The Tax Section at 75 (Foreword)

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The 2014–2015 bar year marks the 75th anniversary of the Section of Taxation. The Section of Taxation was established by the House of Delegates during the Association’s Annual Meeting held in San Francisco in July 1939.¹ On the occasion of the Section’s “diamond jubilee” we reflect on the many accomplishments of the Section over the years and contemplate where the organization will go over the course of the next quarter century.

Before there was a Section of Taxation with regular meetings held thrice annually for committees to meet and discuss current developments in the tax law, there were “tax clinics” sponsored by the Special Committee on Internal Revenue and Its Means of Collection.² The first such “tax clinic” was held during the Association’s 57th Annual Meeting in Milwaukee in August 1934 and included a discussion of papers presented by Robert N. Miller, a former Solicitor of Internal Revenue and one of the founding fathers of the Section of Taxation, Roswell Magill, a senior tax advisor in the Treasury Department during the 1920s and 1930s, and Robert H. Jackson, the then IRS Chief Counsel and future Associate Justice of the United States Supreme Court.³ At the conclusion of his remarks, Jackson invited the bar to provide input on the government’s policies, stating:

A bar which criticises freely, unhesitatingly, which comes to us frankly and points out what it believes to be our errors is a help and is welcome. We invite you, critically, but frankly, to cooperate with us in trying to do the job that after all is the job of your government—just as much as mine.⁴

Happily, the Section of Taxation has taken up the future United States Supreme Court Justice’s invitation, both through written comments on regulations and other administrative guidance, proposals for legislative change to reform the tax laws, and in discussions and debates at our regular meetings.

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² Robert N. Miller, History of Section of Taxation, 8 Bull. 12 (1954); Mansfield, supra note 1, at 4-5, 12.
⁴ Id. at 541.
After 1934, there were eight additional “tax clinics” sponsored by the Committee on Federal Taxation.5 As with the first “tax clinic,” these meetings were attended by leading members of the tax bar and prominent government officials, including Associate Justice Stanley Reed.6 During the ninth such “tax clinic,” the members discussed the imminent establishment of the Section of Taxation and appointed a committee to draft bylaws and nominate the initial officers and council. The latter committee selected George M. Morris to serve as the first Chair of the Section of Taxation. Mr. Morris had chaired the Committee on Federal Taxation for much of the decade before it was transformed into the Section of Taxation, and after his service as Chair of the Section, he was elected to serve as President of the Association during the 1942–1943 bar year.7

To mark the 50th anniversary of the Section of Taxation, former chairs of the Section wrote a collection of papers providing an overview of the development of the Section and its accomplishments through 1989.8 Jim Holden, who served as Section Chair during 1989–1990, provided a brief introduction to this collection.9 Harry Mansfield, who served as Section Chair from 1967–1968, chronicled the key developments over the first 50 years.10 Jack Nolan, who served as Section Chair from 1981–1982 and was the first recipient of the Section’s Distinguished Service Award in 1995, described the Section’s long history of contributions to improving the tax system.11 Nolan’s paper summarized the Section’s role in continuing legal education, both through regular Section meetings and other programs and through The Tax Lawyer. He also commented on some of the Section’s contributions to tax legislation, the development of the United States Tax Court, and the Section’s long-standing history of supporting appropriate funding for the Service. Nolan also highlighted the Section’s work in the area of ethics of tax practice. Martin Worthy, who served as Section Chair from 1973–1974, discussed a series of successful efforts by the Section to promote simplification and reform of the tax laws.12 Jim Lewis, who served as Section Chair from 1984–1985, addressed the Section’s role on policy matters and its efforts “to limit its formulation of

5 See A.B.A. Tax Clinic, 13 Tax Mag. 597 (1935); American Bar Association Tax Clinic Proceedings, 14 Tax Mag. 663 (1936); A.B.A. Federal Tax Committee Meeting, 15 Tax Mag. 263 (1937); Proceedings of the Fifth Tax Clinic of the American Bar Association, 15 Tax Mag. 728 (1937); Proceedings of the Sixth Tax Clinic of the American Bar Association, 16 Tax Mag. 279 (1938); Proceedings of the Seventh Tax Clinic of the American Bar Association, 16 Tax Mag. 663 (1938); Eighth Tax Clinic of the ABA Committee on Federal Taxation, 17 Taxes 390 (1939); Tax Clinic of the Committee on Federal Taxation, American Bar Association, 17 Taxes 643 (1939).
6 Proceedings of the Seventh Tax Clinic of the American Bar Association, supra note 5, at 663.
8 The Section of Taxation: The First Fifty Years, 44 Tax Law. 1 (1990).
10 Mansfield, supra note 1.
tax policy to areas in which tax lawyers are expert.”¹³ Don Harris, who served as Section Chair from 1976–1977, provided some personal reflections on his time as Chair and noted the important support that the Section’s officers receive from the Section’s professional staff.¹⁴ Harris also observed that the Tax Section has contributed to the development of “tax vocabulary” and explained the development of the term “old and cold,” which so many tax practitioners use in almost every day parlance even now.¹⁵ Finally, Mac Asbill, who served as Section Chair from 1971–1972, also provided some personal reflections on his time as Chair and described some of the more notable improvements to the inner workings of the Section over the years.¹⁶

