1. Introduction.

This Manual contains detailed instructions, forms, and distribution lists to be used by the committees and task forces of the Section of Taxation in preparing submissions to federal, state, and local legislative bodies and government agencies and, when appropriate, foreign and international agencies. General instructions regarding the occasions for preparing government submissions and the content of government submissions are contained in chapter 9 of the Guide to Committee Operations (the "Green Book"), which should be consulted in conjunction with this Manual on Government Submissions. The rules regarding the formulation of policy in the ABA are summarized in chapter 2 of the Guide to Committee Operations.

Link to Guide to Committee Operations:
www.americanbar.org/content/dam/aba/migrated/tax/pubs/opsguide.authcheckdam.pdf

2. Conflicts of Interest.

The Section's policy regarding conflicts of interest is set forth in chapter 3 of the Guide to Committee Operations. This policy applies to all Section projects, including all government submissions.


On August 4, 1988, the Council of the Section of Taxation approved a resolution regarding the review of government submissions, and on January 26, 1995, certain modifications were adopted. The current policy of the Council regarding the review of government submissions is as follows:

Except as provided below all written submissions to a government official or entity shall be submitted in advance to the Committee on Government Submissions ("COGS") and to the Council Director of the relevant Committee. Specific procedures for review by such persons and for the substitution in place of the Council Director where appropriate of another Council member or Officer shall be formulated and maintained by the Committee on Government Submissions, subject to the approval of the Vice-Chairs for Government Relations and Committee Operations.
The primary purposes of review by COGS shall be to ensure (1) that the submission is in the correct form and includes a cover sheet, (2) that the document is clearly written, well organized, and internally consistent from a stylistic standpoint, with major points being appropriately emphasized (preferably through an "executive summary") and (3) that the substantive points are technically accurate, intellectually honest and not obviously unbalanced towards particular client interests or results that reflect clearly bad tax policy. In some instances, a COGS reviewer also may be able to suggest additional substantive points based on his or her particular expertise or experience. The COGS reviewer should not normally attempt to duplicate committee research, substantially rewrite the submission or substitute his own substantive preferences for those of the committee.

The Council Director of the relevant Committee will follow the development of a proposed government submission and review it, not only applying the COGS review criteria, but also to insure both that it is consistent with the goals of the Tax Section to provide unbiased, thorough and timely input and that it is not inconsistent with Tax Section policy. The Council Director will be personally responsible for the substantive and editorial contents of written submissions. If the Council Director concludes that the position expressed should not be submitted to the government as representing the view of the Tax Section, the Council Director will advise the Committee Chair and if, together, they are unable to resolve the matter, they will brief the Section Chair who will resolve the matter.

Cases of disagreement between the COGS reviewers and the Committee Chair will be resolved by the Council Director. In the event of their failure to agree, the question will be decided by the VCGR [Vice Chair (Government Relations)], or, if the Section Chair so decides, by the Section Chair. The VCGR and Section Chair should be informed of significant disagreements which have arisen in the review process whether or not they have been resolved.

In the event of circumstances requiring expedited treatment for a government submission, or in the event of other circumstances which in their judgment shall make such action appropriate, the VCGR and Section Chair shall each have authority to abbreviate normal review procedures and to eliminate any stage of review.
PROCEDURES FOR TECHNICAL COMMENTS

Technical comments must be narrowly focused and must be submitted in response to a time-sensitive solicitation for comments from the Department of the Treasury, the Internal Revenue Service, the Department of Labor, or the Pension Benefit Guaranty Corporation.

All documents referenced below may be accessed by visiting the COGS Information Website located at: www.americanbar.org/groups/taxation/policy/cogs_manual.html

1. **Initiation of Comment Project.**
   If a Committee desires to comment, the Committee Chair or the contact person for the project MUST complete the project initiation form found on the COGS Information Website. Once the Staff Counsel is notified of a Committee’s intent to comment, he or she will add the project to the COGS status chart found on the COGS Information Website. The COGS status chart will be updated regularly and the progress of all Section projects will be charted.
   a. If two or more Secondary Committees desire to comment, but the Primary Committee does not, the Section Vice Chair (Committee Operations) shall select one of the Secondary Committees as the Primary Committee for the Comment Project.
   b. The target date for submitting comments to Treasury and the Service shall be the comment deadline specified in the notice of proposed rulemaking. If no comment date is specified in the notice, the Staff Counsel shall consult with the Council Director to determine the appropriate target date.

