



New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>

TAX SECTION

2004-2005 Executive Committee

LEWIS R. STEINBERG

Chair
Crawth, Swaine & Moore LLP
Worldwide Plaza
825 8th Avenue
New York, NY 10019
212/474-1656

DAVID P. HARITON

First Vice-Chair
212/558-4248

KIMBERLY S. BLANCHARD

Second Vice-Chair
212/310-8799

PATRICK C. GALLAGHER

Secretary
212/446-4998

COMMITTEE CHAIRS:

Bankruptcy and Operating Losses

Lawrence M. Garrett
Stuart J. Goldring

Compliance, Practice & Procedure

Barbara T. Kaplan
Ellis W. Reemer

Consolidated Returns

Jonathan Kushner
Linda Z. Swartz

Corporations

Kathleen L. Ferrell
Jodi J. Schwartz

Employee Benefits

Karen G. Krueger
Max J. Schwartz

Estates and Trusts

T. Randolph Harris
Jeffrey N. Schwartz

Financial Instruments

Michael S. Farber
Erika W. Nijenhuis

Financial Intermediaries

David M. Schizer
Andrew P. Solomon

Foreign Activities of U.S.

Taxpayers

Peter H. Blessing
David R. Sicular

Multistate Tax Issues

Robert E. Brown
Paul R. Comeau

New York City Taxes

Robert J. Levinsohn
Irwin M. Slomka

New York State Franchise and

Income Taxes

Maia T. Jones
Arthur R. Rosen

Partnerships

William B. Brannan
David H. Schnabel

Pass-Through Entities

Gary B. Mandel
Andrew W. Needham

Real Property

David E. Kahen
Elliot Pisem

Reorganizations

Karen Gilbreath
Diana L. Wollman

Securitized and Structured

Finance

David S. Miller
Charles M. Morgan, III

Tax Accounting

David W. Mayo
Marc L. Silberberg

Tax Exempt Bonds

Margaret C. Henry
Stuart L. Rosow

Tax Exempt Entities

Dickson G. Brown
Michelle P. Scott

U.S. Activities of Foreign

Taxpayers

Yaron Z. Reich
Andrew Walker

William G. Cavanagh
Edward E. Gonzalez
Alyse Grossman
David R. Hardy

Jeffrey D. Hochberg
Sherwin Kamin
Arnold Y. Kapiloff
Charles I. Kingson

Janet B. Korins
Sherry S. Kraus
Jiyeon Lee-Lim
Deborah L. Paul

Matthew A. Rosen
Seth L. Rosen
Joel Scharfstein
Bryan C. Skarlatos

Gordon Warnke
David E. Watts
Paul R. Wysocki

MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE

March 24, 2004

Mr. Gregory F. Jenner
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3120 MT
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 1R
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Acting Assistant Secretary Jenner and Commissioner Everson:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1057 with respect to the proposed amendments to the regulations governing practice before the Internal Revenue Service (Circular 230) that were issued on December 9, 2003.

The proposed amendments principally address the standards that are applicable to writing tax shelter opinions and the relationship between a tax practitioner and its client and the Internal Revenue Service. We commend you for undertaking to revise Circular 230. We also appreciate the inherent difficulties in delineating the types of opinions that should be covered by Circular 230 and in articulating the proper standards for tax practitioners.

Our report focuses on the scope of the proposed amendments as they relate to opinions and other communications between tax practitioners and their clients and to best practices standards. Our principal recommendation is that the term "tax shelter opinion" should be defined to exclude opinions or other communications that are not intended to provide relief from penalties, as well as the tax portions of documents subject to SEC regulation or exempted from SEC registration. In addition, we recommend that the term "marketed tax shelter opinion" should be defined more narrowly. Furthermore, we recommend that if it is intended

FORMER CHAIRS OF SECTION:

Samuel Brodsky
Edwin M. Jones
Peter Miller
John E. Morrissey, Jr.
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

Peter C. Canellos
Michael L. Schler
Carolyn Joy Lee
Richard L. Reinhold
Richard O. Loengard
Steven C. Todrys
Harold R. Handler


Robert H. Scarborough
Robert A. Jacobs
Samuel J. Dimon
Andrew N. Berg

Do the Public Good • Volunteer for Pro Bono

that violations of best practices serve as a basis for sanctions, then best practices be defined with greater specificity.

If you have any questions regarding this report, please do not hesitate to contact us.

Respectfully submitted,



Lewis R. Steinberg
Chair

cc: Eric Solomon, Deputy Assistant Secretary, Regulatory
Affairs, Department of the Treasury
Helen M. Hubbard, Tax Legislative Counsel, Department of the
Treasury
Michael S. Novey, Associate Tax Legislative Counsel,
Department of the Treasury
Emily A. Parker, Acting Chief Counsel, Internal Revenue
Service
Nicholas J. DeNovio, Deputy Chief Counsel (Technical),
Internal Revenue Service
William D. Alexander, Associate Chief Counsel (Corporate),
Internal Revenue Service