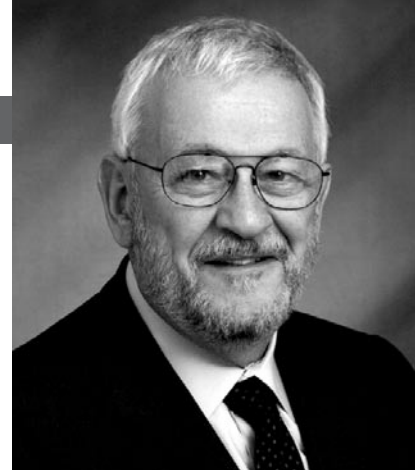


Irwin Treiger

By Jasper L. Cummings, Jr. and Alan J.J. Swirski*



Irwin L. Treiger is Of Counsel at Stoel Rives LLP in Seattle in the Estate Planning and Administration practice. He is this year's ABA Section of Taxation Distinguished Service Award Recipient.

Q Congratulations on your Distinguished Service Award. Can you tell us how you first became interested in practicing tax law?

A Well, I suspect it goes back to law school. The law school that I attended, University of Washington, did not have a great many tax courses, but had enough to whet my appetite. I am not sure that I was quite ready at that point to say that I was going to go into tax practice. I got into tax practice in sort of an indirect way. Supreme Court Justice William Douglas was a native of the State of Washington, and the Washington Law School had been very anxious for some time to get one of their graduates in as a clerk of his. When he first went on the Bench he chose Washington grads for the first several years and my understanding is one was an alcoholic, and one kited checks and a few other things, and the Justice changed course. The University was very anxious to get back in his good graces and so they sort of put me up for the clerkship. I was on the verge and then my draft board stepped in. There was no war going on. Korea was over and Vietnam was a long way off yet, but they decided that Uncle Sam needed me badly. This was after I had been rejected in every ROTC program that they had because of my eyes. At any rate, the Army finally said no to my clerkship, so I turned down the clerkship but I said "boy, I'll show these guys." There were a lot of ways to get deferrals in those days, one of which was to go to school working towards a

degree. So I said, "Okay, I'm going to need one of them." And I spent the year at NYU and I got my LL.M. The Army never got me.

Q What was your first position after NYU?

A While I attended the NYU LL.M. program, I actually worked for Dewey Ballentine in New York, but then when I graduated and got my degree, I headed straight back to Seattle, which was where my heart was. I hired on with Bogle, Bogle & Gates, then the largest firm west of Chicago and north of San Francisco.

Q How has the practice of tax law changed from your first decade of practice as compared to your most recent ten years of practice?

A Well, of course in the first years of anybody's practice, one is going to spend time (a) learning what he is doing, or about what he is doing, and (b) starting to try to build a practice. I did both. I spent at least most of that ten-year period going out and speaking in the community to professional organizations, bar associations, estate planning groups, etc. I did that very, very consistently for a fair period of time to build up a reputation. It went a long way in working for me. At the same time, I was fortunate to be in a large enough firm that there were some pretty interesting cases that I worked on, and I learned the trade. I thought I got great experience for the first ten years.

Q And how about the most recent ten years. How has the practice changed for you from then to now?

A In several ways. First of all the emphasis of my practice has moved from pretty much straight income tax to a lot of estate planning and probate work. The clients who became my clients when they were young—they are not so young anymore. So their needs changed, and as their needs changed, I changed. In my own practice the emphasis changed, but I still do some federal income tax work, and I still do a fair amount of just plain business practice. Most of that is in trying to make a little rain and then turn the matters over to the lawyers in the firm here who specialize.

Q How about more generally—how has just practicing law in Washington changed?

A Well, it is not just Washington. I think it has changed everywhere. I think that specialization has become the norm. When I was at NYU, I do not want to exaggerate, but I would guess the size of the Code was probably 25% of what it is now. I never counted pages, but spending a year at NYU pretty much prepared a young lawyer for a general federal income tax practice. It is not so today, and there are areas of the tax law that I always was involved in in my younger days that I would not touch today. I think the big change that started that for me at least was when ERISA came out. I used to do a lot of pension

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work, along with general compensation work for clients. I started looking at ERISA and realized that the way this is going it will keep changing, I will never be able to keep up and still keep up with everything else, so we hired a couple of people who did nothing but ERISA work. And away I went on my own stuff and even now it is getting much worse. It is very tough for a young lawyer to be all things to everyone in the tax field.

Q Do you think we need more tax generalists, or is that just impossible?

A I do not think it is possible. I mean, I was a tax generalist. In many ways I still am, but boy oh boy, it is really tough. It is really tough for somebody just coming into the field to spread himself or herself out widely enough to grasp all of these aspects of it. There are lots of areas now in addition to ERISA that I do not touch.

