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One of the principal activities of the Tax Section is the submission of comments to the Internal Revenue Service, Congress, the Department of Labor, and other agencies. A great deal of members' efforts go into producing the high quality of comments for which the Tax Section has been widely recognized. Because of the importance of this activity for the Section and because of continuing efforts to improve the process, consideration should be given to why we do it, how the process works, and some of our recent achievements.

On average, we submit 30-50 comments a year to government agencies and the Hill. Many of these comments are of substantial length and, with the exception of the white papers and the other matters submitted under blanket authority, these comments are almost always in response to a proposed regulation or other request for comment by a government agency. The relevant committees of the Tax Section evaluate the need for comments, assign members to work on the comments, and produce draft comments that are submitted after review and approval by the Committee Chair, the Committee on Government Submissions (COGS), the Council Director, the Vice Chair – Government Relations, and the Section Chair. All of us have to read and evaluate these comments in detail.

### Why Do We Do It?

Given the commitment of resources that this process takes, it is fair to ask what it is that the Section achieves by spending so much time on government submissions. The immediate answer is that we are performing a public service that aids not only the government but also the tax system at large. By helping government officials evaluate technical proposals, we can bring a tremendous amount of practical experience and technical expertise to their assistance and hopefully generally improve the quality of the guidance. That helps the government do its job but also hopefully leads to a better product. Needless to

say, it is important that the Section maintain credibility and objectivity in submitting its comments, so that they will receive due consideration by government officials.

Not to be overlooked, however, are the educational and networking benefits to the membership that is an ancillary result of the comment process. Having to dig into an issue the way government regulators do and try to look at it from their point of view often is highly educational to the people developing the comments. It may give them an opportunity to evaluate an issue in a way they never have before. Also, working with others on the comment process provides important networking among our members that can create business friendships that last for many years.

### Do We Have the Right Process in Place for Submitting and Evaluating Comments?

I acknowledge that the process at times can be slow and frustrating. However, our approval process has developed to its current form because of our need to ensure that the comments will be well-reasoned, balanced, civil and useful. While our comments are from time to time submitted after the comment deadline from the government, in almost every instance the comments are still submitted in time for the government to give them full consideration (which they tell me they always do) in developing further guidance.

The starting point is the committees themselves and the need for them to quickly produce the appropriate comments. If that is done in a timely fashion, it greatly improves the chance of a timely submission without further problems in the review process. Problems usually occur when the comments are developed late or they need substantial revision. In recent years (and in my experience) the review process after the comments are developed by a committee has been greatly streamlined and usually does not cause significant time delays. The Committee on Government Submissions (COGS), council directors, and the leadership are very sensitive to this issue and make every effort to complete the review process in a rapid fashion. I can say from recent experience that your leadership often turns these around very quickly and we make every effort to move them to final submission as fast as we can.

All of that assumes that the committees, at the outset, pay attention to how the comments need to be shaped so major editing is not required. This burden falls primarily on the committee chairs who need to take the time to be fully aware of the process so they can ensure that comments move through to submission with minimal obstacles and delay.

Everyone should be aware that we have some constraints on our ability to submit comments under ABA policy. All comments have to be consistent with ABA policies from the House of

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Delegates. In addition, unless comments are submitted under the blanket authority procedure, they must generally fall within the definition of “technical comments.” In order to qualify as “technical comments,” the comments must satisfy two ABA requirements. First, they must be narrowly focused within our Section’s primary or special expertise and jurisdiction, i.e., tax and employee benefits. Second, they must be submitted in response to a “time limited solicitation” by a government agency (an executive branch agency or a government independent agency). This is exactly what we do in the case of proposed regulations. However, when comments are related to other guidance, such as submitting comments in advance of proposed regulations or commenting on guidance on which the government has not requested comments, members will need to consult with their committee or others in the leadership (e.g., Helen Hubbard, Vice Chair – Government Relations) about our ability to file comments. We want to avoid having detailed comments prepared that we are not able to submit because they are not “technical comments.”

## What Are Some of Our More Notable Recent Submissions?

So far this year we have submitted technical comments on a wide range of issues from Form 990 to Circular 230. All of these comments were prepared expeditiously and were extremely well done.

Of particular note, however, are the five white papers that have been submitted so far. These were initiated

under the leadership of my predecessor, Bill Wilkins, and are designed as submissions to Congress that set forth basic principles that we believe should be followed in changing the Internal Revenue Code and ERISA. These were submitted under the blanket authority procedure (i.e., they are not technical comments) and serve a somewhat different purpose than our normal technical comments. One of those purposes is to address issues that we expect Congress to be considering in the relatively near future so that we can establish a framework for follow-up comments or testimony as appropriate. Because of the use of the blanket authority procedure we will have greater latitude in these areas.

In his column last fall, Bill Wilkins reviewed the first white paper that was submitted on tax simplification. This is a perennial topic advocated by the Section but unfortunately, one to which Congress pays little attention. Our only hope is that by continuing to press this theme we will eventually make some progress.

This year we have submitted four other white papers, all of which are on topics that may be under consideration by Congress over the next year:

1. Reforming the Federal Civil Tax Penalties (April 2009);
2. International Taxation (June 2009);
3. Federal Wealth Tax (July 2009) (submitted in conjunction with the ABA Section on Real Property, Trust and Estate Law); and
4. Health Care Reform (August 2009) (submitted in conjunction with the ABA Health Law Section).

The last white paper deals with a topic that has been all-consuming in this Congress and presumably will result in legislation before the end of the year. All of these white papers are available on the Section’s website at [www.abanet.org/tax/pubpolicy](http://www.abanet.org/tax/pubpolicy).

After meeting with the principal tax committees of Congress, the Section determined that an additional white paper should be developed on cap and trade legislation. That project is underway, and we hope to have that ready for submission in the near future.

## What Further Action Is Needed from the Section?

We always need new ideas. I am always delighted to hear from members with suggestions on areas where the Section can be helpful or on ways to improve our processes. Beyond that I would ask all the committee chairs, who really bear the primary responsibility for making sure that our comment process works, to remain very vigilant in analyzing where and when comments are needed and initiate projects to develop those submissions. Don’t wait for a push from Peter Connors, Helen Hubbard, or your Council Director, but move timely on your own initiative to get the projects going and completed.

## Final Note

Your Section leadership will be having its annual meeting with the IRS, the Treasury Department, and the tax division of the Justice Department over the coming months to discuss issues of importance. We always value the input from our members and if anyone wants to suggest issues that should be raised with these agencies please send us your comments and suggestions so we can consider them in time for this process. ■