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SECTION OF TAXATION

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SAN ANTONIO
A.B.A.
SECTION OF TAXATION
MIDYEAR MEETING
Jan. 23-25

WHAT ENGAGEMENT LETTER?

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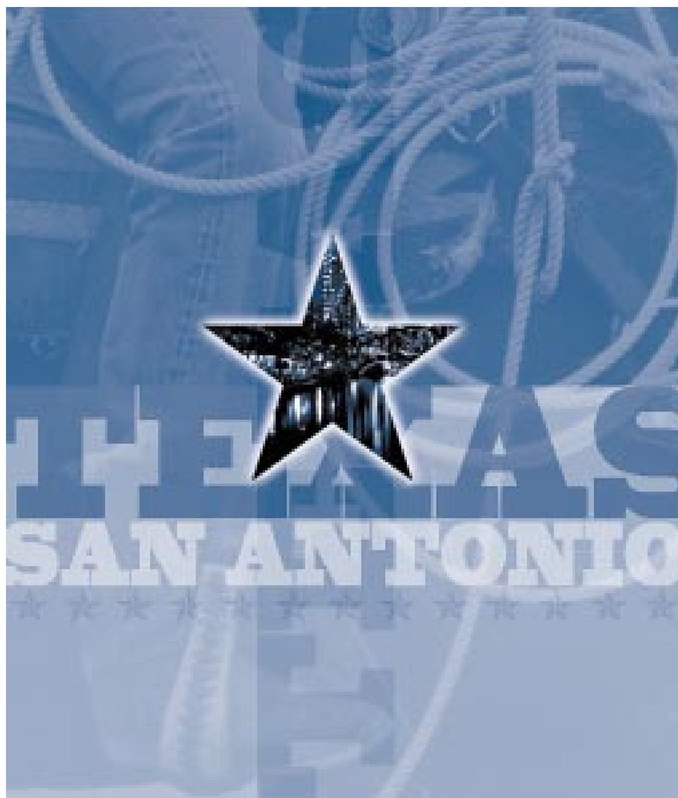

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FROM THE **EDITOR**

by Alice G. Abreu, Philadelphia, PA

Like the bountiful harvests that mark fall, this issue gives us a surfeit of substantive features, pithy debate, and food for further thought. The Section's larder is full, and a brief glance at our masthead, which now boasts twice the number of Associate Editors, will provide a glimpse of how we've grown. Even our readers have participated in this issue, which contains a Letter to the Editor expanding upon a previous Point to Remember. The *NewsQuarterly* is off to a great start.

In his first column as Chair, Herb Beller confirms that the Section has had a productive summer and is poised to have an influential year. He not only describes the government submissions prepared by Section Committees but details the Section's substantial efforts on the tax shelter and simplification fronts. In addition, Herb announces the creation of four task forces that will be producing reports over the coming year, and an important initiative to assist the Service in its Volunteer Income Tax Assistance program.

In this, the inaugural issue of the *NewsQuarterly,* three new members of our Editorial Board are making their debut as Point to Remember authors. We lead with timely commentary from one such new recruit, Leandra Lederman, a proceduralist who provides insightful commentary on the Fifth Circuit's recent decision in *Dunn*. In that case the court was so outraged by the Service's conduct that it went so far as to suggest that an award of attorney's fees might be appropriate. Nevertheless, as Leandra explains, the court's outrage was not only unwarranted but probably resulted from the court's misunderstanding of the law. Next, Don Bly, who also joined the ranks of Associate Editors this summer, lucidly explains the implications of the Service's first pronouncement on a question that has long vexed issuers of stock options. His Point discusses the application of section 83 to the imposition of forfeiture conditions on outstanding stock options and is required reading for anyone who works with start-up companies. Wayne Hamilton, yet another newcomer to our ranks, then helps us understand a Revenue Procedure that resolves an issue that has bedeviled taxpayers engaged in the automobile leasing business. His Point is important not only for those who advise such businesses and need to know how to treat capital cost reduction payments, but also for anyone interested in the resolution of sensitive questions of timing and characterization. Finally, we hear from an able and dedicated veteran, Diane Bennett, who brings us up to date on the many happenings in the taxation of employer-provided life insurance. Her Point explores the developments in this area, from recently issued guidance to the likely effect of the Sarbanes–Oxley legislation. All in all, a very impressive showing by talented and dedicated Section members.

The Point/Counterpoint feature in this issue tackles the question of private enforcement of the tax laws following disclosure of corporate tax returns. The debate is lucid, pointed and pithy and I am indebted to the authors, Allen Madison and Ted Sims, who have done an exemplary job of laying out the issues and debating them thoughtfully and passionately. As usual, Special Features Editor Chris Rizek has done a wonderful job of serving as organizer and referee, and I owe him a striped shirt. Associate Editor Diane Bennett went above and beyond the call of duty in suggesting the topic and we are grateful to her, and to Associate Editor Leandra Lederman for suggesting debaters.

This issue also contains a Special Report that will serve as the foundation for a teleconference to be held on December 11, 2002. The subject of the teleconference is engagement letters—when to have them, how to draft them, and when to modify them. The Report alerts us to some of the issues that tax lawyers must face when drafting such letters and discusses ways of resolving them. The teleconference will expand on this discussion and will also review sample engagement letters that will be available for examination on the web in advance. Kudos to the Tax Practice Management Committee for putting together what promises to be a useful and interesting teleconference, and to Aen Webster and Paul Van Horn for giving us an informative preview.

It is fitting that the inaugural issue of the *NewsQuarterly* carry an interview with one of the most dedicated and celebrated members of the Section. Jim Holden received the Section's Distinguished Service Award last May, and the interview so smoothly conducted by Jack Cummings and Alan Swirski lets us learn, firsthand, why the honor was so richly deserved. Thanks, as always, to Jack and Alan for asking the perfect questions, and to Jim for providing illuminating answers.

Finally, the Spotlight for this issue is on the Individual Income Tax Committee. Although the name of the Committee is so general as to be nearly devoid of descriptive content, the programs and activities of the Committee suffer from no such infirmity. Reading about the multi-faceted programs the Committee has organized, should make you want to check them out at the next Section meeting. Much that is of high quality goes on there, and you'll learn about some of it in this Spotlight. ■

LETTER TO THE EDITOR

David Silverman's article in the Summer 2002 *Newsletter* is a worthwhile contribution to the discussion of issues regarding the taxation of spouses going through the painful process of divorce. I would like to expand on two points he made.

Regarding sales of the marital residence, each co-owning spouse has his or her own $250,000 exclusion under section 121. The special $500,000 exemption available on a joint return under section 121(b)(2) of the Code applies when only one spouse is the owner but both spouses have resided in the property for the requisite two years.

Regarding FICA tax on the exercise of nonqualified stock options transferred to the nonemployee spouse on divorce, under Rev. Rul. 2002–22, the income recognized on such exercise "retain[s its] character as wages of the employee spouse for purposes of FICA." Whether this must be accomplished by a reimbursement agreement between the former spouses or could be accomplished by the employer's placing the funds withheld from the non-employee in a suspense account until it is determined whether the employee's other compensation exceeds the wage base or could be done by some form of credit to be claimed by the nonemployee spouse on his or her tax return would be worth exploring before the Service issues the ruling contemplated by Notice 2002–31.

Donald H. Read
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Berkeley, CA 94707

IMPORTANT SECTION DATES AND SERVICES

FUTURE SECTION MEETINGS

2003 MIDYEAR MEETING—JANUARY 23–25, MARRIOTT RIVERCENTER AND RIVERWALK, SAN ANTONIO, TX
2003 MAY MEETING—MAY 8–10, GRAND HYATT, WASHINGTON, DC
2003 FALL MEETING—SEPTEMBER 11–13, SHERATON CHICAGO, CHICAGO, IL
2004 MIDYEAR MEETING—JANUARY 29–31, GAYLORD PALMS, KISSIMEE, FL
2004 MAY MEETING—MAY 6–8, GRAND HYATT, WASHINGTON, DC

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FROM THE **CHAIR**

by Herbert N. Beller, Washington, DC

HERBERT N. BELLER

Much is going on in the world of taxes these days, so it's not surprising that the Section's activity level over the past few months has been quite high. I'd like to take this opportunity to fill you in on some of the things we've been doing and have on the drawing board.

TAX SHELTERS

Devising effective measures to curb abusive tax shelters continues to be a high priority for Treasury and the Service, and there's been considerable recent activity in this area on the legislative front as well. In March Treasury released a comprehensive set of administrative and legislative recommendations to revamp and strengthen disclosure requirements for newly-defined categories of "reportable transactions," and also to implement a more stringent penalty regime in non-disclosure contexts. Proposed regulations extending the existing disclosure, registration and list maintenance requirements to individuals and other noncorporate taxpayers were issued in June; additional proposed regulations covering the definition of "reportable transaction" and other administrative aspects of the Treasury recommendations are expected shortly; and bills pending in both the Senate (Baucus–Grassley) and the House (Thomas) incorporate provisions reflecting several of the recommendations.

The Section has consistently endorsed a disclosure-based approach as the best way to combat abusive tax shelter transactions. This message was reiterated in our recent comments on the Treasury recommendations, the tax shelter provisions of the Baucus–Grassley bill, and parallel provisions of the Thomas bill. We support the core features of these various initiatives, including particularly (i) subjecting both corporate and noncorporate taxpayers to special disclosure requirements in connection with reportable transactions; (ii) imposing a significant separate nondisclosure penalty for both "listed" and non-listed reportable transactions; (iii) increasing the 20% accuracy-related penalty of section 6662 for certain nondisclosed reportable transactions; and (iv) precluding taxpayers from relying on certain "disqualified advisors" and "disqualified opinions" in asserting the reasonable cause/good faith exception of section 6664 to avoid penalties with respect to unsustained reportable transactions.

At the same time, we have urged that the new "reportable transaction" categories be framed neither too broadly (so as to deluge the Service with mounds of paper on numerous legitimate transactions), nor too narrowly (so as to exclude known or suspected types of potentially abusive transactions). We also have urged a rethinking of proposals that would (i) foreclose any chance of the Service waiving nondisclosure and increased accuracy-related penalties; (ii) adopt a "more likely than not" penalty avoidance threshold for undisclosed *nonreportable* transactions (as opposed to the present law "substantial authority" standard); (iii) too broadly define the "material adviser" concept and potentially intrude upon the attorney-client privilege in connection with advice provided taxpayer-clients with respect to reportable transactions; and (iv) codify all of the requisite elements of the "economic substance" doctrine.

With respect to yet another dimension of the tax shelter problem, I heard from a number of our members who were greatly disturbed by the episode this summer involving the release of taxpayer identities in connection with certain highly publicized summons enforcement actions. Please know that I and other Section officers promptly and candidly discussed these concerns directly with high-level officials at both the Service and Justice, but at the same time reaffirmed our unwavering support of governmental efforts to eradicate the still festering tax shelter problem. I for one was heartened by the joint announcement that followed soon thereafter from those officials who shoulder the ultimate responsibility for administering and enforcing our tax laws in a fair, even-handed and circumspect manner.

Our Tax Shelter Task Force—under the leadership of Bill Paul, and with significant contributions from many others—continues to spend a great deal of time on the difficult and important issues that must be addressed in this area. The quality of the deliberations on the various submissions we have made has been absolutely superb, and has served to remind me yet again of the Section's great depth and dedication to making the tax system as good as it can be. (A special word of thanks to Greg Jenner, who before joining Treasury early this summer, served as a member of Council and very ably chaired our Tax Shelter Task Force.)

SIMPLIFICATION

The Section continues to push hard for major simplification of the tax laws. This, of course, is not an easy or quickly accomplished task. But there are definite signs that the movement is picking up steam—witness: (i) the Joint Committee's comprehensive report in 2001, containing over 100 specific legislative proposals for simplification; (ii) the enactment last year of provisions eliminating, at least on a deferred basis, the so-called PEP and PEASE limitations; (iii) National Taxpayer Advocate Nina Olson's focus, in her 2001 annual report to Congress, on the need for legislative simplification in a variety of areas affecting individual taxpayers; (iv) Treasury's issuance this spring of the first of a series of simplification white papers (proposing a uniform Code definition of the term "child"), together with public statements by Treasury Secretary Paul O'Neill and Assistant Secretary for Tax Policy Pam Olson that the Administration is committed to pursing meaningful near-term simplification measures; and (v) the introduction this summer, by Rep. Rob Portman, of a bill that proposes a broad range of simplification measures affecting both individual and business taxpayers, many of which were previously identified and urged by the joint working group comprised of representatives from the Section, the AICPA and the Tax Executives Institute.

Last month, the ABA/AICPA/TEI working group submitted to Treasury specific proposals urging (i) a uniform definition of a qualifying child; (ii) elimination (or at least rationalization) of the remaining phase-out rules of the Code; and (iii) repeal of the individual and corporate AMT regimes (or, if budgeting constraints make that now impossible, at least making permanent the temporary increase in the AMT exemption amount enacted last year).

Several Section members labored during August and early September in the development and drafting of these proposals, including David Glickman and Terri Hyde (co-chairs of the Section's Simplification Task Force), Armando Gomez (one of our current Nolan Fellows), Les Book (Chair of our Low-Income Taxpayer Committee), and Janet Spragens (a member of Council), as well as Nancy Abramowitz, Mary Lou Fahey, Diana Leyden, Susan Morgenstern, Gail Richmond, and Cindy Wofford. We also are very grateful to Helen Hubbard, who preceded Terri Hyde as co-chair of the Simplification Task Force and served as Assistant Secretary of the Section before moving to Treasury in mid-August.

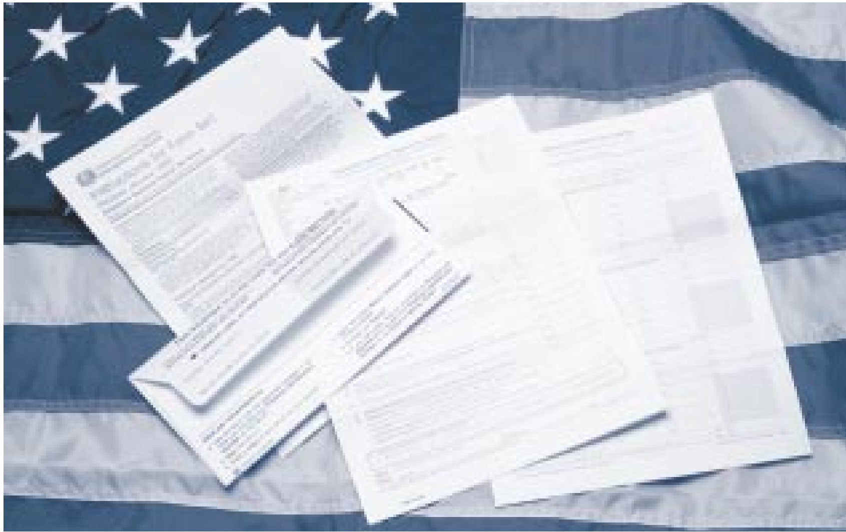
SPECIAL TASK FORCES

One of the pearls of wisdom that prior Section Chairs have imparted is that the best way to get something important done in this organization is to appoint a special task force. In taking that advice to heart, I have established or reconstituted the four special task forces described below to address areas of particular importance to many of our members and to the tax system generally.

Inversions/International Tax Reform. This task force, co-chaired by Len Schneidman and Steve Shay (both former chairs of our foreign committees), is charged with (i) evaluating legislative proposals relating to offshore corporate "inversions," "earnings stripping" and other foreign-oriented transactional behavior designed to reduce the impact of U.S. taxation; and (ii) identifying and evaluating alternatives for fundamental changes in the way that we tax foreign business income (a subject that has become especially important in light of the World Trade Organization edict that our FSC/ETI tax regimes constitute an illegal export subsidiary). The task force members are drawn from our foreign and other committees; and they include leading practitioners from law firms, accounting firms and multi-national corporations, a noted international tax professor, and consulting economists from the University of Michigan and Harvard Business Schools. The group hopes to have an initial draft of a comprehensive report completed by the January meeting in San Antonio.

