

## NEWS BRIEFS

### STANDARDS OF TAX PRACTICE STATEMENT 2000-1

The Section of Taxation's Committee on Standards of Tax Practice has issued Standard 2000-1 for the guidance of tax practitioners. The standard addresses whether differences between the income tax return accuracy standards for taxpayers and the lawyers who advise them result in conflicts of interest between clients and their lawyers. Specifically, it explores whether the benefits of adequately disclosing return positions, which may affect taxpayers and advisers differently, generate conflicts of interest. The statement is available on the Committee's home page at [www.abanet.org/tax/groups/stp/stmt00-1.html](http://www.abanet.org/tax/groups/stp/stmt00-1.html).

### FOUNDATION TO SPONSOR STUDENT WRITING COMPETITION

The Theodore Tannenwald, Jr. Foundation for Excellence in Tax Scholarship was recently formed as a public charity to sponsor, in conjunction with the American College of Tax Counsel, an annual law student writing competition in the field of taxation. The Foundation is named for the late Tax Court Judge Ted Tannenwald, who served on the Court for 35 years (including as Chief Judge from 1981-83) and authored more than 1,000 opinions. He was widely acclaimed as a superb jurist, and was a revered mentor and friend to generations of young tax lawyers and his colleagues on the bench. Long active in the Tax Section, he was a member of Council and the recipient of the 1998 Distinguished Service Award.

The writing competition is open to both J.D. and LL.M. students, with all papers to be submitted under the sponsorship of a tax professor. Entries

for the first competition are due by June 30, 2001. Cash prizes will be awarded, and one of the winning papers will be published in the *Tax Lawyer*. The Foundation has thus far received several significant leadership gifts and is presently in the midst of a general contribution campaign. Contributions of any amount would be greatly appreciated and should be sent to The Tannenwald Foundation, Suite 200, 1275 Pennsylvania Ave., N.W., Washington, D.C. 20004. Inquiries regarding the Foundation may be directed to Herb Beller (202/383-0120), Mark Silverman (202/429-6450) or McGee Grigsby (202/637-2200).

### JCEB NATIONAL INSTITUTE—TAPES

Audio tapes and materials are available from "Regarding Audits and Compliance: the IRS and DOL Speak Out," a Feb. 1-2, 2001, sponsored by the ABA Joint Committee on Employee Benefits and ABA Center for Continuing Legal Education. For more information, contact the Center for CLE at tel. 312/988-6199.

### INTERNATIONAL TAX CONFERENCE IN AMSTERDAM APRIL 4, 2001

The International Bar Association (IBA) Committee N - Taxes and the ABA Section of Taxation will cosponsor a cutting-edge, CLE program in Amsterdam on April 4, 2001. This conference is a one-day review of the hottest international tax issues. It is designed to address issues relevant to a wide range of practitioners, professionals and in-house international tax personnel.

Topics will focus on the following areas: mergers and acquisitions between the US and Europe (outbound U.S./inbound Europe and

inbound U.S./outbound Europe); financing of mergers and acquisitions; and structured finance.

For more information, contact:

Conference Department  
International Bar Association  
Tel: +44 0 20 7629 1206  
Fax: +44 0 20 7409 0456  
Email: [confs@int-bar.org](mailto:confs@int-bar.org)  
Website: [www.ibanet.org](http://www.ibanet.org)

### 10TH ANNUAL ABA/IPT EVENT—MARCH 20-23, 2001

The ABA Section of Taxation and the Institute for Professionals in Taxation (IPT) have joined forces to present the 10th Annual Advanced Sales/Use Tax and Advanced Property Tax Seminars. The seminars will take place on March 20-23, 2001, at the Hotel le Meridien in New Orleans. For the latest schedule and registration information, contact the ABA Section of Taxation at 202/662-8670.

### WHEN YOU CAN'T ATTEND A MEETING

While nothing can fully replace the benefits of attending Section Meetings in person, the Section is pleased to be able to offer audio cassettes from its Committee Meetings and Section Programs. Produced by *Teach'em*, each program typically consists of two cassettes and costs only \$20. Cassettes from the 2000 Fall Meeting and prior Section Meetings are available now. To order, contact *Teach'em*, at 800/225-3775.

