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101 Practice Series Articles
Call for Submissions

The ABA Young Lawyers Division – Taxation Section is currently accepting article submissions for its 101 Practice Series. As stated on the ABA website, the following provides more information on the 101 Practice Series itself and other requirements for submissions:

The 101 Practice Series is an online resource for new lawyers covering basic training in both substantive and practical aspects of law practice. With over 300 quick tips and tools, this series is an essential resource for lawyers in their first three years of practice and is exclusively available to ABA members. The 101 articles are specifically geared toward the new lawyer. This is not a law review, scholarly journal, or magazine. The resource is designed to deliver specific, practical information in an easy-to-read format that maintains a professional presentation. The writing must be clear and concise, using common words and generally short sentences in short paragraphs to communicate practical information. When feasible, authors should write in the active voice and include tips, lists, bullet points, examples, good quotes, lively writing, and other techniques to facilitate the readers' grasp of information. In general, the practice series follows the Chicago Manual of Style, 15th edition, and Webster's 11th edition. Most articles are fewer than 300 words; the longest features are approximately 600 words. A completed single title author form must accompany all submissions.

Authors may write on any tax-related topic. While there is no set deadline for article submissions, articles will be accepted on a rolling basis. We encourage writers to submit their articles as soon as possible. Please visit the ABA website for the list of current 101 Practice Series articles published in the taxation section.

Lastly, please email your article submissions to Asel Mukeyeva (asel.mukeyeva@huschblackwell.com), Blair James (mbjames8911@gmail.com), and Angad Singh (singh2015@lawnet.ucla.edu).
IMPORTANT TAX DEADLINES>>

- October 16, 2017 – Final deadline to file individual tax returns for the year 2016

EVENTS

- August 10 – 13, 2017, New York, NY – ABA annual meeting
- September 14 – 16, 2017, Austin, Texas – 2017 Joint Fall CLE Meeting

INITIATIVES

- **Access to Education** - The ABA YLD dedicates its resources to underserved and often overlooked communities. To combat the crisis of unequal access to education in these very populations, ABA YLD is investing in education through its 2016-2017 *Access to Education* public service project.
- **What Do Lawyers Do?** – Web-based tool and live programming for undergraduate students, particularly racial and ethnic minorities, that shares nuts and bolts information on the legal profession, steps to take to prepare for law school, and other ways to navigate your way to becoming an attorney.
- **Young Lawyer Toolkit** - Web-based resource center for young lawyers, regardless of practice area. The Toolkit includes five main categories: Diversity & Inclusion, Law Practice Management, Solo Practitioners, Litigation, and Transactional.

ARTICLES>>

*The Fundamentals of S-Corporation Eligibility*

By Angad Singh

An S-Corporation ("S-Corp") allows a corporation to receive pass-through taxation treatment, and avoid the double taxation of C-Corporations ("C-Corps") as a result. Therefore, only the shareholders are taxed on the income they receive from the S-Corp. The S-Corp itself does not pay tax. However, there are several requirements that must be met in order for a corporation to maintain its S-Corp status. Please note that the goal of this article is to briefly provide a broad overview of the most important requirements. There may be other requirements and exceptions to rules depending on each individual situation, so it is crucial that practitioners thoroughly research the law regarding S-Corps before offering advice to clients.

**Limit of 100 shareholders**

S-Corporations are not permitted to have more than 100 shareholders.¹ Practically, businesses must seriously consider this significant limitation before electing S-Corp status. Moreover, shareholders belonging to a single family will be treated as one shareholder.² For example, a husband and wife shareholder in a S-Corp will be treated as one shareholder, not two.³ Lastly, individuals may create a partnership that contains multiple subsidiary S-Corps each containing 100 shareholders, even if the total number of shareholders in the partnership spans across all

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¹ See § 1361(b)(1)(A).
² See § 1361(c)(1).
³ Id.
subsidiary S-Corps. The critical requirement is that each individual S-Corp not have more than 100 shareholders.

**All shareholders must be individuals**

Every shareholder in an S-Corp must be an individual, although estates, certain trusts, and tax-exempt organizations can also be shareholders.

**No shareholder can be a nonresident alien**

Shareholders of an S-Corp cannot be nonresident aliens. Nonresident aliens are ineligible to become shareholders in S-Corps.