Business Activity Tax. This task force, co-chaired by Steve Salch and Linda Holman, is an outgrowth of our existing E-Commerce Task Force. Its immediate objective is to prepare a white paper addressing the difficult and ubiquitous problem of developing a workable "nexus" standard under which domestic and foreign jurisdictions may appropriately tax business activities conducted over the Internet and otherwise outside of traditional "bricks and mortar" settings. The task force includes representatives from our State and Local Taxes Committee and several other relevant committees. An organizational meeting is planned for Los Angeles, and the target date for completion of the paper is July 1 of next year.

Transfer Tax Reform. This group is a multi-organizational task force comprised of representatives from the Tax Section, the Real Property Probate and Trust Law Section, the AICPA, the American College of Trust and Estate Counsel, the American College of Tax Counsel and the American Bankers Association. Its purpose is to prepare a comprehensive report, for submission to Congress and Treasury, which analyzes (i) technical and transitional consequences of the significant changes that were enacted in 2001 with respect to the gift, estate and generation-skipping taxes; and (ii) various alternative legislative measures that might be adopted to eliminate the substantial uncertainties that taxpayers and their advisers now face under the existing transfer tax system. The group has received grants from the American Tax Policy Institute and the ACTEC Foundation, and University of Minnesota Law Professor Mary Louise Fellows has been retained to serve as reporter for the project. Members of the joint task force include representatives from our Estate and Gift, Fiduciary Income Tax and Sales, Exchanges and Basis Committees, as well as Council members Lloyd Leva Plaine and Jerry August. The work of



the joint task force is well underway and is expected to span two years.

Sarbanes–Oxley. In the wake of the unfortunate Enron situation and other instances of major corporate misconduct, Congress recently enacted sweeping legislation (the Sarbanes–Oxley Act) that, among other things, imposes prohibitions and limitations upon the types of non-audit services that public accounting firms may perform for audit clients. Among the prohibited activities is the performance of "legal services." Another provision permits the performance of "tax services" if approved in advance by the audit committee of the client's board of directors. A number of commentators have begun to express differing views on the scope of the "tax services" exception and its interface, if any, with the "legal services" prohibition. Forthcoming SEC guidance under the Act may address these issues. Council believes that as the country's largest professional organization of tax lawyers, the Section is well-equipped to consider tax-related questions and proposals arising under Sarbanes–Oxley or other corporate responsibility measures. Towards that end, I have asked Stu Offer, the Section's liaison to the ABA Task Force on Corporate Responsibility, to head up the Section's newly-established Sarbanes–Oxley Task Force. This group includes persons who are active in several of our committees and who practice in law firms, accounting firms and in-house settings. Its purpose is to identify and carefully examine all of the tax-related aspects of the Act, and to make recommendations regarding the nature and content of specific input that the Section might provide. We expect to coordinate these efforts with those of the Business Law Section, which is, of course, considering a much broader range of issues arising under the Act. Although the subject is admittedly delicate, I am confident that we can make a meaningful contribution in this area, and that we can do so in an objective, well-reasoned and fair manner.

VITA INITIATIVE

A major aspect of the Section's pro bono/public service activities this year will be to provide substantial return preparation support at IRS-sponsored Volunteer Income Tax Assistance Program sites throughout the country. I am asking all Section Officers, Council Members and Committee Chairs to participate in this worthwhile endeavor, and I am hopeful that large numbers of our members will follow their lead. Dick Lipton, the head of our new Pro Bono Committee, is in the process of arranging for multiple VITA training sessions at the January meeting in San Antonio. Please consider pitching in on this important project. As plans crystallize, pertinent information will be posted on the Section website.

NEW MEETING CYCLE

Despite our decision not to meet as a Section at the ABA Annual Meeting, the work of the Section continued at a brisk pace throughout the summer months. In addition to the areas mentioned above, several important government submissions were produced by our committees—including comments on (i) Treasury's advance notice of rulemaking relating the capitalization of intangibles (Tax Accounting); (ii) a broad range of recommended changes to the private foundation rules (Exempt Organizations); and (iii) proposed changes in Tax Court Rules governing small cases (Court Procedure and Low Income Taxpayers). Also, under the terrific leadership of Sam Braunstein (Chair of our Professional Services Committee) and Karen Hawkins (Section Vice Chair for Professional Services), we recently have sponsored several successful teleconferences and other external CLE programs.

Our new fall-winter-spring meeting cycle will, I believe, serve as a catalyst for unleashing even greater amounts of energy from our talented and resourceful membership. We very much look forward to having regular fall meetings; and we are exploring the possibility of holding combined fall meetings (perhaps as early as 2003) with other Sections whose interests dovetail with our own (*e.g.,* Business Law and Real Property, Probate and Trust Law).

As should be evident from this report, we certainly have a full head of steam as we approach the LA meeting. As usual, you can expect at all Section meetings a wide range of interesting panels and programs, as well as great opportunities to hear from government participants and to network with colleagues from all over the country. But whether or not you are able to attend our meetings, please do not be bashful about contacting me directly (hbeller@sablaw.com or 202/383-0120) with any questions, suggestions or concerns you may have regarding Section activities. ■

COUNCIL ACTIONS

by N. Susan Stone, Secretary, Houston, TX

The Council of the ABA Section of Taxation met on August 10, 2002, for the Annual Meeting of the Section at the Four Seasons Hotel in Washington, D.C. The Council heard reports and took actions on the following items.

ELECTION TO FILL VACANT COUNCIL SEAT

Herb Beller, Chair of the Section, reported that Greg Jenner, a member of Council whose term was to expire in July 2003, had resigned from Council in order to become the new Acting Deputy Assistant Secretary for Tax Policy of the Treasury Department. Under Section 4.7 of the By-laws of the Section, the remaining members of Council are permitted to select a replacement for any vacant Council seat. Council considered a list of potential candidates to fill the vacancy created by Mr. Jenner's departure. After discussion, Mark Yecies was elected by written ballot to serve on Council for the unexpired portion of the term ending July 2003.

SECTION LEADERSHIP APPOINTMENTS

Herb Beller announced the following appointments: Charlie Egerton as Division Coordinator for the Service's Small Business/Self-Employed Division, Bob McKenzie as Division Coordinator for the Service's Wage and Investment Division, and Jim Hasson as the Division Coordinator for the nonemployee plans portion of the Service's Tax Exempt/Government Entities Division. Herb further stated that Elaine Church would continue as the Coordinator for the employee plans portion of the latter Division. Herb also reported that Bill Paul will become the chair of the Tax Shelters Task Force (formerly the Corporate Tax Shelters Task Force), Steve Shay and Len Schneidman will co-chair the new Task Force on Corporate Offshore Inversions and International Tax Reform, and Terri Hyde will replace Helen Hubbard as a co-chair of the Simplification Task Force.

PRO BONO OUTREACH

Dick Lipton, last-retiring Chair of the Section, delivered a written report to Council summarizing his proposals for implementing the Section's pro bono objectives previously approved by Council. The Report suggested that the Section serve as a catalyst for pro-bono activities by providing a forum for dissemination of information regarding pro bono opportunities. Among the Report's suggestions were: (1) initiating a regular pro bono column in the Section *NewsQuarterly* providing information regarding pro bono opportunities (*see page 27 in this issue*), (2) forming a new pro bono committee by soliciting members at the October meeting and holding the committee's first meeting on Saturday morning at the San Antonio meeting, (3) gathering and disseminating information to members regarding low-income taxpayer clinics ("LITC") and seeking interested lawyers to facilitate LITC mentoring, (4) providing volunteer income tax assistance ("VITA") training at an upcoming meeting of the Tax Section, and (5) gathering and disseminating information regarding exempt organizations seeking legal assistance. After presentation of the Report, Herb Beller stated that the Report's suggestions were achievable by the Section. After discussion, it was the consensus of Council to support the steps outlined in the Report.

SECTION TRAVEL REIMBURSEMENT POLICY EXTENDED TO NONACADEMICS

Stanley Blend, Vice-Chair Administration, reported that the Section had received several requests for travel reimbursement by nonacademic employees of nonprofit organizations who attend Section meetings. At present, Section travel reimbursement is limited to members of the Section who are academics. After discussion, Council approved by majority vote the extension of the same travel reimbursement policy currently applicable to academic employees of nonprofit organizations to nonacademic employees of nonprofit organizations who are members of the Tax Section.

COUNCIL TELECONFERENCE TO FILL VACANCY OF ASSISTANT SECRETARY

On September 10, 2002, Council met by teleconference at 5:00 p.m. EDT for the purpose of filling the vacancy in the office of Assistant Secretary. Herb Beller announced that Helen Hubbard, the current Assistant Secretary, whose term expires July 2003, had recently resigned her office to become the Tax Legislative Counsel for the Department of Treasury. Pursuant to Section 4.7 of the By-laws, Council is permitted to fill certain officer vacancies created by resignation. Council then considered a list of potential candidates and, after discussion, elected by e-mail ballot Shannon Nash to fill the position of Assistant Secretary for the term ending July 2003. ■

POINTS TO **REMEMBER**

Editor's Note: POINTS TO **REMEMBER** are individual submissions to the *NewsQuarterly* from Associate Editors and Section of Taxation members with insights to share. Although these items are subject to selection and editing, the Section conducts no systematic review of these items. Accordingly, each item states the views of the individual contributor and does not necessarily represent the views of the ABA or of the Section of Taxation. We welcome new submissions as well as responses to previously published material found in this section.

WHAT HAS **THE FIFTH CIRCUIT *DUNN*?**

by Leandra Lederman, Austin, TX

Estate of Dunn v. Commissioner, 301 F.3d 339 (5th Cir. 2002), a recent estate tax decision, is as notable for its angry tone as for its content. In *Dunn,* the Court of Appeals for the Fifth Circuit harshly criticized the government's approach to trying and appealing a case involving valuation of a closely held corporation. In reversing and remanding, the court even instructed the Tax Court to "entertain" any claim that the taxpayer-estate might make for attorney's fees and costs. To succeed on such a claim, the estate would have to show that the Service's position was not substantially justified.

Valuation is notoriously inexact and experts often disagree, as was true in *Dunn*. It may, therefore, seem surprising that the Court of Appeals expressed sympathy for an argument that the Service's position lacked justification. The anger reflected in the *Dunn* decision apparently was caused by five things: (1) the mailing of the notice of deficiency approximately two and a half years after the estate filed its return; (2) the Service's increase in its valuation in an amended answer filed in Tax Court; (3) the Service's assertion of a valuation based entirely on asset value without a sizeable reduction for associated tax liabilities; (4) the Service's use of its trial expert solely to criticize the taxpayer's valuation, rather than to support its own; and (5) the government's argument on appeal that the court should affirm the Tax Court decision (which reflected a lower valuation than the Service had claimed in its amended answer). In fact, the Service was well within its rights on the procedural issues involved.

First, the Court of Appeals' statement that the estate's valuation "by virtue of the Commissioner's eleventh-hour deficiency notice, could not effectively be revised downward . . . ." is plainly wrong. Although the court correctly pointed out that the limitations period on refund claims generally expires three years from when the return was due or two years from when the tax was paid (section 6511(a)), it further stated:

> When the IRS presents a deficiency notice in close proximity to the expiration of I.R.C. § 6501's 3-year time bar, it creates a tactical advantage for itself: Once the statute of limitation expires, the taxpayer can no longer claim a refund even if he then concludes that he was too conservative in his original valuation. . . . Consequently, by holding off the filing of a notice of deficiency until more than two years following payment of tax or three years following the filing of the return, the IRS is able to manufacture an advantage with no downside risk: The taxpayer is precluded from claiming a refund except for any taxes paid with the deficiency notice, and the Commissioner is able to assert an excessive value and then use it for leverage in negotiations or at trial.

Fortunately for taxpayers, the Service has no such advantage. When the Service mails a notice of deficiency within the three-year statute of limitations on assessment, the taxpayer always will be able to pursue a refund of amounts paid (or deemed paid) with the return, even if the taxpayer receives the notice more than three years after the return was due, if the taxpayer petitions the Tax Court, which the *Dunn* estate did. That is because, if the taxpayer has not previously filed a refund claim, section 6512(b)(3)(B) will deem the date of the mailing of the notice of deficiency to be the date a refund claim was filed. Because the notice will have been mailed within three years of the due date of the return, the taxpayer's deemed refund claim will be timely under the three-year rule and will therefore benefit from a three-year look-back period with respect to the limitation on the amount of refund imposed by sections 6512(b)(3) and 6511(b)(2)(A). Thus, the court's additional assertion that the timing of the notice of deficiency reflects the lack of "a bona fide disagreement over the value of Dunn Equipment" is patently incorrect. Instead, the Service likely needed much of the three-year statutory period to consider the complex issues raised in the case.

In addition, the estate had almost four months remaining after the November 11, 1994 notice of deficiency to file a claim with the Service for refund of the taxes it had already paid (*see* sections 6075(a), 6511, 7503). Moreover, the estate did lower its initial valuation. On its return, the estate valued the decedent's stock at $1,635,465, based 50–50 on assets and earnings-based values. However, in Tax Court, the estate argued that the value should be $1,582,185. Furthermore, the Court of Appeals, in remanding to the Tax Court, essentially determined an even lower valuation; it set forth a specific formula that yields a value of approximately $977,183, as explained below.

It is true that the Service increased its valuation after the case was docketed in Tax Court. In its notice of deficiency, the Service asserted a value of $2,229,043. In an amended answer, the Service increased its valu-

ation to $4,430,238, using the net asset value of the corporation, with a discount for lack of marketability and lack of supermajority. However, the Service paid a procedural price; it always bears the burden of proving an increased deficiency, as both the Tax Court and Court of Appeals pointed out. *See* Tax Court Rule 142(a)(1). Particularly given that context, the Service's decision to have its expert critique the estate's valuation but not support the Service's own valuation was probably a tactical error.

The Tax Court held that the decedent's stock was worth $2,738,558, weighing the asset-based value 65 percent and the earnings-based value 35 percent. *See* Estate of Dunn v. Commissioner, T.C. Memo. 2000–12. The Service did not appeal but the estate did. As appellee, the Service did not return to its $4,430,238 valuation but instead argued that the Tax Court's holding was correct. Oddly, that tactic angered the Court of Appeals, and the court's ire influenced its decision. Referencing "[t]he Commissioner's abrupt change of position on appeal," the court stated, "[w]e keep this duplicity in mind as we proceed to examine the Tax Court's valuation methodology." The court's misunderstanding of the workings of statutes of limitations on refund claims may also have colored its view; its statement about duplicity immediately follows a lengthy paragraph, quoted in part above, that incorrectly describes the interaction of the statutory period with the statute of limitations on assessment.

This is not the first time that a Court of Appeals has penalized the Service for reconsidering its valuation of a closely held business during the course of litigation. In a trio of cases decided last year, the Court of Appeals for the Ninth Circuit required the Service to bear the burden of proof when it decreased its deficiency subsequent to issuing a notice of deficiency. *See* Estate of Mitchell v. Commissioner, 250 F.3d 696 (9th Cir. 2001); Estate of Simplot v. Commissioner, 249 F.3d 1191 (9th Cir. 2001); Morrissey v. Commissioner, 243 F.3d 1145 (9th Cir. 2001). The message conveyed by these decisions and *Dunn* may be that the Service should carefully determine its valuation methodology, relying on qualified experts, and apply that methodology meticulously. However, the message that the Service might receive is that, at least in valuation cases, it should not deviate from the amount it asserts in the notice of deficiency, even to support a lower valuation.

Ironically, despite the Ninth Circuit's criticism, on remand, the Tax Court upheld its initial valuation in *Mitchell* and reentered its original decision. *See* Estate of Mitchell v. Commissioner, T.C. Memo. 2002–98. (The estate has appealed; *see* docket sheet for docket 21805–93 at www.ustaxcourt.gov). The Tax Court cannot do the same in *Dunn* because the appellate decision left it little discretion. The Fifth Circuit held that the Tax Court must (1) assign a weight of 85 percent to the value that the Tax Court had determined to be $1,321,740 using the earnings-based approach, and a weight of 15 percent to the value that the court determines using the asset-based approach after reducing the market value of the assets by 34 percent of their taxable built-in gain, (2) calculate the estate's 62.96 percent share of that value, and (3) discount the resulting amount by 22.5 percent. The Tax Court had determined that the aggregate value of the corporation's assets was $8,278,342 and that the built-in gains amounted to $7,109,000. Applying the formula to those numbers results in a value of $977,183.43.

