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POINTS TO REMEMBER

Taxpayers Facing Large Penalties for Late-Filed Forms 5471 and 5472

By Michelle Marion*

Many corporate taxpayers with international affiliates have been getting nasty surprises from the Internal Revenue Service. Failure to timely file certain international information returns triggers penalty assessments at $10,000 per form. Because some corporations must file dozens of these forms, hundreds of thousands of dollars in penalty assessments can stack up quickly. In this article, I briefly outline penalty relief available to taxpayers faced with these penalties.

Background

Certain U.S. and foreign persons are subject to special international information reporting requirements. Specifically, these taxpayers must gather and report information concerning their foreign affiliates on a number of forms, including Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, and Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*. The annual deadline for filing both Form 5471 and Form 5472 is the due date of a taxpayer's income tax return (including extensions).

Form 5471 must be filed by certain U.S. citizens and residents who are officers, directors, or shareholders in foreign corporations—including individuals, corporations, partnerships, and trusts. The Service uses Form 5471 primarily to collect information on foreign corporations with substantial U.S. ownership or control. A taxpayer must attach a separate Form 5471 to its income tax return for each foreign corporation with which the taxpayer maintains the requisite relationship. Form 5472 must be filed by foreign-owned U.S. corporations and foreign corporations with U.S. trades or businesses under certain circumstances. A taxpayer must attach to its income tax return a separate Form 5472 for each related party (foreign or domestic) with which the taxpayer engaged in certain transactions during the taxable year. For example, a taxpayer must state on Form 5472 whether it imported goods from a related party and, if so, whether the basis or inventory cost of the imported goods was greater than their customs value.

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FROM THE CHAIR

The Tax "Life-Preserver" for the Poor: Low-Income Taxpayer Clinics

By Michael Hirschfeld*

Tax issues are perhaps the hardest to deal with for low-income taxpayers who may not know of their rights and think they can only get assistance by having to use some of their scant financial resources to hire an expert. While America has long been the beacon of hope for its opportunities for social mobility, the number of low-income people continues to grow. More than 133 million people had incomes below 250% of the federal poverty level in 2012. The recent global recession increased the number of people in this group, including young people who may not even show up in government statistics since they stopped looking for jobs that did not exist. Others in the group can include bus drivers, auto mechanics, nurses, teachers and others who may not come to mind when one thinks of a low-income person. For the more than 133 million people caught in this financial squeeze for survival, the low-income taxpayer clinic ("LITC") is a life-preserver that can keep low-income taxpayers afloat when faced with tax issues that could otherwise sink them financially.

The first LITCs started in the 1970s through the efforts of several law schools. While the number of clinics continued to slowly grow, financial help was needed to jump start new programs and maintain old ones. That help came with the enactment of Code section 7526 in 1998, which authorized the IRS to make matching grants for LITCs. The IRS was given the power to award up to $100,000 per year to establish or operate a LITC. Starting the following year, Congress annually authorized funding for LITCs. In 2013, the IRS's LITC Program Office awarded nearly $10 million in grants to 146 grantees based across the United States and Puerto Rico. LITCs have greatly helped in dispelling the myth of tax law as the domain of only the wealthy.

LITCs help taxpayers primarily in tax controversies with the IRS and state and local tax authorities. Joint and several tax liabilities can be a lingering trap for spouses who flee abusive marriages. A person may have used retirement benefits for a medical emergency, but failed to address the tax impact. Civil law settlements may have been obtained to address a variety of issues such as from medical illness from working conditions. The earned income tax credit (EITC) is a great resource for working people, but it is a highly scrutinized provision that snares many low-income people in tax disputes. Tax controversies are generally not at the forefront of individuals' minds in these situations, and LITCs have been instrumental in preventing tax issues from sinking unsuspecting taxpayers. Without the technical expertise of the LITC, such persons would have an extremely difficult time defending or even understanding all the nuances of such disputes. Where there are no defenses or insufficient defenses to eliminate the tax liabilities, the ability of LITCs to navigate the offer-in-compromise program has led to a much more efficient use of IRS resources as taxpayers become compliant.

The work of LITCs does not stop at client representation in tax controversies. LITCs conducted more than 3,500 educational activities for over 100,000 attendees in 2012 and that number is growing. They address filing requirements, tax recordkeeping obligations, family status issues, identity theft, worker classification issues, and other topics that affect low-income people.