**Affiliates**

An S-Corp is not permitted to hold any stock in a C-Corp. However, Section 1361(b)(3) permits the creation of Qualified Subchapter S Subsidiaries (QSub). A QSub is a domestic corporation, which is not an ineligible corporation under Section 1361(b)(2), in which 100 percent of the stock of such corporation is held by the S-Corp and the S-Corp elects to treat the corporation as a QSub. A QSub is not treated as a separate corporation, and all of its assets, liabilities, and other items are treated as assets, liabilities, and other items of the S-Corp. However, if the S-Corp sells some of its stock held in the QSub, the QSub election disappears and the subsidiary turns into a C-Corp.

**One class of stock**

S-Corps are permitted to only have one class of stock. S-Corps cannot have both common and preferred stocks, and shareholders may not have different economic rights, such as providing for unequal distribution of dividends or profits. As a result, all shareholders must be treated equally. Any difference in treatment could result in multiple classes of stock, which would terminate the Corp’s S-status.

While S-Corps provide the benefit of pass-through taxation, they also have very strict rules regarding eligibility that must be met in order to maintain S-Corp status. This article is meant to provide a broad overview of the basic S-Corp requirements. Practitioners must thoroughly research and understand all S-Corp requirements, exceptions, and case law prior to offering advice to clients.

Angad Singh practices law in California focusing on partnership taxation, state and local taxation, California property tax, and taxation issues related to real estate such as 1031 exchanges, tenant in common structures, cost-segregation studies, and tax projections.

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4 Rev. Rul. 94-43
5 Id.
6 Section 1361(b)(1)(B)
7 Section 1361(b)(1)(C)
8 Section 1361(b)(3)
9 Section 1361(b)(3)
10 Section 1361(b)(1)
A Primer on the Taxation of Gifts
By M. Blair James

Section 2501 of the Internal Revenue Code (the “Code”) imposes a tax on the transfer of property as a gift\textsuperscript{11} by any donor, including both residents and nonresidents. The gift tax is imposed on the donor of the gift,\textsuperscript{12} as opposed to the recipient.\textsuperscript{13}

If a tax is imposed on a donor pursuant to section 2501, then section 2502 provides the amount of the tax is equal to the excess of (1) a tentative tax\textsuperscript{14} on the aggregate sum of the taxable gifts\textsuperscript{15} for the current calendar year and preceding calendar years\textsuperscript{16} over (2) a tentative tax on the aggregate sum of the taxable gifts for each of the preceding years. The Code, however, provides for certain exclusions that can reduce the donor’s estate taxes and income taxes.

In general, the first $14,000\textsuperscript{17} of gifts per year per taxpayer is not included in the total amount of gifts made during a taxable year.\textsuperscript{18} This means, in general, a gift under $14,000 is not subject to gift tax. However, this exclusion does not apply to gifts of future interests in property. If a donor gifts more than $14,000 in a single year, the donor is required to file a gift tax return.\textsuperscript{19}

In addition to the annual exclusion, there is a lifetime exemption from gift taxes.\textsuperscript{20} In general, a taxpayer is allowed a credit against gift taxes imposed by section 2501. The credit is equal to the credit amount in effect under section 2010(c) reduced by the sum of the amount of credits for all preceding calendar periods. For taxable years beginning in 2017, the basic exclusion amount under the section 2010(c) credit is $5.49 million.\textsuperscript{21}

Additional gift tax exclusions include inter-spousal gifts, charitable gifts,\textsuperscript{22} certain gifts for education expenses,\textsuperscript{23} and certain gifts for medical expenses.\textsuperscript{24}

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\textsuperscript{11} A gift is a transfer of property whereby full consideration is not received.
\textsuperscript{12} I.R.C. § 2502(c).
\textsuperscript{13} The recipient does not include the value of property acquired by gift, bequest, devise, or inheritance. I.R.C. § 102.
\textsuperscript{14} I.R.C. § 2001(c) (providing the rate schedule for tax on the transfer of the taxable estate of every decedent who is a U.S. citizen or resident).
\textsuperscript{15} The term “taxable gifts” means the total amount of gifts made during the calendar year. I.R.C. § 2503.
\textsuperscript{16} I.R.C. § 2502(b) (defined preceding calendar period as “(1) calendar years 1932 and 1970 and all calendar years
\textsuperscript{17} For couples, the first $28 thousand is not included in the total gifts made during the taxable year.
\textsuperscript{18} I.R.C. § 2503(b) (adjusted for inflation); see Rev. Proc. 2016-55, 2016-45 I.R.B. 707.
\textsuperscript{19} Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return.
\textsuperscript{20} I.R.C. §§ 2505(a)(1), 2010(c)(3)(A).
\textsuperscript{22} In addition to considering the tax consequences pertaining to gifts, it important to also consider potential deductions stemming from gifts to qualifying charities.
\textsuperscript{23} I.R.C. § 170(b)(1)(A).
\textsuperscript{24} I.R.C. § 213.
Expanding Legal Representation to Modest-Means Clients: Flat Fee, Reduced Fee, Unbundled Services, and Limited Representation
By Robert Bryson

