

FROM THE CHAIR

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TAX REFORM

On November 1, 2005, after some delays, the President's Advisory Panel on Federal Tax Reform made its report to the Secretary of the Treasury. This is the latest step in a process that the President set in motion in January 2005 with the creation of the Panel by executive order. The report recommends two extensive proposals, one directed at reforming the existing federal income tax and the other at moving towards a consumption-based tax system. Both proposals present broad outlines of changes in the federal tax system, but do not provide extensive detail or legislative language.

On November 17, 2005, I wrote on behalf of the Section to former Senators Connie Mack and John Breaux, the leaders of the Tax Reform Panel, commending the Panel on the completion of its work. The letter embraced the report's emphasis on tax simplification, which the ABA has made a legislative priority, and noted that the report included several specific simplification proposals advocated by the ABA, such as repeal of the alternative minimum tax and repeal of income "phase-outs." We also stated our willingness to provide technical

assistance as the tax reform process moves forward.

As of this writing, it remains unclear whether and how the federal tax reform process will continue. It is possible that the President will discuss tax reform in his State of the Union address, and that those remarks may be accompanied by the release of specific tax reform proposals. Other indications suggest that tax reform proposals may not emerge until next year. In any event, when more detailed tax reform proposals are made by the Administration, the Section will consider how it can best participate in the tax reform process.

CIRCULAR 230

Even before the final Circular 230 written tax advice regulations became effective on June 20, 2005, practitioners had begun to voice their concerns about the resulting burdens placed on the tax system. Complaints have steadily increased, while at the same time, enormous efforts have been made by practitioners and their firms to comply with the new rules.

Understandably erring on the side of caution, many practitioners have undertaken the time and expense of applying the new rules each time written tax advice is considered, frequently resulting in the "legending" of written communications in order to avoid noncompliance. Individual comments to the Government have diverged widely in their approaches. Some recommend the issuance of binding confirmation from the Government on the application of the regulations to specific fact patterns, taking the form of "frequently asked questions." Others make proposals to revise the regulations based on experience in specialized areas of practice, such as capital markets and wealth transfer. Occasionally, practitioners argue that the burdens imposed on the tax system seem vastly disproportional

to the benefits obtained, and call for repeal of the most troublesome provisions.

On December 5, 2005, the Section submitted a letter to the Government making many similar observations and requesting immediate action. The letter enumerated the principal undesirable consequences caused by the written tax advice regulations: the necessity to evaluate all proposed written communications against the new technical rules and then to decide on appropriate compliance measures, which acts as a barrier to seeking advice in the first place; the proliferation of legending to avoid noncompliance, with resulting confusion and discord; the pressure created to issue oral rather than written advice; and the concern with the possibility that the Government may find fault with technical violations of the new rules rather than focusing on compliance with core ethical principles. The letter concluded that any benefit produced by the new rules in combatting tax shelters was more than offset by the barriers imposed to obtaining written advice, and that overall tax compliance might well be reduced rather than enhanced. The letter then urged the Government to revise the Circular 230 regulations to align them more closely with their objectives, noting many suggestions previously made by the Section to achieve those goals that had not been adopted, or, alternatively, to request proposals for interpretations of Circular 230 as applied to specific fact situations (i.e., publish responses to "frequently asked questions"). The letter also noted that other approaches could be devised to improve the administrability and effectiveness of the Circular 230 written tax advice rules.

At this writing, I am hopeful that the Government will revisit the Circular 230 written tax advice regulations with the goal of making them

more workable and less burdensome. The Section remains willing, as it consistently has in the past, to assist the Government in developing rules to address tax shelter opinion abuses, while assuring that the impact of the regulations does not unduly burden the ability of practitioners to provide written tax advice.

SECTION ACTIVITY IN RESPONSE TO THE HURRICANES

The Section has continued to monitor the guidance published by the Government in response to tax issues presented by the aftermath of the major hurricanes and to review the legislative initiatives considered by Congress. In addition, in November 2005, the Section entered into a Memorandum of Understanding (MOU) with the IRS that creates an informal partnership to provide assistance to taxpayers at local FEMA disaster recovery centers in response to the hurricanes. Entering into these MOUs has been a high priority for the IRS. The MOU provides an excellent opportunity for the Section to fulfill its objective to provide direct personal assistance to taxpayers adversely affected by the hurricanes. I am grateful to Sylvan Siegler, Vice Chair - Administration, and Greg Jenner, Vice Chair - Communications, for their efforts in working out an acceptable MOU.

