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Section of Taxation
NEWSQUARTERLY

TAX LINK LIVE

Hot Topics and Current Developments in Circular 230

By Christine L. Weingart*

On **Wednesday, June 2, at 1:30 pm ET**, the Tax Section will sponsor its annual **Tax Link Live** member benefit teleconference. This special 90-minute ethics program will feature a discussion on **"Hot Topics and Current Developments in Circular 230."** Speakers will include: Charles A. Pulaski, Jr., Snell & Wilmer LLP, Phoenix, AZ; Karen L. Hawkins, Director, IRS Office of Professional Responsibility, Washington, DC; Professor Michael B. Lang, Chapman University School of Law, Orange, CA; and Christine L. Weingart, Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A., Orlando, FL. This article is background material for the program. For details on registering and obtaining CLE ethics credit, please visit the teleconference website at: http://meetings.abanet.org/meeting/tax/TX06105/.

The Office of Professional Responsibility ("OPR") has been expanded recently in light of the Service's interest in upgrading the quality of tax practice and as part of an aggressive effort to curtail tax shelter promotion. Additionally, Code section 6694 was recently amended to strengthen the accuracy standards applicable to tax return preparers. For these reasons, this article will address possible sanctions under Circular 230 and the interrelationship of Circular 230 and section 6694, as well as pointing out some of the principal situations which may give rise to discipline by OPR under Circular 230. Finally, this article will briefly touch on the recent Return Preparer Report issued by the Service.

The most recent amendment of Circular 230 made some pertinent changes that bear addressing. The American Jobs Creation Act of 2004 clarified the Service's authority to include in the definition of "practice" in section 10.2(a)(4) "rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion." It is important that practitioners keep this broader definition in mind as it may encompass a larger spectrum of activities than advice rendered on return preparation.

Possible Sanctions

OPR has the authority to impose the following sanctions for violations of Circular 230: censure, suspension, disbarment, and monetary fines (not to exceed the gross income derived or to be derived from the conduct giving rise to the penalty).

Many recent decisions issued by OPR relating to the "disreputable conduct" prohibition in section 10.50 have been based upon the practitioner's failure to comply with the practitioner's personal tax return filing and tax payment obligations. For instance, in

*Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A., Orlando, FL.

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EDITORIAL POLICY

The ABA Section of Taxation NEWSQUARTERLY is published quarterly to provide information on developments pertaining to taxation, Section of Taxation news, and other information of professional interest to Section of Taxation members and other readers.

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Articles and reports reflect the views of the individuals or committees that prepared them and do not necessarily represent the position of the American Bar Association, the Section of Taxation, or the editors of the NEWSQUARTERLY. Although contributions are subject to selection and editing, the Section conducts no systematic review of these items. The Editors welcome new submissions as well as responses to material previously published in the NEWSQUARTERLY.

Manuscripts and letters should be mailed to: Assistant Staff Director, Publications, ABA Section of Taxation, 740 15th Street, NW, Washington, DC 20005.

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Section Meeting Calendar

www.abanet.org/tax/calendar

ABA Tax Section meetings are a great way to get connected, get educated, and get the most from your membership! Join us for high-level CLE programming and the latest news and updates from Capitol Hill, IRS, Treasury, and other federal agencies.

September 23-25, 2010	JOINT FALL CLE MEETING	Sheraton – Toronto, ON
January 20-22, 2011	MIDYEAR MEETING	Boca Raton Resort & Club – Boca Raton, FL
May 5-7, 2011	MAY MEETING	Grand Hyatt – Washington, DC
October 20-22, 2011	JOINT FALL CLE MEETING	Hyatt Regency at Colorado Convention Center – Denver, CO
February 16-18, 2012	MIDYEAR MEETING	Manchester Grand Hyatt – San Diego, CA
May 10-12, 2012	MAY MEETING	Grand Hyatt – Washington, DC
September 13-15, 2012	JOINT FALL CLE MEETING	Westin Boston Waterfront – Boston, MA

If You Missed the Last Section Meeting

MATERIALS

As a benefit of membership, Tax Section members can view and search hundreds of papers and materials presented at the Section's Fall, Midyear, and May Meetings dating back to 1999 at: http://www.abanet.org/tax/taxiq. This service is made possible through Thomson Reuters Tax & Accounting and West, a Thomson Reuters business—a primary sponsor of the Section of Taxation.

RECORDINGS

CDs and MP3s of programs from recent Section Meetings are available from Digital Conference Providers (DCP), the Section's audio service provider. Orders can be placed through the DCP website at https://www.dcporder.com/abatx/ or by calling 630-963-8311.

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The ABA is a content partner with West, and many programs presented at the Tax Section's Fall, Midyear, and May Meetings are subsequently made available as online CLE courses on the West LegalEd Center website. For more information, go to http://westlegaledcenter.com and select "ABA Section of Taxation" from the Content Partners drop-down menu.

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EXHIBITOR

APS Asset Preservation Strategies

Stuart M. Lewis*

Attracting younger lawyers has long been a goal of the Section. I am pleased to report that over the last several years the Section has been making steady progress.

Younger lawyers are perhaps facing more economic difficulties than any other cohort of the Section's membership. Jobs are tough to find and school loans are larger than ever. Part of the mission of the Section is to provide services that may be useful to these younger lawyers in these difficult economic times.

By the same token, the Section benefits tremendously by having active younger members. Over the years I have often found the best and most innovative ideas come from our younger lawyers. The Section needs to continue its efforts to attract and involve these members in the activities of the Section.

Summarized below are some of the Tax Section's efforts to provide a much needed bridge for law students, young lawyers, and lawyers transitioning to tax practice. As always, the Section is open to any new ideas that anyone would like to offer to help in the effort.

Law Student Tax Challenge

One of the Section's crown jewels is its very active Young Lawyer Forum (YLF), which is rarely at a loss for creative program ideas or energetic members to carry them out. The YLF, currently chaired by Tom Greenaway, organizes the Section's Law Student Tax Challenge competition, which just completed its ninth successful year. Designed to expose law students to tax issues that might arise for practitioners, the contest is divided into J.D. and LL.M. divisions. Two-person teams research the tax issues that comprise the Challenge and then submit their solutions in writing via technical memoranda and sample client letters. Written submissions are judged by leading tax practitioners from across the country and the teams with the best written submissions present their solutions orally before the competition judges at the Section's Midyear Meeting. This year, 43 J.D. teams and 26 LL.M. teams from ABA-accredited law schools competed for cash prizes and registration waivers to future Section meetings. For details on this year's winners, go to page 15 in this issue of the *NewsQuarterly*.

Careers in Tax Law Publication

If you haven't heard about it already, I highly recommend that you pick up a copy of the Tax Section's recently released *Careers in Tax Law: Perspectives on the Tax Profession and What It Holds for You*. Edited by Professor John Gamino, Robb Longman and Matthew Sontag, and published in 2009, this project brought together a geographically and demographically diverse group of over 75 tax practitioners who provided their unique stories of paths taken, choices made, and lessons learned. The sum total of these thoughtful essays is a composite portrait of the profession that reflects why we are committed to what we do and provides exciting possibilities for the next generation of lawyers. It's an interesting read even for those of us who have been doing this for awhile! To order a copy, go to www.abanet.org/tax/pubs.

Tax Careers Panels

As an outgrowth of the Section's *Careers in Tax Law* publication, we also present free "Careers in Tax Law" panels at ABA-accredited law schools around the country to introduce J.D. and LL.M. students to career opportunities in the tax profession. The career panels typically have three to four lawyers from a range of practice settings. The panelists generally speak for about five minutes each, relating how they pursued their careers, pitfalls they may have encountered, and any advice they may have for the students interested in pursuing a career in tax law. A 10-15 minute Q&A session concludes the panel, followed by a networking reception. Over the last two years, we have done this with over a dozen law schools around the country, and many thanks are in order to the Section's Teaching Taxation Committee, chaired by Professor Tracy Kaye, for its assistance in organizing these programs. If you are interested in sponsoring one at a law school near you, please contact Yolanda Lee at the Section office at leey@staff.abanet.org.

Tax Bridge to Practice

The YLF also organizes the "Tax Bridge to Practice" program, which debuted at the Section's 2009 Joint Fall CLE Meeting with over 80 attendees and will be held again in conjunction with the Section's May Meeting this spring. The half-day program is designed to introduce law students and new lawyers to tax concepts not traditionally taught in law school. The format in May has been expanded to include both plenary and concurrent breakout sessions, including a substantive lecture on a hot topic, and a series of practice and career workshops. The YLF is partnering with the Section's Diversity Committee and the National Bar Association Tax Law Section to incorporate additional breakouts for lawyers who are not committed to a practice area or are transitioning to tax. More information about this program can be found on the

continued on page 17

* Buchanan Ingersoll & Rooney PC, Washington, DC.