2. **Preparation of Comments.**
   The preparation of the comments should begin immediately, under the supervision of the Primary Committee Chair.
   a. If more than one committee will be commenting, it is the responsibility of the Primary Committee Chair to ensure that all the Committee Chairs coordinate with one another concerning the scope of their respective comments and the transmittal of Secondary Committee comments to the Primary Committee. Any questions or problems in this regard should be resolved as quickly as possible through consultation with Council Directors and, if necessary, the Vice Chair (Committee Operations).
   b. It is the responsibility of the Chair of each Commenting Committee to ensure compliance with the Section's policy regarding conflicts of interest. That policy is set forth in chapter 3 of the Guide to Committee Operations (the "Green Book") and summarized in the following certification which must appear on the cover page of 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.

Committee Chairs must ensure that no one of whom this certification would not be true is permitted to contribute to a Comment Project. Any question about this policy should be directed to the Committee's Council Director or to the Section Vice Chair (Government Relations), the “VCGR”.

c. It is the responsibility of the Primary Committee Chair, in consultation with the Council Director of the Primary Committee, to determine in the early stages of the development of the comments whether the comments assert a controversial position or address significant policy issues as to which there may be a definable minority position. If such is the case and time permits, the Primary Committee Chair will put the substance or principles of the comments to a vote of the Committee and, if a substantial minority opposes the position taken or any significant part of it, the views of the minority are to be included in the comments. If such is the case and there is no time for a Committee vote, the Primary Committee Chair and the Council Director for the Comment Project will supervise the preparation of an appropriate statement of a minority position to be included as part of the comments.

A statement of a minority position will generally be appropriate where a substantial number of those participating in the preparation of the comments opposes the position or positions to be taken in the comments or any substantial portion of the comments, and their views are supportable as a matter of law and policy and expressed in a well-articulated and reasoned manner.

d. The Chair of each Commenting Committee shall carefully review and edit the draft comments generated by that Committee, making sure that they are technically accurate, are appropriately balanced in tone and content, and conform to acceptable organizational and citation formats.

e. The Chairs of all Commenting Committees should report the status of this project in the Quarterly Project Summaries Chart submitted pursuant to chapter 7 of the Guide to Committee Operations.

3. Communication with the Section Staff Counsel.
Throughout the work on the comments, the Primary Committee Chair shall keep the Section Staff Counsel fully informed of the progress of the comments. The Primary Committee Chair must notify the Section Staff Counsel (and the COGS reviewer(s), if assigned) at least two weeks before a draft is expected to be ready for COGS review.

4. Selection of COGS Reviewer(s).
After receiving notification that a Comment Project has been created, the COGS leadership will solicit a COGS reviewer from the list of COGS members according to their expertise and rotation.

a. The selection of the COGS reviewer(s) shall be made in a timely manner, taking into account such factors as the official deadline for submitting the comments to the Government, the approximate date the committees involved expect the comments to be ready for COGS review,
the probable length and complexity of the comments, the background and expertise of COGS members, and the availability of COGS members able to make a commitment to the deadlines and other requirements in paragraph 8 below.

b. Immediately upon selecting the COGS reviewer(s), the Section Staff Counsel shall notify the Commenting Committee Chairs of the name and contact information of the COGS reviewer(s).

5. Submission of Draft Comments to COGS Reviewer(s).
As soon as draft comments have been reviewed and edited by (or under the supervision of) the Primary Committee Chair, the Primary Committee Chair shall forward copies of the draft comments, along with a standardized cover page, to the COGS reviewer(s), the Council Directors of the Primary Committee and all Secondary Committees, the Chairs of all Secondary Committees, and the Section Staff Counsel. If the draft of comments exceeds five pages (single-spaced) or asserts a controversial position, the comments must include at the outset a summary or outline of the principal points and suggestions made in the comments, including, particularly, any areas of major disagreement with the proposed regulations. A statement of minority position may also be required (see paragraph 4 above).

Upon receipt of draft comments, the COGS reviewer(s) should review the draft and make appropriate comments and suggestions as soon as possible. Where there is a Task Force of two or more COGS reviewers, this process of review and comment should be coordinated by the Task Force Head. Except in extraordinary cases, the target time for completion of COGS review (including transmittal by COGS) is one week, and the maximum is two weeks. During the review process, the COGS reviewer(s) should discuss the draft directly with the Contact Person or other representatives of the Commenting Committees to whatever extent the COGS reviewer(s) considers such discussion to be helpful.