In addition, the Section of Taxation and LEXIS-NEXIS™ have joined forces to present *Comm-Online*—an online, searchable database containing thousands of pages of cutting-edge Committee CLE program materials presented at Tax Section Meetings from May 1999 to

the present. Available FREE to Tax Section members on the Section's website, *Comm-Online* gives you instant access to scholarly reports, policy recommendations, legislative forecasts, planning documents and more.

Find out more about *Teach'em* cassettes and *Comm-Online* at [www.abanet.org/tax](http://www.abanet.org/tax).

## TAXI CDS ARE STILL AVAILABLE

Not just for kids, TAX-interactive (TAXi)—the award-winning, online learning lab designed to teach teens about the U.S. Tax System—is available on CD-ROM. Tax professionals, who may find this program useful in their pro bono work or with their own teens or relatives, are invited to

obtain a free copy of the TAXi CD from the ABA Tax Section office by calling 202/662-8670.

[www.irs.ustreas.gov/prod/taxi/](http://www.irs.ustreas.gov/prod/taxi/)



## TO THE EDITOR

I welcome the publication of ["Installment Sales to Defective Grantor Trusts" by D. Silverman, *Sec. Tax'n Newsl.*, Fall 2000 at 11], since it enables me to say in public what I have been saying in private for some time, without earning the opprobrium of those who are using this technique for blowing their cover.

Viewed from the perspective of someone who practiced in the 1970s and '80s, the notion that by making an installment sale to an intentionally defective grantor trust (a better term would be an intentionally grantor-taxed irrevocable trust) a taxpayer can transfer her estate to her beneficiaries while avoiding both income taxes on the sale and estate and gift taxes is simply laughable.<sup>1</sup>

The point of this letter is not to make the various technical arguments which can be made against the technique, which should be obvious to all competent tax practitioners, but to wonder that an attorney could fashion a spiel to convince his client, and worse, himself, that such a position might be sustainable upon examination by the Service or in Tax Court.

Return with us to the thrilling days of yesteryear, when the tax-shelter lawyer rides again! Selecting a line from the statute here, a private letter ruling there, and a revenue ruling over yonder, the Masked Man concocts an argument, prepares the documents, collects a fee, and "Heigh-ho, I've got the Silver, Away!"

Do we not remember the rule of 78's depreciation, the advanced royalty payment, the investment tax credit strip, the "losses are ordinary, gains are capital" allocations, and all of the other techniques which, like the sale to the intentionally grantor-taxed irrevocable trust, were based upon inapplicable, out-of-context, or simply incorrect statements of law? Have the principles that in tax law, substance prevails over form, and that sham transactions are ignored, been overturned? Have we forgotten the hundreds of millions, perhaps billions, of dollars paid in taxes, interest, and penalties by participants in the tax shelters of the '90s and '80s? Or perhaps we hunger for those days again, when we could collect fees for putting clients into contrived tax schemes and more fees for getting them out?

I had thought that as tax lawyers, we had learned our lesson from the tax shelter debacle of the 1980s, but I see by the corporate tax shelter promotions that we have not. I had

thought that those of us practicing in the estate planning area were above this sort of thing but I see from the "ghoul charitable lead trust"<sup>2</sup> and the sale to the intentionally grantor-taxed irrevocable trust that we are not.

Tax lawyers have a dual responsibility: to our client and to the tax system as a whole. It should not be necessary for any of us to learn this by means of the IRS imposing preparer, tax shelter promoter, and aiding and abetting penalties, but if it is, so be it.

Very truly yours,  
Mitchell R. Miller  
Beverly Hills, California

## DAVID SILVERMAN RESPONDS

The general principles governing the tax consequences of asset sales to intentionally defective grantor trusts seem firmly grounded in the Code and the law, and their straightforward application appears to result in the tax conclusions which were outlined. Nevertheless, the IRS could challenge various parts of the transaction, which if successful, could negate some (or all) of the tax benefits sought. In particular, the IRS could attempt to assert that (i) the initial "sale" to the grantor trust is actually a taxable sale which results in immediate tax to the grantor under IRC section 1001; (ii) IRC section 2036

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1 In theory, the fair market value of the property at the time of transfer is included in the taxpayer's estate by virtue of the installment obligation and its proceeds, but an important part of these schemes is the elimination of these assets from the taxpayer's estate as well.

2 A charitable lead trust whose measuring life is that of a fatally—but not terminally—ill individual, usually not related to the donor or remainder beneficiaries of the trust, and frequently rounded up from a list of nursing home or AIDS patients.