The Service may end up owing more than a refund in *Dunn*. The Court of Appeals directed the Tax Court to consider a claim for attorney's fees, if asserted, "if perchance the re-valuation of the Decedent's block of . . . stock should reduce the net worth of the Estate to a sum below the $2 million cap on entitlement to relief . . . ." By effectively locking the Tax Court into a valuation well below that number, the Court of Appeals may have eased the way for a fee award, if the Tax Court finds that the estate's "net worth" is the value of its assets on the date of the decedent's death.[1] Yet, the Fifth Circuit's misunderstanding of tax procedure hardly lends credence to its suggestion that the Service's position was not substantially justified.

SUBSEQUENTLY IMPOSED RESTRICTIONS: THE SERVICE SPEAKS ON SECTION 83

by Donald R. Bly, Atlanta, GA

In a letter ruling released this spring, PLR 200212005 (November 8, 2001), the Service provided a curiously simple answer to a historically troublesome question: Does section 83 apply to a taxpayer who owns outright shares which subsequently become subject to a substantial risk of forfeiture as a result of an arms-length negotiated financing or third-party investment?

THE CONCERN

In general, section 83(a) requires a taxpayer to include in gross income the fair market value of any property received (less the amount, if any, paid for such property) in connection with the performance of services. Thus, if an employee receives stock from her employer as part of her compensation, she will be taxed on the fair market value of such stock on the date of receipt. The result is different, however, if the employee's ability to transfer or keep the stock is conditioned upon her continued employment for a period of time. This is because the income inclusion and the corresponding fair

[1] *Cf.* Estate of Woll by Woll v. United States, 44 F.3d 464 (7th Cir. 1994) (apparently using fair market value); Estate of Rao v. United States, 987 F. Supp. 249 (S.D.N.Y. 1997) (same); *but cf.* Wilkes v. United States, 2000 U.S. Dist. LEXIS 12430 (M.D. Fla. 2000) (parties agreed that net worth meant "cost"; court determined that decedent's acquisition cost was relevant measure), *aff'd,* 289 F.3d 684 (11th Cir. 2002) (declining to consider government's argument, first raised on appeal, that net worth should be based on fair market value of estate's property on date of decedent's death); Estate of Lute v. United States, 19 F. Supp. 2d 104, 1061 (D. Neb. 1998) (using "acquisition cost of real estate" to arrive at a figure under $2 million and much lower than that advanced by government).

market value determination under section 83(a) do not occur until the property is either transferable or no longer subject to a "substantial risk of forfeiture." Treas. Reg. § 1.83–3(c) provides that a substantial risk of forfeiture exists where rights in transferred property are conditioned upon the future performance of services. Thus, unless the employee timely makes an election under section 83(b) to include the value of such stock in income immediately regardless of the restrictions, the taxable event will spring at the time the substantial risk of forfeiture lapses.

To understand the problem addressed by PLR 200212005, consider the formation of a corporation that is both owned and operated by several individuals, typically referred to as the founders. The founders, who often form the company on the strength of a good idea and relatively little capital, initially make a relatively small or nominal contribution in exchange for stock in the entity. The stock received is unrestricted and freely transferable, albeit with relatively little value. Once the initial capital runs out, assuming there was any, the founders must look to outside sources of capital, sources that will not invest without assurances that the corporation's most valuable asset, i.e., the employment of the founders, will be retained. The founders provide this assurance by agreeing to forfeit all or a portion of their shares if they resign before an agreed upon vesting date.

The applicability of section 83 in this case depends on whether there was a "transfer" of the restricted stock to the founders "in connection with the performance of services." Many practitioners were concerned that the Service would make one of two arguments in order to bring this transaction within the purview of section 83(a). The first of these would be a constructive exchange argument pursuant to which the founder would be deemed to have transferred his vested stock to the corporation in exchange for restricted stock, thereby providing the requisite section 83 transfer. The second argument is

Unfortunately, the letter ruling provides only a scattershot outline of section 83 and thereby masks the relevance and weight accorded to each provision.

based on the step transaction doctrine. In cases where the corporation has engaged in little or no activity at the time of the founder's acquisition of shares, and where no substantial activity could be expected in the absence of outside investors (who presumably would require that the founders' stock be restricted), the Service could argue that the various stock issuances, loans and subsequent restrictions should be lumped together as a single transaction, regardless of the formal sequence of events. Under this argument, the outside investors would be considered the initial owners of the corporation, with the founders receiving only restricted shares as remuneration for their employment. Although neither of these arguments are any more intellectually appealing than the conclusion that there was no transfer in connection with the performance of services when the restrictions appeared, the mere specter of a challenge led most practitioners to recommend the filing of a protective section 83(b) election.

PLR 200212005

The taxpayer in PLR 200212005, along with other unrelated parties (collectively, the "Founders"), formed Company A. Upon formation, the taxpayer received Company A shares that were substantially vested for purposes of section 83. At some point after the formation of Company A (we are not told how much time had elapsed), a lender agreed to provide financing in exchange for an option to purchase Company A securities issued in Company A's "next equity financing." When the next equity financing occurred, certain restrictions "previously not contemplated" were placed on some of the Founders' shares. These restrictions would have caused some of the taxpayer's shares to be substantially nonvested for purposes of section 83 if there had been a "transfer" in connection with the performance of services. The restrictions were scheduled to lapse in two stages (a portion of the shares would vest on Date 4 and the rest on Date 5), but upon a change in control of Company A 50 percent of the substantially nonvested shares would immediately vest. Before Date 5, Company A was sold to Company B, triggering the vesting of 50 percent of taxpayer's substantially nonvested shares.

The taxpayer in PLR 200212005 had not requested a ruling under section 83, instead requesting only a ruling that the vesting of these shares upon the change in control of Company A was not a "payment in the nature of compensation" for purposes of sections 280G and 4999 (each dealing with golden parachute payments). This is not surprising, as the taxpayer very likely had made a protective section 83(b) election. The regulations under Section 280G, however, provide that a payment for purposes of that section is considered made in the year in which the property transferred is includible in gross income under section 83, ignoring any section 83(b) election. *See* Prop. Reg. § 1.280 G–1(d), Q&A–12. Thus, the taxpayer's ruling depended on an analysis of the transaction under section 83.

Unfortunately, the letter ruling provides only a scattershot outline of section 83 and thereby masks the relevance and weight accorded to each provision. Several of the highlighted provisions are of unknown relevance (e.g., "the grant of an option to purchase property does not constitute a transfer of such property"). Nevertheless, the most significant provisions can be gathered: (i) property is not taxable under section 83 until it is transferred to and substantially vested in a service provider; (ii) property is substantially nonvested when it is both subject to a substantial risk of forfeiture and is nontransferable, and (iii) once a service provider's rights in property are substantially vested and are taxed under section 83, any

subsequent income or gain with respect to that property is not compensation income.

Turning to the facts before it, the Service noted that each Founder's rights in its Company A shares were already "transferred to and substantially vested in them" at the time that the lender required that such shares be restricted. The Service thus concluded that "the subsequent imposition of the forfeiture provisions on the founders' Company A shares must necessarily have been accomplished in the absence of a section 83 'transfer' (i.e., the shares were already owned for section 83 purposes), and that, therefore, those provisions had no effect for section 83 purposes." Because it concluded that the Founders already owned their Company A shares for section 83 purposes on the date the restrictions were first placed on the stock, the Service subsequently concluded that the substantial vesting of the Founders' shares resulting from the change of control of Company A was not a "payment in the nature of compensation" for purposes of sections 280G and 4999.

THE IMPACT

How will PLR 200212005 affect the advice of practitioners presented with similar facts? Perhaps not as much as the favorable conclusion might initially suggest. Aside from section 6110(k)(3)'s mandate that letter rulings may not be used or cited as precedent, the letter ruling does not specifically alleviate the initial concerns. None of the potential arguments described above are considered or dismissed. On one hand, since PLR 200212005 serves up ideal facts if the Service were inclined to raise the constructive exchange argument, perhaps some practitioners will get comfortable that this argument is no longer a concern. However, the letter ruling does not specifically consider the argument, so it is difficult to tell whether the Service considered and rejected the argument or simply failed to consider it. In addition, the letter ruling provides no evidence that the Service would not consider raising the more problematic step-transaction argument. Because the letter ruling does not provide dates, we cannot ascertain when the financing occurred relative to the date of Company A's founding, nor what Company A's financial situation was when negotiations with the lender began. In short, PLR 200212005 provides no comfort that a step-transaction argument would not be available to the Service under the right set of facts.

While the conclusion that the subsequent imposition of forfeiture restrictions "must necessarily" have been accomplished in the absence of a section 83 transfer is comforting, further guidance is needed. Until a revenue ruling is issued on this topic, most careful practitioners will continue to plan around the problem. Given the potential trap and ease of cure at the front end, many practitioners will continue to file protective 83(b) elections until more formal guidance is issued.

GOOD NEWS FOR FINANCIERS: THE SERVICE ANNOUNCES A **SAFE HARBOR FOR CAPITAL COST REDUCTION PAYMENTS**

by Wayne A. S. Hamilton, Deerfield Beach, FL

In response to the controversy between the Service and financiers surrounding the proper tax treatment of capital cost reduction (CCR) payments made by purchasers of leased vehicles, the Service has issued Rev. Proc. 2002–36. As discussed in greater detail below, the Procedure offers a safe harbor method pursuant to which the amount of the CCR payment received from a lessee will not be includible either in the finance company's gross income or in the basis of the purchased vehicle. The Procedure also provides the manner in which taxpayers may obtain the Service's automatic consent to change to the safe harbor method of accounting. In a win for both taxpayers and the Service, the Procedure provides audit protection for those taxpayers who may currently have this issue under consideration, and for those taxpayers who switch to the safe harbor method.

BACKGROUND – CCR PAYMENTS

Individuals who lease a vehicle may in some cases make an up-front payment to the dealer. The payment has the effect of reducing the total amount of rent they pay as lessees after the inception of the lease. These payments are commonly referred to as capital cost reduction, or CCR, payments. For federal income tax purposes, most finance companies that purchased leased vehicles from auto dealers did not treat the CCR payments as income. This approach was consistent with the position taken by the Service in the July 1997 Market Segment Specialization Program ("MSSP") paper on commercial banking. However, about two years ago the Service began taking the position in audits that the CCR payment was income to the finance company at the inception of the lease despite the fact that the finance company had no entitlement to and could never receive such payments. The Service also took the position that CCR payments would increase the finance company's basis in the purchased vehicle by the amount of the payment. (*See*, Field Service Advice 200103006 (Sept. 28, 2000); IRS Chief Counsel Memorandum 200048001 (Dec. 1, 2000); IRS Chief Counsel Memorandum 200030931 (May 11, 2000) and IRS Chief Counsel Memorandum 200123047 (March 12, 2001)). In July, 2001 the Service released a revised MMSP paper on commercial banking adopting its new position. The 2001 MSSP paper did not identify any change in laws or regulations as a basis for the new position.

The Service's position had a number of results that were detrimental to finance companies. For instance, finance companies had what was in

effect phantom income, as they had no right to receive the CCR payments. Also, the new position resulted in the mismatching of income and deductions because the increase in the finance company's basis in the purchased vehicle would increase the company's cost recovery deductions, but that increase would occur over a number of tax years, whereas the inclusion occurred in the first year.

REV. PROC. 2002–36 – THE SAFE HARBOR

To avoid further controversy and for administrative convenience, earlier this year the Service issued Rev. Proc. 2002–36. Rev. Proc. 2002–36 gives finance companies that purchase leased vehicles from auto dealers a safe harbor method of accounting for any CCR payments. Under this method, finance companies will not need to include the CCR payments in income or in the basis of the purchased vehicle. (*See* Sections 3 and 5). The Procedure defines CCR payments to include, among other things, not only a cash down payment and the trade-in value of a lessee's used vehicle, but also any prepaid first or last monthly rental payments. (*See* Section 4). However, it does not include security deposits, administrative fees or taxes paid in connection with the lease.

In addition to providing a safe harbor method of accounting, Rev. Proc. 2002–36 also sets forth a procedure by which taxpayers may obtain automatic consent from the Service to change to the safe harbor method of accounting. (*See* Section 7). If a taxpayer changes to the safe harbor method of accounting, the treatment of CCR payments will not be raised as an issue in any taxable year before the year of change, and if the treatment of CCR payments is already an issue under consideration in a taxable year before the year of change, that issue will not be further pursued. (*See* Section 7.04). Taxpayers who are already on the safe harbor method before May 3, 2002, are not required to file an application to change their method of accounting (Form 3115). More importantly, for taxpayers already on this method, the Service will not raise it as an issue, and if the issue has already been raised on audit, the issue will not be pursued further. (*See* Section 6).

Overall, the approach set forth in Rev. Proc. 2002–36 reaches the appropriate result for these common leasing transactions. It is closely aligned with the true economics of the transaction and it does not result in the mismatching of income and deductions. The approach also avoids the significant time and expense involved in disputes over this issue, and should, therefore, be of great benefit to both taxpayers and the Service.

CHANGING RULES FOR **EXECUTIVE LIFE INSURANCE**

by Dianne Bennett, Buffalo, NY

Split dollar life insurance arrangements have been a mainstay of executive compensation for decades. These arrangements, where the employee and employer share—or "split"—the costs and benefits—the "dollars"—of life insurance policies, generally have provided executives with tax-free build-up of retirement or other funds, while at the same time providing current life insurance protection.

Until recently, the Service appears to have ignored the compensatory nature of one of the benefits inherent in most split dollar arrangements: the tax-free build-up of retirement funds. This is a benefit (or at a minimum an extension of a compensatory benefit to the employee) on which the employee is not currently taxed (nor does the employer receive a deduction). A flurry of pronouncements started in 1996 with a controversial Technical Advice Memorandum, which now looks like the proverbial trial balloon (TAM 199604001 (Jan. 26, 1996)). In 2002 alone, the Service has issued three pronouncements: (1) Notice 2002–8 (2002–4 I.R.B. 398 (January 28, 2002)) largely revoking Notice 2001–10, 2001–5 I.R.B. 459 (January 29, 2001), which itself revoked 40- and 50-year old revenue rulings that remain revoked); (2) proposed regulations (Prop. Reg. § 1.61–22, July 3, 2002); and (3) yet another notice (Notice 2002–59, 2002–36 I.R.B. 1 (September 9, 2002)). On top of this, Congress has entered the fray—whether intentionally or not still is being debated—with the Sarbanes–Oxley Act, potentially prohibiting traditional equity split dollar arrangements for executives of publicly traded companies.

Split dollar life insurance has many uses, including so-called "private split dollar" arrangements. All of these arrangements are swept under the new rules. This discussion focuses on the employer/employee context.

The new rules do several things. First, they change the method for determining the value of current life insurance protection, which has been known to most taxpayers as the "PS 58 costs," referring to a table of insurance costs so old that it was based on 1946 mortality tables. Second, they impose clear rules for taxing the benefits in these arrangements. Third, they perhaps prohibit any type of split dollar arrangements for officers and directors of publicly traded companies.

The Service's guidance at this point generally is only proposed, and many questions remain unanswered. However, the Service's general approach is clearer and appears likely to remain in place. In addition, the Service has provided extensive transition rules in its pronouncements. Executives and employers should begin thinking now about their approaches to both existing and new split dollar arrangements; indeed, they should rethink their approach to life insurance of any kind, other than group term.