For the 75th anniversary of the Section, we will have a series of papers included in each issue of the 68th volume of The Tax Lawyer. The first compendium, which appears in the following pages, chronicles the major achievements of the Section during the past quarter century. The second compendium, slated to appear in the Winter issue, will address the evolution of tax practice over the past 25 years. The third compendium, slated to appear in the Spring issue, will address the role of the Section and its members in providing representation for underserved clients. The fourth compendium, to be included in the Summer issue, will highlight important aspects of the Section’s work in the state and local tax arena. To paraphrase Harry Mansfield, “there is no adequate way to portray fully and fairly the activities of the Tax Section . . . even if all its records could be adequately collected and reviewed.”¹⁷ The goal of the four-part series on which we are about to embark is to memorialize the important work of the Section and its role in tax practice and the tax system.

Our walk down memory lane begins with a paper by Phillip Mann, who served as Section Chair from 1997–1998. I thought it fitting that Phillip begin our review of the past 75 years given that one of the key players in the formation of the Section, Robert N. Miller, was also the founder and namesake of Phillip’s firm in Washington, D.C., and given that his late partner, Jack Nolan, provided a thorough history of the Tax Section’s contributions through the golden anniversary. It will not surprise readers who have had the pleasure of knowing Phillip that his paper does justice to the development of the Section over the years, highlighting the many ways in which the Section provides education and benefits to its members and works to improve the development of the tax law for all.

The next paper, by Jerry Cohen, who served as Section Chair from 1995–1996, documents the key contributions of each chair over the past quarter century. Culled from the pages of the NewsQuarterly and his own archives

¹³James B. Lewis, Policy, the ABA Section of Taxation, and the Section’s Critics, 44 Tax Law. 26, 28 (1990).
¹⁴Don V. Harris, Jr., Sprung From the Rumble Seat, 44 Tax Law. 32 (1990).
¹⁵Id. at 33.
¹⁶Mac Asbill, Jr., This Occasion for Looking Back, 44 Tax Law. 34 (1990).
¹⁷Mansfield, supra note 1, at 13.
no doubt, Jerry shows how, year by year, the Section's members have worked tirelessly to provide thoughtful comments to Treasury and the Service on guidance projects and have suggested myriad ways through which Congress could simplify the tax laws. He also shows how the inner workings of the Section have evolved, including through the election of three women to chair the Section.

Herb Beller, who chaired the Section from 2002–2003, writes next about the Section's Distinguished Service Award and the 20 luminaries upon whom this prestigious award has been bestowed. While just over half served previously as Chair of the Section, the others served the Section admirably without ever holding the Section's highest office. Serving as Chair of the Section is a high honor for any tax lawyer and ought not lead automatically to consideration for the Distinguished Service Award. As Herb's paper demonstrates, those former chairs who have been so honored received the award in large part for what they did outside of their time as chair. Because the Section is a volunteer organization with over 22,000 members, the efforts of many often go unnoticed. But without the dedication of those who help draft comments on regulations or who help organize and present at our continuing legal education programs, the Section could not do all that it does. Whether through their work in the bar, in academia, or government, those who have been honored with the Distinguished Service Award each demonstrated, in their own way, how an individual can help improve the tax system for all.

One of the Section's most important contributions to the tax system over the years has been through its work on ethics and standards for tax practice. Paul Sax, who chaired the Section from 1999–2000, writes next to address the Section's work in this area. Summarizing the three formal ABA opinions that most closely address the role of practitioners in our tax system, Paul reminds us that “[e]very major development in ethics and standards of tax practice has emanated from the Tax Section.” He also rightly notes that this is an area in which constant vigilance is required and suggests that even today there may be “need for guidance and revision.” With the Treasury Department’s recent revisions to Circular 230, which eliminated the requirement for boilerplate disclaimers and require instead that practitioners apply principled rules in crafting written tax advice, the time may be ripe to consider whether there is indeed a need for new formal guidance from the ABA on the role of tax lawyers in the tax system. The Section’s Standards of Tax Practice Committee will be considering this question during the coming year.