LITCs also serve as front line organizations, seeing and raising issues in need of greater attention. In addition to helping fund LITCs, the IRS also provides these clinics with a voice to speak to about these issues through its Taxpayer Advocate Service ("TAS"). The TAS Office of Systematic Advocacy hears concerns of LITCs, and that office can address these issues with the IRS on behalf of the LITCs and their low-income taxpayer clients. TAS has advocated before IRS on numerous issues raised by LITCs, and the IRS has listened and acted. For example, further educational outreach has been made by the IRS relating to filling out the Form 2848 Power of Attorney form and how to obtain an individual taxpayer identification number, among other efforts.

While very successful, LITCs still need more help. Funding is a constant struggle and any sources of new funding, including in-kind donations, are welcome. Volunteers who know the tax law are welcome, too, as LITCs can use pro bono assistance in handling overflow cases. LITCs can also count pro bono hours toward the amount that they must match in order to continue receiving IRS funding. Those seeking more information about LITCs can look on the IRS webpage, http://www.irs.gov/Advocate/Low-Income-Taxpayer-Clinics/, reach out to their local LITC, or contact the Tax Section office at tel. 202/662-8670. ■

* Dechert LLP, New York, NY. Statistical information found in this article is from the Taxpayer Advocate Service, Low Income Taxpayer Clinics Program Report (2014).

John E. ("Buck") Chapoton

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

Buck Chapoton served as the first Assistant Secretary of the Treasury for Tax Policy under President Reagan, and as Tax Legislative Counsel under President Nixon from 1970 to 1972. He is currently with Brown Advisory.

Q What are the biggest differences you see in the tax policy environment in 2014 compared to when you started in the Reagan administration working on tax reform?

A When I joined Treasury in 1981 as Assistant Secretary, President Reagan had just been elected. There was a great hope that he would take strong steps to reinvigorate the lackluster economy. The stock markets were just floating along without any big changes for a decade or so, and there were serious concerns that America was falling behind its trading partners in economic growth and innovation. The tax code was not the mess it is today, but politicians and the public alike thought the tax system was unfair and had serious flaws. Tax shelters allowed investors to reduce their tax bills almost at will—the unfairness of tax shelters was a big factor in the public's mind—but, most important, tax rates were far too high. The top individual tax rate was 70% in 1980. So there was lots of support for doing something to spur the economy forward, and most assumed that "fixing" the tax system would be essential to that effort. There was widespread hope that Reagan might be the man who could do it.

The supply siders and their mantra of lower tax rates had caught the ear of the new President early in his campaign, and this had appeal on Main Street and in Washington, on both sides of the aisle. A coalition of "Reagan Democrats," supporting the President and pushing for lower tax rates, organized in the House. This group, composed mainly of conservative, so-called "Blue Dog" Democrats, was key to the President's success in the Democrat-controlled House.

Thus, major tax cuts were the principal ingredient of the Administration's first economic package in 1981. The tax proposals passed Congress almost intact; many of the Congressional changes enhanced rather than diminished the benefits provided taxpayers (indexing of tax rates and the personal exemptions, for example). For individuals this Act meant a 25% cut in tax rates at every income level ("across the board") over a three-year phase-in, and for businesses it granted gigantic tax incentives for new investment in plant and equipment located in the U.S. (reinstatement of the investment tax credit and a new, much accelerated, depreciation schedule). Howard Baker, the new Senate majority leader, called the 1981 tax bill a "riverboat gamble," but the country and the Congress wanted to give this new President and his new ideas a chance to see if they might work to reinvigorate the economy. ERTA was passed rather resoundingly in both houses.

Q In addition to ERTA in 1981, Reagan signed major tax legislation in 1982, 1984, and 1986. What do you think accounts for those successes?

A ERTA, the 1981 bill, was the President's first tax victory and it was a very major piece of tax legislation. But it was by no means his last big tax victory in Congress. Reagan had many problems that later confounded his presidency, but his legislative magic on the tax side seemed to stay with him. His administration produced major tax bills in 1982 (TEFRA), 1984 (DEFRA), and finally fundamental tax reform in 1986. It's helpful to look more closely at the subsequent tax bills, particularly 1986 of course.

