Section of Taxation
Committee on Government Submissions
Fall 2014 Training

Hosted by Julian Kim
Chair, Government Submissions
Why?

• An important goal of the Tax Section is to provide objective and thoughtful input on tax matters of importance

• Tax Section comments are held in high regard by the Government, and it is critical that the Section maintain that reputation

• The comment process works best when everyone understands Section’s procedures and expectations
Three Types of Comments

• Technical Comments
  – Most comments (e.g., IRS and Treasury)

• Blanket Authority Comments
  – All comments not under technical commenting authority (typically legislative proposals)

• Formal ABA Position
  – Important enough to justify a statement on behalf of the entire American Bar Association
  – Very rare
Technical Comments
Technical Comments - Background

The ABA delegates to the Tax Section authority to submit narrowly focused comments in response to a solicitation from:

– Department of the Treasury
– Internal Revenue Service
– Department of Labor
– Pension Benefit Guaranty Corporation
Technical Comments – Initiation

1. Be aware of important developments under your committee’s jurisdiction
   • See Section’s Code jurisdiction list

2. Complete project initiation form found at http://apps.americanbar.org/tax/groups/cogs/statusform.html
   • Correct: Comments on Proposed Regulations Relating to Deductions for Claims against an Estate under section 2053
   • Incorrect: Comments on Proposed Regulations under section 2053

3. Notify Section Staff Counsel
   • jesse.tsai@americanbar.org
Technical Comment – Drafting

1. Focus on content and style
   • Objective
   • Intellectually honest
   • Respectful tone

2. Reach consensus within the committee
   • If significant, minority positions are permitted

3. Alert Staff Counsel two weeks prior to projected completion
   • COGS reviewer
   • Smooth review process and adherence to any deadlines
Technical Comment – Review Process

1. Committee Chair
   • Publication ready

2. COGS Reviewer
   • Composed of former Committee Chairs with COGS experience
   • You may reach out to COGS members or have Staff Counsel solicit a reviewer

3. Council Director
   • Applies COGS review criteria, responsible for substance and tone

4. Section Vice Chair, Government Relations
   • Peter Blessing

5. Section Chair
   • Armando Gomez
Committee Chair Responsibilities

• Determine whether to comment
• Organize a team and delegate responsibilities
• Ensure compliance with the Section’s policy regarding conflicts of interest
• Coordinate with other relevant committees
  – Code jurisdiction list
  – Common sense - Who else would be interested?
• Monitor progress
• Keep the Council Director and the Staff Counsel informed
Conflicts of Interest

• “If a member (or the member's firm to the member's actual knowledge) has been engaged by a client to influence a government decision or policy determination on an issue that is also under consideration within the Section, such member shall not participate (or, upon receiving actual knowledge of such engagement, shall cease participation) in the preparation of Section material intended to be submitted to governmental personnel with respect to that issue.” (Green Book, Section 1.2)

• Be familiar with the entire policy
Conflicts of Interest

• Conflicts of interest statement is included in every comment

• “Although many of the members of the Section of Taxation who participated in preparing these Comments have clients who might be affected by the federal tax principles addressed by these Comments, no such member or the firm or organization to which such member belongs has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.” (COGS Manual, p.4)
Committee Chair Responsibilities-Cont’d

• Controversial issues
  – Committee vote on substance or principles of the comments
  – If substantial, minority views are permitted, although this is rare

• Ensure comments are publication ready
  – Ensure proper tone
  – Follow the Citation & Style Manual
    • Standardized Cover Sheet
    • Executive Summary

• Involve new members, Young Lawyers Forum
Council Director Responsibilities

- Encourage comments on important matters
- Follow development of proposed submissions
- Review and apply COGS review criteria
- Ensure unbiased, thoughtful, and timely submission consistent with the Section policy
- Be personally responsible for the substantive and editorial contents of written submissions
Disagreements

• Within the committee shall be resolved by the Committee Chair
• Between the COGS reviewer and the Committee Chair shall be resolved by the Council Director
• If unresolved by the Council Director, the Vice Chair Government Relations or the Section Chair will make the final decision
Multiple Committees