With respect to the amount of taxation for current life insurance protection, the transition rules are extensive and generally favorable to the taxpayer. For 2004 and beyond, however, at least for split dollar arrangements entered into after January 28, 2002, employees, especially younger ones, can expect to include

more in income for current life insurance protection than they do now, assuming most of them have stopped using the PS 58 table. The PS 58 table clearly was outmoded and over-inclusive. For example, for a taxpayer age 60, the Service, using the PS 58 table, assumed that the annual cost of $1000 of term life insurance protection was $20.73. To meet the challenge of these high rates of income inclusion, life insurance companies came up with their own 1-year term costs for tax purposes, as low as, for example, $1.35. The Service will clamp down on these creative costing programs by requiring life insurance companies to demonstrate widespread use of the term rates before applying them for tax purposes. The Service has also developed its own Table 2001, which taxpayers may use in the current transition period. That Table, for example, places the annual value of $1000 of current life insurance protection at $6.51 for a 60-year-old individual. The spread of these dollar amounts indicates where the Service, and the tax regime, is headed. Again, employers and employees should check the transition rules, especially for policies entered into on or before January 28, 2002, but should be alert to the possibility of increased costs for this aspect of split dollar arrangements.

The Service's basic approach now is to divide split dollar arrangements into two types. Historically those types have been called "endorsement" and "collateral assignment" split dollar. Under the endorsement arrangement, the employer owns the policy and the executive is permitted to designate death beneficiaries and possibly obtain other benefits. The Service proposes to tax these arrangements using the traditional "economic benefit" approach. The economic benefit of the equity piece will be treated as occurring under section 83 when it substantially vests. There are other adverse rules in the proposed regulations, including no deduction to the employer for the employee's inclusion in taxation of the current life insurance protection. These are points we expect will be worked out, and one would hope modified, in the final regulations. As now proposed, the rules make endorsement arrangements, commonly used for funding nonqualified deferred compensation plans (sometimes called supplemental executive retirement plans or SERPs) or in group term carve out plans for executives, particularly unattractive.

The "collateral assignment" arrangements, the more common in our experience, place the ownership of the life insurance policy in the employee, who then assigns to the employer the right to obtain a return of an amount equal to its premiums. The Service proposes to tax collateral assignment arrangements using a loan analysis and applying section 7872 and the original issue discount (OID) rules. If the terms of the arrangement are such that the employer can require repayment of the amount due it at any time, the arrangement will be treated as a demand loan. If the employer will receive the amount due it only at the end of a specified term, the arrangement will be treated as a term loan. Under section 7872, if there is no interest or below-market interest charged, the arrangement will be recharacterized as a loan with interest at the applicable federal rate (AFR), and the interest will be treated as compensation income from the employer to the employee (or, in a shareholder/company loan setting, a dividend, and in a donor/donee setting, a gift).

The advantage of the loan arrangement is that there is no additional taxation for the annual economic benefit or for the equity build-up. The demand loan approach, of course, floats the interest with the market, whereas the term approach provides consistency throughout the loan term. With interest rates very low at this time, the term loan approach likely will be preferred. The demand loan approach likely will not be attractive, partly because of its unpredictability in terms of costs for income tax purposes (and in other contexts, gift and generation-skipping tax purposes). In October, for example, the annual short-term (under 3 years) loan AFR was 2.03%, the rate for a mid-term (3–9 year) loan was 3.46%, and for a long-term loan (over 9 years) 4.90%. The tax cost of these loans can be high as well, because the interest is applied to the total premiums paid by the employer, not simply the annual premium. For example, if an employer pays premiums of $25,000 annually towards the life insurance policy of an executive, after 10 years, the total premiums paid are $250,000 and the deemed compensation in that 10th year is interest on a $250,000 loan.

In terms of transition rules, or grandfathered arrangements, employers and executives will have the opportunity to work through several scenarios and to decide—before 2004—whether to "roll out" the equity in an existing policy, or not. Rolling out the equity (i.e., giving the employee an unfettered right to that portion of the proceeds or the contract) should preclude taxation of that equity in the future under the endorsement method.

And then came Sarbanes–Oxley. This Act, signed into law July 30, 2002, was designed to address perceived abuses by corporate insiders, particularly with respect to accounting practices. In its sweep is a prohibition on personal loans—extended after July 30, 2002—from publicly held companies and other "issuers" to directors and executive officers. With the Service specifically applying the loan approach to collateral assignment split dollar arrangements, these arrangements now appear to have been swept into the prohibited loan category. Most commentators believe this application of Sarbanes–Oxley to be unintended and one that will probably be corrected. Also, it would appear that endorsement arrangements, which do not involve a loan analysis, should not be prohibited. In addition, many believe that arrangements entered into on or before July 30, 2002, should not be affected. However, statements by some members of Congress and the freezing for a period of time by some

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POINT & COUNTERPOINT: DISCLOSURE AND PRIVATE ENFORCEMENT

INTRODUCTION: Recently, Senator Charles E. Grassley wrote a letter to Treasury Secretary Paul O'Neill and Securities and Exchange Commission Chairman Harvey Pitt asking whether the government might benefit from the disclosure of corporate tax returns to other agencies and to the public. Senator Grassley did not give any reasons for or against disclosure of corporate tax returns—he merely raised the issue. Professor Theodore S. Sims embraced the idea, however, and expanded on it. In an article in *Tax Notes, 95 Tax Notes 735* (July 29, 2002), he suggested that the disclosure of corporate tax returns might help the Service police corporate tax shelters. Going further, he suggested that the public be allowed to assist the Service in such enforcement efforts. In this point-counterpoint feature, Section member Allen Madison of Palo Alto, California, challenges Professor Sims' arguments for disclosing corporate returns and even "privatizing" corporate tax enforcement. Professor Sims replies below and expands on the thinking behind the proposal in his *Tax Notes* article.

POINT: DON'T PUBLICIZE CORPORATE TAX RETURNS OR PRIVATIZE ENFORCEMENT

by Allen D. Madison, Palo Alto, CA

The federal government should not make corporate tax returns available to the public. Not for corporate governance purposes. Not for tax enforcement purposes. Requiring disclosure of corporate tax returns is a bad idea all around, and deputizing the public to enforce the tax laws is an even worse one.

In his *Tax Notes* article, Professor Sims made two arguments in support of the disclosure of corporate returns and the partial "privatization" of corporate tax enforcement. First, he argued that the Service does not have sufficient resources to fight the proliferation of corporate tax shelters. Second, he suggested that disclosure of corporate tax returns could help restore respect for our system of self-assessment. On the basis of these two premises, Professor Sims concluded that the only way to combat corporate tax shelters is to make it as profitable to prevent them as it is to create them. Disclose corporate returns publicly, says Professor Sims, and let the public pore over them and enforce the tax laws for the Government.

I disagree with both of Professor Sims' premises. Because I disagree with his premises I also disagree with his conclusion. But there are also independent reasons to disagree with his conclusion.

I disagree with Professor Sims' first premise, that the Service lacks the resources necessary to combat corporate tax shelters. After the Service reorganized it created a new Office of Tax Shelter Analysis focused solely on the shelter problem. The regulations regarding registration of tax shelters, maintenance of investor lists, and separate disclosure by corporations of shelter transactions are just now beginning to be implemented and bear fruit. Large corporate taxpayers are regularly audited, and more and more abusive transactions are being identified. Finally, while salaries are modest, the Service and the Treasury Department still attract some of the brightest minds in the tax field. Consequently, when the Service included tax shelter enforcement in its budget plan, it asked for only a modest increase in its budget for 2003. The Service and the Treasury Department themselves evidently do not believe they are short on resources.

Even if we assume that the Service is short on resources, Professor Sims' solution of privatizing tax enforcement does not necessarily follow from the problem. The more practical solution would simply be to give the IRS more resources. Does Professor Sims, a former government employee, believe the government would be incapable of enforcing our tax laws even with unlimited resources? Professor Sims does not explain why he does not take the more practical approach, e.g., suggest that we give the Service more resources.

I also disagree with Professor Sims' second premise, that our voluntary assessment system is in shambles. Professor Sims supported this premise with the rhetorical suggestion that corporate tax departments have been focusing on tax savings rather than compliance, referring to contemporary tax departments as "profit centers." Although I would agree that participation in abusive corporate tax shelter transactions is not desirable, the pursuit of tax efficiency is not the equivalent of such participation. Moreover, tax efficiency at the corporate level is in itself good (for shareholders, customers, and whoever else the corporate income tax may fall on) and should not be frowned upon. The General Accounting Office estimates that individual taxpayers overpaid $945 million because of failing to make legitimate elections. It is quite possible that corporate taxpayers overpay as well. If corporate tax departments are generally focusing on legitimate reductions in tax, I don't see why Professor Sims would characterize our voluntary

assessment system as in shambles. As Judge Learned Hand said in *Commissioner v. Newman,* 159 F.2d 848, 850–51 (2d Cir. 1947) (L. Hand, J., dissenting), "[T]here is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. . . . Nobody owes any public duty to pay more than the law demands."

This is not to say that abusive corporate tax shelters are acceptable. Rather, I merely doubt that corporate tax shelters have eroded our voluntary assessment system. The vast majority of the work of corporate tax departments and the tax professionals that assist them is devoted to compliance issues that are fully within the law. Indeed, corporate tax officers have a fiduciary duty to their shareholders to ensure such compliance. By contrast, it is possible that any problems with our voluntary assessment system might result from misperceptions rather than from too acute an understanding of our tax laws. Recent cases like *Compaq, UPS, Boca Investerings,* and *IES Industries* suggest that the lines between legitimate and abusive corporate transactions are extraordinarily fuzzy. If the problem is that we have fuzzy lines, then the solution should be to make the lines less fuzzy, by providing taxpayers with more guidance and clearer rules. We can remedy such problems within the existing system, by educating taxpayers and eliminating ambiguities, rather than privatizing tax enforcement.

Uprooting our existing tax enforcement system does not follow from these highly debatable premises. On the contrary, turning over corporate tax returns for private enforcement would damage our voluntary assessment system.

First, it would smack of unfairness. Corporations have valuable trade secrets and business information that can be discerned from their tax returns. Examples of the kinds of subject matter that one might discern from tax returns and that have been given trade secret protection by statute or the courts include: merchandising data regarding the characteristics and nature of customers, plans for the introduction of new products, costs and pricing (particularly transfer pricing), sources of supply, information regarding economic efficiencies, payroll information, business models, patterns of business, and information regarding royalties.

But a trade secret remains judicially protected only as long as it remains a secret or is communicated "to others pledged to secrecy." Currently the Service is pledged to secrecy under sections 6103 and 6110. To make corporate tax returns available for private consumption would effectively strip corporate America of its valuable intellectual property because the tax enforcers would no longer remain pledged to secrecy. This would be unfair to the corporations and their shareholders, who consist of almost any citizen who has done any planning for retirement.

Confidentiality of these trade secrets helps American corporations compete in the global market. To my knowledge, no other developed countries allow public disclosure of corporate tax returns. Requiring the disclosure of corporate tax returns in the name of private tax enforcement would impair competitiveness of American corporations.

The cost to corporations of defending against enforcement actions would also skyrocket. The Service coordinates its enforcement actions at the administrative and litigation levels. For example, if there are 1,000 corporations under audit for the same issue, one of the corporations may seek a technical advice memorandum. The decision in that memorandum creates a uniform position throughout the Service on that issue. If the Service decides in favor of the taxpayer, it removes the issue from the audit of the other corporations. It is unlikely that private enforcers would be willing or able to coordinate administrative enforcement in such a manner. Corporations would thus incur the cost of fighting issues that they might not have to face under our current system.

Similarly, if the same group of corporations has the same issue under audit, the Service may coordinate its litigation and take only one of the corporations to court. Although the Service may litigate the case in another jurisdiction if it does not like the outcome of the first case, it can still exercise restraint, and not litigate against each and every taxpayer facing the issue. Again, it is unlikely that private enforcers would be able or willing to coordinate their litigation in the same manner, and again corporations will face costs that they do not have to incur under the present system.

A lack of centralized authority in private enforcement would burden our court system with tax cases. The Service has centralized administrative authority to conduct audits. Without centralized administrative authority the courts would have to handle every minor dispute that arises in a tax case and that the Service currently handles administratively.

A lack of centralized authority in private enforcement would also cause an administrative nightmare for corporations undergoing audit. With economic incentives, every private enforcer, potentially the entire population (would we exclude foreigners

from acting as private enforcers?), would attempt to take on every audit now underway. Presumably, if Professor Sims wants to rid society of tax shelters, the private enforcers would require the Service's authority to issue judicially enforceable document requests. For the Service to find tax shelters on audit now it issues endless document requests. Every corporation, then, might end up answering endless document requests from hundreds or even thousands of private enforcement firms.

In his counterpoint, Professor Sims suggests that auctioning off the right to audit tax returns would solve some of these problems. I disagree. As discussed, the Service does not find what it considers a tax shelter until it has already requested numerous documents; private enforcers would probably do no better. Prior to the discovery of what one might consider a tax shelter, bidders may value a corporate tax return as the cost to the company of avoiding litigation. Even corporations that engage in only legitimate transactions may therefore be held hostage to freelance private enforcers. Similarly, corporations that do engage in illegitimate transactions with huge tax savings might be able to buy off the winning bidder before any action is taken for an amount much less than the tax the evading corporation might end up paying if subject to government enforcement.

At bottom, Professor Sims' proposal is to fight fire with fire. He perceives taxpayer abuse of the system, so he proposes a system of private enforcers with no accountability. It is hard to doubt that private enforcers would abuse the system and eventually bring the system down. Private enforcement in the securities field led to the Private Securities Litigation Reform Act of 1995. In the legislative history, Congress criticized private enforcer abuse and sought to rein it in. Tax law with its fuzzy lines would likely attract even more abuses than the securities field and lead to enforcement actions against legitimate transactions. Taxpayers engaging in legitimate transactions ought to be able to remain free from the abuse of private tax law enforcers. In tax law, the enforcement function should remain with the government. ■

COUNTERPOINT: **PRIVATE AUDITING MAKES SENSE**

by Theodore S. Sims, Boston, MA

In response to my short piece in *Tax Notes,* in which I suggest that if corporate returns are to be publicly disclosed we might also consider private audit and enforcement, Allen Madison essentially argues that (1) our system of self-assessment through confidential returns and government enforcement ain't broke, and (2) fixing it would inflict unacceptable collateral damage. I think Mr. Madison makes a persuasive case for neither of those claims.

Part of Mr. Madison's argument is addressed to the predicate question of public disclosure, which I took as given for purposes of my piece, and on which I will therefore not dwell. The standard claim is that public disclosure would compromise "trade secrets." Much of what Mr. Madison enumerates, while commonly viewed as confidential, does not rise to the level of a true trade secret, and is not actually disclosed in the return. If the need to preserve trade secrets is the principal objection to disclosure, I think it incumbent on those making the objection to be specific about just what actually is a trade secret, what might actually be disclosed, and what harm the disclosure would actually do.

Mr. Madison's principal ground for asserting that the system needs no fixing is the claim that the Service's resources are already adequate to its tasks. He points to the creation of an Office of Tax Shelter Analysis, and the fact that the Service is currently requesting only modest increases in its budget. But the creation of the new Office—*not* the first "special" group to combat tax shelters ever created by the Service—is no substitute for adequate resources. And the absence of a request for increased funding, by a deficit-plagued Administration for which tax reduction appears to be more of a priority than tax enforcement,[1] is hardly persuasive evidence that we are devoting sufficient resources to the task.

There is ample evidence that we are not. Between 1975 and 2000, when the number of individual returns grew from about 82.2 million to over 127 million, audits of individual returns declined from 1,839,558 to 617,765 (or by more than 65 percent). During the same period audits of corporate returns fell by over 80 percent, from 154,889 to 27,835. In just the six years between 1995 and 2000, the examination rate for all individual returns dropped from nearly 1.7 percent to under 0.5 percent, or by nearly two-thirds, and the audit rate for all corporate returns declined from over 20 percent to nearly 11 percent. For large corporations the decline was even more dramatic, from over 48 percent examination to just over 16 percent. As noted by the Service on February 16, 2001, these declines reflect the combined effects of a 17 percent decline in overall staffing between 1992 and 2000, a 13 percent growth in the number of returns, the additional burdens and customer service obligations imposed by the 1998 Restructuring Act, and the ongoing use of outdated information systems. Those same concerns were underscored in the Commissioner's September 2002 Report to the IRS Oversight Board. It is hardly a picture

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1 Witness the apparent assertion by Mark Weinberger, former Treasury Assistant Secretary for Tax Policy, that, since the Bush administration was "against capital gains taxes in general," it would "not take any action against" the apparent misuse of exchange funds. David Cay Johnston, "A Tax Break for the Rich Who Can Keep a Secret," *New York Times,* C1, col. 2 (September 10, 2002). While Mr. Weinberger did not confirm the exact quote, he apparently did not contradict it either, saying only that he "recalled making much less-definitive remarks."

