## **New York State Bar Association Tax Section**

# **Report Participation Policy**

#### A. In General

By participating in any manner in the preparation of a Tax Section report or other form of commentary (together, a "Report"), you are agreeing that you:

- (i) are a member of the NYSBA Tax Section,
- (ii) are participating in order to further the **Tax Section's Mission**,
- (iii) will comply with the Tax Section's Confidentiality Rules, and
- (iv) will comply with the **Tax Section's Conflict of Interest Rules**.

These four elements are fundamental to the quality, integrity and objectivity of our Reports, which are of paramount importance to the Tax Section.

If a member would like to participate (or is currently participating and would like to continue participating) in the report preparation process as to any Report but the member is *uncertain for any reason* as to whether the member can comply with all four elements of this Participation Policy, the member should consult with the Chair of the Tax Section.

The Chair of the Tax Section is authorized to determine the extent and manner of any member's participation in the report preparation process and any other application of this policy.

#### B. The Tax Section's Mission

The purposes of this Section shall be:

- (i) to bring together for the furtherance of the public interest in a fair and equitable tax system and for their mutual interest such members of the New York State Bar Association as are professionally concerned with the development of sound tax policy and administration;
- (ii) to further the education of the bar and public in tax matters and to disseminate information relating to taxation;
- (iii) to study the existing tax laws and their administration and pending tax legislation and regulations and to report thereon to the Association, and when appropriate, to the Bar, to the public, and to federal, state and municipal authorities;
- (iv) to support, promote and initiate desirable tax reforms, and to oppose changes in the tax laws and administration that would not be in the public interest; and
- (v) to study the relationship between the tax laws of this country and other countries and to make recommendations for the improved integration of such laws.

# C. The Tax Section's Confidentiality Rules

- (i) Drafts of a Report (including issues lists, outlines, and portions of a draft Report) should not be shown to (or discussed with) anyone outside of the working group or the Executive Committee.
- (ii) The discussions that take place among the working group (in meetings, on calls, via e-mail) should not be shared with anyone other than members of the working group and members of the Executive Committee. This prohibition applies to sharing what was said, who said it, and what decisions were made.
- (iii) Members of the working group or the Executive Committee may consult with non-members in order to gather additional information or views regarding the subject matter of the Report.
- (iv) Every individual who is present on a working group conference call should announce himself/herself.

(v) The discussions and the voting that takes place at the Executive Committee meetings and via e-mail are not shared outside of the Executive Committee, except that the content of the discussion and the final decisions (without revealing who said what) may be shared with members of the working group who are not on the Executive Committee.

# D. The Tax Section's Conflict of Interest Rules

- 1. A member may not participate if:
  - (i) the member feels (for any reason) that the views the member will express (or the member's other contributions) will be influenced by what the member thinks would be beneficial or detrimental specifically to the member's current, former or prospective clients, the member's firm or the member's employer, or the member himself (either in his interactions with such persons or in his capacity as a taxpayer) as opposed to what the member thinks would further the Tax Section's Mission;
  - (ii) the member or the member's firm or employer is so closely associated with clients who have an interest in the subject matter of the report that the public may perceive that the member would be influenced by the interests of those clients; or
  - (iii) the member is currently (or was recently) engaged by a client to assist in an effort to lobby in relation to one or more relevant issues with the intent of influencing the views of anyone in the executive, legislative or judicial branch of the government.1
- 2. A member shall consult with the Chair before participating in the preparation of a Report if:
  - (i) the member feels (for any reason) that the member could not freely state the member's actual views on any relevant issue;
  - (ii) the member's firm or employer is currently (or was recently) engaged by a client to assist in an effort to lobby in relation to one or more relevant issues with the intent of influencing the views of anyone in the executive, legislative or judicial branch of the government;
  - (iii) the member is required under New York State Rules of Professional Conduct Rule 6.4 to disclose to the Tax Section Chair that the "interests of a client may be materially benefitted by" what could be stated in a report; or

(iv) the member has obtained consent from a client to participate in the report preparation process (whether or not such consent was required by New York State Rules of Professional Conduct Rule 1.7).

# Provisions of the New York State Rules of Professional Conduct Cited Above

## RULE 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration, notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer actively participates, the lawyer shall disclose that fact to the organization, but need not identify the client. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7.

### RULE 1.7. Conflict of Interest: Current Clients

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:
- (1) the representation will involve the lawyer in representing differing interests; or
- (2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
  - (4) each affected client gives informed consent, confirmed in writing.

<sup>&</sup>lt;sup>1</sup> Official Comment: Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. ... In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients. A lawyer's identification with the organization's aims and purposes, under some circumstances, may give rise to a personal-interest conflict with client interests implicating the lawyer's obligations under other Rules, particularly Rule 1.7. A lawyer is also professionally obligated to protect the integrity of the law reform program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially affected.