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June 17, 2026

House of Commons Standing
Committee on National Finance
Ottawa, Ontario

Via email: FINA@parl.gc.ca, nffn@sen.parl.gc.ca

RE: Bill C-31 Audit Power Provisions

Dear Sirs and Mesdames:

I am writing to you today on behalf Tax Executives Institute, Inc. ("TEI") to provide comments on Bill C-31, introduced in the House of Commons on May 6, 2026 (the "Proposed Legislation"). The Proposed Legislation would amend the Income Tax Act ("ITA") to compel production of information and more effectively audit taxpayers who refuse to comply with the Canada Revenue Agency's ("CRA") audit queries and requirements. In Appendix A, please find a brief setting out TEI's concerns and recommendations regarding the Proposed Legislation.

TEI appreciates the opportunity to provide comments on the Proposed Legislation. If you have any questions or would like to discuss the attached brief, please do not hesitate to contact Sandy Shanks, Chair of TEI's Canadian Income Tax Committee, at sandy.shanks@conocophillips.com, or Benjamin R. Shreck of TEI's legal staff at bshreck@tei.org or +1 202 464 8353.

Respectfully submitted,

Walter B. Doggett

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Appendix A: TEI Brief

**Brief submitted to
the House of Commons Standing Committee on
Finance (“FINA”)
and
the Senate Standing Committee on National Finance
(“NFFN”)
regarding
Bill C-31, a second Act to implement certain
provisions of the budget
tabled in Parliament on May 6, 2026
Submitted by: Tax Executives Institute, Inc. (“TEI”)**

The Proposed Legislation contains amendments to the ITA¹ intended to enhance the capacity of the Canada Revenue Agency (“CRA”) to compel production of information and more effectively audit taxpayers who refuse to comply with CRA audit queries and requirements (hereinafter, collectively, a “requirement” or “requirements”). Collectively, we refer to these proposals as the “Audit Powers Proposals.”

The Audit Powers Proposals would: (i) impose a new penalty upon the issuance of a compliance order under subsection 231.7 (the “Penalty Regime”); (ii) create a new notice of non-compliance (“NNC”) regime (the “NNC Regimes” and, collectively with the Penalty Regime, the “Sanction Regimes”); and (iii) amend subsections 231.1(1), 231.2(1) and paragraph 231.2(3)(b) to authorize the CRA to collect information on behalf of foreign governments pursuant to tax treaties or “listed international agreements” as defined in subsection 248(1) (the “Information Exchange Regime”).

While TEI understands and supports effort to enhance “the efficiency and effectiveness of tax audits,” we have serious concerns about the Audit Powers Proposals. TEI previously submitted to the Department of Finance (“Finance”) comment letters dated May 29, 2024,² and September 12, 2025,³ respectively (collectively, the “TEI Submissions”) outlining those concerns. While Finance has addressed several of the concerns raised in the TEI Submissions, several of the more serious concerns remain outstanding, including that:

- (i) The Sanction Regimes violate Section 8 (unreasonable search and seizure) of The Charter of Rights and Freedoms (the “Charter”) by permitting the CRA to threaten taxpayers into disclosing information to the CRA that the CRA is not entitled to obtain;
- (ii) The Sanction Regimes contain penalties so disproportionate to any legitimate regulatory objective so as to constitute a “true penal consequence” without providing for the constitutionally required procedural protections, in violation of section 11 of the Charter (rights in criminal and penal matters);
- (iii) The NNC Regime proposes an administrative and judicial review process that is, in crucial ways, unworkable and will only create delays without resolving substantive disputes between the CRA and taxpayers; and
- (iv) The Information Exchange Regime would allow foreign governments – including those with questionable human rights records – to effectively use the CRA to compel Canadians

¹ All statutory references herein are to the ITA unless otherwise indicated.

² See <https://www.tei.org/sites/default/files/TEI%20Comments%20-%20Proposed%20Expanded%20CRA%20Audit%20Power%20-%20FINAL%20to%20Canadian%20Government%2029%20May%202024.pdf>.

³ See <https://www.tei.org/sites/default/files/TEI%20Comments%20-%20Enhanced%20CRA%20Audit%20Powers%20-%20FINAL%20to%20Finance%2012%20Sep%202025.pdf>.

to turn over personal information, with little, if any, safeguards about how that information will be used. This is a serious issue for our members and for Canadians that, again, raises significant Charter concerns.