Q In the more than 50 years you have been practicing, what are the biggest improvements you have seen made to the Internal Revenue Code and what areas of it are most in need of fixing?

A Well, I do not see a lot of improvement at all. I see just the opposite. I see the complexity and efforts to micromanage everybody's business life instead of going out and dealing with general principles. The classic example now is this attempt to legislate business purpose. I am not alone in thinking that concepts like business purpose are best left to the courts and in individual cases.

Q Are there any areas of the tax law that you think most need the intervention of Congress at this point?

A Most do.

Q Would it be difficult to just pick a few?

A I would like to see a flat tax. I am not sure I can pick anything specific; I just think the whole thing is a mess.

Q You have served many small business clients in tax matters. What are the toughest tax issues facing small businesses today, as you see it?

A Complexity. I have clients who just plain do not understand, and it is very hard to explain to some of them what some of these provisions are doing to limit what they can do, even in the area of compensation now. Compensation used to be a fairly straightforward thing, I mean you had the question of whether it was "unreasonable." Nice concept for courts to deal with since they deal with such issues all the time. Now you have all of these arcane provisions with highly technical provisions, applying even to many, many small businesses. Section 409A is the classic example. They are struggling to cope with these things. The ones that do not have pretty decent tax advisors, either lawyers or accountants, are really finding themselves in trouble sometimes.

Q Do you see any possibility of matters being simplified for small businesses in the tax Code?

A Well, I give them credit for saying that they have tried, but then they made those so complicated. Sub S was a classic example of trying to make the tax laws easier and better for small business, but you look at the provisions of S now and they are almost as tough as C in some respects.

Q You are heading up efforts to reform Washington State's tax system. Can you tell us what that involves and how the project is progressing?

A I will try to keep it a reasonable length because it is something I have been working on for a couple of years. Washington State has one of the

worst tax structures in the country. We have no income tax. Instead of income tax we tax business on something called business and occupation tax, which is a gross income tax with no deductions. It has gotten, however, to a point where everyone lobbies the legislature and gets a special rate, special exemption, special whatever. We now have over 510 special provisions for various industries and so forth. The B&O tax is multiplied: Company 1 sells its products to Company 2 and pays the business tax. Company 2 then has to pay a business tax on the gross revenue that it derives, right down the line. In some cases it is pyramided six times. It is irrational. Unfortunately, our voters have rejected a progressive income tax every time it is presented to them. The last time that it was presented was in the late '60s if I recall, maybe the '70s. I was employed as a special attorney general to write the Income Tax Act, which I did. And then it was resoundingly defeated by our wise voters 60 to 40. The theory of our rather brilliant Supreme Court is that income is property, and you cannot tax property in this state without certain uniform rates and so forth. They have never heard about trees and fruit. At any rate, we were retained—this one was pro bono—but we were retained by the combined governments of the four counties surrounding Seattle to try to come up with something because essentially we have a terribly anti-business system. Fifty-seven percent of the tax revenue of the State of Washington comes from business, which is way more than almost any other state and certainly way more than any other states in the west that we compete with by a long margin. We were instructed to try to come up with something better, and what we did was sort of a modified VAT. It really has some good features but it has some that some people do not like; nobody is ever going to be 100% happy with any sort of tax structure. What we did though to get revenue into the state was to classify any business activity, includ-

ing employment, as a taxable activity. We called our little tax the NEAT—Net Economic Activity Tax—and we came out with a report that provided for the NEAT just about the wrong time because the economy was starting to go to hell. I am sure it was not just the State of Washington, and there was a clamor for taxes, clamor for everything, and both gubernatorial candidates in our state, the incumbent and her opponent, both did a George Bush—you know—“read my lips – no new taxes.” They would not listen to anything, and we are in terrible shape. Everybody is in terrible shape I suppose, but we have a \$9 billion deficit for our next biennium that I do not know how they are going to get away with it. I am thinking about trying to do this by initiative, if we might get it done that way. We are a strong initiative state here.

Q So right now it is written and the next step awaits how to attempt to implement it?

A Yes, except one of the problems we face is a group of extraordinarily liberal politicians and labor union people who want to put in an income tax on only high income people, starting at \$250,000 or something like that which I think has driven 1,000 millionaires out of the State of New Jersey already. And they are talking about doing that by initiative. If we are going to end up fighting initiative battles, nobody wins.

Q What is your sense of the likelihood of this being resolved one way or the other in the next three years?

A It is conceivable in the next three years, but it sure is not going to be this year. But we just continue to plod away.

Q You have received much recognition for community service. What do you believe the lawyer’s role is with respect to community service where they practice?

