1707 L Street, N.W.
Sixth Floor
Washington, D.C.
20036-4202
(202) 331-3883

THE DISTRICT OF COLUMBIA BAR

MEMORANDUM

Lawyer Referral
and Information Service
(202) 331-4365

Sections Office
(202) 331-4364

Membership Office
(202) 331-0705

TO: Board of Governors
Section Chairpersons

FROM: Lynne M. Lester
Manager, Sections Office

DATE: January 12, 1988

SUBJECT: Proposed letter to J. Walter Lund, Associate Director, DC Department of Finance and Revenue in general support (with minor modifications) of proposed regulations to the Inheritance and Estate Tax Revision Act of 1986.

Pursuant to the Section Guidelines No. 13, Sections a and c, the enclosed public statement is being sent to you by the Estates, Trusts and Probate Law Section

a(iii): "No later than 12:00 noon on the seventh (7th) day before the statement is to be submitted to the legislative or governmental body, the Section will forward (by mail or otherwise) a one-page summary of the comments, (summary forms may be obtained through the Sections Office), the full text of the comments, and the full text of the legislative or governmental proposal to the Manager of Sections. The one-page summary woll be sent to the Chairperson(s) of each Section steering committee and any other D.C. Bar committee that appear to have an interest in the subject matter of the comments. A copy of the full text and the one-page summary will be forwarded to the Executive Director of the Bar, the President and President-Elect of the Bar, the Section's Board of Governors liaison, and the Chairperson and Vice-Chairperson of the Council of Sections. Copies of the full text will be provided upon request through the Sections Office. Reproduction and postage expenses will be incurred by whomever requested the full text (i.e., Section, Bar committee or Board of Governors account). The

Robert E. Jordan III
President
Philip A. Lacovara
President-Elect
Martin D. Minsker
Secretary
Elizabeth Hayes Patterson
Treasurer

Board of Governors:
Constance L. Belfiore
Jane Golden Belford
James D. Berry, Jr.
Donald T. Bucklin
Daryl A. Chamblee
Vincent H. Cohen
James E. Coleman, Jr.
Dr. Chauncey Fortt
Paul L. Friedman
Jamie S. Gorelick
Janine D. Harris
Dr. Melvin Hershkowitz
Carolyn B. Lamm
Frank J. Martell
Anne Meister
Eleanor Holmes Norton
James Robertson
Lois J. Schiffer
John Vanderstar

Andrew H. Marks
General Counsel

Katherine A. Mazzaferri
Executive Director
Charles E. Lorenzetti
Assistant Executive
Director, Administration
and Finance
Ann Barker
Director, Public
Service Activities

Manager for Sections shall help with the distribution, if requested, and shall forward a copy of the one-page summary to each member of the Board of Governors. In addition, the Manager for Sections shall draw up a list of all persons receiving the comment or statement, and he/she shall ascertain that appropriate distribution has been made and will assist in collecting the views of the distributees. If no request is made to the Manager for Sections within the seven-day period by at least three (3) members of the Board of Governors, or by majority vote of any steering committee or committee of the Bar, that the proposed amendment be placed on the agenda of the Board of Governors, the Section may submit its comments to the appropriate federal or state legislative or governmental body at the end of the seven-day period."

a(vi): The Board of Governors may request that the proposed comments be placed on the agenda of the Board of Governors for the following two reasons only:

(a) The matter is so closely and directly related to the administration of justice that a special meeting of the Bar's membership pursuant to Rule VI, Section 2, or a special referendum pursuant to Rule VII, Section 1, should be called, or (b) the matter does not relate closely and directly to the administration of justice, involves matters which are primarily political, or as to which evaluation by lawyers would not have particular relevance.

a(v): Another Section or committee of the Bar may request that the proposed set of comments by a Section be placed on the Board's agenda only if such Section or committee believes that it has greater or coextensive expertise in or jurisidiction over the subject matter, and only if (a) a short explanation of the basis for this belief and (b) an outline of proposed alternate comments of the Section or committee are filed with both the Manager for Sections and the commenting Section's chairperson(s). The short explanation and outline of proposed alternate comments will be forwarded by the Manager for Sections to the Board of Governors.

a(vi): Notice of the request that the statement be placed on the Board's agenda lodged with the Manager for Sections by any Board member may initially be telephoned to the Manager for Sections (who will then inform the commenting Section), but must be supplemented by a written objection lodged within seven days of the oral objection.

Please call me by 5 pm, Monday, January 18, 1988 if you wish to have this matter placed on the Board of Governors' agenda for Tuesday, February 2, 1988.

Enclosures

ESTATES, TRUSTS AND PROBATE LAW SECTION

Steering Committee:
Carol A. Rhees, Co-Chair
Martin J. McNamara, Vice-Chair
Thomas J. Cholis
Thomas J. Egan
Lloyd Leva Plaine
Henry L. Rucker

The District of Columbia Bar

January 11, 1988

Mr. J. Walter Lund
Associate Director
Department of Finance
and Revenue
Room 3016
300 Indiana Avenue, N.W.
Washington, D.C. 20001

Re: Proposed Estate Tax Regulations

Dear Mr. Lund:

As members of the Steering Committee of the Estates, Trusts and Probate Law Section of the D.C. Bar, we have reviewed the proposed regulations issued pursuant to the Inheritance and Estate Tax Revision Act of 1986. On the whole, we find the regulations to be clear, complete and very helpful. We do note, however, several areas where we believe additional guidance would be of assistance to the practicing Bar and perhaps to the Department, as well.[1/]

First, as you know, there has long been uncertainty in the District with respect to the meaning of the term "business use intangible personal property." This uncertainty poses a serious dilemma for personal representatives and preparers of estate tax returns in the District. For this reason, we feel that it is imperative that the term be defined with as much specificity as possible in the regulations. Toward this end, we suggest that the last sentence in the definition of business use intangible personal property be replaced with a sentence stating that the term includes only property titled in the decedent's name at the time of death and used by the decedent in the District of Columbia to earn a living.

1/ The views expressed herein represent only those of the Estates, Trusts and Probate Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

1707 L Street, NW, Sixth Floor, Washington DC 20036 202/331-4364 Sections Infoline 223-7729

Second, for similar reasons, the term "personal trust," which is used in both the Act and the proposed regulations, should be defined. This is not a term of art with a recognized meaning. We would suggest that the term be defined as a trust created by the decedent and revocable by the decedent at his date of death.

Third, we recommend that the word "final" be inserted before the word "adjustments" in section 3705.6 to make it clear at what point a revenue agent's report should be filed with the Director.

Fourth, section 3707.2 states a release of lien will not be issued "on property not subject to District estate tax or in cases where no District estate tax return is required to be filed." In light of section 3707.1, we question whether releases of lien need to be issued even in cases where a District estate tax return is required. We suggest that section 3707.2 be clarified in this regard.

Fifth, we suggest that the phrase "Except as provided in Section 3707.5" be added at the beginning of section 3707.3 to avoid a possible inconsistency between these sections.

Finally, on a more trivial level, we note that the references in sections 3702.3 and 3702.4 to "Sections 3703.1 and 3703.2" should read "Sections 3702.1 and 3702.2." Similarly, the reference in section 3703.10 to "Section 3701.8" should read "Section 3799.2."

Please feel free to call upon any of us if we can be of assistance.

Sincerely,

Carol A. Rhees

Martin J. McNamara

Thomas J. Cholis

Thomas J. Egan

Lloyd Leva Plaine

Henry L. Rucker