Tax Bites Borrows from Shakespeare

By Gail L. Richmond*

This issue's Tax Bites continues the Shakespearean motif begun in the Fall 2009 issue. The articles below borrow their titles from the bard. Special thanks for suggesting the topic is due Professor Richard Kaplan, University of Illinois, whose article (listed below) abstract includes the following words of comfort: "This article analyzes who should take advantage of this opportunity, using the barest minimum of arithmetic (and no calculus)."

Richard L. Kaplan, *To Roth or Not to Roth: Analyzing the Conversion Opportunity for 2010 and Beyond*, Daily Tax Rep. (BNA), Sept. 22, 2009.

David A. Pratt, *To (b) or Not to (b): Is That the Question? Twenty-First Century Schizoid Plans Under Section 403(b) of the Internal Revenue Code*, 73 Alb. L. Rev. 139 (2009).

Howard E. Abrams, *Carried Interests: The Past Is Prologue*, 24 Tax Mgmt Real Est. J. (BNA) 23 (2008).

Ronald Cluett, *Sound and Fury, Signifying What? The U.S. Foreign Earned Income Debate*, 51 Tax Notes Int'l (TA) 943 (2008).

Trevor Johnson, UK Tax Update: *Friends, Customers, Taxpayers, Lend Me Your Ears*, 43 Tax Notes Int'l (TA) 117 (2006).

G. Warren Whitaker & B. Dane Dudley, *Deporting Is Such Sweet Sorrow: Giving Up U.S. Citizenship or Residence*, Prob. & Prop., Sept./Oct. 2005, at 10.

Martin Dawson & Chris Holden, *All the World's a Stage*, 155 Taxation 467 (2005).

Trevor Johnson, UK Tax Update: *Now Is the Winter of Our Discontent*, 36 Tax Notes Int'l (TA) 1011 (2004).

Bryan T. Camp, *The Evil That Men Do Lives After Them*, 104 Tax Notes (TA) 439 (2004).

Arthur W. Andrews, *Community Property with Right of Survivorship: Uneasy Lies the Head That Wears a Crown of Surviving Spouse for Federal Income Tax Basis Purposes*, 17 Va. Tax Rev. 577 (1998).

Mark T. Carroll, *He Doth Protest Way Too Much*, 8 Prac. Tax Law. 9 (1994).

Lane Davenport, Gingrich Challenge: *Whether 'Tis Nobler to Cut Taxes or Suffer the Pains of Narrower Reelection Victories*, 48 Tax Notes (TA) 1079 (1990).

*Nova Southeastern University Law Center, Davie, FL.

REPORT OF THE NOMINATING COMMITTEE

2010-2011 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 2010 Annual Meeting in August. Under the Section Bylaws, the current Chair-Elect, Charles H. Egerton of Orlando, FL, becomes Chair of the Section at the close of the Annual Meeting.

Chair-Elect:	William M. Paul, Washington, DC
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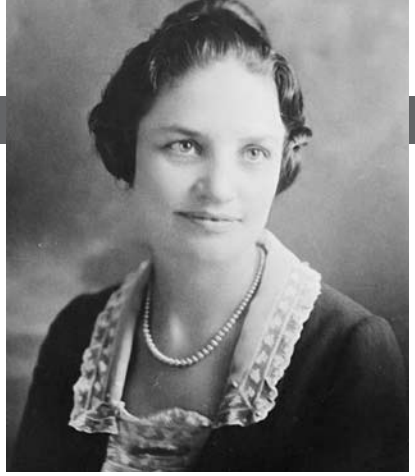

Mabel Walker Willebrandt

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

Mabel Walker Willebrandt headed what became the Tax Division of the U.S. Justice Department from 1921 to 1929. She was famous at the time not for her tax duties but for her duties in enforcing the Volstead Act (Prohibition), which also was handled by her division. She was the second female Assistant Attorney General.†

Q What did you do before you joined the Justice Department?

A I graduated from the law school of the University of California in 1916 and largely defended prostitutes in police court. I served as the first public defender for women in Los Angeles, without pay, and represented over 2000 women. I did become active in Republican Party politics.

Q Why were you appointed to head Prohibition enforcement?

A Well, as one of my friends said: "Nobody in the Justice Department wanted that job. It had no political advantages at all. So, of course, they gave it to Mabel." So I certainly did not seek out that part of the job. Eventually the opposition of the wets kept me from being appointed as the first female federal judge.

Q How much of your division's time was spent on tax cases?

A Fifty percent. Of course there is a substantial overlap between the two because one of the chief vices of the bootlegger is the dastardly evasion of taxes. In addition, Prohibition enforcement was assigned to the IRS. I also supervised the Federal Bureau of Prisons.

Q Was there any conflict between your responsibility for Prohibition enforcement and for tax appeals?

A Some would say so. I recall the time I ruled that imported bootleg alcohol could be sold by the Federal Marshals tax free. Secretary Mellon and the Commissioner were against me on that one and took it up with the Attorney General and Congress. The *Times* headline said I "overruled Mellon."

Q How many cases did you argue in the Supreme Court?

A My office submitted 278 cases on certiorari to the Supreme Court and I personally argued many of them; I am listed on 172 cases. Of course, my staff wrote most of the briefs.

Q Which do you consider to be the most important tax cases?

A It is hard to say. I will list these: *Taft v. Bowers*, 278 U.S. 470 (1929) (donee must use donor's cost basis in computing donee's sale gain); *Hellmich v. Hellman*, 276 U.S. 233 (1928) (liquidating dividend is in exchange for stock); *Reinecke v. Northern Trust Co.*, 278 U.S. 339 (1929) (contemplation of death case).

Q Would you be surprised that 80 years after your work there would be disputes in the Supreme Court about prosecuting officials for failure to provide "honest services" to the government or to private employers under the federal anti-fraud statutes? (*See* current litigation in *Black v. United States*, *Weyhrauch v. United States*, and *Skilling v. United States*.)

A No. We faced that in *Donnelley v. United States*, 276 U.S. 505 (1928). Donnelley was a Prohibition enforcement officer who failed to report apparent violations by a small-time bootlegger named Curran. He was convicted and appealed on the basis of numerous objections to the jury charge. One of them was the charge that he should have reported the apparent violation to the U.S. Attorney even though he was unsure a violation had occurred. The official position of the Justice Department was that if Donnelley did not have enough facts to make a case against Curran then he did not have to report. I disagreed. So I signed and filed Solicitor General Mitchell's brief but also signed and filed a second brief taking the opposition position: that it was not up to Donnelley to decide whether Curran could be convicted or whether it was most "advantageous" to the enforcement effort to pursue him rather than someone else. The Supreme Court agreed with me in affirming the conviction. (Elizabeth MacDonald thought Willebrandt stretched to make her argument.)

* Jasper L. Cummings, Jr., Alston & Bird LLP, Washington, DC, and Raleigh, NC, and Alan J.J. Swirski, Skadden, Arps, Slater, Meagher & Flom LLP, Washington, DC.

† See generally Elizabeth K. MacDonald, "The Justice Department and Some Problems of Enforcement:" Mabel Walker Willebrandt, "Prohibition Portia" (posted at Women's Legal History Project, Stanford University); Mabel Walker Willebrandt, The Inside of Prohibition (1929); Dorothy M. Brown, Mabel Walker Willebrandt: A Study of Power, Loyalty and Law (1984) (which was serialized in the *New York Times*); The Frederick A. Cook Society website; *New York Times* obituary, Apr. 9, 1963, at 31; various *New York Times* Archive articles, including Jan. 11 and 19, 1925, Nov. 17, 1925, Sept. 27, 1928, May 28, 1929, Apr. 15, 1934, and Oct. 22, 1950.

Q How did you come to leave the Justice Department?

A I think it became politically difficult for me after I was perceived to have attacked Governor Smith in connection with the 1928 campaign. I made several speeches to religious groups under the auspices of the Speaker's Bureau of the RNC. There was a lot of press about that, positive and negative, and it was thought that there was a rift between me and Attorney General Mitchell (formerly Solicitor General). Finally on May 26, 1929, I submitted my resignation to President Hoover, informing him I would become D.C. counsel for the Aviation Corporation.

Q What did you do after you left the Justice Department?

A I did some work with the wine industry (actually, grape concentrate) and then devoted my practice mostly to income and estate tax work; in fact I was known as the "tax lawyer to the stars," including Louis B. Mayer. I also became interested in aviation law and worked with Amelia Earhart. I was the ABA's first female committee chairman, heading the Air Law Committee in 1938.