TEFRA in 1982 was a large tax bill but, in my view, it was basically corrective legislation, a reduction of the very generous cost recovery allowance passed in the euphoria of 1981, plus some very significant loophole closers of the old school. ERTA did almost nothing to tighten the tax code. The office of tax policy had—and I think always has—a list of "corrections" to the Code it would like to make given the legislative license to do so, but 1981 did not present that opportunity; 1982 did. After the major tax cuts in 1981, the deficit had suddenly become a major concern in the national economic debate, and many in the Administration sought ways to reduce the red ink. Interestingly, unlike today, revenue increases were acceptable to the Reagan White House so long as they could be classified as preventing tax avoidance or scaling back excessive tax benefits. That was a significant part of the 1982 legislation.

DEFRA, the 1984 tax bill, basically followed the example of the 1982 Act, tightening of the system to increase revenues without raising tax rates.

The final significant tax bill of the Reagan years was of course the monumental Tax Reform Act of 1986, and it was an entirely different animal. The 1986 legislation was a conceptual turn-around by the Reagan Administration. The 1981 Act, the Administration's opening salvo, was entirely a tax cut bill—reducing taxes by lowering rates and increasing tax deductions. In addition, a major conceptual goal of ERTA was to reduce

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the tax on capital, accomplished through lower taxes on capital gains for investors, and higher depreciation deductions and investment tax credits for businesses. Note that on the corporate side this benefitted only capital intensive businesses. Other businesses, such as the large service sector in this country, received no tax benefit in 1981; the corporate tax rate remained at a high 46%. The fundamental tax reform effort of the 1986 Act had a different goal—to broaden the tax base as much as possible by reducing or eliminating tax preferences built up over the years for both individuals and corporations, and to use the revenue raised by base broadening to lower all tax rates as much as possible. The goal of the 1986 effort was to be revenue neutral as compared to prior law, and to eliminate as much as possible government influence through the tax code. The mantra this time was, basically, "take tax considerations out of investment and business decisions and let the free market work." The effect was necessarily an increase in tax on capital—the exact opposite of the 1981 legislation. This was proposed and accomplished quite openly by eliminating tax preferences designed to encourage capital formation in the business sector—the investment tax credit and accelerated depreciation—and increasing taxes on capital gains of individuals. In return, tax rates were dramatically lowered for all individuals and all corporations. The objective was to reduce the drag and influence the tax system has on the U.S. economy as much as possible. Although hardly perfect, the Tax Reform Act moved the needle a very long way toward achieving that goal. Most tax policy observers would, I think, agree with that statement.

In cold political jargon this meant the individual tax cuts were "paid for" (in revenue terms) by taking away the accelerated depreciation and the investment tax credit benefits that had been adopted in 1981, Reagan's first tax bill. So the 1986 Act was a large increase in tax on capital generally (and businesses and investors specifically) and a reduction of tax on earnings of individuals and non-capital intensive businesses. Perhaps most surprising, the corporate community gave nary a peep of protest—many said this was a classic example of the support lower tax rates can buy. That's a political lesson the tax reform advocates of today should note.

Q Can you describe what you have been doing in the tax world since your work in the Reagan administration?

A After Treasury I returned to my law firm, Vinson & Elkins, as managing partner of the Washington office. During the late 1990s I became active in the Tax Section, primarily on the corporate tax shelter problem, and subsequently served as Vice-Chair of the Section for Government Relations. I retired from V&E in 2001 and opened the Washington office for Brown Advisory, a Baltimore-based investment advisory firm, where I still work. I remain interested and involved in the world of tax policy in a number of ways, including serving on the board of the Concord Coalition, a non-partisan think tank that addresses broad budget issues.

Q When you look at how tax policy and tax legislation was developed in the 1980s and compare it to today, what changes if any do you see from then to now?

A Of course the big change that everyone would point to, including me, is the political polarization in the Congress, and in the nation, that we witness today. The parties are just not working together, and even within parties there are major disagreements on basic questions of tax policy and, thus, little consensus how the tax code should be written. Achieving agreement on politically-charged tax issues was not a cakewalk in the 1980s, but compromise was not a bad word, as it seems to be now, and helpful legislation could be agreed upon then. The 1986 Tax Reform Act is the confirmation of that statement.

