

# FROM THE CHAIR

by Dennis B. Drapkin, Dallas, TX



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## COMPLIANCE AND ETHICS INITIATIVES

**W**ith all the recent focus on the development and implementation of the final Circular 230 written tax advice rules, it is important to remember that Circular 230 imposes other ethical obligations on practitioners. Based on recommendations from former Section chair Dick Lipton, Council has approved creating a task force to consider and put into effect initiatives to promote practitioner compliance with these other Circular 230 ethical requirements. Karen Hawkins, former Vice Chair - Professional Services (and current liaison to the Office of Professional Responsibility), will head the task force, and former Section chair Steve Salch will serve as vice chair of the task force. The task force is expected to consider projects such as: practitioner obligations relating to due diligence, conflicts, client records and powers of attorney; practitioners who are delinquent in their individual filing obligations; assisting OPR in preparing training materials for its personnel; and helping to publicize OPR positions on specific ethical situations.

## SURVEY OF IRS APPEALS PROCESS

There has been considerable publicity lately as to whether the IRS appeals function has changed in important respects and, if so, how these changes might affect the resolution of tax controversies. Appeals has traditionally served an important alternative dispute resolution function, fostering the settlement of tax controversies in a fair and efficient manner, thereby avoiding the need for expensive, time-consuming litigation. Under the supervision of Charlie Egerton, Vice Chair - Committee Operations, the Committee on Administrative Practice, with input from the Low Income Taxpayers Committee, has developed a survey to ascertain the recent experience of Section members with the efficacy and independence of the appeals process. The survey was developed with technical assistance from the American Bar Foundation, which has considerable expertise in creating surveys that are statistically meaningful. At the Midyear Meeting, Council approved going forward with the survey.

## PATENTING TAX STRATEGIES

Much to the amazement of most tax practitioners, for several years now, the U.S. Patent and Trademark Office has been granting patents on tax planning methods. To intellectual property experts, however, this is not a surprising result, given the recent growth and court approval of so-called business method patents. The IRS reportedly has been following these developments and may be interested in providing input to the Patent Office as to whether a patent application covering a tax strategy satisfies the legal requirements for patentability. In view of the potential impact on tax policy and tax administration, I asked two of

our Council Directors, Ellen Aprill and Charlie Pulaski, to look into this subject and report to Council at the Midyear Meeting. Their report included valuable input from Professor Richard Gruner, an intellectual property expert at Whittier Law School. The sense of Council was that we should continue to investigate, and ascertain more widely how other professional organizations, as well as government officials, are reacting to this growing trend. We know, for example, that because the initial surge of patented tax strategies has focused on wealth transfer techniques, the Real Property, Probate and Trust Law Section is deeply concerned. We have also reached out to the Intellectual Property Law Section in an effort to coordinate our activities on behalf of the tax system with their expertise in the subject matter.

## COMMUNITY OUTREACH TRAINING PROGRAM

For several years, the Real Property, Probate and Trust Law Section has provided community outreach continuing education covering subjects within its primary jurisdiction. RPPT offers multi-week programs in urban areas in cooperation with local minority and ethnic bar associations and all-day intensive programs at its section meetings. This past fall, RPPT invited the Tax Section to cosponsor these programs in order to expand their subject matter and take advantage of the CLE structure that RPPT has developed. Elinore Richardson, our Vice Chair - Professional Services, explored this opportunity with RPPT, and recommended to Council that the Tax Section join with RPPT in providing both types of outreach programs. Council agreed at the Midyear Meeting to go forward with the proposal. The Tax Section's Diversity

Committee will have principal responsibility for arranging for speakers on tax subjects. The first outreach program involving both sections will take place at the Fall 2006 Joint CLE Meeting with RPPT in Denver.

## ABA FORMAL OPINION 346

ABA Formal Opinion 346 provides professional standards for tax shelter opinions given to third-party non-clients. It was last revised in 1982. In light of the promulgation of the final Circular 230 written tax advice regulations, the ABA Standing Committee on Ethics and Professional Responsibility, which has jurisdiction over ABA formal opinions, concluded that it was time to revisit and update Opinion 346. In addition, responding to a request made by a Senate subcommittee to the ABA to upgrade its standards of practice in light of tax shelter abuses, in 2004 the ABA formed a Task Force on Tax Shelter Ethical Responsibilities. In view of these developments, the Section's Standards of Tax Practice Committee has created a subcommittee to recommend revisions to Opinion 346. This project will be coordinated through Council, as well as with the ABA Standing Committee and the ABA Tax Shelter Task Force.

## RECENT GOVERNMENT SUBMISSIONS

It has been a busy period for Tax Section submissions to the government. Our energetic committees have recently produced comments on a broad range of administrative and legislative subjects.

- The Low Income Taxpayers Committee prepared comments on proposed changes to collection due process procedures under sections 6230 and 6330.
- The Partnerships and LLCs Committee submitted comments on proposals addressing transfers of partnership equity for services, and also commented on Notice

2005-15 regarding "assets-over" partnership mergers.