Q The 1928 election was a time of a lot of controversy for you. Did you experience anything like that later in your career?

A I became counsel to the Screen Directors Guild. As you recall, the Director's Guild agreed with the loyalty oath that Senator McCarthy demanded. We had quite a hot time when De Mille, Capra and a majority of the board opposed the president, Joseph Mankiewicz, who was supported by John Huston, Elia Kazan, Billy Wilder and William Wyler.

Q Did you have any involvement with Democratic administrations?

A Well only indirectly. I was portrayed at the 1934 Gridiron Club dinner as a representative of conservative principles, along with William Randolph Hearst, Clara Bow and Al Capone. I read about that in the *Times* and recall an interesting reference to Robert H. Jackson, who had just become General Counsel of the Bureau of Internal Revenue. He was in a skit about CCC boys and was described as being from New Hampshire, although of course he was from upstate New York, like the President. One of the other "actors" asked him "what is ethics?" and he responded: "Ethics is a noble sentiment that reaches its peak in Presidents between elections."

Q What was your last tax case?

A I think it was the case of Mr. Bronson. The Tax Court ruled that he should have included a large amount in income, and upheld the fraud penalty. I appealed to the Second Circuit, and with Hand dissenting, the Second Circuit reversed and remanded on the fraud penalty. *Bronson v. Commissioner*, 183 F.2d 529 (2d Cir. 1950), rev'g 7 T.C.M. (CCH) 415 (1948). I convinced the court that the receipt of stock in exchange for the taxpayer's release of an option to buy bonds and receive bonus stock in 1929 could reasonably be viewed as nontaxable. It is rather remarkable how long it took for the tax effects of that terrible year 1929 to work their way through the tax system.

Q Do you consider the taxation of ordinary income or capital gains to be more onerous?

A [As Secretary Mellon has said, the taxation of ordinary income is quite onerous. Consider this case.] "An heir to a large estate visits a lawyer. He convinces the lawyer that he is being victimized by rich culprits who have forged a will to deprive him of his share in the estate. The victim has no funds, but has in the opinion of the lawyer a sound case. The lawyer takes the case without retainer, of necessity. He burns the midnight oil, works devotedly for ten years, and finally, after taking the case through all the courts in the state, recovers for his client and receives a net fee of $100,000. Along comes the United States government and taxes him as though he received that fee for one day's experience in court and requires him to pay $30,220 as his tax for this year. It does not permit him to spread the income over the years in which it was earned. If, added to that situation, the lawyer in 1932 suffered a loss of all of his $100,000 income through the decline of some South American bonds, which were sold to him on the representation that the State Department had approved the issue, he cannot deduct the loss. Even though he has had no real net income, since the $100,000 fee would be offset by the $100,000 loss on the bonds, the government still says he must pay a tax on income despite the actualities." Mabel Walker Willebrandt, *The Increasing Burden of Taxation*, 12 NEB. L. BULL. 63, 77 (1933) (Dec. 1932 Proceedings of the Nebraska State Bar Association). ■

One-Size-Fits-All Lien Filing Policies Circumvent the Spirit of the Law, Fail to Promote Future Tax Compliance, and Unnecessarily Harm Taxpayers

Section 7803 requires the National Taxpayer Advocate to prepare an Annual Report to Congress that includes, among other things, legislative recommendations to resolve problems encountered by taxpayers. In the third of an annual series, *NewsQuarterly* publishes excerpts of the Annual Report. In her 2009 Annual Report to Congress, the National Taxpayer Advocate, Nina E. Olson, recommended that the Internal Revenue Service modify its lien filing policies to follow the spirit of the law, to promote tax compliance, and to limit unnecessary harm to taxpayers.

NewsQuarterly encourages readers to submit responses or comments which may be published in a subsequent issue.—Christopher M. Pietruszkiewicz, Vice Chancellor for Business and Financial Affairs and J.Y. Sanders Professor of Law, LSU Law Center, Baton Rouge, LA

Background

The purpose of the NFTL is to protect the IRS's priority over other creditors.

A federal tax lien (FTL) arises when the IRS assesses a tax liability, sends the taxpayer notice and demand for payment, and the taxpayer does not fully pay the debt within ten days. An FTL is effective as of the date of assessment and attaches to all of the taxpayer's property and rights to property, whether real or personal, including those acquired by the taxpayer after that date. I.R.C. § 6321; IRM 5.12.2.2 (May 20, 2005). This lien continues against the taxpayer's property until the liability either has been fully paid or is legally unenforceable. I.R.C. § 6322. This statutory lien is sometimes called the "secret" lien, because third parties—and usually the taxpayer—have no knowledge of the existence of this lien or the underlying tax debt, and the taxpayer may not understand the significance of this statutory lien. To put third parties on notice and establish the priority of the government's interest in a taxpayer's property against subsequent purchasers, secured creditors, and junior lien holders, the IRS must file an NFTL [notice of federal tax lien] in the appropriate location, such as a county registrar of deeds. I.R.C. § 6323(f). It is IRS policy not to use the NFTL as a negotiating tool. IRM 5.12.2.1 (May 20, 2005). The IRS is required to release a lien not later than 30 days after the underlying liability either is fully satisfied through full payment of tax or is legally unenforceable (typically, by expiration of the statutory period for collecting the tax). I.R.C. § 6325(a)(1). Once the certificate of release is issued and filed in the same office as the related NFTL, the tax lien is conclusively extinguished. I.R.C. § 6325(f). Under certain circumstances, the IRS may withdraw an NFTL, in which case the provisions of "this chapter [chapter 64 of subtitle F, relating to collection] shall be applied as if the withdrawn notice had not been filed." I.R.C. § 6323(j)(1).

Definition of Problem

Properly applied, the [NFTL] can be an effective tool in tax collection. It gives the IRS a priority interest in the taxpayer's property, such as a home or a car, and may enable the IRS to collect all or a portion of the tax debt if the taxpayer sells or refinances the property.

If improperly applied, however, tax liens have the potential to cause needless harm to taxpayers and undermine long-term tax collection. Assume, for example, that a taxpayer loses his job during a recession and becomes unable to pay his tax bill. The filing of a tax lien can significantly harm the taxpayer's credit and thus negatively affect his or her ability to obtain financing, find or retain a job, secure affordable housing or insurance, and ultimately pay the outstanding tax debt. Moreover, the government must consider that its role as a creditor is different from that of a private entity creditor. If the filing of a tax lien drives up the taxpayer's costs and renders him or her unemployed or underemployed, the government may be forced to make outlays in the form of unemployment benefits, food stamps, and the like. Thus, the imprudent filing of a tax lien has the potential to badly damage the taxpayer and the taxpayer's family and simultaneously reduce federal revenue—a lose-lose proposition.

For this reason, the decision whether to impose a tax lien should be made on a case-by-case basis. Yet, the IRS files many liens systemically, pursuant to "business rules" that require automatic lien filing or a lack of substantive human review.

The National Taxpayer Advocate has been hearing increasing complaints about lien processing in recent years, and this year we conducted a high-level research project on collection activities that, in part, attempted to assess whether liens are being filed effectively to collect revenue. To complete this assessment, TAS reviewed nearly 1.9 million transactions involving about 270,000 individual taxpayers who first incurred new balance-

due liabilities during tax year 2002 (and who had no previous unpaid balances due at that time) and against whom NFTLs were filed in subsequent years. The results of our research suggest that the IRS's use of liens may not be furthering the agency's revenue collection objective and, equally significant, that the IRS has shown very little interest in evaluating the effectiveness of liens for itself. Among our findings:

- There is no discernable causal relationship between the number of lien notices filed and the amount of revenue collected. Over the past decade, the IRS has increased its lien filings by nearly 475%—from about 168,000 in fiscal year (FY) 1999 to nearly 966,000 in FY 2009. Yet overall inflation-adjusted (in terms of 2009 dollars) Collection revenue has declined by approximately 7.4% during this period.
- IRS procedures require employees to code the source of all payments received on delinquent accounts. *See* IRM 5.1.2.8.1 (Aug. 15, 2008). Where the IRS received a payment after an NFTL was filed against a taxpayer's property, the IRS coded the source of payments as "miscellaneous" or did not code the payment at all in about 52% of the cases. The IRS's failure to accurately code and track the source of payments largely defeats the purpose of having a coding system because it precludes the IRS (including TAS) from drawing useful conclusions about the effectiveness of its lien filings.
- In cases where the IRS did code the source of a payment as something other than "miscellaneous," our analysis found that more than 95% of all payments and more than 80% of all revenue collected did not result from the lien filings and would have been collected anyway. The largest source of Collection revenue and payments on these accounts was refund offsets (*i.e.*, the taxpayer filed a return in a subsequent tax year showing a refund due and the IRS withheld the refund to satisfy the past-due tax debt), which occur regardless of the existence of an NFTL. Of the $905 million attributable to payments for which there is a designated payment code, only about $169 million was unambiguously attributable to lien filings with respect to 2002 delinquent tax liabilities.