I remember one political disagreement in the early 1980s that might be an instructive example. In 1981 when Bob Dole was the new chairman of the Senate Finance Committee, he started holding Republican-only caucuses of the Senate Finance Committee members; they would meet separately, agree on resolutions of issues to be presented in an upcoming Committee markup, and since they represented a majority of the Committee, these decisions would sail through the formal Committee markup session. Well, you can imagine how that irritated the Democrats who were pretty much left out of the debate process. They complained, and Dole answered, and a compromise was reached. Today, the Finance Committee probably works together better than any other committee in Congress, but it's still not like it was. Members did talk to each other and while politics played a role, their motives were in major part to make the tax system better and more fair. Today the overriding question seems to be, not the substance, but how will this sell in my next election? That is not a formula for making good tax policy. I hope I'm overstating this problem, but I fear I'm not.

Q Is there one legislative change you would like to take back if you could?

A When I think about things that we did not do, I think about things that we did not do to make the system tighter and better. One that really jumps out at me is the international side, how U.S. companies should be taxed on activities abroad. We see companies that are basically U.S. entities for all substantive non-tax purposes and yet by formalistic structuring they are not treated as a U.S. entity for tax purposes. We also see individuals and corporations that are based in the U.S. avoiding our taxes by moving income-producing intangible assets to low-tax jurisdictions abroad. It is relatively easy to move intangible assets around the globe, and businesses make the case that large amounts of income follow those intangible assets, resulting in much lower taxes. I think we should have paid more attention to those issues that were just appearing on

the horizon, and I think the tax policy office should do so now. As I saw the tax law develop over the years, the courts and the Service said substance would prevail over form. We should find ways to reinvigorate that principle.

Q Was indexing for inflation a good or bad idea looking back at it from 30+ years in hindsight?

A That is a good question, and one which for some reason I am never asked. I was very suspicious of indexing when it was enacted. The Treasury had not proposed that change; it was pushed on us by the Senate Finance Committee. We accepted it and acted like we liked it, and I guess we did, although I'm not sure we analyzed its impact as thoroughly as we did other significant tax policy issues. But it's academic now; it's not going to be reversed.

Q What advice would you give policy makers who today are genuinely interested in tax reform?

A It seems to me what is missing in the effort is effective education of just how much damage the tax system does to the economy today because of unnecessary complexity and inefficiency. Tax reform is a frightening subject to most people. Our leaders have to explain that reform is possible without hurting most taxpayers—what they might lose in repeal of popular deductions and exclusions will generally be more than offset by tax rate reductions—and even when that's not the case, the benefits to the economy are more than worth it for themselves and the overwhelming majority of taxpayers. But it's not an easy task; the explanations have to be repeated often and in terms people can understand. Which brings me to the crucial ingredient—a committed President. In my view tax reform will not be possible without the effort of a President who is persuaded of its crucial importance, and his or her effective use of the bully pulpit. We don't have that now I'm afraid, although there are some groups who are making pretty persuasive arguments for reform.

Q Some blame the loss of moderates for the logjam on the Hill; some say that this is why there are fewer grand bargains. Do you believe that?

A I think that is a significant factor. Loss of moderates just means a higher percentage of polarized members. Members from polarized districts have little incentive to compromise. Gerrymandering has really made it difficult to elect people who are motivated enough to support a change that is best for the country even though some compromise is required, as it so often is in a democracy. Stated differently, districts that are "safe" for one party or the other do not strengthen our democratic system in my view.

Q Do you think the U.S. will ever adopt a VAT?

A I doubt the U.S. will ever adopt a value added tax. I think it will be discussed forever, but any kind of new tax system will be terribly frightening to the left and the right, conservatives and moderates, and that will pretty well kill it. The most recent example is the Simpson Bowles Commission. They considered a VAT at some length and decided they just were not going to recommend a new tax system for this country. I suspect they decided a VAT would present new policy considerations and have new good points and bad points like any tax system new or old, and thus new debates on old conceptual issues would start all over again. Although I see benefits from a VAT, I have concluded such an effort would set the tax improvement effort back, not advance it.

Q What do you think of the complexity of the Code today?

A The complexity of the present Internal Revenue Code is basically outrageous. The Code could be dramatically simplified, but to do it right would require a major undertaking and probably could be accomplished only as a part of fundamental tax reform. That doesn't mean more targeted simplification efforts shouldn't be attempted in every tax bill and in every legislative proposal Treasury sends to Congress. But I'm not hopeful.