The Legal Gap (or “Justice Gap”) refers to the income brackets that are too high for legal aid-type services and too low to afford traditional attorneys. These “modest means” clients are essentially left to fend for themselves in the legal system. Numerous studies report alarming trends in which courts are becoming “saturated” with pro se litigants. Nearly 60 percent of small business owners never consult an attorney. According to a 2012-2013 study, more than four out of five low-income and middle-income individuals appear pro se in court because they feel priced out of the legal market. The problem is particularly acute for individuals facing scrutiny over their tax returns.

Legal Aid providers are insufficient, and Big Law is not picking up the slack, leaving many low-income individuals without even minimal legal advice. The legal community and tax professionals need to adapt to these new realities. Most peoples’ interaction with the government occurs through two entities: the Post Office and the Internal Revenue Service (the “Service”). The Service is shrouded in an aura of misunderstanding, which contributes to taxpayers’ irrational fears about and approaches to dealing with the Service. We, as tax professionals, understand that the Service is a collection of rules and people; if you understand those rules and people, you can successfully navigate it.

The Solutions

A handful of law firms and non-profit organizations are experimenting with limited legal service offerings and “low-bono” clients in various contexts including landlord-tenant disputes, criminal defense, and family law. However, very few (if any) attorneys are taking these concepts and applying them to their tax practice.

25 ABA Journal, “Lawyers need to move beyond ‘access to justice’ to close the legal services gap,” Dan Lear, 1 Sept. 2015, retrieved at http://www.abajournal.com/legalrebels/article/lawyers_need_to_move_beyond_access_to_justice_to_close_the_legal_services_g
26 Dan Lear, supra citing ABA Standing Committee study on Delivery of Legal Services
Tax attorneys are uniquely placed to expand access to legal services because (a) many individual tax controversies are simple and (b) most of these issues can be dispensed at the examination phase.

**Flat Fee and Limited Activities**

The easiest strategy, but also the most limited in scope and practice, is the “flat fee, limited activity” model. Under this model, law firms offer flat fees to modest means clients in exchange for a specific enumerated list of tasks the law firm will undertake on the client’s behalf. The law firm does not agree to represent the client or accept service on the client’s behalf. These models work well for clients who are prepared to undertake their representation. For example, a law firm might:

1. Write an appeal contesting a Service determination,
2. Prepare the client for the initial contact interview, and
3. Educate the client on various solutions including appeals, installment agreements, and offers in compromise.

The law firm assists the client in understanding the process, but the client is ultimately responsible for carrying out the objectives. Under this model, modest means clients can access tax advice at affordable rates. However, the client bears all risk of success or failure.

**Sliding Fee Scale and Unbundled Services**

The sliding fee model is much more lucrative but might prices out modest means clients in the lower middle-income bracket. Under the sliding fee scale model, law firms charge a rate based on the individual’s income. The attorney agrees to undertake limited representation and to provide “unbundled services.”

Unlike the flat fee model, the sliding fee and unbundled services model place more risk on the law firm. Many law firms who adopt this model tread a careful line between non-profit and ‘mini-profit.’ The sliding fee scale model is difficult to implement because the law firm must run efficiently and limit the scope of its services to a handful of areas in which the law firm is familiar. Essentially, law firms cannot pay attorneys to research novel arguments or areas of law because the time and expense are too great. Most law firms that undertake this model either (1) enjoy the non-profit status, (2) receive grants or donations, or (3) it composes a small part of their practice.

Many law firms can offer the sliding fee and unbundled services to clients because (a) their practice is already specialized and (b) many individual tax controversies deal with simple issues, such as claiming dependents, substantiating Schedule C expenses, and other simple Form 1040 issues. Most of these issues are easily dispensed by experienced tax attorneys (especially if the client waits on hold with the Service).

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Robert Bryson is a graduate of the University of San Diego School of Law. Robert is passionate about public service. He currently volunteers at Legal Aid in the Low Income Tax Clinic where he helps low-income families navigate IRS rules and, when necessary, assist them with their tax disputes.

NEWS AND ANNOUNCEMENTS>>

ABA Tax Meeting in Washington D.C. – May 11 – May 13
ABA YLD Tax Law Committee hosted a happy hour during the recent ABA tax meeting in Washington, D.C. The happy hour was well attended. Below are some pictures from the May meeting.