TEI Comments

1. Introduction to the Sanctions Regime

In assessing the Sanction Regimes, it is important to understand the context in which this regime is proposed to apply.

Consider, as example 1, a large Canadian multinational taxpayer with Canadian income tax payable of \$1 billion. Such a taxpayer is likely to be routinely audited by the CRA, typically on a year-round basis, and can expect to receive dozens of CRA information requests information a year. Suppose, in the course of such an audit, a dispute arises over the legality of a single requirement⁴ – perhaps the CRA issues a requirement ostensibly to assess the taxpayer’s compliance with its withholding obligations under the ITA, but the taxpayer believes the requirement is really asking for information about unnamed clients for which the CRA has not obtained the judicial authorization mandated by law.⁵ Maybe the taxpayer is correct, maybe the CRA is correct, but assume there is a genuine dispute between the parties.

The ITA provides for the resolution of such disputes by requiring the CRA to seek a compliance order under section 231.7. If the taxpayer is correct, the Court will refuse to issue such an order and the CRA will have to seek the requested information in a lawful manner (i.e., by obtaining judicial authorization). If the CRA is correct, and the Court issues such an order, the taxpayer will typically comply with the compliance order as non-compliance with such orders is very rare. That is the current state of affairs.

Under the Penalty Regime, if the CRA is successful in the Federal Court, the taxpayer will be subject to an automatic penalty of \$100 million. This penalty, however, has no relationship to the information sought in the CRA requirement. When provided, it may show that the taxpayer has fully complied with its withholding obligations under the ITA, such that no additional tax is due. And

⁴ There are many reasons why a taxpayer may legitimately not comply with a requirement, including that the requirement: (i) requests documents subject to solicitor-client privilege, (ii) is unclear as to what is requested and from whom, (iii) requests information about unnamed taxpayers for which the CRA is required, and has not, obtained judicial authorization under subsection 231.2(3), (iv) requests information that is not within the power, possession, or control of the taxpayer, (v) was not issued for bona fide purposes of administering the ITA and thus is ultra vires the CRA’s information gathering powers, or (vi) requests information for the purpose of a criminal inquiry.

⁵ Under subsection 231.2(2) the CRA is required to obtain judicial authorization for requirements to provide information about unnamed persons. This example is based on real events.

yet, the taxpayers would still be subject to a \$100 million penalty. Or perhaps the information may show that the taxpayer failed in some minor way to comply with its withholding obligation, *e.g.*, it is liable for failing to withhold and remit \$1 million in withholding tax, which is 1% of the penalty imposed that would be imposed under the Penalty Regime.

Nor is this only an issue for a large multinational taxpayer. Suppose as example 2, the CRA asks an individual taxpayer – a single parent making \$50,000 a year – for a copy of the receipt for childcare expenses of \$5,000 (i.e., worth approximately \$750 in federal income tax savings). Assume, for some reason, the taxpayer fails to respond to that requirement in a timely fashion and the CRA issues an NNC. A taxpayer that responds within 30 days from the issuance of the NNC will be subject to a \$1,500 penalty – twice the amount of tax at issue.

This is the context which informs our concerns with the Sanction Regime – the above are realistic examples which contemplate, for different taxpayers, enormous penalties wholly disproportionate to the conduct of the taxpayer and to the amount of tax at issue. We use these examples to provide context for the issues we raise below.

2. The Sanction Regimes Violate Section 8 of the Charter

As the examples above indicate, the Sanction Regimes eliminate the distinction between taxpayers who frivolously fail to comply with CRA requirements and taxpayers who either raise bona fide questions about the lawfulness of such requirements or innocently fail to comply with them, punishing all equally with often grossly disproportionate penalties.

In example 1, it is obvious how the threat of penalties could compel the production of information that the CRA is not lawfully entitled to obtain – the use of threats to obtain such information unlawfully being inherently unreasonable under section 8 of the Charter.⁶ Faced with uncertainty about the lawfulness of a requirement, the taxpayer in example 1 might rationally “choose” to produce the requested information, rather than risk a \$100 million penalty if it is wrong. Such a choice is not a real choice. Similarly, it is hard to imagine many individual taxpayers, facing a \$25,000 penalty, risking a NNC by asserting their rights against the CRA.