The National Taxpayer Advocate has identified the following concerns with the IRS's NFTL policy:

- Lack of managerial review prior to most NFTL filings, which circumvents the provisions of § 3421 of the IRS Restructuring and Reform Act of 1998 (RRA 98);
- Lack of verification of assets prior to filing an NFTL;
- Unnecessary harm to taxpayers whose accounts are reported currently not collectible (CNC); and
- Failure by the IRS to fully utilize its statutory authority to withdraw NFTLs.

Such an approach to NFTL filing harms taxpayers and impairs both the collection of current tax debts as well as future compliance.

Conclusion

The IRS measures the number of liens filed each year but does not measure whether public filing of liens makes a difference in a taxpayer's compliance behavior over time. By measuring and reporting on the number of liens filed and by not measuring or reporting on their long-term compliance effect, the IRS overstates the effectiveness of liens and sends a message to its employees that the quantity, not the quality, of liens is what matters.

Recommendations

The National Taxpayer Advocate recommends that the IRS take the following specific actions:

1. Immediately implement a quality review of Designated Payment Codes.
2. Adopt two long-term effectiveness measures to ensure that employees file appropriate and productive NFTLs.
   a. First, the IRS should measure the total and average revenue (dollars collected) attributable to NFTL filings.
   b. Second, it should measure the long-term impact of the NFTL on the taxpayer's compliance behavior.
3. Abandon the policy of automatic NFTL filing on CNC hardship accounts with an unpaid balance of $5,000 or more.
4. Implement the provisions of RRA 98 § 3421 by basing lien filing determinations for all IRS contact employees on a thorough review of all the taxpayer's circumstances (including the existence and the value of assets, the taxpayer's financial information, and the ramifications of the lien on the taxpayer's credit rating), after an in-person or telephone interview with the taxpayer and substantive consideration of the facts, which may include consultation with a manager.
5. Require managerial approval for NFTL filings in all cases where the taxpayer has no assets, regardless of the employee's grade level.
6. Immediately issue interim guidance to allow, upon the request of a taxpayer, the withdrawal of an NFTL where the statutory withdrawal criteria are satisfied, even if the underlying lien has been released. After consulting with the IRS Office of Chief Counsel on the interpretation of IRC § 6323(j) and, consistent with the counsel advice, revise the IRM to provide guidance on when withdrawal of an NFTL is appropriate in cases in which the lien has already been released.
7. Conduct annual training for collection employees and managers in exercising judgment and discretion before and after NFTL filing, and include the TAS training video, *Taxpayer Rights: Collection Case Studies,* as part of the training. ■

Tax Crimes and Defenses

By Megan L. Brackney and Caroline D. Ciraolo*

This article outlines the elements of the most commonly-charged tax crimes, as well as many potential defenses and statutes of limitations issues.

Willfulness: Ignorance of the Law Is an Excuse

Tax crimes are unique in that ignorance of the law can be a complete defense. This is because "willfulness" is defined as an intentional violation of *known* legal duty. *United States v. Abboud*, 438 F.3d 554, 581 (6th Cir. 2006) ("[b]ecause of the complexity of the tax system, tax law is one of the few areas where the Supreme Court has held that ignorance of the law is a defense.") (citing *Cheek v. United States,* 498 U.S. 192, 199-200 (1991)). Attorneys representing a client accused of a Title 26 crime should consider whether the conduct at issue was the result of negligence, mistake of fact, or ignorance of the contents of the tax return. The client also may have a defense based on good faith reliance on an accountant, bookkeeper, or other tax expert. *See United States v. Moran,* 493 F.3d 1002, 1013 (9th Cir. 2007). On the other hand, a defendant may not argue that the internal revenue laws are unconstitutional, as that merely demonstrates an erroneous conclusion of law. *See United States v. Simkanin,* 420 F.3d 397 (5th Cir. 2005).

Title 26 Crimes and Defenses

The most commonly-charged tax crimes are evasion (I.R.C. § 7201), filing a false return (or aiding and abetting the filing of a false return) (I.R.C. § 7206), and failure to file or pay (I.R.C. § 7203). These and other related offenses are discussed below.

Tax evasion is defined as a willful attempt to defeat or evade tax due and owing, or evasion of the payment of tax assessed. The government is not required to prove the exact amount of tax due. *United States v. Kaatz,* 705 F.2d 1237, 1246 (10th Cir. 1983). Courts have held that this element is satisfied by proof that the amount due is "substantial." *United States v. Koskerides*, 877 F.2d 1129, 1137 (2d Cir. 1989); *but see United States v. Daniels*, 387 F.3d 636, 641 (7th Cir. 2004) ("the government need not charge a substantial tax deficiency to indict or convict under [I.R.C.] § 7201.") Of the courts that require proof that the tax due is "substantial," the threshold is fairly low. *See, e.g., United States v. Cunningham,* 723 F.2d 217, 231 (2d Cir. 1983) (deficiency of $2,617 deemed substantial). The defense may present evidence that there is no deficiency due to offsetting errors or that the funds at issue constitute nontaxable income such as gifts, loans or return of capital. *See United States v. Kayser*, 488 F.3d 1070 (9th Cir. 2007).

Under section 7201, the government is required to prove an affirmative act of evasion. Such conduct is not limited to filing false tax returns. It may include other conduct—such as preparing a false appraisal or submitting false documents during an audit. In *Spies v. United States* 317 U.S. 492 (1943), the Supreme Court held that mere failure to file is not sufficient to establish an "attempt" to evade, but that an attempt may be inferred from a pattern of failure to file or pay, along with other indicia of fraud, such as false invoices, destruction of records, and hiding assets or income from the Service.

Where a taxpayer failed to file his or her return or failed to pay a tax assessed, but has not committed an affirmative act of evasion, the prosecution may charge misdemeanor failure to file under section 7203. This is one of the few misdemeanors in the Code. The government need only prove that the defendant had an obligation to file a return or pay tax that was due and willfully failed to do so. Common defenses include the defendant's good faith belief that she was not legally obligated to file, *United States v. McKee,* 506 F.3d 225 (3d Cir. 2007), that the return had been filed by a third party (*e.g.,* the accountant or spouse), or that the return was filed but was lost in the mail. A taxpayer will lack the requisite willfulness if he was incapable of filing due to a psychological or medical condition. To avoid these defenses, the government seldom brings failure to file cases without a pattern of at least three years of non-filing.

Defendants charged with evasion or willful failure to pay tax may challenge willfulness on the grounds of inability to pay based on the reasoning in *United States v. Poll,* 521 F.2d 329, 333 (9th Cir. 1975). The "*Poll* Test" requires the government to prove that at the time the tax payment was due, the taxpayer possessed sufficient funds to meet his obligation or that the lack of sufficient funds was the result of a voluntary and intentional act without justification. The government can satisfy this burden with evidence that the defendant chose to pay other creditors instead of the Service. *See United States v. Easterday*, 2007 WL 2023500 (N.D. Cal. July 12, 2007).

Another commonly-charged tax crime is the filing of a false return or making a false statement in violation of section 7206(1). The elements of this offense are that the defendant willfully signs and files any return, statement, or other document

* Caroline D. Ciraolo, Rosenberg, Martin & Greenberg, LLP, Baltimore, MD, and Megan L. Brackney, Kostelanetz & Fink, LLP, New York, NY.

under penalty of perjury that he does not believe to be true and correct as to a material matter. Unlike evasion under section 7201, this offense does not require a tax deficiency. The false statement must relate to a material matter, but the threshold is low: a matter is "material" if it would have any tendency to influence the Service in its normal processing of returns. Section 7206(2) sets forth the offense of aiding and abetting in the filing of a false return, the elements of which are that the defendant willfully aided or assisted in the preparation of a return, affidavit, claim, or other document, which is fraudulent or false as to any material matter, with knowledge that the document will be submitted to the Service. This charge is often brought against return preparers and promoters of abusive tax transactions. *See United States v. Ambort*, 405 F.3d 1109 (10th Cir. 2005).