The COGS reviewer (or Task Force Head) shall provide the COGS comments to the Contact Person. (The Council Directors of the Primary and Secondary Committees should likewise direct their comments to the Contact Person as well as to the COGS reviewer or Task Force Head) with an indication whether the revised comments need to be resubmitted to COGS for further review.

8. Committee Revision of Draft Comments.
As soon as possible (but in all events within ten days) after receipt of the COGS Mark-up and Report, the Contact Person and any other members of the Primary or Secondary Committees who need to be consulted shall thoroughly consider the COGS suggestions and comments (discussing them, if necessary, with the COGS reviewer or Task Force Head), and make such revisions to the comments as they consider appropriate. After carefully reviewing and editing such revisions, the Primary Committee Chair shall forward the revised comments again to the COGS reviewer(s) if resubmission has been requested, and to the Council Director and the Section Staff Counsel.

9. Clearance of Revised Comments by the Council Director.
As promptly as possible (normally within ten days) after receipt of the revised comments following the completion of COGS review, the Council Director shall communicate approval of the comments to the Section Staff Counsel. If additional revisions are required, the Council Director shall arrange with the Contact Person for any necessary retyping and transmission of the final revised comments to the Section Staff Counsel.

10. Review by the VCGR and the Section Chair.
Upon being notified by the Council Director that the comments have been approved for transmittal, the Section Staff Counsel shall submit the comments along with the standard comment transmittal letter to VCGR and Section Chair for review. Upon the receipt of VCGR and the Section Chair approval, the Section Staff Counsel will arrange for the submission of the final version of the comments to the appropriate Government officials, with copies to the Council Directors and Section Officers, COGS Chair, the COGS Vice Chairs, the Primary and Secondary Committee Chairs, the members of Committee on Government Relations, and all persons listed on the cover page.

11. Testimony and Participation in Hearings.
The Committee Chair or other Committee member designated by the Committee Chair may participate as a witness before the Service or Treasury, with the approval of the Committee's Council Director and the VCGR. Unless the Committee's Council Director determines that time does not permit, any written testimony or text or outline of oral testimony shall be informally reviewed in advance by the VCGR and the Section Chair.

12. Withdrawal from Comment Projects.
If, after a Comment Project has been initiated, a Commenting Committee decides that it does not wish to submit comments, the Committee Chair shall so advise that Committee's Council Director and, with the Council Director's concurrence, may terminate work on the Comment Project with a notice to the Section Staff counsel.

13. Questions or Problems.
Questions with respect to the operation of these procedures, or the status of pending projects, should normally be directed to the Section Staff Counsel.

Before filing technical comments with the government agency, the Section must provide copies of the proposed submission to other sections (if any) that are reviewing entities with respect to the subject matter addressed by the submission. As of June, 2010 those sections are Administrative Law and Regulatory Practice, Dispute Resolution, International Law, Intellectual Property Law, and Labor and Employment Law. The reviewing Section is allowed 5 business days to review technical comments when the comment period is more than 30 days and 2 business days when the comment period is 30 days or fewer. A reviewing entity can object only when the comments are in conflict with the Association Policy.
TECHNICAL COMMENTS REVIEWING PROCESS

All technical comments must be reviewed and signed off by following people listed – the section will not submit any comments without their approval

1. Committee Chair Review
2. COGS Review
3. Council Director Review
4. Vice Chair Government Relations Review
5. Section Chair Review
6. Reviewing Entity (if applicable)
PROCEDURES FOR BLANKET AUTHORITY COMMENTS

Blanket authority allows the Section to present policy statement on matters within its jurisdiction to federal, state, or municipal legislative bodies, governmental agencies, courts (with respect to procedural rules only), interstate governmental, or international governmental bodies. Blanket authority should be limited to matters of importance to the formation of tax policy or the administration of the tax laws.