Finance has implicitly acknowledged the validity of this concern by providing a defense against penalties, in proposed subsections 231.7(7) and 231.9(14), where the refusal to comply with a requirement is based on a reasonable belief that the information, documents, or answers sought by the CRA are subject to solicitor-client privilege. These defenses are a recognition that, without them, the Sanction Regimes would have the effect of discouraging taxpayers from making privilege claims against the government. Unfortunately, since these defenses only covers a subset of the scenarios in

⁶ See *R. v. Wills*, 1992 CanLII 2780 (ON CA).

which a taxpayer is lawfully permitted to refuse to comply with a requirement, their existence acknowledges the problem but fails to fully address it.

The concern that the Sanction Regimes would allow the CRA to obtain information through unconstitutional means is just relevant to taxpayers. Taxpayers who are coerced by the Sanction Regimes into producing information the CRA is not entitled to obtain may pursue Charter remedies against the Crown under section 24 of the Charter for the breach of their Charter rights. Such remedies could include (i) damages; (ii) the exclusion of evidence (and/or evidence derived from it) from future proceedings; (iii) a stay of proceeding against the taxpayer (i.e., in criminal prosecutions); or (iv) even the vacation of the CRA's re-assessment of the taxpayer⁷ (if, for example, the effect of the breach would be to render the taxpayer civil appeal unfair). It would be unfortunate if, after spending years investigating a taxpayer, CRA's efforts were frustrated (whether in a civil dispute or in a criminal prosecution) because the evidence was procured through unconstitutional coercion under the Sanction Regimes. It would also be an enormous waste of government and taxpayer resources.

While the Penalty Regime – but, crucially, not the NNC Regime – requires the Minister to vary or vacate a penalty imposed by the Minister, if the Minister determines that the penalty previously imposed was “disproportionate or unfair,” this does not address the potential violation of taxpayers' Charter rights. The constitutional concern is that the threat of penalties may coerce taxpayers into responding to unlawful requirements to avoid such penalties – an ability to vary or vacate such penalties does not diminish that threat.

3. The Sanction Regimes Violate Section 11 of the Charter

The constitutional implications of the Penalty Regime go beyond violating section 8 of the Charter. The Penalty Regime is essentially penal in nature and thus subject to the constitutional protections afforded under section 11 of the Charter to Canadians “charged with an offence” (in this instance, essentially, non-compliance with a requirement, which is an offence under section 238(1)). Such protections are not afforded by the Proposed Legislation.

First, the conduct being penalized under the Sanction Regimes – the failure to comply with a requirement – is a criminal offence under section 238(1). Further, the existing consequences for failing to comply with a requirement are penal in nature – a criminal prosecution under subsection 238(1).

Second, the penalties contemplated by the Penalty Regime, under realistic circumstances, exceed by orders of magnitude the maximum criminal fine under section 238(1) for failing to comply with CRA requirements. Moreover, in practice, fines imposed by the courts on taxpayers who

⁷ See, *O'Neill Motors Ltd. v. R.*, 1995 CanLII 19035 (TCC), *aff'd Canada v. O'Neill Motors Ltd.* (C.A.), 1998 CanLII 9070 (FCA), for the proposition that a CRA assessment can be vacated as a remedy for a breach of section 8 of the Charter.

criminally fail to comply with requirements are far less than the minimum penalties contemplated by the Penalty Regime (i.e., \$5,000).⁸ Together, these strongly suggest that the proposed penalty is penal in nature. As the majority of the Supreme Court of Canada (the “SCC”) noted in *Guindon*:

A monetary penalty may or may not be a true penal consequence. It will be so when it is, in purpose or effect, punitive. Whether this is the case is assessed by looking at considerations such as the magnitude of the fine, to whom it is paid, whether its magnitude is determined by regulatory considerations rather than principles of criminal sentencing, and whether stigma is associated with the penalty.⁹

Here, the nature of the Penalty Regime strongly suggests that its monetary penalties are penal in nature.

