

DELAWARE STATE BAR ASSOCIATION
SECTION OF TAXATION
PRINCIPLES AND PROCEDURES
Adopted by Unanimous Vote
of Section of Taxation on
May 20, 1996

DSBA SECTION OF TAXATION PRINCIPLES AND PROCEDURES

General. The Delaware State Bar Association (the "DSBA") is exempt from federal income taxation as a business league under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended. As a business league, the DSBA is not precluded from presenting the views of its membership to members of legislative bodies, governmental officials or the public. Because the Section of Taxation (the "Section") is an integral part of the DSBA, it must follow the procedures and policies of the DSBA with respect to all of its activities. The Section reports to and is subject to the jurisdiction of the DSBA's Executive Committee (the "Executive Committee"). The Section regularly develops, with respect to matters within its jurisdiction, proposed legislation, regulations and rulings, and comments on legislation, regulations, rulings and governmental policies proposed by others, and submits such proposals or comments, after they have been approved by the Section, to the Executive Committee of the DSBA for approval as DSBA policy. Any statements submitted to legislative bodies, courts or governmental agencies on matters within the Section's jurisdiction that have not been approved by the Section and the Executive Committee may be made only as the comments of the individuals advocating the positions contained in such statements, and such statements may not aver or imply that they represent the position of the DSBA or the Section.

Purpose. The Section endeavors to contribute to the improvement and enhanced public understanding of the tax laws and their administration. In promoting that objective, the Section monitors and evaluates tax developments, conducts studies and develops recommendations regarding solutions to tax problems and the administration of justice with respect to tax matters.

Conflicts of Interest. Members of the Section who have clients whose interests may be affected by proposed legislation, regulations, rulings or governmental policies should always be mindful of their dual roles. No member should permit the interest of a client to lead the member to make or support a proposal that the member would otherwise not favor, to oppose a proposal that the member would otherwise not oppose, or to urge on the Section, or one of its committees, a position that might help the member's client at the potential expense of the Section's standing and reputation. This sensitivity to possible conflicts of interest is a matter of ethical responsibility and is also essential to the effectiveness and credibility of the Section.

In certain circumstances, a member should, in fairness and good conscience, refrain from participating in the development of a particular Section position or from speaking or voting on that position. One clear example of this is when a Section member or, to the knowledge of the member, the member's firm has been specifically engaged by a client to act with respect to, or otherwise to influence the development or outcome of, the subject matter under consideration. In other circumstances, a member may not be required to refrain from participating, speaking or voting, but should, in fairness and good conscience, make a disclosure of client interest. Such circumstances may exist when the member believes that the interest of a particular client may be materially or directly affected by a matter being considered by the Section, but the member or, to the knowledge of the member, the member's firm, has no specific engagement to represent such client with respect to such matter.

It is recognized, however, that adherence to these standards cannot be brought about solely by rule, but must be left in part to such things as reminder, example and tradition. No rule, however well drafted, can be a substitute for conscience or good judgment. This policy applies to all Section projects, including, without limitation, comments on proposed or existing legislation, regulations, rulings or governmental policies. When staffing a project, the head of any Section committee has a special responsibility to consider the matter of actual or apparent conflicts of interest, not only to avoid potential criticism, but also to encourage the formulation in the finished product of a balanced view. Members who encounter uncertainties in the application of this policy should consult with an officer of the Section.

Tax Policy Issues. It is the policy of the Section to confine its recommendations, comments and testimony to its areas of professional expertise. The simplicity, enforceability and fairness of the tax system and its effect on economic, business and personal behavior are all within areas in which the Section believes it has such expertise. The need for a tax cut to stimulate the economy or the need for a shift in tax burdens among income classes illustrate economic and political questions on which the Section does not believe it has particular expertise or wisdom or on which it should comment. Accordingly, the Section will, with rare exceptions, not comment on proposed changes in the rate structure or the amounts of deductions or exemptions available under State tax law. Many issues of fundamental tax policy may involve both legal, technical and tax-system policy issues on which the Section has expertise, and purely economic or political issues on which the Section does not. In considering such issues, the Section policy is to confine its comments to those aspects of the issues within the area of the Section's expertise, and such comments shall be explicitly subject to the effect of the purely economic or political aspects of such issues.

Legislative Retroactivity. The Section has a policy of not making any affirmative recommendation for retroactive legislative effect, except in rare cases.

Consistency with Federal Law. Based on the long-established principle of administrative and

taxpayer efficiency, the Section has a policy of not making any affirmative recommendation regarding proposed or existing legislation, regulations, rulings or governmental policies adopted or being considered by the State of Delaware that would be inconsistent with corresponding existing or proposed federal legislation, regulations, rulings or governmental policies relating to the income tax and administrative and procedural matters except in rare cases.

Role of Representatives of the Division of Revenue. Representatives of the State Division of Revenue are not permitted to vote as members of the Section with respect to the Section's approval or disapproval of any proposed or existing State legislation, regulations, rulings or governmental policies.

Liaison. It is the Section's policy to cooperate, by the exchange of ideas and views, with governmental staffs and agencies, other DSBA sections and other professional organizations interested in taxation, including the Delaware Society of Certified Public Accountants, the ABA Section of Taxation and the tax committees or sections of other state or local bar associations.