The reports on the early “tax clinics” from which the Section evolved reveal that participants presented and debated various papers. Invariably, only men were identified in those reports. As with the rest of the legal profession, time

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18 Of course, many who knew and loved Christine Brunswick, the late executive director of the Section and the 2013 recipient of the Distinguished Service Award, would argue that during her time she truly held the controls to the Section. And, oh didn’t she steer us calmly through what were often troubled waters!
has changed the composition of the Section’s membership. Pam Olson, who served as Section Chair from 2000–2001, was the first of three women (so far) elected to that position19 and provides us with her observations on the growing diversity within the Section. She details how various seasoned Section leaders and mentors helped her develop from a young government lawyer into the Section’s first female chair. Her discussion of the Section’s Diversity Committee and Young Lawyers’ Forum, both of which continue to develop future Section leaders, reminds us of how far the Section has come in its efforts to embrace young and diverse lawyers. As Pam properly admonishes, the work to build a more diverse Tax Section requires a commitment over time and depends in large part on current leaders reaching out to mentor those who will follow in their footsteps. My own experience confirms the importance of this commitment. Because I first met the Section during law school as one of the student editors of The Tax Lawyer, and then was invited to participate as a panelist at Section meetings during my time in government, when I entered private practice I was already well acquainted with some Section leaders. But it was Pam who quickly but quietly nudged me to get actively involved in the work of some Section committees and from there to move up into leadership positions. If each of our current leaders follows her model, we can rest assured that the next generation of Section leaders will be truly representative of the diversity of our membership. This is not always easy work, and during the current year Section leadership will be working to finalize a long term strategic plan to address our diversity efforts and to build upon the solid foundation that Pam and others have laid for us over the past quarter century.

The stated mission of the Section is “to serve our members and the public by providing education about taxes and tax systems, and by providing leadership to support the development of an equitable, efficient and workable tax system.” Dick Lipton, who chaired the Section from 2001–2002, demonstrates in his paper how the Section has worked to address equity in the tax system through its members’ dedication to pro bono work and through the Section’s investments in public service efforts. As President Kennedy reminded America in his City on the Hill address shortly before his inauguration, “[f]or of those to whom much is given, much is required.”20 The Section has significant treasure and talent, and it is only proper that we invest those resources in work that helps those most in need.

19Susan Serota served as Section Chair from 2006–2007. Karen Hawkins was the Section’s Chair-Elect from 2008–2009 and under the Section’s bylaws, would have become Section Chair for the 2009–2010 bar year had she not stepped down to become Director of the IRS Office of Professional Responsibility.

One of the most significant growth areas for the Section over the past quarter century has been in the area of employee benefits. Susan Serota, who chaired the Section from 2006–2007, addresses the remarkable growth of the Employee Benefits Committee, which is now the largest committee within the Section. As Susan explains, the growth stems in large part from legislative changes, starting with ERISA in 1974, to the development of 401(k) plans in the 1980s, to pension portability changes, and more recently to the Affordable Care Act. These laws, which affect workers of all types, are extraordinarily complex, and the Section members specializing in this area have played an important role in the development of regulations and other guidance that taxpayers need to understand and implement the provisions that Congress has enacted.

Of course, nothing is more fundamental to the work of a bar association than law improvement. Ken Gideon, who chaired the Section from 2004–2005, and Bill Wilkins, who chaired the Section from 2008–2009, write jointly to highlight some of the more notable contributions to law development made by the Section during the past 25 years. Over the course of their careers, Ken and Bill have each been deeply immersed in tax policy matters, both in government and the private sector. Having worked on numerous projects submitted to the government in their Section roles and having been on the receiving end of numerous other projects while in government, they bring important perspectives on the effectiveness and impact of the Section’s government submissions and on the key risks inherent in making such submissions. The Section would be wise to follow their counsel on these topics in the years to come.

These eight papers present a picture of a strong, vibrant, and growing Section of Taxation. During this celebratory year we will have occasion to recollect and discuss the accomplishments of the past, but we must also take stock to focus on our future. As noted above, the Section is already studying what it can do to help our members understand our ethical duties to our clients and the tax system, and we are building a long term strategic plan to address diversity in our membership and leadership.

We will also continue to build upon the Section’s public service programs and seek ways to solidify their financial footing for the generations to come. In this regard, the Section is working with the ABA Fund for Justice and Education to establish a permanent endowment to support the Section’s public service initiatives, including the Christine A. Brunswick Public Service Fellowship program. The Tax Assistance Public Service endowment fund (“TAPS”), which is being endowed with the mission of supporting tax-related public service programs approved by the Section’s Council, has an initial target endowment amount of $5 million, which would be expected to provide sufficient income to support two new Brunswick Fellows per year into the future. These Fellows provide tax representation for, and develop and advocate for policy changes to address the needs of, low-income taxpayers. Over time the TAPS fund will help the Section to build a network of public
service minded lawyers that will provide a safety net for taxpayers most in need of help.

Last, but certainly not least, we will continue to accept Justice Jackson’s invitation to provide input to the government by developing thoughtful submissions to help improve the state of the tax law. With any luck, when the Section celebrates its 100th anniversary, those who reflect on the intervening years will be able to say that we achieved at least some of what we sought to do.