Another rarely seen misdemeanor is found in section 7207, which proscribes the willful delivery or disclosure to the Service of any list, return, account, statement or other document known by the defendant to be fraudulent or to be false in any material manner. This offense does not contain a perjury element and therefore applies to any documents given to the Service. As noted, section 7207 is rarely used; in fact, there is a stated policy against charging this offense except in limited circumstances, such as where a felony charge is not warranted and the prosecution does not want to give a pass to a cooperating witness. *See* § 16.02, *Department of Justice Criminal Tax Manual.*

Where a defendant corruptly or by threats of force, impedes or interferes with the due administration of internal revenue laws, the government may charge a felony under section 7212. Sometimes referred to as a "one-man (person) conspiracy," this is the rare Title 26 crime that does not require willfulness. Instead, the *mens rea* is corrupt intent, which is an improper motive, or a bad or evil purpose to secure unlawful benefit for oneself or someone else. *See United States v. McBride*, 362 F.3d 360 (6th Cir. 2004). The unlawful benefit need not be under the tax laws, *United States v. Saldana*, 427 F.3d 298 (5th Cir. 2005), and at least some courts have held that the defendant need not be aware of a pending Service investigation or proceeding. *See United States v. Bowman*, 173 F.3d 595 (6th Cir. 1999); *United States v. Molesworth*, 383 F. Supp. 2d 1251 (D. Idaho 2005).

Frequently charged with or in lieu of substantive tax counts is a conspiracy charge under 18 U.S.C. § 371, which requires a finding that two or more persons agreed to commit a substantive offense against the United States or to defraud the United States, and the commission of an overt act in furtherance of the conspiracy. A conspiracy to defraud or impede the Service in the assessment or collection of tax is known as a "*Klein* Conspiracy." *See United States v. Klein*, 247 F.2d 908 (2d Cir. 1957).

Statutes of Limitations Issues

Under section 6531, the statute of limitations for Title 26 crimes and conspiracy under 18 U.S.C. § 371 is six years and begins when the offense is "complete," *e.g.*, when a false return is filed. The statute of limitations for conspiracy runs from the last act in furtherance of the conspiracy. *United States v. Bellomo,* 176 F.3d 580, 598 (2d Cir. 1999). Other Title 18 offenses are subject to the general five-year statute of limitations for federal crimes.

The period of limitations for charging tax crimes can be suspended where there is an outstanding summons issued by the Service. Section 7609(e)(2) tolls the statute of limitations if there is no final resolution of a third party's response to a summons issued by the Service. Suspension begins six months after the summons is served and ends upon the final resolution of the summoned party's response. This tolling provision used to be somewhat obscure, but the United States has warned that it will seek to apply it in prosecutions against defendants implicated by information turned over by the Swiss bank UBS pursuant to the *John Doe Summons* issued in 2008. *See United States v. UBS AG*, 09-60033-CR-COHN (S.D. Fla.). ■

AMT Planning: An Unexpected Opportunity for Capital Gains and Dividends

By Oleg Ikhelson*

Certain provisions of the Economic Growth & Tax Relief Reconciliation Act expire after December 31, 2010. Among them is the ever popular 0% tax rate for long-term capital gains and qualified dividends for qualified taxpayers.

To qualify for the preferential 0% rate, the taxpayer's other (non-capital gain) income, less allowable deductions, must be below the section 1 limits for the 15% tax rate. For example, for 2010, married taxpayers would be in the 15% tax bracket if their taxable income does not exceed $68,000 (for 2009, it is $67,900). Thus, a taxpayer with capital gains income whose "ordinary" (not capital gains or qualified dividends related) taxable income, after deductions, is below $68,000 in 2010 will qualify for the 0% tax rate, regardless of how large the overall income was for the year.

* Vice President, Tax Planning, The MDE Group, Inc., Morristown, NJ.

An interesting tax planning opportunity arises in connection with high net worth clients whose significant itemized deductions trigger application of the alternative minimum tax (AMT). It is common knowledge that in high income-tax states (*e.g.,* California, Hawai'i, New Jersey, New York), most affluent taxpayers lose at least a portion of their state/local tax deductions to AMT. The treatment of miscellaneous itemized deductions is worse. Even if miscellaneous itemized deductions survive the 2% income tax deduction floor, they are not allowed against AMT, so practitioners often advise clients "not to bother." What those tax advisors fail to realize is that they are potentially depriving their clients of the opportunity of squeezing into the 0% bracket. The simple example below demonstrates this phenomenon.

Example

Assume that a wealthy retired couple with an active portfolio worth $10 million received ordinary income, between taxable interest, IRA and pension distributions, of $200,000 and also had $60,000 of qualified dividends in 2009. They incurred $80,000 in investment management fees. They also have multiple houses in various states and paid $100,000 in property taxes. They paid another $20,000 in state income taxes during 2009.

Most tax practitioners specializing in high net worth clients will recognize the classic AMT case. Because state taxes and miscellaneous itemized deductions are added back for AMT purposes, this taxpayer's AMT income will be $260,000 (before a partial AMT exemption). Hence, the advisors will logically deduce, the couple will pay 15% on qualified dividends and (in this case) 26% on the remaining taxable income.

As logical as the conclusion above may seem, it is incorrect. Our wealthy clients will not pay any federal income tax on the $60,000 of dividends they received in 2009. Those dividends will be taxed in the 0% bracket.

The calculations described below show how this result is possible. We begin by calculating taxable income under the income tax regime.

Thus, we arrived at a taxable income of $59,027 for regular tax purposes. That taxable income would have been even lower but for three limitations. Miscellaneous itemized deductions were reduced by the 2% of adjusted gross income floor ($5,200). I.R.C. § 67. Itemized deductions were reduced by 1% of the taxpayers' adjusted gross income in excess of $166,800. I.R.C. § 168(f). Personal exemptions were also subject to a formula phase-out based on adjusted gross income. I.R.C. § 151(d)(3)(E). The last two reductions do not apply in 2010.

For 2009 and 2010, section 1(h)(1)(B) provides a 0% tax rate that will apply to the smaller of capital gain (or qualified dividend) income, or taxable income, up to the upper limit of $67,900 in 2009 or $68,000 in 2010. In our hypothetical, the total taxable income falls under the 0% rate. The computations required by the Service's *Qualified Dividends and Capital Gain Tax Worksheet* also lead to this result.

Because the taxpayers' itemized deductions are not allowable for AMT, we suspect that their tax liability will be based on the AMT calculation. Because state tax, miscellaneous itemized deductions, and personal exemptions are not allowed in computing AMT, our AMTI (alternative minimum taxable income) is $260,000.

The taxpayer receives a partial exemption of $43,450 (exemption of $70,950 minus 25% of the amount by which AGI exceeds $150,000). I.R.C. § 55(d)(1)(A) & (3)(A). Thus, the amount subject to tax equals $216,550. At this stage of our AMT calculations, we are directed to compute tax using maximum capital gains rates, as we did in our income tax computation. In other words, it is the taxable income for regular tax purposes (line 43 of 1040) that determines applicable tax rates for AMT. As a result, the entire $60,000 of qualified dividend income is subject to 0% tax. The remaining amount, or $156,550, is taxed at the 26% AMT rate. Our taxpayers' tax burden for 2009 is $40,703, an effective rate of a bit over 15% of AGI.

Planning for 2010

The same planning opportunity is available in 2010. While there is some uncertainty with respect to a number of provisions expiring in 2009 (*e.g.*, the increased AMT exemption enacted in section 1012(a) of the 2009 Recovery Act and the sales tax deduction extension in section 201(a) of the 2008 Extenders Act), the 0% capital gains tax rate applies through the end of this year, barring some unexpected retroactive changes to the tax law.

So, what would be my advice to wealthy clients and their tax advisors?

First, don't ignore deductions just because you know they won't survive

AGI:		$260,000
Itemized deductions:		
Real estate tax:	100,000	
State income tax:	20,000	
Miscellaneous itemized deductions:	74,800	
Total itemized deduction:	194,800	
Less §68(f) reduction of itemized deductions	−932	
Itemized deductions after the §68 phase-out	193,868	
Personal exemptions (after a partial phase-out):	7,105	
Total allowable deductions		200,973
Taxable Income:		$59,027

the AMT guillotine. The most often overlooked deductions are wealth and money management fees and estate planning fees.

Second, for those with clients in Florida, Nevada, Texas, Washington and other no income tax states: advise them to save sales tax receipts from large taxable purchases, *e.g.,* boats, cars, etc. There is a common misconception about the sales tax deduction that only *major* purchases are eligible to be itemized and deducted separately, and the IRS tables must be used for all other items. In reality, a taxpayer can elect to deduct actual sales tax expenses on *any* purchases, as long as the receipts are retained to substantiate the claim. I.R.C. § 164(b)(5).