In addition, the penalty computation is arbitrarily determined and not based on regulatory considerations. A penalty based on tax payable in no way reflects regulatory considerations in the context of a tax information reporting regime, where the information being sought may have nothing to do with the amount of tax payable or may have immaterial implications for the taxpayer’s tax payable. Again, in example 1, the information sought may show that no tax is payable by the taxpayer or that the taxpayer owes a small amount of tax, which tax is dwarfed by the penalty.

Finally, the obligation for the Minister to vacate or vary a penalty that is disproportionate or unfair does not address this constitutional issue. As a starting point, any administrative penalty that would be greater than the fine that could be imposed on a criminal conviction for the same act is on its face disproportionate and unfair, given the greater moral blameworthiness required for a criminal conviction (i.e., the intent requirement). In addition, given that the penalties are penal, we fail to see how providing discretion to the Minister to impose a lesser penalty addresses the absence of Charter mandated procedural protections for penal penalties.

The same concern applies to the NNC Regime. The taxpayer in example 2 would be subject to a penalty that is greater than the fine typically imposed on a taxpayer convicted of criminally failing to comply with a requirement, without any of the procedural protections afforded to persons accused of a criminal offence. Moreover, while the revised Penalty Regime provides a duty not to

⁸ For example, in the recent case of *R. v. Holsworth* (Prov Ct. of British Columbia, Nelson Docket 26418-1 & 26419-1, dated Oct 6, 2022), *aff’d* 2023 BCSC 1041, the taxpayer was convicted of four counts of failing to comply with a notice of requirement to file various corporate tax returns. He was sentenced to a global \$4,000 fine for all counts. Similarly, in *R. v. Steeves* (Prov Ct. of British Columbia, Salmon Arm Registry 23302 and 23303, dated August 28, 2018), *aff’d* 2019 BCSC 1471, the taxpayer was convicted of 7 counts of failing to comply with a Notice of Requirement to file various personal and trust tax returns. She was sentenced to a fine of \$1,000 – the minimum fine – on each count. Based on our review of the caselaw, such sentences are common.

⁹ *Guindon v. Canada*, 2015 SCC 41 (CanLII), at para. 76.

impose a penalty that is unfair or disproportionate, no such duty exists under the NNC Regime. Therefore, the NNC Regime permits the imposition of unfair and disproportionate penalties. This is untenable.

4. The NNC Regime's Administrative and Judicial Review Process is Unworkable

In addition to the concerns identified above, the administrative and judicial review process contemplated by the NNC Regime is, in crucial ways, unworkable and will only create delays without resolving substantive disputes between the CRA and taxpayers.

(i) *Inappropriate standard of review*

A fundamental problem with the NNC Regime is that the standard of review contemplated by the regime affords taxpayers no opportunity to have an independent court assess the correctness of the CRA's requirement.

In contrast with compliance proceedings under section 231.7, where the Federal Court considers the correctness of a taxpayer's position that they are not required to comply with a requirement, the NNC Regime never allows taxpayers to obtain a final judicial determination of their obligations. Instead, the NNC Regime merely provides an opportunity to review the reasonableness of the Minister's decision to issue an NNC, and to have judicial review of the reasonableness of the Minister's decision to uphold that NNC. Neither consider whether the NNC was correctly issued in the first place. This is profoundly unfair because it permits the imposition of penalties where the Minister's determination, while perhaps reasonable, is incorrect, thus punishing taxpayers for correctly asserting their rights. This raises further doubts about the constitutional viability of this proposal.

Further, a reasonableness standard for judicial review of the Minister's decisions is inappropriate in circumstances where the issue is not the Minister's determination of a factual question (Did the taxpayer comply with a requirement?) but the Minister's interpretation of a legal question (Did the taxpayer have a legal obligation to comply with the requirement? Was the requirement lawful?). Questions about the legality of a requirement is a question of law which should be reviewed on a correctness standard. As the SCC observed in the recent *Vavilov* decision, such a standard is "is necessary for the proper functioning of the justice system . . ." ¹⁰ The NNC Regime fails to comply with that guidance.

¹⁰ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 59.

- (ii) *The NNC Regime does not provide for a meaningful mechanism to assert privilege claims against the CRA*

Because the appeal process contemplated by the NNC Regime only permits review of the Minister's decision to issue an NNC, proposed subsection 231.9(14), intended to ensure that taxpayers are not penalized for asserting privilege claims, is largely rendered ineffective. Simply put, since the Minister will never be permitted to review a privileged document, an administrative or judicial review of the Minister's decision that subsection 231.9(14) does not apply can never be meaningfully reviewed.