A Well, I was bred to community service. I had a couple of parents who were extraordinarily into community service, my mother in particular. At any rate, I have always had the belief that lawyers, probably more than any other profession, owe a payback to their communities. I do not really care what area of endeavor it is, but throughout my career, from the very beginning, I believed that you just have to get active in community service. There is also a side benefit to it because the more you get out, the more you get your name known, the more likely it is you will be generating business out of it. That is not the principal reason you go into it, but it is certainly a pretty good side benefit to it. I got active in my first year or two in the Chamber of Commerce and so forth and over the years worked my way up. I served as president or chairman of the board of a number of institutions here in Seattle and I still do.

Q What have your most favorite projects been for public service during your career?

A There have been a lot of them. In the 1980’s our symphony orchestra was virtually bankrupt and the mayor was very concerned that we would lose our prized cultural organization, so he appointed a special three person panel to look into it and see what could be done, and he asked me to chair it. It was an interesting panel. It had the CEO of Safeco Insurance and Bill Gates, Jr.’s mother. We were given 30 days to come up with a report and we did. Most of the recommendations that we made in our report were followed through by the state government, by the city government, and by the organizations themselves. We pulled the orchestra out of their problem and they are thriving onward

and upward. I chaired the effort to get a new stadium built for the baseball team and we attempted to pass a special tax to fund it. Our baseball team has done pretty badly, it is still doing pretty badly, but in 1998 we had a fairly good season. We came from way behind to win the Western Division of the American League. It was very interesting because we took polls throughout that campaign. We really did not start our campaign until Labor Day, and the election was the end of September, so it was very tight. And the Mariners got very hot and they were winning like mad and we were tracking this effort. We started off with 33% yes and every win gave us one more percent. It was just incredible. You could just track it. Every time they won a game, another percent. We needed one more day before the election—we lost by one percent. However, we then did an end play. We went back to the legislature and convinced them to come up with some revenues from other sources and we were able to get the thing done. But that was fun.

Q Early in your career, I understand you did tax work for the Space Needle. What can you tell us about that?

A Well, the Space Needle is now Seattle’s outstanding landmark. It was built as a private venture. It was privately owned land surrounded totally by city land. And a group of five local businessmen got together to decide what they could do for the World’s Fair that was coming in October of ‘62. They came up with this plan and this design. It was quite costly and then they started scratching their heads about how they were going to make any money out of this thing. They really did have a fear that after the World’s Fair patronage would drop off, they expected to have good crowds through the World’s Fair and then the patronage was going to taper off and then who knew what would become of this thing, it could become a white elephant. They had all sorts of

economic projections as to what kind of patronage they could expect during the six months of the fair and then what would happen thereafter. A number of the projections showed that 50% of projected revenue would all come in the six months of the World's Fair. So we decided to take that case to the IRS and we were able to convince the IRS that our projections were at least plausible and they gave us a 50% depreciation rate.

Q So a two year useful life? And it is still there today.

A Still there today, I am looking out my window at it, and it is still attracting lots of people.

Q Looking back at your career and looking at the state of law today, what advice can you give to young tax lawyers looking to build their tax practices today?

A Well, first I would give one bit of advice to young tax lawyers, or tax lawyer wannabes. It is the same as I gave them years ago and that is if you really want to get into it and get into it relatively fast, get an LL.M. I think that

once I decided to become a tax lawyer, that was the best thing I did for myself. And now there are quite a few programs. At the time I did it, I think there was just NYU and Boston if I recall correctly. We now have a program here at University of Washington, a Master's program. I just think that is the best way to start. The next is pick the specialty because I do not think one is going to be a generalist, it is very difficult to do it. So think about what area of tax law you really want to get into and then pursue it. And getting into public service not only does good for the community but gets you out meeting more people and helps you build a practice that way. ■

TO THE EDITOR | READERS RESPOND

EDITOR'S NOTE: *NewsQuarterly* welcomes correspondence from readers, both letters to the editor and article-length commentary.

To the Editor:

I have just finished reading your interview with Mel Thomas in the Summer 2009 issue of the *NewsQuarterly*.

I am extremely fortunate to have had the privilege of working with Mel at various times over the past 24 years. Mel's retirement is a loss to the tax system. Not only did he dedicate his

career to making that system as good as it could be, but he was also a great guy to work with. He was smart, funny, and extremely patient with uppity young tax lawyers who thought they knew a lot more than they did (including me at the top of the list).

I always felt that Mel was greatly misunderstood. Many industries and interest groups viewed him as their *bête noir*. I would often hear something like "If we could just get around Mel ...". Those who worked with him, and came to understand why he approached issues the way he did, realized that it was more likely that the proposal under consideration simply had too many flaws to be ready for prime time. Mel simply pointed those flaws out, or asked questions

which brought them to light, and the result became inevitable. But, human nature being what it is, it was easier to blame Mel than admit their proposal was weak. Mel seemed to just laugh it off, although I can't help but believe it frustrated him a bit.

I hope I speak for everyone in the tax community when I wish Mel all the best in the future.

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