I note also that the claim that the Service's resources are currently sufficient is inconsistent with the need for growth in funding outlined in outgoing Commissioner Rossotti's final Report to the IRS Oversight Board. *See* Rossoti, Assessment of the IRS and the tax System (September 2002).

of consistent vigor in enforcing the Internal Revenue laws.

As for my suggestion that corporate "compliance" has become more cost-benefit calculation than compliance, evidence on this is (for obvious reasons) not easy to come by. But it is more than just rhetorical flourish, as Mr. Madison's discussion itself reflects. After dismissing my description of corporate tax departments as "profit centers," he immediately acknowledges that "the pursuit of tax efficiency" is "in itself good . . . and should not be frowned upon." That, I suggest, is the crux of the matter, and the temptation to be aggressive in pursuing tax "efficiency" becomes harder to resist as the prospect of enforcement declines.

Historically, the business folk did the expected value calculations; the lawyers' job was to try to ensure that their clients remained within the law. As lawyers have increasingly been forced to compete with, or been assimilated into and made answerable to, more business-oriented enterprises like accounting and/or consulting firms, the line has increasingly become blurred between rendering a dispassionate assessment of the law, and assisting in determining the expected cost of getting caught—taking into account the probability of detection, the prospect and cost of litigation, and the probability and cost of not prevailing if it comes to that. When high-powered, aggressive practitioners get seven-figure, multi-year guarantees from accounting firms, and with all the emphasis on creating "products" that can be "marketed" to clients, it seems clear that something more than figuring out the most "tax efficient" way of structuring existing (or even new, but legitimate) business operations is going on. Mr. Madison invokes Learned Hand's oft-cited dissent in *Commissioner v. Newman*. But it is rather more difficult to imagine Judge Hand declaiming that there is "nothing sinister in so obscuring an impenetrably aggressive position in Schedule M as to create a reasonable likelihood that the matter will go undetected, be misunderstood by the examiners, or be mishandled by a federal court."

Such tactics are, I suggest, an important aspect of the reality that currently prevails. As reflected in the Commissioner's September 2002 Report to the IRS Oversight Board, they are of profound concern to the Service. I simply disagree with Mr. Madison's sanguine view that shelters (corporate and otherwise) reflect no real erosion of our system of voluntary self-assessment, and I think the problem is more than mere "misperception." What is going on is both real and almost surely increasingly widespread. When forced to choose between what Mr. Madison characterizes as a "fiduciary duty . . . to insure compliance" and the opportunity to make their operations more "tax efficient" at what they assess as modest risk, it seems increasingly the latter that corporate tax professionals are inclined to choose. The bottom line impact is immediate, while the (possible) unpleasant consequences are contingent and remote. So, even though responsible practitioners will continue to insist on some colorable basis for the positions they take, the benign, high sounding "duty to minimize your taxes" too readily becomes the more pernicious "whatever you can reasonably expect to get away with to reduce your taxes is legit." I have heard an acquaintance of mine—an intelligent, skillful practitioner and an honorable individual, who made the transition from law practice to accounting firm—defend his efforts by saying, "It's not as though we never say 'No.'" It seems to me the more pertinent question is "To what have you recently said 'Yes'?" Maybe it's naive to believe it was ever otherwise, but I think it clear that the system by now is somewhat broke.

As for the drawbacks to private enforcement, Mr. Madison points to the prospect of administrative and judicial chaos and soaring compliance costs as private auditors, responsible to no one and nothing but their own economic self-interest, descend like buzzards to pick over every corporate return. I suspect the picture is overdrawn. Even if it isn't, the problem can be readily overcome. After the close of each filing season we could just auction the right to audit each return. The winning bidder—and, apart from the government, only the winning bidder—would then be entitled to audit that return. That single feature would address the collateral problems to which Mr. Madison alludes: it would eliminate the prospect of multiple audits and the absence of coordination that he fears; discovery would be confined to one private auditor per corporate return per year; each auditor could be pledged to preserve (except to the extent properly disclosed in litigation) the confidentiality of any genuine trade secrets disclosed in the audit. As for the need to avoid "chilling" legitimate transactions, that's what courts are for. And as for coordination of the government's guidance and litigation strategy, the Service could continue to give National Office advice, it could (absent misrepresentation) continue to be binding in favor of the recipient, and it would continue to be binding in favor of no one else. While examination and litigation would be up to the private auditor in the first instance, we could still reserve to government officials the right to audit any return for which there was no adequate private audit, and responsibility for deciding which adverse judicial decisions to appeal. The only real incremental burdens experienced by corporate enterprises would be those of more tenacious audits, and more effective enforcement of the law.

That leaves, finally, Mr. Madison's question about why I prefer private enforcement to more resources for the Service. In fact I would welcome an infusion of resources into the Service, though I think the prospects, realistically, are dim. But there isn't any real reason why we should have to choose. If, as I believe, compliance has become too much a matter of expected value calculation, the more effective short-term solution (though condemned by Mr. Madison) is *pre-*

SEE **POINT & COUNTERPOINT** PAGE 34

SPECIAL REPORT: WHAT ENGAGEMENT LETTER? AND WHAT SHOULD IT SAY?

INTRODUCTION: In this Special Report, Aen Webster and Paul Van Horn explore the engagement letter in the context of some of the most troubling ethical issues that arise in legal representation. As a service to members, the Tax Practice Management Subcommittee will expand on the discussion below by sponsoring a member-benefit teleconference on DECEMBER 11, 2002, entitled, "What Engagement Letter?" The panel, which will include tax lawyers from solo practices and small and mid-sized firms, will discuss numerous practical and ethical issues involved in a tax attorney's undertaking the representation of new clients. In many jurisdictions, use of engagement letters is mandatory. Even in those jurisdictions which do not strictly require engagement letters, malpractice insurance coverage may be significantly less expensive if lawyers routinely use engagement letters. The panelists will discuss the pros and cons of various styles of engagement letters used in diverse areas of tax practice, covering issues including those discussed in this article, and will review a number of sample letters. Those sample letters will be available at: www.abanet.org/cle/programs/t02tll1.html. For details on registering and obtaining CLE ethics credit, please see the box immediately following this Report.

by Aen Walker Webster, Washington, DC, and Paul E. Van Horn, New York, NY

The engagement letter is rarely the primary focus for a tax lawyer at the outset of a representation. Many of us use forms we have developed over the years for various types of client matters and the engagement letters we send to new or continuing clients are based almost entirely on those forms. The rules of most courts permit the use of a standardized letter (sometimes even a memorandum or pamphlet) to provide clients with required information. In general, a letter tailored to the particular client or situation is not needed. See, for example, Comments to Rule 1.5 of the District of Columbia Rules of Professional Conduct. Even if based on standardized forms, engagement letters deserve close attention as they not only give the client needed information, but can also establish the parameters of a client matter for a number of purposes.

Ethical rules in most jurisdictions require a writing that sets forth the agreement between the lawyer and client as to the scope and terms of a representation. By setting forth the precise scope of the representation, we may focus the client on the limits of the services to be provided. A disconnect between the services the lawyer contemplates and the open-ended vision a client may have all too often leads to disputes, and a detailed engagement letter can ensure that both the lawyer and the client share an understanding of the scope of the representation.

FEES AND RETAINERS

Information commonly addressed in engagement letters includes the basis of charges for the lawyer's services and costs. The letter should address whether services will be provided for a fixed fee, on a contingency basis or on the basis of hourly charges, and whether any blended rates will apply. If a retainer is involved, the letter should specify whether it is to be treated as a nonrefundable fee to secure the lawyer's services or an advance payment that will be consumed as services are performed. If the latter, the letter also should make clear the means by which the client will be informed of the services performed and the status of the prepaid amount. An engagement letter also should provide that in the event the scope of the representation changes, the lawyer reserves the right to revisit the agreed upon fees.

The engagement letter also should set forth the lawyer's billing procedures, including whether payment may be by credit card and whether interest will be charged on late payments. How the lawyer will bill for travel time and related costs also should be disclosed in the engagement letter. In addition, the letter should set forth the nature of costs passed through to clients and any adjustment to those costs to reflect an allocable portion of firm overhead. ABA Formal Opinion 379, issued in 1993, discusses this issue in more detail. In the years since that opinion was issued, clients have become increasingly prone to question these charges and many larger clients may seek to negotiate them up front.

In some jurisdictions the engagement letter may specify arbitration of disputes about bills and other matters. If so, it may be necessary to specify that the client should seek independent legal advice prior to agreeing to this feature. The lawyer may also reserve the right to receive reasonable fees and costs if legal action is needed to collect the agreed-upon fee. From a client-relations point of view, however, too many references to independent counsel and potential disputes may obviate the need for any engagement letter at all—the client will be scared away.

CONFLICTS OF INTEREST

Many ethical issues may be addressed in engagement letters. For those who remember Homer's Odyssey, perhaps the Scylla and Charybdis in the context of engagement letters are conflicts of interest and confidentiality. Although negotiating the obstacles can be daunting, ignoring the issue can lead to unwanted and unnecessary disputes later on.

Rule 1.6 of the ABA Model Rules (and corresponding provisions of the ethical rules applicable in each jurisdiction) addresses conflicts of interest. These may arise between or among the lawyer, an existing client, a potential new client, a former client, or even in the representation of one client who is acting in dual capacities. In order to establish clearly to whom the lawyer's duty runs, it is important to establish the identity of the client. For example, does the lawyer represent the business, or its founder? What about an officer or employee of the business? If the initial contact is with a wife, does the lawyer represent her, or the couple? If the representation is joint, it is important to establish from the start what that implies as to the lawyer's ability to provide separate counsel to, or receive separate information from, either party. If the lawyer is retained to administer an estate, is the estate itself the client? More commonly it is the fiduciary of the estate, whether referred to as the Executor, Personal Representative or Administrator. Accordingly, if the fiduciary has invited one or more beneficiaries to an initial meeting, it is important to establish that the lawyer does not also represent the beneficiaries, to the extent their interests diverge from those of the estate fiduciary.

In situations similar to those described above, it is important to identify potential as well as actual conflicts. The client may waive, if the conflict is disclosed fully and the waiver is knowing. In some instances, it may be prudent to suggest consultation with independent counsel as to the waiver.

When a conflict can be anticipated, the engagement letter may explain that if a conflict arises, the lawyer reserves the right to withdraw and need not share the reason. In joint representations and other situations where conflict may be predictable, it is often prudent to state up front that in the event of the lawyer's withdrawal for any reason the client could incur extra costs in securing new representation. In that way, the client may make a decision weighing all facts, including the cost of potential duplication of effort by new counsel.

CONFIDENTIALITY

The lawyer's duty to maintain client confidences, set forth in Rule 1.7 of the ABA Model Rules, is implicated in any joint representation or whenever a third party is involved in any aspect of a client matter. For instance, in a dual representation, lawyers may find themselves squarely confronted with a choice between violating the duty to maintain a client confidence and violating the rule against conflicts of interest. (As promised above, the lawyer now must navigate between Scylla and Charybdis.) A well-drafted engagement letter which is in place before the incident arises can provide a simple escape hatch from a situation that otherwise could be extremely difficult. In tax representations, the client may bring an accountant, actuary, insurance

agent, financial advisor or other third party to one or more meetings and may expect the lawyer to provide information and/or work product to the third party. Additionally, the duties of tax lawyers to provide certain information to the Internal Revenue Service pursuant to Circular 230 or Tax Court rules may be contrary to the ethical duty to preserve client confidentiality. The engagement letter should set forth any known exceptions to confidentiality in a given matter and should explain the possible need to share information with the Service.

RETURNING RECORDS

An additional issue to address is the retention or return of client records at the conclusion of the representation. Rules vary considerably from state to state as to the lawyer's duty to retain client records and, with the exception of executed original documents such as partnership agreements, wills and contracts (which, in any event, it may be prudent not to hold in safekeeping for clients, but that is the subject of another article), the lawyer may have the right to destroy files and other records after a certain period. Whatever the rules are in a particular state should be explained, so that the client knows what to expect.

Even the best engagement letter cannot forestall all conflicts or solve every dilemma that may arise in the area of maintaining client confidences, but it should keep disputes regarding the issues covered to a minimum and can be a most important path to safety in the event of a conflict. Of course, the lawyer should ensure that the client evidences his or her agreement to the terms of the engagement letter by signing it. Only with the client's assent will the letter create a contract. ■

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INTERVIEW WITH JAMES P. HOLDEN, TAX SECTION DISTINGUISHED SERVICE AWARD RECIPIENT

by Jasper L. Cummings, Jr., Raleigh, NC, and Alan J.J. Swirski, Washington, DC

JAMES P. HOLDEN

INTRODUCTION: Jim Holden has been an active member of the Tax Section and a respected member of the tax bar for many years. He is the co-author of two books on ethics in tax practice and a nationally recognized expert on standards of tax practice. In addition to being a partner at the Washington, DC-based law firm of Steptoe & Johnson, LLP and having served as Chair of the Firm and head of its tax practice, Jim has taught as an adjunct professor at Georgetown and served on the Commissioner's Advisory Group. He was Chair of the Tax Section from 1989–90 and has received numerous awards, including the American College of Tax Counsel's Erwin Griswold award in 1999 and the Section's Distinguished Service Award for 2002.

Q You are the co-author of two leading texts in the area of standards of practice in the tax area. In your view what are the most pressing ethics issues facing tax attorneys today?

A The fundamental issue in the ethics of tax practice has always been about trying to be a good person while also trying to be an effective tax lawyer. That, I think, is the fundamental objective. Many of the difficult ethical issues that we encounter in daily practice center around two subjects: One is confidentiality of client information, and the other is conflict of interest. The ABA Ethics 2000 Commission addressed both of those subjects over the past several years with, in my opinion, somewhat mixed results.

One of the major problems in the area of confidentiality is presented by the fact that ABA Model Rule 1.6 does not permit a lawyer to disclose a client's confidences absent a threat of death or bodily harm. That is a pretty high standard. Most of the states on the other hand permit a lawyer to disclose information as necessary to prevent or to rectify a client's fraud practiced upon another person. The Ethics 2000 Commission recommended that Model Rule 1.6 be expanded to allow disclosure of client fraud, but the ABA House of Delegates rejected that recommendation after a very contentious debate. Thus, the ABA Model Rules remain out of step with the majority of the states by continuing to elevate confidentiality over respect for the rights of those who have been wronged by client fraud.

A troublesome issue also exists with respect to conflicts of interest. In this day and age when lawyers move from firm to firm with considerable frequency, there is a problem when a lawyer arrives at the new firm having been exposed at the old firm to some knowledge about a case that is being handled by the new firm. The new firm may be required to give up representation in such a case unless client consent to a screening mechanism can be obtained. Many observers believe that this unduly interferes with the freedom of lawyers to move to another law firm. The Ethics 2000 Commission proposed to allow the moving lawyer to be screened by the new firm from contact with the existing case without the need to seek client consent. That recommendation was also hotly debated and rejected by the ABA House of Delegates. This troublesome issue of conflicts surrounding the moving lawyer thus remains to be resolved.

I suspect that both of these issues will be revisited in the future and that the Model Rules in question will be broadened along the lines of the Commission's recommendations.

Q Have you been involved on either side of the so-called Multi-Disciplinary Practice issue? What are your views on these entities and where does the ABA stand at present with respect to the legality of such organizations?

A I have been involved in the MDP debate. Indeed, I think I was the first witness to testify before the so-called Simmons Commission, which was a commission established by the ABA and chaired by former Tax Section Chair Sherwin Simmons to look at the MDP issue and to develop recommendations concerning the ABA's position.