I would like to mention one aspect of simplification I think should be discussed more. Over the years the tax bar and others have participated in the reorientation of our tax system from a system of principles to a system of rules. If the system relies only on rules, you'll get more and more detailed rules to shut down this loophole or that, but with enough work almost any rule can be avoided or circumvented. And of more concern, many taxpayers have to understand these complex rules even though they are not trying to skate close to the line. Detailed rules add immeasurably to the complexity of our system. In prior days, we had a much more principle-based tax structure. It is harder to avoid a principle. Sometimes principles are vague but so be it; this would not present a problem for the great majority of taxpayers who are not trying to manipulate a transaction to get the most tax juice possible out of it. But if Taxpayer A wishes to go closer to the line, he will want to have a good lawyer, or good accountant, to tell him whether he has crossed the line or veered too close to it. That's a good thing; Taxpayer A would be motivated to hire the best lawyer or the best accountant who is going to attempt to accomplish his motive and to protect him at the same time. Ours is a self-assessment tax system and that means professional tax advisors play a major role in the administration of our tax law. We want the best and most ethical carrying that role. Under the current system a taxpayer is often motivated to hire the least principled advisors, "I want the lawyer or accountant who will tell me what I want and give me an opinion that it will work." That will not build a tax system we will like. I should add that I realize I'm vastly oversimplifying a very complicated subject with this short answer. ■

Automatic Penalties for Failure to Timely File Forms 5471 or 5472

When a corporation files an untimely Form 5471 or Form 5472, Internal Revenue Service Center computers automatically assess a $10,000 penalty per form. The Service also automatically assesses the penalty on untimely Forms 5471 that are attached to late-filed partnership returns. Taxpayers have been told the Service plans to roll out the automated penalty procedures to other types of taxpayers (*e.g.*, individuals), but so far it has limited these procedures to corporations and partnerships. Additional penalties for insufficient information may be assessed on examination.

The Service will abate the automatic penalties under certain circumstances. For instance, if a taxpayer establishes reasonable cause for its failure to timely file, the Service must abate the penalty. The term "reasonable cause" is not defined in the Code or in the regulations applicable to Form 5471 penalties. Reasonable cause generally means that a taxpayer exercised ordinary business care and prudence but nevertheless failed to comply with its tax obligations.

The regulations applicable to Form 5472 penalties contain some guidance on the reasonable cause standard. Specifically, the regulations provide that reasonable cause may include an honest misunderstanding of fact or law that is reasonable considering the taxpayer's knowledge and experience. The regulations further state that "[r]eliance on an information return, professional advice or other facts… constitutes reasonable cause and good faith, if under all the circumstances, the reliance was reasonable." For example, a corporation may establish reasonable cause for failure to timely file Form 5472 if the corporation lacked knowledge and reason to know that it was owned by a 25% foreign shareholder and its belief was consistent with other information reported, furnished, or known to the corporation.

Additionally, taxpayers may qualify for automatic penalty relief associated with the 2012 Offshore Voluntary Disclosure Program (2012 OVDP). As applicable here, Frequently Asked Question 18 (FAQ 18) of the 2012 OVDP states that the Service will not impose a penalty for the failure to timely file international information returns (e.g., Form 5471 and Form 5472) if the taxpayer has no underreported tax liabilities from related transactions and the Service has not already requested the delinquent forms. FAQ 18 advises taxpayers to submit delinquent Forms 5471 or Forms 5472 on an amended return together with a statement explaining why the forms are late. Reasonable cause is not required. The Service now says FAQ 18 relief is not available to taxpayers under examination, but taxpayers are pushing back on that assertion.

When a corporation files an untimely Form 5471 or Form 5472, Internal Revenue Service Center computers automatically assess a $10,000 penalty per form. The Service also automatically assesses the penalty on untimely Forms 5471 that are attached to late-filed partnership returns.

In my experience, the Service is less inclined to grant penalty relief under FAQ 18 when a taxpayer files a delinquent Form 5471 or Form 5472 with an original return rather than with an amended return. This counterintuitive tendency springs from the implication in FAQ 18 that the taxpayer files the delinquent Form 5471 or Form 5472 after filing the original return for the period. But FAQ 18 does not condition penalty relief upon a taxpayer filing a timely original return. In any event, the Service may amend or end the 2012 OVDP at any time, with or without prior notice.