- The Exempt Organizations Committee prepared comments on proposed regulations under sections 501(c)(3) and 4958, and also submitted comments on legislative initiatives included in S. 2020 affecting exempt organizations and charitable contributions.
- The Court Procedure and Practice Committee commented on proposed Tax Court rules regarding electronic filing of documents, and also prepared a letter to Chief Judge Gerber on privacy protection concerns in Tax Court filings.
- The Employee Benefits Committee submitted numerous comments on proposed regulations under section 409A regarding non-qualified deferred compensation arrangements.

## IRS OVERSIGHT BOARD PUBLIC FORUM

The IRS Oversight Board held its annual public forum in Washington, D.C. on February 8, 2006. This year, in place of formal testimony, the Oversight Board convened two panels, one on the customer service needs of taxpayers and the other on measurements of tax administration. The Section was represented by former chair Pam Olson, who participated in the customer service panel, with input from several Section committees, including Administrative Practice, Low Income Taxpayers and Pro Bono. Among the themes that emerged from the panel were: the importance of customer service as a sound preventive strategy that reduces the need for additional enforcement down the road; open and frequent communication with stakeholders helps the Service avoid mistakes and improves efficiency; and greater discretion and empowerment of IRS employees may improve customer service and conserve resources.

## HURRICANE KATRINA ACTIVITIES

As a result of the relocation of the Section's Midyear Meeting due to the impact of Hurricane Katrina, Council approved last fall a Tax Section contribution to Hurricane Katrina relief efforts based on attendance at the Midyear Meeting. Because of the extraordinary registration at that meeting, the Section contributed a total of \$32,000 to the following organizations: Mississippi Center for Justice Hurricane Katrina Victims Legal Relief Fund; Southeast Louisiana Legal Services Corporation; Louisiana Recovery Authority Fund/Support Foundation of the Baton Rouge Area Foundation; and the Foundation for the Mid South. In addition, through its Katrina Task Force, the Tax Section has developed a mentoring program to assist local lawyers in the areas affected by the hurricanes to provide federal tax assistance relating to tax return preparation and the implementation of the numerous IRS special initiatives that address the impact of the storms.

## LAW STUDENT TAX CHALLENGE

The closing rounds of the Section's 5th Annual Law Student Tax Challenge were held at the Midyear Meeting in San Diego. For the first time, LL.M. candidates were included in the program, competing against other LL.M. candidates. Over 40 J.D. and LL.M. participants prepared written submissions addressing the same complex international tax planning problem. The semi-finalists were invited to San Diego to make oral presentations to the "client," represented by a panel of experienced tax practitioners. We are grateful for the efforts of our Young Lawyers Forum in developing the competition and making it a continuing success. For a list of the winners and more details, please see the News Briefs at page 25.

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# NOMINATING COMMITTEE

## REPORT

### 2006 – 2007 NOMINEES

In accordance with sections 6.1 and 6.3 of the Section of Taxation Bylaws, the following nominations have been submitted by the Nominating Committee for terms beginning at the conclusion of the 2006 Annual Meeting in August. Under the Section Bylaws, the current Chair-Elect, Susan P. Serota of New York, NY, will become Chair at the conclusion of the 2006 Annual Meeting.

<b>CHAIR-ELECT:</b>	Stanley L. Blend, San Antonio, TX
<b>VICE CHAIRS:</b>	Elaine K. Church, Washington, DC ( <i>Committee Operations</i> ) Gregory F. Jenner, Washington, DC ( <i>Communications</i> ) Louis A. Mezzullo, Richmond, VA ( <i>Publications</i> ) William M. Paul, Washington, DC ( <i>Government Relations</i> ) Rudolph R. Ramelli, New Orleans, LA ( <i>Administration</i> ) Elinore J. Richardson, Toronto, Canada ( <i>Professional Services</i> )
<b>SECRETARY:</b>	Christine L. Agnew, Houston, TX
<b>ASSISTANT SECRETARY:</b>	Armando Gomez, Washington, DC
<b>COUNCIL DIRECTORS:</b>	Helen M. Hubbard, Washington, DC Stephen E. Shay, Boston, MA Emily A. Parker, Dallas, TX Priscilla E. Ryan, Chicago, IL

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#### MIDYEAR AND MAY MEETINGS

Despite changing the location and dates, the Midyear Meeting in San Diego attracted 1250 registrants, which was slightly more than last year. We are grateful for the extraordinary efforts of Section staff, led by Meetings Director Julie Hulsey, in making the arrangements.

We are looking forward to another outstanding meeting on May 4 - 6, 2006, in Washington, D.C. At that meeting, we will present the Section's Distinguished Service Award to Martin Ginsburg. In addition, Nina Olson, the National Taxpayer Advocate, will address the Section at its plenary breakfast.

#### STAFF ADDITIONS

We welcome the following new additions to the Section's staff: Bonnie Algera, Membership & Marketing Manager; Andrea Amato, Administrative Assistant; Emily Caldwell, Assistant Director of Meetings; Karen Gee, Technology Manager; and Deitz Lefort, Staff Counsel. ■