We suppose that, if a taxpayer were assessed for a penalty under proposed subsection 231.9(13) in respect of a document over which it claims privilege, it could appeal such an assessment to the Tax Court of Canada (the "TCC") under proposed subsection 231.9(15) and assert its privilege claim there. Of course, disputes in the TCC take years to resolve, highlighting that the NNC Regime, far from expediting CRA audits, is likely to delay them even further. Moreover, for many taxpayers the cost of disputing such an assessment in the TCC would likely exceed the amount of the penalty – even if they win, they lose.

- (iii) *The lengthy appeal process is burdensome and results in enormous penalties for taxpayers who appeal the issuance of an NNC*

The NNC Regime contemplates that the initial administrative appeal may not be resolved until 270 days after the CRA issues an NNC (i.e., 90 days to file an appeal and a further 180 days for the Minister to consider the appeal). Given the further 90-day appeal period to the Federal Court and the corresponding delays in obtaining hearings at the Federal Court – typically measured in years, not months - it is difficult to imagine any circumstances where an appeal could be fully heard within 500 days, i.e., without accruing the maximum penalty contemplated by the NNC Regime.

This is an inappropriate and unfair result. A taxpayer who, in good faith, exercises their right to appeal the issuance of an NNC, shouldn't face a crushing penalty just because the appeal process set out by Parliament is long and slow. Moreover, it is particularly unfair since most of the delay arises a result of government (in)action. If it takes one year (optimistically) for a taxpayer to obtain a hearing date in the federal court because of inadequate government funding for the courts, why should they face an extra \$18,250 penalty?

Furthermore, how many ordinary taxpayers are well positioned to navigate the complexity of the administrative and judicial review process contemplated by the NNC Regime without professional assistance. Is the taxpayer in example 2 expected to hire a lawyer to contest a \$1500 penalty?

Finally, we note that the slow appeal process makes a mockery of the intended purpose of the NNC Regime of expediting CRA audits. It provides taxpayers who frivolously refuse to comply with CRA requirements with an avenue to add years of delay to CRA audits.

5. Final Comments on the Sanction Regimes

TEI supports the government's desire to expedite CRA audits and to discourage taxpayers from frivolously and inappropriately delaying such audits. But it must do so in a coherent and constitutionally compliant manner. The proposed Sanction Regimes fail to do so.

TEI has previously shared alternative – better – approaches to achieving the government's objective including:

- (i) providing the Federal Court with sufficient resources to expeditiously resolve disputes over CRA requirements, which would expedite audits and discourage frivolous objections to CRA requirements.
- (ii) significantly increasing the range of potential sanctions for taxpayers who fail to comply with requirements after such disputes are resolved and the Federal Court issues a compliance order; and
- (iii) amending the Federal Court's Rules of Procedure to permit the Federal Court to sanction taxpayers who make frivolous or vexatious arguments in compliance proceedings in lieu of giving the Minister the power to punish taxpayers advancing bona fide, if unsuccessful, arguments.

We note that such alternatives are simpler, more targeted, and, crucially, constitutionally valid. These sorts of changes would not result in the unfair or abusive results we see for taxpayers, large and small, in examples 1 and 2, above. We urge you to consider pausing the enactment of the Sanction Regimes and consider these other, better, alternatives.

6. The Information Exchange Regime

The Information Exchange Regime raises serious concerns for TEI members. If passed, this proposal will allow foreign governments either with tax treaties with Canada or who are signatories to listed international agreements to compel Canadians to supply personal private information – either their own or that of third parties such as clients - to foreign governments, with little, if any, safeguards to protect against inappropriate use of such information.

Under current sections 231.1 and 231.2, the CRA can require Canadians to provide information to the CRA, but only if such information is sought for purposes of enforcing compliance with the ITA. The proposed amendment would relax this requirement so the CRA can compel the information for purposes of administering a “listed international agreement” (as defined in

subsection 248(1)). The SCC has held that the CRA's powers under sections 231.1 and sections 231.2 are akin to a government seizure which triggers a taxpayer's section 8 Charter rights.¹¹

Canada currently has tax treaties or listed international agreements with over 140 foreign governments, including countries with questionable governments and human rights records.