1. Occasions for Blanket Authority Comments.
   a. Legislative Comments
      i. Pending Legislation. Committees may prepare both policy and technical comments on legislation that is introduced or otherwise proposed, either in Congress or by the Administration.
      ii. Enacted Legislation. Enacted legislation, particularly major legislation, may require issue papers or specific proposals for consideration.
   b. Comments on Court Procedures. Committees may prepare comments on court procedures.
   c. All other non-technical comments which are not offered for adoption by the House of Delegates or Board of Governors as ABA policy.

2. Additional Requirements.
   a. The procedures for technical comments should generally be followed. However, because legislation is often on a “fast track” COGS review process maybe omitted.
   b. Upon the receipt of VCGR and the Section Chair approval, the Section Staff Counsel will submit the approved version of the comments to the Section Council for consideration and vote.
   c. The Section Council will vote on the substance of the comments and decide whether to submit the comments under Blanket Authority.
   d. Upon Section Council’s approval, the Section Staff Counsel will submit the comments to ABA officers, to all sections, divisions and other relevant ABA entities. If no objection is raised within the prescribed time limit (or if the House of Delegates or Board of Governors, if asked to intervene, overrules the objection), the Section will then submit the proposed comments to the government.

3. Blanket Authority Approval
   a. Generally, the Section Council needs five working days to approve a policy and the ABA requires two weeks (10 business days) to approve a “blanket authority.” If the ABA approves, the Section has two years to speak on the subject.
   b. An expedited blanket authority procedure is available in special circumstances. This policy requires Council approval and a two-day approval process by the ABA. If approved by the ABA, this procedure allows the Section to speak for 90 days on the subject. Any Section, Division, or ABA entity has veto authority over either of the blanket authority procedures.
   c. The ABA has blackout dates relating to its Annual and Midyear meetings and holidays. The blackout dates include 3 days before and after the official meeting dates. The day before an observed holiday is also include as a blackout date. Blanket authorities cannot be submitted during any blackout date and blackout dates do not count toward either 2-week or 2-day approval period.
PROCEDURES FOR FORMAL ABA POSITION

A formal statement of ABA policy adopted by the House of Delegates or the Board of Governors should be sought only when the subject matter is important enough to justify a statement on behalf of the entire ABA and its membership. If the Committee Chair, in consultation with the Council Director, concludes that a legislative recommendation adopted as ABA policy and enacted into law would significantly improve the tax law, the following procedures shall be followed.

1. **Initiation of Project.**
   The originating Committee shall notify the Section Staff Counsel, estimating when the project will be completed and describing any time constraints or other unusual features of the project. The Committee will keep the Section Staff Counsel informed of any changes in its plans or estimated time of completion.

2. **Committee Vote.**
   A vote of the Committee is required for a legislative recommendation.

3. **Review and Vote of Council.**
   After review by COGS and any necessary revision by the originating Committee, the recommendation is submitted to Council for consideration and vote. Recommendations are normally submitted to Council twice, once for preliminary review and again for a vote. The Committee’s Council Director should prepare an issue paper identifying significant points of controversy, reporting the Committee vote, and summarizing significant comments of Committee members voting in the negative. The Council Director should also determine whether it would be helpful to Council for the Committee Chair or other Committee members to appear. A negative vote by Council will not prevent the originating Committee, if the Committee requests, from submitting the recommendation to the Section membership. Where the Committee Chair believes that the likelihood of enactment will be adversely affected by postponing Section action until the next Section meeting, and Council agrees, Council may act on the recommendation on behalf of the Section, and the recommendation will be submitted to the House of Delegates or Board of Governors without delay.

4. **Consideration by the Section.**
   The recommendation may be submitted to the Section for a vote only after a vote of Council has been taken. Notice that the recommendation that is to be presented to the Section for a vote must be given in the manner prescribed by the rules of procedure of the Section. A summary of each recommendation must be printed in the Newsletter. The full text of the recommendation, including the Committee’s explanatory report and suggested statutory language, if any, will be maintained at Section headquarters and will be made available to any Section member at the meeting of the Section when the recommendation is considered. The recommendation may be included on the Consent Calendar or may be presented for discussion and vote, at the discretion of the Section Chair. If the recommendation is presented for discussion, the Chair of the originating Committee will ordinarily
present the recommendation and report on the Committee’s vote and, if appropriate, Council’s views. Amendments may be offered from the floor. If an amendment is not simple and clear, it will be acted upon only in principle, and adoption will be on the condition that the Council approves the specific amending language before the recommendation is submitted to the ABA for adoption.