Third, the second item of advice also applies to taxpayers living in low income tax states, *e.g.*, Indiana or Illinois. While residents of these states will owe some income tax, at least some of them will pay more in sales tax, especially if there are significant purchases, *e.g.*, vehicles, furniture, jewelry, etc. When added to real estate taxes and investment fees, these expenses may become tiebreakers that push your well-to-do client into the 0% bracket he had no clue about. The sales tax deduction is definitely available on the 2009 returns and should be analyzed diligently. If Congress again extends the section 164(b)(5) sales tax deduction option for one more year, the same opportunity will be available for 2010 tax planning. ■

continued from page 1

Decision No. 2008-12, OPR suspended for 48 months a practitioner who failed to file one federal income tax return and filed another five returns late. Of particular note in this decision is the practitioner's lack of cooperation, with principal defenses that he had in fact filed the returns, that all the returns were accurate and the taxes paid, and claiming that the matter was a personal vendetta by the revenue officer. The decision particularly points out the practitioner's "apparent disinterest in, or lack of respect for" the proceeding. *See* IR-2010-27.

Relationship Between Section 6694 and Circular 230

Section 6694(a) provides a penalty for a tax return preparer who prepares a return with respect to which any part of an understatement of liability is due to an unreasonable position and the tax return preparer knew (or reasonably should have known) of the position. A position is unreasonable unless (i) there is substantial authority for the position, (ii) the position was properly disclosed and had a reasonable basis, or (iii) in the case of tax shelters or reportable transactions, there is a reasonable belief that the position would more likely than not be sustained on its merits. The section 6694(a) penalty is equal to the greater of $1,000 or 50% of the income derived by the tax return preparer with respect to the return or claim. Section 6694(b) provides a penalty where such understatement is due to willful or reckless conduct. The penalty is equal to the greater of $5,000 or 50% of the income derived by the tax return preparer with respect to the return or claim.

Section 10.34 provides return preparer practice standards for practitioners who practice before the Service. While historically these standards have generally paralleled those of section 6694, at this writing we are still awaiting amendments to section 10.34 to reflect changes to section 6694. Unlike section 6694 violations, violations of section 10.34 are subject to discipline under section 10.52(a)(2) only if the violation is reckless or true gross incompetence as defined in section 10.51(a)(13). This appears to set a higher standard for imposition of Circular 230 sanctions that may at times require multiple violations of section 6694 in order to trigger these sanctions.

Section 8.11.3 of the Internal Revenue Manual requires all cases in which section 6694 penalties have been sustained in whole or in part to be referred to OPR. It is unclear whether this may result in a stacking of Circular 230 monetary sanctions and section 6694 penalties. The Tax Section has taken the position that there shouldn't be stacking. However this may force OPR to impose other sanctions (such as suspension or disbarment) even if a practitioner may prefer an additional monetary penalty.

Conflict of Interest

Section 10.29 essentially has the same conflict of interest rules as the Model Rules of Professional Conduct Rule 1.7, except that under Circular 230 the informed consent must be confirmed in writing by each affected client within a reasonable period not to exceed 30 days, and the writing has to be kept for 36 months after the conclusion of the representation. The Model Rule requires the informed consent to be confirmed in writing but does not require it to be signed by the client, leaving the possibility that the lawyer may simply send a confirming letter to the client. Because of this discrepancy, tax return preparers in any state, whether that state bar has adopted the Model Rule or not, should get informed consent confirmed in writing by the client, and not rely on compliance with state rules to protect themselves from conflict of interest obligations.

Responding to Service Requests for Information

Section 10.20(a) requires practitioners, upon a proper and lawful request from a duly authorized officer or employee of the Service, to submit records or information in any matter before the Service, unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged. Section 10.20(b) requires practitioners, upon a proper and lawful request from the Director of OPR, to provide any information the practitioner has concerning an inquiry by OPR into alleged violations of Circular 230, unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged. The requirement to provide information to the Service or OPR on request raises a number of concerns, especially with regard to engagement letters and conflict waivers. With engagement letters, some information may be privileged and some may not be privileged. However, resistance to disclosure of engagement letters may trigger a suggestion by the requesting revenue officer that there is a violation of Circular 230. Regarding conflict waivers, section 10.29(c) provides that a practitioner must retain copies of written consents and provide them to officers or employees of the Service on request, with no exception for privileged information. The lack of a privilege exception is in conflict not only with the general information request rules of section 10.20, but also with professional responsibility standards generally.

Section 10.20(a)(2) provides that if the requested information is not in the practitioner's possession, then the practitioner must notify the Service of the identify of any person who the practitioner believes may have the records or information. This requirement in and of itself appears to conflict with state bar confidentiality protections and possibly the attorney-client privilege depending on who has the information and how the practitioner received the information related to where the information is.

Errors and Omissions

Section 10.21 requires a practitioner to advise the client of errors or omissions as well as to advise the client of the consequences of failure to correct the error or omission. Beyond Circular 230, this may raise some interesting issues. For instance, if the practitioner is responsible for the error, he may need to advise the client to seek independent counsel. Additionally, if the error or omission rises to the level of criminal activity, the practitioner may need to advise the client to seek a criminal defense attorney. For a good discussion of the relationship between a tax return preparer's duty to his client and the standards under Circular 230, see Frederic G. Corneel, *Guidelines to Tax Practice Second*, 43 Tax Law. 297 (1990).

There is no statutory authority requiring a taxpayer to prepare an amended return to correct an error. However sometimes that may be the best course of action, and a practitioner advising a client of an error or omission is likely obligated to add a caveat to any advice regarding correcting the error with the information that such an amendment is not legally required.

Contingent Fees

Section 10.27(b) provides rules prohibiting tax return preparers from charging contingent fees in cases involving practice before the Service except in certain circumstances. In addition to the traditional concept of a contingent fee based on the percentage of refund reported on a return, the definition of contingent fee for this purpose also includes "any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained." There is some question as to whether this would also encompass a situation in which the tax return preparer voluntarily refunds a fee to a client.

In Notice 2008-43, the Service specifically provided that a practitioner may charge a contingent fee under section 10.27(b)(2) for a claim under section 7623 (the whistleblower statute).

Return Preparer Initiative

In December 2009, the Service released a report entitled "Internal Revenue Service Return Preparer Review" recommending a regulatory scheme for tax return preparers who are not currently practitioners subject to Circular 230. By January 1, 2011, the Service proposes to require all paid signing preparers to register and obtain and use a Preparer Tax Identification Number. The proposal will also require all paid preparers who are not enrolled agents, CPAs or attorneys to pass a competency examination. One significant recommendation is to require all signing paid tax return preparers to be subject to verification of personal and business tax compliance every three years. As discussed above, failure to be compliant with personal and business tax returns can lead to significant penalties, and this provision indicates that the Service intends to increase vigilance in this aspect of compliance.

Although for the most part the new return preparer rules will not initially apply to attorneys, the report did leave open the possibility of imposing future continuing education requirements or other competency requirements on CPAs, attorneys, and enrolled agents if the data collected in the future indicates a need for this.

Conclusion

In light of the recent increased focus on aggressively pursuing tax practitioners who violate professional responsibility duties, this article has been provided as a brief overview of the potential sanctions under both Circular 230 and section 6694, as well as pointing out some of the principal possibilities for discipline by OPR under Circular 230. As practitioners await the revisions to section 10.34, they should be aware of the enhanced authority and activity of OPR in enforcing Circular 230. ■

2010 JANET SPRAGENS PRO BONO AWARD RECIPIENTS:

Caroline D. Ciraolo and Juan F. Vasquez, Jr.

The ABA Section of Taxation honors Caroline D. Ciraolo and Juan F. Vasquez, Jr. with its 2010 Janet Spragens Pro Bono Award. Named after the late American University Law professor who greatly contributed to ensuring representation for low-income taxpayers, the Tax Section presents this award each year to up to three individual lawyers or law firms that have demonstrated outstanding and sustained commitment to pro bono (free) legal services, particularly with respect to federal and state tax law.

Caroline D. Ciraolo is a Partner at the Baltimore law firm Rosenberg, Martin & Greenberg, LLP and helped found the U.S. Tax Court Pro Bono Program in Maryland, and continues to provide pro bono consultation services to unrepresented, or pro se, taxpayers at Tax Court calendar calls. Ciraolo volunteers in the Baltimore Low Income Taxpayer Return Preparation Clinic, where she both represents individual clients and instructs potential volunteers in how to represent low income taxpayers in tax controversies. She instructs student tax clinics at the University of Maryland School of Law and the University of Baltimore School of Law. Ciraolo is active in the Pro Bono committees of both the ABA Section of Taxation and the Maryland State Bar Association.

