



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
Cravath, 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. Stomka

New York State Franchise and

Income Taxes

Maria 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

Securitizations 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

MEMBERS-AT-LARGE OF EXECUTIVE COMMITTEE

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

August 12, 2004

The Honorable Andrew J. Eristoff
Commissioner
New York State Department of Taxation and Finance
W.A. Harriman State Office Campus, Building 9
Albany, New York 12227

Dear Commissioner Eristoff:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1065 regarding the proposed tax shelter legislation (S.6500) now pending before the New York Legislature. We applaud New York's efforts to tackle the tax shelter abuse problem, and encourage New York's cooperation with the Internal Revenue Service and other states to address the issue. Combating tax shelter activity to preserve the integrity of our tax system, and the public trust that is essential to it, is extremely valuable.

Our report addresses several concerns regarding specific provisions of the legislation, and makes suggestions that might help clarify or otherwise improve the legislation. Specifically, the report recommends that:

- The Commissioner's apparently unfettered discretion in listing transactions as New York tax shelters be tempered by the addition of further administrative procedures or guidelines and by a required period of public comment.
- The list maintenance and registration requirements imposed on promoters not apply merely on the basis that an investor in a tax shelter is a "New York taxpayer," but only if the promoter knows or has reason to know that the investor is a New York taxpayer.

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

- The legislation define “New York taxpayer” for this purpose.
- The effective dates be modified to ensure that taxpayers are better able to comply with the new law’s requirements.
- Consideration be given to adopting a limited amnesty program similar to that adopted in the California tax shelter legislation.

I appreciate your consideration of our comments. If you have any questions or comments regarding this report, please contact me and we will be glad to assist however we can.

Respectfully Submitted,



Lewis R. Steinberg
Chair

cc: The Honorable George E. Pataki
The Honorable Joseph L. Bruno
The Honorable Sheldon Silver
The Honorable Herman D. Farrell, Jr.
The Honorable Thomas F. Barraga
The Honorable Richard Platkin
Thomas Heinz

The Honorable John P. Cahill
The Honorable Carol E. Stone
Barbara G. Billett
Michelle A. Cummings
Christopher O’Brien
Holly Chamberlin
John Bartlett, Esq.