5. **Submission to the ABA.**

Normally, after a favorable vote of the Section, the legislative recommendation will be submitted to the ABA for adoption as ABA policy. This submission will ordinarily be made at the new meeting of the House of Delegates, but the Section Chair and the Section Delegates may defer presentation to the following meeting if they believe it advisable. Where Council believes that the likelihood of enactment would be adversely affected by waiting for the next meeting of the House of Delegates, the Council May deiced to submit the proposal under ABA “blanket authority” procedures. No legislative recommendation that is rejected by a vote of the Section may be submitted to the ABA for approval or submitted under “blanket authority”.
COSPONSORSHIP WITH OTHER ABA SECTIONS

The Section can submit joint technical comments with other sections of the ABA. The Sections listed below also have Board approved authority to submit technical comments to the IRS or Treasury. If a co-sponsoring section does not have technical commenting authority, it must obtain blanket authority from the ABA.

**Section of International Law and Practice**  
Office of Foreign Assets Control, Department of the Treasury  
Office of the General Counsel Department of the Treasury  
Financial Crimes Enforcement Network, Department of the Treasury

**Section of Labor and Employment Law**  
Internal Revenue Service  
Department of Labor  
PBGC

**Section of Intellectual Property Law**  
Internal Revenue Service

**Health Law Section**  
Internal Revenue Service

**Section of Real Property, Trust & Estates Law**  
Internal Revenue Service  
Department of the Treasury

COSPONSORSHIP WITH OTHER ORGANIZATIONS

The Section cannot submit comments with other organizations without advance approval by the ABA Board of Governors.
CHECKLIST OF IMPORTANT REMINDERS

When Starting a Government Submission Project

☐ Notify the Staff Counsel when starting a government submission project, not when it is done. Remember that the quality, not quantity, of submissions to the Government is most important. It is not necessary to express a view about every conceivable issue.

☐ Let other committees with an interest in the subject matter know what you are doing.

While Working on the Project

☐ Make sure that what you write is courteous, balanced, and intellectually honest. Objectively consider all sides of an issue. Address issues (not the draftsmen) with fair, tightly-reasoned argument, not mere opinion. Don’t be only negative; offer alternative solutions. Be practical; think about complexity and compliance.

☐ Stay in touch with the Section Staff Counsel. Let her know at least two weeks before a draft of a submission will be ready for COGS review, so that that the review can go smoothly. Give special advance warning if the submission will be unusually lengthy, arcane, or controversial.

When Completing the Project

☐ Include a substantive executive summary with every submission that exceeds five single-spaced pages or is controversial.

☐ Include with every government submission a cover page.

At All Times

☐ Keep your Council Director and the Section Staff Counsel updated.

☐ If you have a question, contact the Section Staff Counsel or your Council Director.
REVIEWER CHECKLIST

Format Matters

☐ If the comments exceed 5 pages (single spaced) or assert a controversial position, is there an Executive Summary at the outset summarizing the principal points and suggestions made?
☐ Is there a standardized cover sheet?
☐ Do the citations conform in style to those shown in the COGS Citation and Style Manual and is the style used both rational and consistent?
☐ If the committee chair has indicated that the comments may involve a definable minority position, has a statement of minority position been included?

Review Criteria

1. Organization:
   ☐ Are the comments clearly written?
   ☐ Well organized?
   ☐ Internally consistent from a stylistic standpoint?

2. Balance and Tone:
   ☐ Are the substantive points -- Technically accurate? Intellectually honest?
   ☐ Not obviously unbalanced toward particular client interests?
   ☐ Not obviously unbalanced toward results that reflect clearly bad tax policy?
   ☐ Are suggestions practical and administrable?
   ☐ Are issues addressed with fair, tightly reasoned arguments and not mere opinion?
   ☐ Are alternative ways to address the policy objectives of the government discussed?

3. Specific Language: Do the comments avoid:
   ☐ Hyperbole and rhetoric (words such as “ridiculous” and “totally unjustified”)?
   ☐ The imperative (phrases such as “must be revised” instead of “we recommend”)?
   ☐ The prescriptive (phrases such as “should be revised” instead of “it would be helpful”)?

**NOTE:** Should the answer to any of the foregoing questions be “No,” the COGS reviewer should advise the contact person of the particular problems raised by any negative response.

Reviewer Commentary:

(attach addendum if more space required).
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