MEETINGS WITH THE GOVERNMENT

On December 8, 2005, Section officers met with senior officials at the IRS and the Treasury Department to discuss issues of current importance. As in the past, the meetings resulted in a useful interaction that emphasized the views of our members and the Section's participation in fostering improvements to the tax system. This year, our discussions focused on Circular 230, federal tax reform, the new nonqualified deferred compensation rules, certain aspects of the tax shelter regulations, and gui-

dance issued this fall in the aftermath of the hurricanes. In addition, we discussed with the IRS the Section's interest in surveying our members regarding the independence and effectiveness of the appeals process.

RECENT GOVERNMENT SUBMISSIONS

The Section has been active in providing the Government with timely comments on a wide range of subjects:

- At the request of the Director of the Office of Professional Responsibility, the Section, through its Standards of Tax Practice Committee, examined whether Tax Court Special Trial Judges would be a more appropriate trier of fact in OPR disciplinary hearings than the administrative law judges who currently hear these cases. These comments are noteworthy due to the substantial contributions made by the Section of Administrative Law, the Judicial Division and the ABA's Standing Committee on Professional Responsibility.
- The Committee on U.S. Activities of Foreigners and Tax Treaties prepared comments on regulations relating to the obligations of partnerships to withhold tax under section 1446 on effectively connected taxable income allocated to foreign partners.
- The Employee Benefits Committee urged the expansion of transition relief granted under proposed regulations interpreting recently enacted section 409A.
- The Exempt Organizations and Employee Benefits Committees made recommendations for guidance in response to the aftermath of Hurricanes Katrina and Rita.
- The Committee on Financial Transactions prepared comments concerning proposed regulations under section 475 relating to elective safe harbors for dealers in securities, dealers in commodities, and traders in securities and commodities.

- The Employee Benefits Committee submitted detailed comments in response to proposed regulations issued under section 415.
- The Section submitted comments on pending legislation regarding codification of the economic substance doctrine, offers in compromise, frivolous tax returns, exempt organizations and charitable contributions.

PUBLICATIONS DEVELOPMENTS

Through the outstanding efforts of our Vice Chair - Publications, Jerry August, and Council director Sam Braunstein, the Section and THE PRACTICAL TAX LAWYER, an ALI-ABA publication that is cosponsored by the Tax Section, have commenced a collaborative effort in which experienced members of the Section are paired with members of the Section's Young Lawyers Forum and Diversity Committee to co-author articles for publication. This project was inaugurated with the publication of two articles in the Fall 2005 issue of THE PRACTICAL TAX LAWYER. We expect that at least one article resulting from this mentoring program will be published in each issue of THE PRACTICAL TAX LAWYER.

2006 MIDYEAR MEETING

We are looking forward to an excellent Midyear Meeting, February 2 - 4, 2006, at the Manchester Grand Hyatt Hotel in San Diego. Hurricane Katrina forced us to relocate the meeting from New Orleans, and we were fortunate to be able to return to last year's outstanding venue. The Manchester Grand Hyatt has graciously agreed to allow the Section to reschedule its 2009 Midyear Meeting, thereby providing an opportunity to return to New Orleans. The Section will contribute \$25 to one or more charities assisting those affected by Hurricane Katrina for each person who registers for the 2006 Midyear Meeting.

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FROM THE CHAIR

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George Yin, who recently stepped down as chief of staff of the Joint Committee on Taxation and is currently on the faculty of the University of Virginia Law School, will be the keynote speaker at the meeting. There

will be free Volunteer Income Tax Assistance (VITA) training on site; a series of Low Income Taxpayer Clinic programs will be available; the new (2006-2007) John S. Nolan Fellows will be announced as will the recipi-

ent of the Section's Pro Bono Award; and the final rounds of the Law Student Tax Challenge for JD candidates and, for the first time, LLM candidates, will be conducted. ■