The fundamental issue in this area is how to bring some form of professional regulation to the many lawyers who perform legal services in firms other than traditional law firms. For

convenience sake, I would refer to those non-law firms as "NLF firms" and to the lawyers practicing in them as "NLF lawyers." This makes the terms of reference a little easier. The important thing to recognize is that the economics of the marketplace have demanded NLF firms and those same economics have demanded NLF lawyers. That is not going to change. There is nothing that the ABA can say or do that is going to prevent NLF practice from occurring.

Now, the NLF firms maintain that they are not practicing law, which is a gross misstatement, made only to escape from regulation. Obviously the lawyers in those firms are advising clients with regard to the application of the tax law and many other areas of law. While the Enron and Andersen meltdowns may generate rules that preclude auditing firms from providing consulting services to their clients, those rules are not going to spell the end of NLF law practice. So, we have to recognize that NLF law practice is here to stay. And the disappointing thing is that the American Bar Association has chosen essentially to ignore the subject.

The Simmons Commission recommended that NLF lawyers be permitted to practice so long as they and their firms subscribe to the professional rules for lawyers in the jurisdictions where they practice. The ABA, after another contentious debate, rejected the Simmons Commission's recommendation. This action leaves the matter where it arose, that is, we have a great many NLF firms and a great many NLF lawyers, and nobody is regulating them. The ABA position seems to be that if we simply ignore the problem, it will go away. That's clearly not going to happen.

As I said, the Simmons Commission believed that each state should take over the responsibility for regulating NLF firms and lawyers practicing in the state, just as the states now regulate the practice of lawyers active in their jurisdictions. My concern with this recommendation was whether it would be workable. The regulation of law practice on a state-by-state basis might have made sense when law practice was largely confined to in-state matters. With the advent of large, national firms, that balkanized form of regulation is already showing wear at the seams. If it were extended to include, for example, the law practice of truly national and international accounting firms, I doubt that it would be workable. First you would have to assume that, if the ABA did amend the Model Rules to recognize law practice by NLF firms, the states would fall in line and adopt those rules. That might happen, but it seems to me very unlikely. Second, if it did happen, it would be only over a long period of time, meaning an absence of regulation for that long period.

In my testimony before the Simmons Commission, I suggested that they think outside the box and consider some form of national regulation that would be available to those NLF firms (and indeed to traditional law firms as well) that elected national regulation. This would permit observance of single set of standards that could be applied nationally. My suggestion, however, is apparently much too radical for many segments of the bar and it has not been well received, despite its practical advantages.

Q Would that national system have involved the federal government?

A Probably, although if we are thinking outside the box, not necessarily. I might analogize this concept to the Securities and Exchange Commission, which effectively regulates accounting firms on a national level. While there is some state-level regulation of accounting firms, those that operate on a national level are effectively regulated on that same level. It does not seem like heresy to me to suggest that truly national law firms and NLF firms could benefit from a similar form of regulation. As matters now stand, there is a total absence of regulation, both state and federal, of law practice in NLF firms, and that cannot be the right answer.

Q On the Congressional front concerning changing the scope of services that audit firms can provide through consulting services, have you seen any consensus emerging on The Hill this year on that issue?

A I think you see more of a consensus emerging on what I would call broad consulting activities by firms that provide audit services. They don't seem to have focused as closely on tax consulting services, which in my mind are indistinguishable from other consulting services and should be subject to the same restrictions.

Q You graduated from law school in 1960 and have had a wide-ranging career in tax. How has the practice of tax changed since your first decade of practice?

A There have been an amazing number of changes. Some of them I would characterize as atmospheric, others I would characterize as more substantive. In terms of the atmospherics, there has been a dramatic change in the size of law firms. Today we have huge firms that would have been unthinkable in the early 1960s.

Another interesting change is the more limited access that we have to government officials. When I started practicing law if you wanted to accomplish something at the Internal Revenue Service you simply walked down and entered any door in the building and went to the office that you wanted to be in and, generally, had quick access to the government officials. That, of course, has dramatically changed with the current restrictions that are born out of legitimate security concerns.

Also, in those days there was an absence of portability of lawyers. When lawyers joined firms, they tended to form deep personal relationships with the firms and their fellow lawyers. There wasn't the kind of movement among firms that exists today.

Another major and desirable change is the dramatically increased presence of women in both law practice generally and in tax practice particularly. When I went to law school there were only two women in my class of several hundred graduates. In most firms, there were few, if any, women lawyers. Now it is not surprising to find that half or more of graduating classes and law firms are composed of women. That represents a major change in the atmospherics of the practice.

On the substantive side, I think the big change is the massive complexity of the tax law, including in the international area of the practice. When I started, there was no subpart F, which was enacted shortly after I started practicing. In the employee benefits area, there was no ERISA. In trust and estates we worried only about things like the marital deduction; there were no concepts such as generation-skipping trusts. In the corporate area we didn't have any anti-*General Utilities* provisions to deal with. The well-rounded tax lawyer in the old days could competently and confidently represent a client in almost any area of tax practice. I could handle an international transaction, create a pension plan, handle an estate plan, or deal with a corporate liquidation, redemption, or reorganization. Today, with the level of sub-specialization that exists, most of us feel substantially more restricted in the areas where we can profess true competence.

Another area in which major change has occurred is the legislative process. In the old days Treasury would annually develop a plan, would present that plan to the Ways and Means Committee, which would hold orderly hearings. The House would act and then its bill would move over to the Senate, where the Finance Committee would hold hearings and act. There would often be 10 or 12 pieces of tax legislation each year, most of which were considered on the basis of their tax policy merit, without regard to other considerations. Now the tax legislative process has been subsumed into the budget process, and changes to the tax law are essentially a byproduct of that much larger event. Changes to the tax law are now often motivated by pressures such as revenue loss offsets as distinguished from their contribution to tax policy.

Another area of substantive change relates to guidance provided by the administrative process. In the old days, we relied on Revenue Rulings as an important source of guidance from the Service. Today, as we all know, there is really a very small flow of revenue rulings. I think the change may stem in part from the fact that in the early days Private Letter Rulings were not publicly available even in redacted form. So the only way you knew what the Service was thinking was by reading the Revenue Rulings. Today, with this great flow of Private Letter Rulings, we have a lot of information about what the IRS is thinking on a wide variety of subjects, and we don't need to depend so heavily on Revenue Rulings.

Q What areas of the Code do you believe are most in need of "fixing"? Do you see any prospects for change in those areas?

A I think the one area that is probably most significantly in need of attention, and I think is getting some now, is the international area. It seems to me that the current dispute that exists with the WTO over how much we are going to subsidize export activities of U.S. taxpayers is not likely to be the last of this kind of controversy. Unless we modify our system of taxing our citizens on a global basis to more closely match the territorial taxing systems of our major trading partners, continued collisions of this sort are inevitable. I am not competent enough in international tax law to provide the solution to that problem, but I see it as a very important problem over the near term.

Q You have spent a significant portion of your career working on tax controversy matters. Has the process changed for better or worse over the years, and what systemic changes would you recommend?

A The controversy process, I think, has probably changed less than some of the other areas of tax practice that I have talked about. On the atmospheric side, I recall that when I started practicing, the Tax Court's chambers were located in the IRS building. Eventually, the Tax Court succeeded in obtaining its own building. Also, when I started practicing, the Claims Court was composed of commissioners and of judges that heard appeals from those commissioners. The commissioners have by now become the judges of the Claims Court and the former judges have become the judges of the Court of Appeals for the Federal Circuit. So there have been significant changes in the structure of the courts that hear many of the tax cases.

In my view, there is one change to the judicial process that should receive more serious consideration than it has in the past. That change would extend the jurisdiction of the Tax Court to hear refund suits as well as deficiency proceedings. I see no rational policy reason to require a taxpayer to go to a Federal district court or to the Claims Court to sue for a refund of tax. Nor do I see any policy reason to require that the taxpayer pay all of a disputed tax amount before being able to sue for a refund. I would permit the Tax Court to hear refund suits, and I would eliminate the *Flora* doctrine that demands full payment as a ticket to a refund suit. Under today's rules, a taxpayer may have several deficiency years and several refund years, all involving similar issues, and those various years may end up in different court systems. That just makes no sense.

The Tax Court's current caseload is down. The district court caseloads are awesomely high. I suspect that the district court judges would be delighted to see the Tax Court taking some of that burden off their shoulders. And I suspect that the Tax Court judges would welcome the addition to their jurisdiction. Moreover, taxpayers

would benefit. It is hard in all of this to find any losers if my proposal were to be adopted.

Q Have you ever heard of any serious effort on the Hill to reverse the *Flora* decision and expand the Tax Court's jurisdiction to include refund suits?

A To my knowledge, there hasn't been any really serious discussion of this particular issue. A few years ago, the ABA Federal Courts Committee proposed that all appeals from tax cases be routed to a national court of tax appeals, removing those appeals from the U.S. Courts of Appeal. I was at that time Chair of the ABA Tax Section, and we were able to defeat that particular proposal in the ABA House of Delegates. It does seem important to me that generalist judges ultimately establish the appellate law in the tax area. I do not believe that tax specialists should resolve these issues to the exclusion of generalist judges. The issues decided on appeal can have very wide implications and deserve the attention of the broader community.

Q The Bush Administration has expressed a willingness to tighten rules applicable to tax shelters. How effective do you believe these efforts have been so far?

A I think that they have been only moderately effective. The corporate tax shelter problem (more accurately, the "business" tax shelter problem) is very difficult to resolve. Perhaps the most difficult aspect is to define what we mean when we call something a tax shelter. To put it more precisely, what do we mean when we call something an abusive tax shelter? We just do not have a definition.

At the same time, I don't think it is possible or even desirable to try to define an abusive tax shelter in legislation. It would be just too difficult. If it were easy to craft an effective definition, we would have seen one a long time ago because a lot of very bright people have been giving the subject a lot of attention.

It seems to me that the best way to attack the tax shelter problem is to make the downside of investing in a shelter that fails to be sustained on its merits very painful to the participants, not only to the taxpayers who invest in it, but also to those who promote and market it. The downside for investors could be increased by significantly increasing the substantial understatement penalty and by eliminating the reasonable cause and good faith exception under section 6664. With regard to promoters, I think it remarkable that a promoter can market a tax shelter, get paid, and pass on to the investor all of the problems of defending the shelter and all exposure to penalties. The tax law gives the promoter a free ride. I would advocate legislation under which a promoter incurs a penalty any time that an investor in the tax shelter incurs a penalty. The promoter penalty would be equal to the investor's penalty.

Q The courts have issued a number of decisions in recent years addressing alleged tax shelters and the economic substance doctrine. Some believe these decisions are in conflict and may send mixed signals to corporations considering tax-saving devices. Do you believe the law in this area is in an appropriate posture, or are major changes needed?

A This is very similar to the last question. I think we have to admit that the cases are in conflict, and it is extremely difficult to reconcile them, particularly cases where investments have been made in exactly the same shelter but the courts have gone in different directions. As matters now stand, we leave it to the courts, applying the economic substance doctrine, to attempt to define abusive tax shelters for us. And that may be the best that we can do for now, even though the cases are often inconsistent and unpredictable. As a matter of fact, that lack of predictability may itself contribute to the cause by discouraging tax shelter investment on the ground that it is inherently dangerous.

I return to the notion that the best way to deal with the problem is to make tax shelter investments unattractive because the downside risk is high enough to generate concerns that are effective to modify conduct. When we faced the individual tax shelter problem of the 1970s, the solution was ultimately found in tax law changes like the at-risk rules. Those rules proved to be effective because they made the economic downside of a tax shelter investment both unavoidable and unattractive. Again, I think we have to make the economic downside of investing in the modern generation of tax shelters significant enough to capture the attention of investors, and we need to extend that downside potential to the promoter of such products.

Q Your practice often involves representing clients before the Office of Appeals of the IRS. How has that office been changed in recent years in scope of responsibility and mandate, and how do you believe those changes have affected its core mission?

A I think we should recognize at the outset that the Appeals Division of the Service has been extraordinarily successful over the years in accomplishing its mission. It is probably the most successful ADR program in the country. If the tax cases that get settled in Appeals were instead to make their way to the courts, the courts would be unable to handle that caseload with the resources available today. So that Appeals, I think, is critically important to our tax administration process.

It is unfortunate that the appeals system has been saddled in recent years with some important but less attractive responsibilities. From the point of view of any tax professional involved in the controversy process, there are good tax cases and there are bad tax cases. Good tax cases are those that present meaningful and substantive issues of tax law that can be evaluated and resolved. Bad tax cases

SEE **INTERVIEW** PAGE 33

SPOTLIGHT ON COMMITTEES

by Gail Levin Richmond, Ft. Lauderdale, FL

COMMITTEE ON INDIVIDUAL INCOME TAX

The work of the Committee on Individual Income Tax can be analogized to that of a general practitioner acting in tandem with numerous specialists. In carrying out its activities, the Committee focuses on provisions that affect individual taxpayers but that do not fall exclusively within the purview of committees with a particular substantive focus. As explained below, the Committee's activities reflect a prior Committee name, concerns about complexity, overlap with other Tax Section entities, and an interest in life-cycle and "interdisciplinary" issues. Many of its activities should be of interest to practitioners who counsel individual taxpayers, to young lawyers, and to law students.

Because the Committee has had several names, many Section members may be unaware of its current activities. Two years ago the Committee changed its name from the Committee on Individual Investments and Workouts, a name it had adopted several years ago when bankruptcy and restructuring issues were a critical aspect of its activities. The Committee continues to address these issues in both its current developments reports and by sponsoring at least one panel per year in this area. The Committee has covered the tax consequences of debt discharge, Supreme Court decisions in cases such as *Gitlitz*, *Young*, and *Craft*, and a taxpayer's ability to discharge taxes in bankruptcy. In this area, it has benefitted from interaction with members of the Bankruptcy Tax Force, several of whom have participated in Committee-sponsored panels. Again, reflecting its prior name, the Committee also presents programs dealing with such investment topics as the broker/dealer/trader distinction.

Although the Committee's "constituents" are adversely affected by complexity, they may be unable to afford private representation but not be poor enough to qualify for assistance from a low income taxpayer clinic. Because of its concern for these taxpayers, the Committee has provided input into Section simplification efforts, discussed joint programming with the Committee on Low Income Taxpayers, and presented a panel on the work of Citizens Advocacy Panels. It is sponsoring an October 2002 Section program on using mediation and arbitration in tax matters. Perhaps most importantly, it has scheduled time at each May meeting for a dialogue with National Taxpayer Advocate Nina Olson. Committee programs directly follow those sponsored by the Committee on Low Income Taxpayers, enabling interested members to attend both.

Because an individual taxpayer's primary goals change over time to reflect both economic and demographic factors, the Committee has a particular interest in life cycle issues. Recent programs reflecting this interest include a panel covering financing a college education, a panel discussing tax consequences for students and their parents, and a panel covering investment and other tax consequences of a personal residence. Possible future panels topics include financing long term care and saving for retirement.

In several presentations, the Committee added an interdisciplinary twist by including non-tax professionals as panelists. For example, the panel on financing a college education included a financial aid professional who commented on how various savings devices affected a student's ability to receive financial aid. A panel on attorney's fees included an attorney specializing in personal injury litigation. A panel on equity-based compensation covered tax, financial, and accounting aspects of options, stock appreciation rights, and other devices.

The Committee also follows proposed and recently enacted legislation, reporting on such topics as the bankruptcy bill under consideration in Congress for the past few years, the Democratic and Republican tax platforms, and income tax consequences of transfer tax repeal.

The Committee's structure currently includes Subcommittees chaired by Tom Allington (Bankruptcy, Workouts, and Insolvency), Mona Hymel (Individual AMT), Bill Lyons (Section 108 and Other Exclusions), and Roberta Mann (Individual Deductions).

Tax Section members who are interested in joining the Committee or who have ideas for future panels or other Committee projects should contact the Chair, Gail Levin Richmond, richmondg@nsu.law.nova.edu. ■

REMINDER: Section members may apply to join committees with the new online *Committee Preference Form* at www.abanet.org/tax/groups/comember.html. You will need your eight-digit ABA member ID number and your password (usually your last name) to access the form. If you do not know your ID number, contact the ABA Service Center at service@abanet.org. *One Committee Rule*: As of July 1, 2001, the Section has rescinded its *One Committee Rule*. Section Members now may join as many committees as they like.