• The Primary Chair should keep the Council Director and the Section Staff Counsel fully informed of the progress of the comments
  – Copy on emails
  – Allows for comments to be properly ushered through the COGS process so that deadlines are met

• You may comment on issues outside your jurisdiction
  – Must first reach out to committees with jurisdiction
  – Joint comments from committees are permitted and encouraged where appropriate
Comment Project Idea

- Complete Initiation Form
- Notify Section Staff Counsel
- Notify other committees that may be interested in the subject matter (see code responsibility list)

PRINCIPAL AUTHOR
DRAFT/REVISE COMMENTS
- Objective analysis
- Courteous
- Consider all sides of the issue

COGS REVIEWER
- Executive Summary (if applicable)
- Minority position (if applicable)
- Standardized cover sheet
- Ensure review criteria met

REVIEW BY PRIMARY COMMITTEE CHAIR
- Update Staff Counsel
- Review and edit Draft
- Coordinate with secondary committee (if applicable)

FINAL REVIEW BY SECTION CHAIR/VCGR

COUNCIL DIRECTOR APPROVAL

RESOURCES
- Initiation Form: http://apps.americanbar.org/tax/groups/cogs/statusform.html
- Section Staff Counsel Email: jesse.tsai@americanbar.org
- Code Responsibility List: http://www.americanbar.org/content/dam/aba/migrated/tax/leadership/crl_code.authcheckdam.pdf
Blanket Authority
Comments
Blanket Authority Comments - Background

• Policy Statement to
  – Legislative bodies
  – Governmental agencies (other than Treasury, IRS, Labor, PBGC)
  – Courts (with respect to procedural rules only)

• Limited to matters of importance to the formation of tax policy or the administration of the tax laws
Blanket Authority Comments - Procedures

- Follow technical comment drafting procedure
- Requires Section Council vote
  - Reviews substance
  - Blanket authority request
- Requires ABA Approval
  - Special circumstances/expedited: Authority to comment for 90 days
  - Regular: Authority to comment for 2 years
Blanket Authority Comments - Tips

• Start early
  – Review process is much longer compared to technical comments

• Alert Section Staff Counsel to potentially controversial points
  – Controversial or sensitive points and issues must be addressed as early as possible to maximize the likelihood of approval by Section Council and the ABA
COGS PROCESS CONCEPTUAL FLOWCHART – BLANKET AUTHORITY COMMENTS

COMMENT PROJECT

- Complete Initiation Form
- Notify Section Staff Counsel
- Notify other Committees that may be interested in the subject matter/have code jurisdiction

PRINCIPAL AUTHOR
DRAFT/REVISE COMMENTS
- Objective analysis
- Courteous
- Consider all sides of the issue

COGS REVIEWER
- Ensure review criteria met
- Executive Summary (if applicable)
- Minority position (if applicable)
- Standardized cover sheet

SECTION CHAIR/VCGR APPROVAL

COUNCIL DIRECTOR APPROVAL

VREVIEW BY PRIMARY COMMITTEE CHAIR
- Review and edit draft
- Coordinate with secondary committee (if applicable)
- Keep Staff Counsel updated

SECTION COUNCIL VOTE TO REQUEST BLANKET AUTHORITY

ABA Review of Blanket Authority Request (Typically two weeks)

Submit to Government Entity
Formal ABA Position
Formal ABA Position

• Important enough to justify a statement on behalf of the entire ABA

• Procedure
  – Committee vote
  – Council vote
  – Section leadership consideration
  – Submission to the ABA for adoption by House of Delegates or the Board of Governors

• Very rare
Final Thoughts

• Short comments that adequately address the issue are acceptable and often are preferable

• You may request a change to your committee’s Code jurisdiction
  – Committee Questionnaires

• Co-sponsored comments with other ABA Sections are permitted
  – The co-sponsoring section must have technical comment authority over the subject matter or must obtain blanket authority

• Co-sponsored comments with other organizations are permitted subject to approval from Section Council and the ABA
End of Presentation