The proposed Information Exchange Regime will permit foreign governments to use Canadian tax laws to access personal, private, information about Canadians, including clients of our members, often without their knowledge. Such information may include social insurance numbers, bank records, employment information, information about membership in Canadian recreational or religious organizations, among other things.¹² Not all of the foreign governments with whom Canada has a tax treaty or who are signatories to listed international agreements share our democratic values or regard for the rule of law. Not all are friendly with Canada. Some are known to use personal, private, information for illicit or improper purposes. Once information about Canadians is in the possession of a foreign government, Canada loses the ability to control how it is used, and Canadian may have no meaningful protection against the misuse of their information under the laws of the foreign country. This is not simply a technical tax issue, this raises significant privacy concerns for TEI and indeed all Canadians. This result is highly problematic and unlikely the intention of the drafters of the legislation.

Canadian taxpayers do not expect their personal information to be handed over to a foreign government without meaningful assurance that such information will not be misused. The SCC stated in *McKinley Transport* that the taxpayer's reasonable expectation of privacy in his or her tax records vis-à-vis the Minister is relatively low. However, the SCC was clear to point out that individuals have "different expectations of privacy in different contexts and with regard to different kinds of information and documents, it follows that the standard of review of what is "reasonable" in a given context must be flexible if it is to be realistic and meaningful."¹³ It is uncontroversial to posit that Canadians have a very different expectation of privacy vis-à-vis the Minister where the Minister is collecting information for the purposes of administering Canadian tax law, subject to all the legal

¹¹ *R. v. McKinlay Transport Ltd.*, [1990] 1 SCR 627 ["*McKinley Transport*"].

¹² The foregoing list is based on information that the CRA deems relevant in assessing a taxpayer's residence in Canada (see Income Tax Folio S5-F1-C1 Determining an Individual's Residence Status: <https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-5-international-residency/folio-1-residency/income-tax-folio-s5-f1-c1-determining-individual-s-residence-status.html#p1.10>). If Canadian tax authorities ask for such information in assessing whether a taxpayer is resident in Canada, why would we not expect that foreign tax authorities might ask for similar information to assess (or to purport to assess) whether a taxpayer is resident in their country

¹³ *Supra*, note 12 at p.645.

and constitutional protections afforded by Canadian law, than they have in a context where the Minister is collecting information at the request of a foreign dictatorship or human rights abuser.

This privacy concern is particularly relevant for third party requirements. A third party who receives such a requirement likely has no way of knowing whether the taxpayer fears the foreign government and no way of knowing that the taxpayer's Charter rights may be violated by production of the information to the CRA. For our members, the prospect of being used by foreign governments to collect information for improper purposes is an enormous reputational risk.

We urge you to pause the Information Exchange Regime and advance it as a separate legislative proposal subject to proper oversight – instead of being minor provisions of a broader technical tax bill. Any proposal to proceed with the Information Exchange Regime should require that third party requirements on behalf of foreign governments require: (i) judicial oversight (similar to the existing process for unnamed persons requirements); (ii) notification of the “named taxpayer” where the requirement is in respect of such a taxpayer; and (iii) that the Minister establish that the laws of the requesting country have effective protections of taxpayer information substantially similar to those afforded to Canadians under Canadian law. Absent such procedural protections, the use of the CRA's audit/requirement powers to collect information for foreign governments constitutes an unreasonable search and seizure, which violates section 8 of the Charter.

About TEI

TEI was founded in 1944 to serve the professional needs of in-house tax professionals.¹⁴ Today, the organization has 55 chapters across North and South America, Europe the Middle East & Africa (“EMEA”), and Asia, including four chapters in Canada. Our over 6,000 members represent 2,800 of the world's leading companies, many of which either are resident or do business in Canada. Over 15% of TEI's membership comprises tax professionals who work for Canadian businesses in a variety of industries across the country. The following comments and recommendations reflect the views of TEI as a whole but, more particularly, those of our Canadian constituency.

¹⁴ TEI is organized under the Not-For-Profit Corporation Law of the State of New York and is exempt from U.S. Federal Income Tax under section 501(c)(6) of the U.S. Internal Revenue Code of 1986 (as amended).