PRO BONO UPDATE: **NEW PRO BONO COMMITTEE FORMED**

by Richard M. Lipton, Chicago, IL

One of the priorities of my term as Section Chair was to focus on pro bono activities. The current Chair, Herb Beller, has asked me to maintain this focus by heading up a new Pro Bono Committee. I wanted to tell you briefly about the proposed activities of this new committee.

The first meeting of the Pro Bono Committee will be held in conjunction with the Tax Section's meeting in San Antonio in January 2003. The Pro Bono Committee will meet on Saturday, January 25, 2003, at 7:15 am; breakfast will be served. The focus of the meeting will be coordinating the activities of the committee.

I anticipate that there will be two major initiatives undertaken immediately by the Pro Bono Committee. The first involves VITA training. Many tax lawyers would be willing to devote their time and efforts to help less-fortunate individuals prepare their income tax returns. However, most of us have not been trained to do so. To resolve this issue, we are working on obtaining assistance from the Service in providing training (in a 3-hour course) at the meeting in San Antonio; tentatively, we have scheduled training programs on Saturday morning and afternoon in San Antonio. The exact time and place for this training should be covered in the next issue of the *NewsQuarterly*. Once training of Tax Section members is completed, we expect to utilize the Tax Section website as a means to inform members of opportunities to assist in tax return preparation services on a pro bono basis in their communities.

Second, we will be contacting low income taxpayer clinics (LITCs) from around the country in order to determine which ones would want to undertake a mentoring program at the LITCs (or, where appropriate, having Tax Section members actively involved directly pro bono in disputes). Again, if and when any LITCs express interest, this information will be made available through both the *NewsQuarterly* and the Tax Section website.

We also recognize that neither Council nor the Pro Bono Committee will have a monopoly on ideas. If any of you have a suggestion for additional pro bono activities in which Tax Section members could be involved, please e-mail me at RLipton@mwe.com. ■

POINTS TO **REMEMBER**

FROM PAGE 14

insurance companies of premium payment requirements in this context (each premium payment arguably being treated as a "new", post July 30 loan), indicate that "fixing" this problem may not be quick or easy. Publicly traded employers should consider not paying the premiums on policies for directors and executive officers under collateral assignment arrangements until the rules are clarified.

Those who must address existing split dollar arrangements would be well-advised to wait. First, the rules are not clear. The Service has kept up its steady stream of pronouncements, including Notice 2002–59, discussing the tax implications of reverse split dollar and private split dollar arrangements. But many questions remain unanswered. In addition to some mentioned above, issues remain on how to analyze co-owned policies and how to value the benefit in an endorsement policy, for example.

Second, insurance companies must run calculations for employers and executives to determine tax and economic consequences of the different treatments (including a possible rollout of existing equity). Then employers and executives need to decide which treatment they will agree to use and who will bear the cost of the additional tax. There may be a provision in the documents that provides an answer. One thing is clear: employers and executives should not modify existing arrangements if at all possible. A "material modification" could result in taking the arrangement out of the favorable transition rules.

With respect to new split dollar arrangements, again employers and executives alike would be well-advised to wait and see. The employer who has promised executives this type of arrangement, or historically has offered it to executives reaching certain levels and ages, can calculate the cost to the executive of waiting and can pay that amount in a bonus, if need be.

What is clear is that the landscape for split dollar life insurance arrangements has changed dramatically, and that the ground continues to shift under our feet. Employers as well as employees should have an understanding of all the rules, pay careful attention to the development of the final regulations, and exercise caution in taking any steps to change or enter into new arrangements at this time. ■

2003 MIDYEAR MEETING

JANUARY 23–25, 2003, SAN ANTONIO, TX

GENERAL INFORMATION

San Antonio welcomes the Section of Taxation to the 2003 Midyear Meeting, January 23–25, 2003. Join us in this historic city and take advantage of the opportunity to meet with government officials and the country's leading tax attorneys to discuss the latest federal tax policy initiatives, regulations, legislative forecasts, and planning ideas.

DRESS CASUAL

The dress for the 2002 Midyear Meeting is casual, so relax and bring comfortable attire.

REGISTRATION

Any Section member attending any part of the 2003 Midyear Meeting, *regardless whether or not he or she speaks,* must register and pay the registration fee. Shared registrations are not permitted. Companions are defined as non-Section members not attending substantive meetings. Any companion attending substantive programs must register and pay either the Section member or non-Section member registration fee, whichever is applicable.

The Section is pleased to offer a 15% discount to advance registrants. To register for the 2003 Midyear Meeting, please use the Meeting Registration and Ticket Purchase Form in this *NewsQuarterly* or online at www.abanet.org/tax/. **The final deadline for advance registration is December 19, 2002.**

The registration fee includes one set of meeting materials and permits registrants to attend all meetings, sessions and programs; however, it does not include meal functions and social events listed as "Ticketed Event." All tickets are sold on a first-come, first-served basis. Payment may be made by check or credit card. The Section accepts American Express, Master Card and VISA. **No registration will be processed or considered received unless payment is included.**

The Meeting Registration and Ticket Purchase Form, along with a full payment, must be faxed or postmarked by December 19, 2002, to be eligible for the discounted advance registration fee and airline ticket raffle. Registrations will be accepted after the December 19th deadline date (until January 9, 2003); however they will be automatically processed with the "on-site" fee. Please note that once on-site, those who register between December 19, 2002, and January 9, 2003, will be able to pick up their badge and meeting materials at the advanced registration area.

MEETING REGISTRATION FEE WAIVED

The 2003 Midyear Meeting registration fee will be waived for Tax Section members who have never attended a Tax Section meeting and for law students and LLM candidates. Meeting benefits include Continuing Legal Education programs, legal publications, professional development, networking and access to up-to-date information. To register, use the Meeting Registration and Ticket Purchase Form in this *NewsQuarterly* or visit the Section's website: www.abanet.org/tax/.

REFUND POLICY

All cancellations and refund requests **must be received in writing and** be postmarked or faxed by December 19, 2002, to receive a refund. All refund requests will incur a $50 cancellation fee. Absolutely no refunds will be granted at the meeting. Please direct all refund requests to the Meeting Registrar at the Section Office.

ON-SITE REGISTRATION AND TICKET PURCHASE HOURS

The Registration Desk will be open during the following hours:

Thursday . . . 12:00p.m. – 9:00p.m.
Friday . . . . . . 6:30a.m. – 6:30p.m.
Saturday . . . . 6:30a.m. – 4:00p.m.

WIN FREE AIRLINE TICKETS

At the Midyear Meeting, the Section will raffle two airline tickets for travel within the continental United States. All complete registrations postmarked or faxed by December 19, 2002, will be eligible. The drawing will take place during the Section Luncheon at the Midyear Meeting. You do not have to be present at the Luncheon to win the tickets.

AIR TRAVEL INFORMATION

American, Delta and USAirways are the preferred airlines for the 2003 Midyear Meeting. To make airline reservations or to compare rate information, attendees should contact the airlines directly using the ABA reference numbers provided below.

American Airlines
1-800-433-1790
Reference: 15794

Delta
1-800-241-6760
Reference: 189408A

US Airways
1-877-874-7687
Reference: 36632473

Attendees are encouraged to compare all options available, including rates and restrictions between an airline's own zone fares and ABA rates.

The ABA rates are available through your travel agent, directly from the airline, or from the ABA travel agency, Tower Travel Management at 1-800-921-9190.

CAR RENTAL INFORMATION

ABA Members can receive special rates through Hertz. Call 1-800-654-2230 and mention the ABA/Hertz reference number CV022R0637; TDD users dial 1-800-654-2280. You will be asked for your ABA membership ID number at the time of rental.

CHILD CARE SERVICES

If you need childcare services, contact the concierge in the hotel where you are registered.

MEETING MATERIALS

As is customary, the Section Program *Meeting Materials* will be available at the Midyear Meeting in print form and on CD-ROM in PDF and MS Word formats. Please note that the materials are no longer available on disk. You will receive the format based on what was indicated on your Meeting Registration and Ticket Purchase Form. Please note that the *Meeting Materials* contain only the material for the Saturday Plenary Session and Section Programs. The materials from selected Committee Programs will be compiled and made available following the meeting in the *Selected Committee Handouts.* Both the *Meeting Materials* and *Selected Committee Handouts* print publications are available by subscription and for purchase separately.

In addition, all meeting materials including committee program material will be available on *Comm-Online*—an innovative Tax Section and LexisNexis™ joint project which gives members FREE online access to hundreds of pages of Section Program and Committee Meeting Materials. This service is available online at www.abanet.org/tax/commonline/.

HOTEL RESERVATIONS

Those wishing to make reservations at the San Antonio Marriott may do so by using the Hotel Reservation Form located in this *NewsQuarterly* or online at www.abanet.org/tax/. **The deadline for making reservations is Friday, January 3, 2003.**

Please note that the Hotel Reservation Form should be sent directly to the hotel, not to the Section Office.

CLE AND ETHICS* CREDIT

Please note that you *must be registered for the meeting* in order to be eligible to receive CLE or Ethics credit. Accreditation has been requested for this meeting from every state with mandatory continuing legal education (MCLE) requirements for lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE." The Uniform Certificate of Attendance will be available at the meeting for both attendees and speakers and will be included with the Tax Section Meeting Materials. Please call the ABA's CLE Department in Chicago at 312/988-6217 with any questions pertaining to the number of credit hours granted by each state.

New Requirements for New York and Delaware Attorneys: Please be aware that new rules for New York and Delaware attorneys require that you sign in and out of each session that you attend. You must record your state license number for each state in which you are currently licensed. The sign-in and out forms will be available in each meeting room.

AUDIO TAPES

Audiocassette tapes of committee and Section programs will be available for purchase on-site as well as following the meeting. Provided by Teach'em, each program typically consists of two cassettes and costs only $20. To place an order, contact Teach'em at 1-800-776-5454 or info@Teachem.org, or www.Teachem.net/ABA/.

PROGRAM SCHEDULE

For the complete 2003 Midyear Meeting Program Schedule, including dates and times, visit the Tax Section website at www.abanet.org/tax/.

SECTION PROGRAMS

All Section Programs will be held on Saturday afternoon following the Plenary Session. Some of the programs you can choose from include:

- *Current Developments in Individual, Corporate, Partnership, and Estate & Gift Taxation,* sponsored by the Teaching Taxation Committee.
- *Planning for International Joint Ventures,* sponsored by the US Activities of Foreigners & Tax Treaties Committee.
- *Handling Audits with "Sensitive Issues,"* sponsored by the Civil and Criminal Tax Penalties Committee.
- *In Light of Recent Circumstances—An Updated Look at What Benefits Lawyers Need to Know About Securities Laws,* sponsored by the Employee Benefits Committee.
- *Proposed Regulations Under Section 263(a) on Capitalization of Intangibles Expenditures: Impact on Tax Planning and Compliance Issues,* sponsored by the Tax Accounting Committee (tentative pending the issuance of regulations).

In addition, Pamela Olson, Assistant Secretary of the Treasury, Tax Policy, will speak about current and upcoming projects from the Office of Tax Policy during the Section Luncheon on Saturday.

2003 Section of Taxation Midyear Meeting Registration and Ticket Purchase Form

ADVANCE REGISTRATION WITH FULL PAYMENT MUST BE POSTMARKED OR FAXED BY DECEMBER 19, 2002.
CANCELLATIONS: $50, **NO REFUNDS after December 19, 2002.**

INFORMATION

(Please type or print clearly.)

Attendee Name: ____________________

ABA ID No.: ____________________

Please check here if you need CLE Credit in one of the following states: ❑ NY ❑ PA ❑ TX ❑ DE

Companion Name: ____________________

Firm or Agency: ____________________

Business Address: ____________________

____

City/State/Zip: ____________________

Daytime Telephone: ____________________

Fax: ____________________

E-mail: ____________________

Home Address: ____________________

____

____

City/State/Zip: ____________________

❑ Please check here, if under the Americans with Disabilities Act, you require specific aids or services during your visit to the Tax Section Meeting

❑ Audio ❑ Visual ❑ Mobile Call 202-662-8672

❑ Do not send me promotional information from sponsors and other vendors

REGISTRATION

If Postmarked or Faxed	by 12/19/02	after 12/19/02
Check one:		
Regular Member/Associate	❑ $325	❑ $375
Foreign Lawyer	❑ $325	❑ $375
Young Lawyer (admitted to the bar less than 3 years)	❑ $250	❑ $295
Full-Time Law Professor	❑ $85	❑ $95
Government Official	❑ $85	❑ $95
Non-Section Member*	❑ $375	❑ $425
Full-Time J.D./LL.M. Candidate	❑ waived	❑ waived
First Time Tax Section Attendee	❑ waived	❑ waived

❑ Yes, I am an ABA Tax Section Member.

❑ Yes, this is the first Tax Section meeting I have attended.

*ABA members registering will become Tax Section members for 2002-2003.

Check one: Registrants will receive one version of the meeting materials.

❑ Traditional book version only: *included in registration fee*

❑ On CD-ROM only (Windows version): *included in registration fee*

❑ Traditional book version with CD-ROM: additional $60 Charge

UNABLE TO ATTEND THE MEETING?

Mail the following materials after the Meeting:

❑ Meeting Materials CD-ROM $60.00 + $5.95 S/H

❑ Meeting Materials traditional book version $65.00 + $5.95 S/H

❑ Selected Committee Handouts $75.00 + $5.95 S/H

NOTE: Meeting Materials contain only the materials for the Saturday Plenary and Section programs

TOTAL: $ ____________

TICKETED EVENT

THURSDAY, JANUARY 23

TOUR/ACTIVITY

1 Golf Outing at Silverhorn Golf Club of Texas (8:30 a.m. tee time) ___ at $88 each = $_____

FRIDAY, JANUARY 24

TOUR/ACTIVITY

2 Art Tile Tour and Luncheon ___ at $75 each = $_____

COMMITTEE LUNCHEONS

3 Administrative Practice and Court Procedure ___ at $32 each = $_____

4 Agriculture ___ at $32 each = $_____

5 Banking and Savings Institutions, Financial Transactions, Regulated Investment Companies, Insurance Companies & Tax Exempt Financing ___ at $32 each = $_____

6 Civil and Criminal Tax Penalties ___ at $32 each = $_____

7 Corporate and Affiliated & Related Corporations ___ at $32 each = $_____

8 Estate and Gift Taxes & Fiduciary Income Tax ___ at $32 each = $_____

9 Exempt Organizations ___ at $32 each = $_____

10 Foreign Activities of U.S. Taxpayers, Foreign Lawyers Forum, Transfer Pricing & US Activities of Foreigners and Tax Treaties ___ at $32 each = $_____

11 Partnerships and Real Estate ___ at $32 each = $_____

12 S Corporations ___ at $32 each = $_____

13 State and Local Taxes ___ at $32 each = $_____

RECEPTIONS

14 Employee Benefits ___ at $68 each = $_____

15 Section Reception ___ at $70 each = $_____

SATURDAY, JANUARY 25

COMMITTEE BREAKFAST

16 Partnerships, Real Estate & S Corporations ___ at $25 each = $_____

TOUR/ACTIVITY

17 Outlying Missions ___ at $25 each = $_____

LUNCHEON

18 Section Luncheon ___ at $36 each = $_____

PAYMENT INFORMATION

TOTALS:

Registration Fee $ ________

Additional CD-ROM $ ________

Ticket Total $ ________

TOTAL PAYMENT: $ ________

Make checks payable to **ABA SECTION OF TAXATION** or fill in the credit card information below. **MUST PRINT CLEARLY AND LEGIBLY**

Check One: ❑ Master Card ❑ VISA ❑ AmEx

CARD NO: ____________________

EXP. DATE: ____________________

SIGNATURE: ____________________

RETURN TO:
Meeting Registrar
ABA Section of Taxation
740 15th Street, NW, 10th Floor
Washington, DC 20005-1022
Or Fax to (202) 662-8682

BY: Dec. 19 2002

(PL)

For Tax Section Use Only

Check # ____________

Amount Rec'd $ ____________

Initials ____________

HOTEL RESERVATION FORM: SAN ANTONIO MARRIOTT

Telephone (210) 223-1000
For reservations 1 (800) 648-4462
Fax: (210) 554-6248

RETURN BY JANUARY 3

101 Bowie
San Antonio, Texas 78205

HOTEL

Please indicate which hotel you are requesting:

☐ **Marriott Rivercenter (Headquarters Hotel)**
☐ **Marriott Riverwalk**

INFORMATION

Group: ABA Section of Taxation.