In addition to her tax pro bono work, Ciraolo has served on the Homeless Persons Representation Project Annual Campaign in Baltimore, and is a member of the 4th Circuit Court of Appeals, Criminal Justice Act Panel. Ciraolo also represents clients from the Caroline Center, a Baltimore program that helps women and their families in need. Ciraolo was selected Educator of the Year in 2008 by the Maryland Volunteer Lawyers Service.

Juan F. Vasquez, Jr. is a Shareholder in the Houston office of Chamberlain, Hrdlicka, White, Williams & Martin and has provided pro bono services for several taxpayers facing collection issues in Houston. He successfully resolved the tax issues facing a number of clients, including an innocent spouse case before the U.S. Tax Court and an unemployment benefits case before the Texas Supreme Court.

In addition to his tax pro bono work, Vasquez has served on the Board of Directors of Big Brothers and Big Sisters of Greater Houston, and served as a big brother to a young man for more than nine years. Vasquez is immediate past president of the Mexican American Bar Association of Houston, and is the current vice president of the Hispanic Bar Association of Houston.

Vasquez chairs the ABA Section of Taxation Diversity Committee, and is a former Nolan Fellowship recipient. ■

News Briefs

2009 Law Student Tax Challenge Winners

The Tax Section has announced the winners of its 2009 Law Student Tax Challenge, a contest developed by the Young Lawyers Forum and designed to give students an opportunity to research, write, and present their analyses of a complex, "real life" tax planning problem. The contest features J.D. and LL.M. divisions, both of which compete in two-person teams. The teams' written submissions are judged by leading tax practitioners from across the country and the teams with the best written submissions are invited to present oral arguments before a panel of distinguished tax lawyers and judges attending the Section's Midyear Meeting. This year's competition featured 43 J.D. teams and 26 LL.M. teams from 34 schools.

J.D. Division Results

- 1st Place – Brendan Sponheimer and James Murtha, Western New England College School of Law. Frederick D. Royal, coach.
- 2nd Place – Sara Steinberger and Travis Wheeler, Temple University Beasley School of Law. Kathy Mandelbaum, coach.
- 3rd Place – Kaitlyn Wahlsten and Jonathan Heinonen, Hamline University School of Law. Morgan L. Holcomb, coach.
- Best Written Submission – Neill O'Brien and Casey Nunez, Western New England College School of Law. Frederick D. Royal, coach.

LL.M. Division Results

- 1st Place and Best Written Submission – Nicole Forsythe and Ryan White, University of Missouri-Kansas City School of Law. Judith Frame Wiseman, coach.
- 2nd Place – Henry Chen and Irina Goldberg, University of San Diego School of Law. Richard A. Shaw, coach.

A complete listing of the teams entered in the 2009 competition, along with sample entries, is available on the Section's web site at www.abanet.org/tax/lstc.

New Subscriptions Portal

The ABA is pleased to announce a new subscriptions portal which gives you the ability to control how you receive member benefit publications such as *The Tax Lawyer, NewsQuarterly*, and the *ABA Journal*. You may now elect to have your publications delivered in print, in electronic format, or both. Members can access the Subscriptions Portal through myABA or directly at www.abanet.org/esubscription/home.cfm.

Current Developments Reports

The Tax Section highlights in one place current development reports from its Section Meetings. Reports from the 2010 Midyear Meeting, along with older reports, are available online at www.abanet.org/tax/developments.

Apply for an ABA Section of Taxation Public Service Fellowship

The Tax Section established a Public Service Fellowship program to help fill the need for tax legal assistance around the country, and to foster an interest in tax-related public service for those lawyers who participate. Each year, we accept applications from recent law school graduates or judicial clerks interested in working in tax-related public service organizations. To apply, you must secure employment with a public-interest, non-profit Section 501(c)(3) organization that involves taxation or administration of tax law, and commit to a two-year term with that organization (your employment may be contingent upon award of the Fellowship).

For more information about the Public Service Fellowships, please visit www.abanet.org/tax/awards/publicservice.

IRS Nationwide Tax Forums

As a component of its communication and outreach efforts, the IRS is conducting a series of tax forums across the nation this summer. Designed for tax professionals, the forums present the latest news and information from the IRS over three days of seminars taught by representatives of the IRS, the ABA Section of Taxation, and other national organizations. The upcoming 2010 dates and locations are:

LOCATION	DATE
Atlanta, GA	June 22-24
Chicago, IL	July 13-15
Orlando, FL	July 27-29
New York, NY	August 10-12
Las Vegas, NV	August 24-26
San Diego, CA	August 31-September 2

For more information, visit www.irstaxforum.com. ABA members qualify for a discount. Please note that CLE accreditation is not requested in advance for these programs, and attorneys interested in attending and earning CLE credit are encouraged to check with their state regulatory boards.

Take Advantage of Standing Order Lists

Keep your tax library current by signing up for a Tax Section Standing Order List. Under the Standing Order List program, you can receive essential tax law publications on 45-day risk-free approval at a **25% discount** off of the list price. You will be billed separately for each edition at the then-current price, plus shipping and handling. If, for any reason, you are not satisfied with any edition, you may return it within 45 days of receipt for a complete refund of the price of the book…no questions asked!

To learn more about the Standing Order List program, please contact Andrea Amato at amatoa@staff.abanet.org or 202/662-1783.

Committees can help you tailor your ABA Tax Section membership to your Practice

Committees focus on specific practice areas and are the best way to get involved in the Section. The Corporate Tax Committee through comments to the government and substantive programs at meetings addresses issues such as section 382, economic substance doctrine, troubled companies and reorganizations and the prosecution and defense of offshore bank accounts. The Exempt Organizations Committee deals with diverse issues such as the new Form 990, program related investments, Form 990 disclosure and endowment fund rules for financial reporting. While most committees target specific substantive areas, some committees reach across practice areas. Our active and growing Young Lawyers Forum provides special networking and career development opportunities for new young lawyers and law students.

Just a few of the valuable benefits of committee membership include:

- Networking and exchanging information with others in your practice area
- Participating in listserv and email discussion groups with other practitioners
- Accessing the most up-to-date information on the issues important to you and your area of practice
- Gaining valuable CLE through specialized teleconferences and other opportunities in your area of interest

Please visit the Section's Committee Membership website at www.abanet.org/tax/committees to find out more about the benefits of membership in any of the following committees:

Administrative Practice
Affiliated and Related Corporations
Banking and Savings Institutions
Bankruptcy and Workouts
Business Cooperatives and Agriculture
Capital Recovery and Leasing
Civil and Criminal Tax Penalties
Closely Held Businesses
Corporate Tax
Court Procedure and Practice
Diversity
Employee Benefits
Employment Taxes
Energy & Environmental
Estate and Gift Taxes
Exempt Organizations
Fiduciary Income Tax
Financial Transactions
Foreign Activities of U.S. Taxpayers
Foreign Lawyers Forum
Individual & Family Taxation
Insurance Companies
Investment Management
Low Income Taxpayers
Partnerships and LLCs
Pro Bono
Publications
Real Estate
Sales, Exchanges, and Basis
S Corporations
Standards of Tax Practice
State and Local Taxes
Tax Accounting
Tax Exempt Financing
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U.S. Activities of Foreigners and Tax Treaties
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NOW it's easier than ever to sign up for as many committees as you like with our online Committee Preference form at www.abanet.org/tax/committees. Please note you will need your eight-digit ABA member ID number and password (usually your last name) to access the form. For assistance, please contact the ABA Customer Service Center directly at service@abanet.org or by calling 800.285.2221.

