Breakfast Meeting of the Committees on: Multistate Tax Issues, New
York City Taxes, New York State Franchise and Income Taxes and
New York State Sales and Miscellaneous
The Arches
8:00 a.m. Registration - Conference Center Lobby
9:00 a.m. General Session - Conference Center

***Current Developments In State Taxation:
Subchapter S, Check-The-Box, Nexus And Other Issues***

Panel Chair:

Maria T. Jones
Kramer, Levin, Naftalis & Frankel
New York City

Panelists:

David P. Blaustein
Office of Counsel
New York State Department of Taxation and Finance
Albany

Carolyn Joy Lee
Roberts & Holland LLP
New York City

***The Future Of Partnership Tax: Proposals To Reform Subchapter K,
International Aspects Of The Check-The-Box Regulations and Other Topics***

Panel Chair:

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

Panelists:

Andrew N. Berg
Debevoise & Plimpton
New York City
William H. Morris
Attorney Advisor
Office of International Tax Counsel
Department of the Treasury
Washington, DC

Robert E. Brown
Boylan, Brown, Code, Fowler, Vigdor & Wilson, LLP
New York City
Cecily W. Rock
Senior Legislation Counsel
Staff of the Joint Committee on Taxation
Washington, DC

12:30 p.m. Attorneys' Luncheon - The Arches
Speaker: **Donald C. Lubick**
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
Washington, DC

12:30 p.m. Spouses/Guests - Lunch on your own
6:30 p.m. Cocktail Reception - Hotel Patio
7:30 p.m. Dinner Dance - Ballroom located in the Conference Center

SUNDAY, JULY 27

8:00 a.m. Registration - Conference Center Lobby
8:00 a.m. Executive Committee Breakfast Meeting - Conference Center
Open to all attorneys and spouses/guests
9:30 a.m. General Session - Conference Center

Exploring the World of Corporate Tax Shelters:

The Role Of Tax Advisors And The Government's Response

Panel Chair:

Harold R. Handler

Simpson Thacher & Bartlett

New York City

Panelists:

Robert A. Jacobs

Milbank, Tweed, Hadley & McCloy

New York City

Clarissa Potter

Associate Tax Legislative Counsel

Department of the Treasury

Washington, DC

Glen A. Kohl

Wilson, Sonsini, Goodrich & Rosati

Palo Alto, California

Michael L. Schler

Cravath, Swaine & Moore

New York City

Global Trading And Derivatives:

Who Taxes Whom, What And When

Panel Chair:

Robert H. Scarborough

Sidley & Austin

New York City

Panelists:

Patricia A. Brown

Associate International Tax Counsel

Department of the Treasury

Washington, DC

Yaron Z. Reich

Cleary, Gottlieb, Steen

& Hamilton

New York City

Lewis R. Steinberg

Cravath, Swaine & Moore

New York City

12:30 p.m. **Departure** - Special arrangements have been made with The Gideon Putnam for a 1:00 p.m. check out for our group. Anyone checking out after 1:00 p.m. will be assessed a half-day's room rate.

**B. ANNUAL MEETING, NEW YORK MARRIOTT MARQUIS, NEW YORK CITY,
JANUARY 21, 1997**

RICHARD L. REINHOLD
TAX SECTION CHAIR, PRESIDING
Cahill Gordon & Reindel
New York City

MORNING PROGRAMS
Westside Ballroom South, 5th Floor
Westside Ballroom North, 5th Floor

In the Westside Ballroom South - 5th Floor

8:30-8:45 a.m. BUSINESS MEETING AND ELECTION OF OFFICERS
9:00-10:30 a.m. RECENT DEVELOPMENTS IN SUBCHAPTER C

SPEAKERS:

KIMBERLY S. BLANCHARD
Haythe & Curley
New York City

PHILIP J. LEVINE
Assistant Chief Counsel (Corporate)
Internal Revenue Service
Washington, DC

ERIC SOLOMON
Ernst & Young LLP
Washington, DC

ROSE L. WILLIAMS
Attorney-Advisor
Office of Tax Policy
Department of Treasury
Washington, DC

**10:45-12:00 noon RECENT DEVELOPMENTS IN EMPLOYEE BENEFITS WITH
A FOCUS ON TAXATION OF LARGE DISTRIBUTIONS**

SPEAKERS:

DIANNE BENNETT
Hodgson, Russ, Andrews, Woods & Goodyear
Buffalo

J. MARK IWRY
Benefits Tax Counsel
Department of Treasury
Washington, DC

STEPHEN T. LINDO
Willkie Farr & Gallagher
New York City

In the Westside Ballroom North - 5th Floor

10:45 a.m. RECENT DEVELOPMENTS IN PARTNERSHIP TAXATION

SPEAKERS:

ANDREW N. BERG
Debevoise & Plimpton
New York City

WILLIAM B. BRANNAN
Cravath, Swaine & Moore
New York City

MICHAEL D. THOMSON
Tax Legislative Counsel
Department of Treasury
Washington, DC

PHILIP R. WEST
Deputy International Tax Counsel
Department of Treasury
Washington, DC

12:00 noon **DUTCH TREAT RECEPTION — Broadway Ballroom Foyer, 6th Floor**

12:30 p.m. **LUNCHEON — Broadway Ballroom, 6th Floor**

ANNUAL REPORT TO THE TAX SECTION

RICHARD L. REINHOLD

Chair, Tax Section

LUNCHEON SPEAKER:

KENNETH J. KIES

Chief of Staff

Joint Committee on Taxation

Washington, DC

AFTERNOON PROGRAM

Marquis Ballroom B & C, 9th floor

2:30-4:00 p.m. **HOW TAX POLICY IS FORMULATED IN NEW YORK STATE AND NEW YORK CITY**

SPEAKERS:

MARIA T. JONES

Rosenman & Colin

New York City

ABRAHAM M. LACKMAN

Secretary to the Senate Finance Committee and

Special Advisor to the Majority

Albany

ARTHUR R. ROSEN

McDermott, Will & Emery

New York City

STEVEN U. TEITELBAUM

Deputy Commissioner and Counsel

New York State Department of Taxation and Finance

Albany

JAMES W. WETZLER

Deloitte & Touche LLP

New York City