Group Dates: 1/23/03 - 1/25/03

Name: ______________________________

Co-Affiliation: ______________________________

Address: ______________________________

City: ____________________ State:_____ Zip:_________

Phone: ______________________________

Reservation requests must be accompanied by a check or money order equal to one night's room rate plus tax or by credit card, which will be billed for one night. All reservations are subject to tax of 16.75%. This guarantee of payment insures that a room will be held for your first day of arrival only. Should you not arrive, the room will become available for resale at 6:00 a.m. the following morning and your deposit or credit card will be used as payment for the first night's room rent if the reservation is not cancelled 48 hours prior to arrival.

Check-in time after 4:00 p.m. Check-out time 12:00 noon. Late departures will be charged full night's rate plus taxes. 24 hours prior to arrival, the hotel cannot refund advance deposit without a cancellation number from the hotel.

Please provide credit card information or indicate paying by check or money-order. Credit cards accepted: American Express, Diners Club, Visa, Master Card, or Discover.

Credit Card: ______________________________

Card No.: ______________________________

Exp. Date: ______________________________

Signature ______________________________

Check or money order enclosed: $ ________________

☐ Check here if confirmation notice is required.

Fax to: ______________________________

☐ Check here if requesting a non-smoking room.

☐ Check here if requesting a room equipped for handicapped persons.

☐ King bed or

☐ 2 Double beds

Arrival Date: __________ Departure Date:______________

Arrival Time: a.m. ___________ or p.m.______________

Requested room type	**Convention Rates**
☐ Single	$200 (plus 16.75% tax)
☐ Double	$214 (plus 16.75% tax)

Sharing with: ______________________________

SECTION EXHIBIT

The Section of Taxation Exhibit will take place on Friday and Saturday. Representatives from a variety of tax publishers and service providers will demonstrate the latest tax law research methods and exciting new products to aid you in your daily practice.

SECTION LUNCHEON AND RECEPTION

The Section Reception will take place on Friday, January 24, from 6:30p.m. to 8:00p.m. The Section Luncheon will be held on Saturday, January 25, from 11:45a.m. to 12:40p.m. Both events will be held at the San Antonio Marriott.

ACTIVITIES AND TOURS

Tickets for these activities may be ordered using the Registration and Ticket Order Form found in this *NewsQuarterly*. Tickets are sold on a first-come, first-served basis.

THURSDAY, JANUARY 23

SHOTGUN BEGINNING AT 8:30AM

SECTION GOLF OUTING – SILVERHORN GOLF CLUB OF TEXAS
(Ticketed Event: $88.00)

The Section of Taxation offers the opportunity to hit the links before diving in to the Midyear Meeting. Plan now to join colleagues at the Silverhorn Golf Club of Texas. Designed by golf course architect Randy Heckenkemper in concert with PGA Tour professionals Willie Wood and Scott Verplank, this course traverses over 200 acres of beautiful hill country. Silverhorn is located just five minutes from San Antonio International Airport. The cost of this event includes round-trip transportation between the Marriott Rivercenter and Riverwalk and the golf course, box lunch, cart and greens fees. **Golf cancellations must be received by Wednesday, January 8, 2003, in order to receive a refund.**

FRIDAY, JANUARY 24

8:00AM – 9:00AM

COMPANIONS' BREAKFAST – COMPLIMENTARY

9:00AM – 3:00PM

A HEART OF SAN ANTONIO ART TILE TOUR & LUNCH
(Ticketed Event: $75.00)

This tour will highlight the distinctive art tile in the buildings of San Antonio. Participants will begin the day on foot in the area of Alamo Plaza with a stroll to the Menger Hotel. The Victorian-tile lobby and tile courtyard fountains are works of art. Other famous San Antonio buildings along the River Walk, including La Mansion Hotel and La Villita Assembly Hall, will demonstrate the juxtaposition of historic tile work as well as selections of tiles from current tile artists.

A motor coach will then take participants to the McNay Art Museum, ranked as one of the top 19 places in the world to see decorative tile. Lunch will be at a local restaurant, followed by a stop at the home of tile artist Janie Williams located in Terrell Hills —one of the oldest and most beautiful residential areas in the Alamo City. From her basement studio, Ms. Williams specializes in designing and creating tiles for kitchens, baths, fireplaces, pools, fountains and murals. Ms. Williams' enchanting work is also displayed throughout her home and open courtyard.

At the conclusion of the tour, the motor coach will return participants to the Marriott Rivercenter & Riverwalk. **Please wear comfortable walking shoes and dress appropriately for the weather.**

SATURDAY, JANUARY 25

9:00AM – 12:00PM

OUTLYING MISSIONS
(Ticketed Event: $25.00)

Participants will be taken by motor coach to begin the tour at Mission San Jose. Known as the "Queen of the Missions" and established in 1720, this mission is recognized as the most beautiful, prosperous and best fortified of all of the missions in the area. The famous "Rosa's Window," although weathered by time, is considered one of the finest pieces of Spanish Colonial ornamentation in the country.

Included in the tour is the Mission Nuestra Senora de la Concepcion. Completed in 1755, after over 20 years under construction, it stands as the oldest, unrestored, stone church in the country. Rare original frescoes are still in evidence on the interior walls and ceilings. The acoustics have been compared to the Mormon Tabernacle.

At the conclusion of the tour, the motor coach will return participants to the Marriott Rivercenter & Riverwalk. **Please wear comfortable walking shoes and dress appropriately for the weather.** ■

GOVERNMENT SUBMISSIONS BOXSCORE

Since the last issue of the NewsQuarterly, the Tax Section has coordinated the following Government Submissions, which can be viewed and downloaded free of charge from the Section's website at www.abanet.org/tax/pubpolicy/regindex.html. If you have any questions or need assistance in locating these documents please contact the Tax Section office at (202) 662-1783.

I.R.C. §	DATE	TITLE	COMMITTEE	CONTACT
414(v)	6/26/02	Comments Regarding Proposed Treasury Regulation § 1.414(v)-1	Employee Benefits	Leonard S. Hirsh Bernard F. O'Hare
various	6/27/02	Comments to IRS and Treasury Dept. Regarding Tax Shelter Proposals dated March 20, 2002	Section of Taxation	Richard M. Lipton
n/a	6/28/02	Comments Concerning Limited Scope Income Tax Examinations in the Internal Revenue Service's Large and Mid-Size Business Division	Administrative Practice	Melissa E. Welch Thomas J. Callahan Gregory J. Gawlik
1441	7/24/02	Comments Regarding IRS Notice 2002-41: Withholding Foreign Partnership and Withholding Foreign Trust Agreements	U.S. Activities of Foreigners and Tax Treaties	Edward J. Tanenbaum Jason S. Bazar
n/a	8/5/02	Comments Concerning Proposed Amendments to Tax Court Rules	Court Procedure & Practice	Nancy T. Bowen
n/a	8/13/02	Comments Concerning Proposed Amendments to Tax Court Rules	Low Income Taxpayers	Elizabeth A. Copeland Leandra Lederman
various	9/13/02	Comment Letter to Treasury Dept. regarding Recommendations of the AICPA/ABA/TEI Task Force on Tax Simplification	Section of Taxation	David Glickman Terrill A. Hyde

THE SECTION WANTS YOUR E-MAIL

Do you want to be alerted to important ABA and Section information by e-mail? If you have not registered your e-mail address with the ABA, or if you have an e-mail address change, please submit this information using the **Change of Address** form on the ABA website at **www.abanet.org/members/join/coa1.html**, or contact the ABA Service Center at 800/285-2221. Using the Change of Address form on the website, you can also request to be removed from ABA e-mail distribution lists. Please note that your e-mail address will be used only within the ABA—the ABA does not sell or rent e-mail addresses to anyone outside of the ABA (see the ABA privacy statement on our website). If you have any questions, please feel free to contact the ABA Service Center at the number above or the Tax Section office at 202/662-8670.

INTERVIEW WITH **JAMES P. HOLDEN**

FROM PAGE 25

involve issues that you would rather not have to wrestle with, such as collection due process hearings. You are not really working with the tax law; you are instead working with a taxpayer who has a tax liability and not much money, and you are trying to protect that person's rights while the system extracts money from him. It can be an impossible situation.

I do think there is a risk to the core mission of Appeals when it is required to perform these other assignments that tend to make the role of the Appeals Officer less attractive. We need to assure that Appeals will continue to attract highly qualified people. ■

CLE CALENDAR

For more information about upcoming CLE events, visit the Tax Section website at www.abanet.org/tax/, the ABA CLE website at www.abanet.org/cle/, and the ALI–ABA website at www.ali-aba.org.

TOPIC	DATE	CONTACT
ABA Connection Teleconference: Tax Issues from a Tough Year	Nov. 20, 2002 1–2pm ET	ABA CLE 800/285-2221 www.abanet.org/cle/
Tax Section *Last Wednesday* Teleconference: State & Local Taxes Program	Nov. 27, 2002 1–2:30pm ET	ABA CLE 800/285-2221 www.abanet.org/cle/
19th Annual National Institute on Criminal Tax Fraud, San Francisco, CA	Dec. 4–6, 2002	ABA CLE 800/285-2221 www.abanet.org/cle/
Tax Section *Tax Link Live* Teleconference: "What Engagement Letter?"	Dec. 11, 2002 2–3pm ET	ABA CLE 800/285-2221 www.abanet.org/cle/
ABA Connection Teleconference: The Final Word on Ethics 2000	Dec. 18, 2002 1–2pm ET	ABA CLE 800/285-2221 www.abanet.org/cle/
Tax Section *Last Wednesday* Teleconference: Administrative Practice and Tax Controversies Program	Jan. 29, 2003 1–2:30pm ET	ABA CLE 800/285-2221 www.abanet.org/cle/

POINT & COUNTERPOINT

FROM PAGE 18

cisely to fight fire with fire. The incentives offered by private enforcement will bring high-powered resources to bear on challenging abstruse but aggressive tax-saving schemes more expeditiously than would additional appropriations for the Service. It would, moreover, do so at no real budgetary cost. Auctioning enforcement rights would effectively compensate the government in advance for the market's assessment of the expected understatement (net of anticipated enforcement costs) in a given corporate return. The necessity of bidding for the privilege would induce prudence on the part of prospective private auditors; it would curb abuse, and tend to insure that conservatively prepared returns were left alone; it would simultaneously ensure searching audits by those who successfully bid. It would, I acknowledge—it is *intended to*—make consumption of aggressive planning products both hazardous and costly. In short order it would reduce the expected returns to aggressive planning, and eventually tip the balance in favor of submitting squeaky-clean returns. Once that happens, and corporate managers come to realize that there is a financial *premium* on conservatively prepared returns, we should then expect to find few bidders for the privilege of auditing those returns. That's the real virtue of what I have suggested.

Finally, Mr. Madison invokes the distrust and concern for abuse of private enforcement reflected in the Securities Litigation Reform legislation enacted in 1995. While the causes are surely multi-faceted, given the outright fraud (WorldCom, Enron) and downright plundering (Tyco, Enron) that have materialized since 1995, that is not an argument with which I would choose to close. But to those who share Mr. Madison's concern, I suggest that, at least in the context of auditing corporate tax returns, abuse could be controlled by requiring prospective auditors to bid and to pay for the right to audit a return. Whether they deplore it or applaud it, I think most tax professionals would agree that, as matters stand where enforcement is concerned, the deck is currently stacked against the Service. And, to paraphrase Judge Hand one final time, I do not think the government is compelled to structure its enforcement so as to maximize the rewards to aggressive private efforts to pay less than what the law demands. If, as Ken Kies has been (approximately) heard to say, "We don't need more laws, all we need is to enforce the laws we have," there is nothing even remotely unfair about getting *really* serious about enforcing the laws we have. ■

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☐ **EFFECTIVELY REPRESENTING YOUR CLIENT BEFORE THE "NEW" IRS: A Practical Manual for the Tax Practitioner with Sample Correspondence and Forms (2001-2002 Edition)**. This comprehensive, easy-to-use handbook was designed as a roadmap for the general tax practitioner in all stages of representation before the IRS in controversy matters. It includes a full discussion of the relevant law, the types of information you'll need to gather from your client, from the IRS, and from third parties, the types of questions to ask, and a host of practice tips. It also includes completed forms and sample correspondence, so you do not need to "reinvent the wheel." The CD-ROM for this edition has been enhanced to include active and functioning hypertext links to websites that take you to specific referenced sections of the Internal Revenue Code, IRS forms and publications, recent court cases, Treasury Regulations, Circular 230, GAO studies, Model Rules of Evidence, Civil Procedure and Professional Responsibility, and the like. In addition, direct links to the web-based version of the Internal Revenue Manual are incorporated into the narrative in order to send the user to the exact location being discussed.
Size: 8.5 x 11, Softcover, 1780 pages, including CD-ROM / Price: $240 Members, $290 Nonmembers, $145 Nonprofit or Academic / Product Code: 5470527

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Size: 8.5 x 11, Softcover, 900 pages / Price: $195 Tax Section Members, $240 Nonmembers / Product Code: 5470541

☐ **SALES & USE TAX DESKBOOK, 2001-2002 EDITION.** Year after year, the **ABA Sales & Use Tax Deskbook** provides tax managers, attorneys, and accountants—in one, reliable source—all of the information they are most likely to need about sales and use taxes. Broken down by state, each chapter is written and updated annually by one or more lawyers experienced in the sales and use tax practice of that state. The chapters are organized in a uniform format to aid the reader in finding information and to facilitate multistate research.
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Size: 6 x 9, Softcover, 595 pages / Price: $95 Tax Section Members, $120 Nonmembers / Product Code: 5470534

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NEWS BRIEFS

SECOND ANNUAL TAX CHALLENGE IS UNDERWAY

The Section of Taxation Young Lawyers Forum is proud to sponsor the Second Annual Law Student Tax Challenge. This nation-wide competition is open to all law students attending an ABA accredited law school. Two-person teams will analyze and present the tax consequences of a complex business-planning problem, which is posted on the Tax Section's website. Written submissions are due November 12, 2002. Semifinalists will be notified by December 16, 2002, to compete in the Tax Challenge finals in San Antonio on January 24, 2003. For the contest rules and further details, visit www.abanet.org/tax/groups/ylf/lstc02.html.

INCREASE YOUR POWERS OF DEDUCTION WITH *THE PRACTICAL TAX LAWYER*

Published by ALI-ABA in cooperation with the ABA Section of Taxation, this useful magazine offers concise, practice-oriented articles to assist lawyers with all aspects of tax law. The articles are written by practitioners and are reviewed by an expert board of editorial advisors who are members of the ABA Tax Section and are appointed by the Section. Published four times yearly, each issue of *The Practical Tax Lawyer* brings you pragmatic, nuts-and-bolts advice on how to solve your clients' tax problems. The articles are prepared by practitioners like yourself who have tried numerous methods, found what works, and now want to share those solutions with you. For more information, go to www.ali-aba.org/aliaba/ptl.htm.

12TH ANNUAL ABA/IPT EVENT – MARCH 31– APRIL 3, 2003

The ABA Section of Taxation and the Institute for Professionals in Taxation (IPT) join forces again to present the 12th Annual Advanced Sales/Use Tax and Advanced Property Tax Seminars. The seminars will take place on March 31 – April 3, 2003, at the Hotel le Meridien in New Orleans. For the latest schedule and registration information, visit the Tax Section's website after January 1, 2003, at www.abanet.org/tax/meetings/.

ABA SECTION OF TAXATION
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