ABA Section of Taxation CLE Calendar

www.abanet.org/tax/calendar

DATE	PROGRAM	CONTACT INFO
May 19, 2010	**6th Annual Symposium - Managing the Stages of a State Tax Controversy: Practice, Procedure & Helpful Advice** *Cosponsored by Georgetown Law CLE*	Tax Section www.abanet.org/tax 202.662.8670
May 19-21, 2010	**3rd Annual U.S. – Latin American Tax Planning Strategies Conference** Mandarin Oriental – Miami, FL *Cosponsored by the International Fiscal Association*	Tax Section www.abanet.org/tax 202.662.8670
May 28-30, 2010	**9th Annual North Carolina/South Carolina Tax Section Workshops** Kiawah Island Golf Resort – Kiawah Island, SC *Cosponsored by ABA Tax CLE on the Road*	Tax Section www.abanet.org/tax 202.662.8670
June 2, 2010	**"Tax Link Live" Member Benefit CLE Teleconference** "Hot Topics and Current Developments in Circular 230" *Organized by the Standards of Tax Practice Committee*	Tax Section www.abanet.org/tax 202.662.8670
June 3-4, 2010	**10th Annual Tax Planning Strategies – U.S. and Europe Conference** Odd Fellow Palæet – Copenhagen, Denmark *Cosponsored by the International Fiscal Association (IFA)*	Tax Section www.abanet.org/tax 202.662.8670
June 10-11, 2010	**Charitable Giving Techniques** Levin Institute – New York, NY *Cosponsored by the Tax Section*	ALI-ABA www.ali-aba.org 800-CLE-NEWS
June 24-25, 2010	**How to Handle a Tax Controversy at the IRS and in Court: From Administrative Audit Through Litigation** Renaissance Stanford Court – San Francisco, CA *Cosponsored by the Tax Section*	ALI-ABA www.ali-aba.org 800-CLE-NEWS
July 7-9, 2010	**Estate Planning for the Family Business Owner** Gleacher Center – Chicago, IL *Cosponsored by the Tax Section*	ALI-ABA www.ali-aba.org 800-CLE-NEWS

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Section's May Meeting website: http://meetings.abanet.org/meeting/tax/May10/.

Comments/FATCA Comments

The Section is well-known, and hopefully well-respected, for its frequent comments on proposed regulations and other guidance from the government. The comment process is an excellent opportunity for younger members to get actively involved in the Section. By doing so those members can benefit substantially, not only by acquiring substantive knowledge of subject areas, but also by making useful contacts and by being involved in dealing with the IRS or other government agencies.

From time to time, the Section comments on bills pending in Congress. These comments often require an even greater effort and involvement than do regulatory comments. A recent example was the comments we submitted on the Foreign Account Tax Compliance Act (FATCA), H.R. 3933 and S. 1934. This legislation was recently enacted as part of the HIRE Act and is likely to have major consequences in the area of international taxation. I believe that our efforts played an important role in the development of that legislation.

I want to especially thank the following people, without whom our comments would not have been submitted and certainly would not have been submitted in a timely manner: Joan Arnold, Peter Blessing, Peter Connors, Helen Hubbard, Stephen Lessard, Dean Marsan, Fred Murray, Duncan Osborne, Ansgar Simon, and Michael Spielman.

May Meeting

As this issue goes to press plans are well underway for the Section's May Meeting in Washington. I look forward to seeing you there. ■

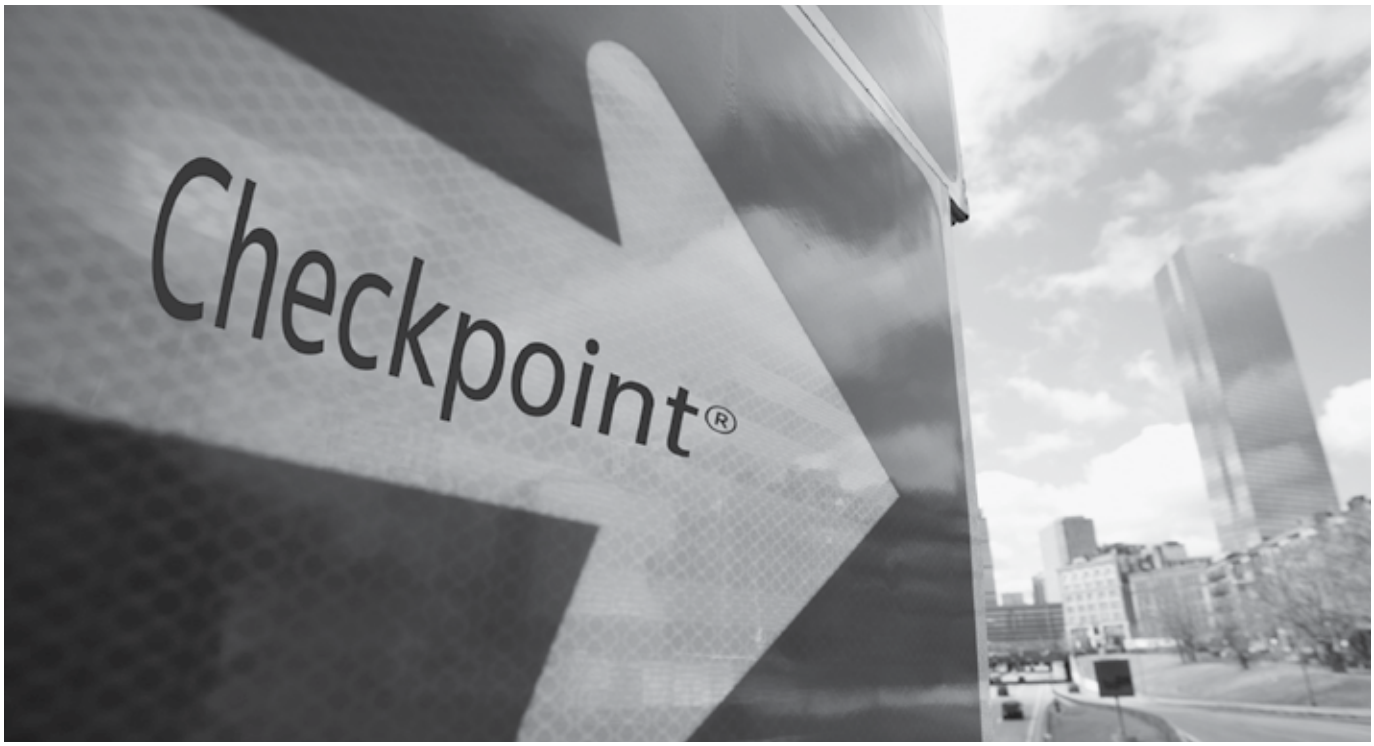
BOXSCORE

Since December 2009, the 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.

Submissions and Comments on Government Regulations, Administrative Rulings, ABA Policy and Blanket Authorities*

TO	DATE	CODE SECTION	TITLE	COMMITTEE	CONTACT
House Committee on Ways & Means, Senate Committee on Finance	4/6/2010	1374	H.R. 4169 - Technical Correction to ARRA Change in Section 1374 Built-In Gain Tax	S Corporations	Helen Hubbard
House Committee on Ways & Means, Senate Committee on Finance	4/5/2010	2210(a) and 2664	Reform of Federal Wealth Transfer Tax	Estate and Gift Taxes	Helen Hubbard
House Subcommittee on Financial Services and General Government, Senate Subcommittee on Financial Services and General Government	4/5/2010	n/a	Internal Revenue Service Funding	n/a	Helen Hubbard
Internal Revenue Service	3/12/2010	706	Comments on Proposed Regulations Under Section 706	Partnerships and LLCs	Jennifer Alexander
Internal Revenue Service	3/3/2010	4944	Comments Concerning Proposed Additional Examples on Program-Related Investments	Exempt Organizations	David S. Chernoff and Robert A. Wexler
Internal Revenue Service	2/26/2010	368	Comments on Temporary and Proposed Regulations Regarding the Measurement of Continuity of Interest Under Section 368	Corporate Tax	John Sweet and Bob Woodward
Internal Revenue Service	2/24/2010	987	Comments Concerning Proposed Regulations Under Section 987	Foreign Activities of U.S. Taxpayers	Paul Crispino and David Golden
Internal Revenue Service	2/23/2010	142(a)(6)	Comments Concerning Proposed Regulations on Solid Waste Disposal Facilities	Tax Exempt Financing	Scott Schickli
Internal Revenue Service	2/3/2010	104(a)(2)	Comments on Limitation of Section 104(a)(2) Exclusion	Individual and Family Tax	Megan L. Brackney
Internal Revenue Service	1/19/2010	514(c)(9)(E)	Comments Concerning Partnership Allocations Permitted Under Section 514(c)(9)(E)	Real Estate	Wayne Pressgrove, James Wanderer, Joshua Weinberger, and James Sowell
Internal Revenue Service	1/6/2010	265(b)(3)	Comments Concerning Modification of the Qualified Small Issuer Exception Under Section 265(b)(3)	Tax Exempt Financing	Wendy T. Salinas
House Committee on Ways & Means, Senate Committee on Finance	12/3/2009	n/a	Comments on Foreign Account Tax Compliance Act of 2009, H.R. 3933 and S. 1934	Various	Helen Hubbard

*The technical comments listed in this index represent the views of the ABA Section of Taxation. They have not been approved by the ABA Board of Governors or the ABA House of Delegates and should not be construed as representing the policy of the ABA.



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