A final alternative for penalty relief rests on guidance provided in the *Internal Revenue Manual*. When a taxpayer files a late Form 5471 or Form 5472 with a late-filed Form 1120, *U.S. Corporation Income Tax Return*, the *Manual* instructs Service employees to abate the Form 5471 or Form 5472 penalties when the following two conditions are met:

1. No penalty was assessed on the related Form 1120 (i.e., the Form 1120 reported no tax or the tax was paid timely) or the Service abated penalties on the late-filed Form 1120 under the First Time Abate program; and
2. The Service has not assessed penalties on Form 5471 or Form 5472, as applicable, in the preceding three years.

Conclusion

Although the Service may assess substantial penalties for failure to timely file international information returns like Forms 5471 and 5472, the Code, 2012 OVDP, and *Manual* set forth numerous grounds upon which the penalties may be abated. Taxpayers failing to meet the requirements for penalty relief outlined above may nevertheless find success in IRS Appeals. ■

POINTS TO REMEMBER

IRA Rollovers

By David Pratt*

"Roll over Beethoven and tell Tschaikowsky the news."—Chuck Berry (1956)

According to the Investment Company Institute, total U.S. retirement assets were $21.9 trillion as of September 30, 2013. The largest single component of that total was the $6.2 trillion held in individual retirement accounts (IRAs), an increase from $3.7 trillion in 2008 and $2.6 trillion in 2000. http://www.ici.org/research/stats/retirement/ret_13_q3. Most of the increase represents tax-free rollovers, of amounts previously held in employer-sponsored plans, rather than direct contributions by the individual account owner. The Employee Benefit Research Institute found that in 2011, rollover amounts were almost 13 times the amount of contributions. IRA Contribution Flows Dwarfed by Rollovers, June 6, 2013, www.ebri.org. A recent study by Cerulli Associates found that annual rollover contributions are expected to be $451 billion in 2017. Jill Cornfeld, Annual IRA Rollovers to Surpass $450B by 2017, Feb. 8, 2013, http://www.planadviser.com/Annual_IRA_Rollovers_to_Surpass_450B_by_2017.aspx.

Lump Sum Distribution Options

Defined benefit pension plans traditionally paid benefits in annuity form, and annuity payments may not be rolled over. I.R.C. § 402(c)(4). However, participants in defined contribution plans, and in an increasing number of private sector defined benefit plans, have the option of taking a lump sum distribution on termination of employment, at any age. A participant who receives a lump sum distribution typically has the following four options:

1. Leaving the money in the former employer's plan. Many employers do not want the trouble and expense of maintaining accounts for former employees and discourage use of this option, for instance by limiting investment choices, restricting the availability of future distributions or charging higher fees than to current employees.
2. Transferring the funds to a new employer's plan. Some plans do not accept rollovers or make rollovers difficult because of concerns that acceptance of a rollover from a plan that is not fully in compliance with the Code may taint their plans.
3. Transferring the funds, directly or indirectly, to the participant's IRA. A direct rollover is generally preferable as it avoids the 20% mandatory income tax withholding that would otherwise apply. I.R.C. § 3405(c).
4. Keeping the money and paying income tax on the amount distributed in the year of receipt plus, in most cases where the participant is under age 59½, a 10% additional income tax under section 72(t).

Advantages and Disadvantages of Rollovers

An IRA rollover has several advantages. It severs the tie with the former employer, gives the participant the greatest degree of control, and makes it possible for the participant to take irregular distributions or to stretch out distributions to the greatest extent allowed by the age 70½ minimum distribution rules. However, there are also significant disadvantages, which are often not fully understood by the participant. First, the participant is now responsible for the successful long-term investment of the funds, generally with no review of available options by a fiduciary. Second, the participant must avoid engaging in any prohibited transaction, as that would trigger immediate taxation of the entire account. I.R.C. § 408(e)(2). Figuring out how the prohibited transaction rules apply to IRAs is fiendishly difficult, and many IRA owners succumb to the siren calls of exotic investment vehicles (bull semen, anyone?). Third, the individual no longer has the benefit of the ERISA fiduciary responsibility rules, as many victims of Ponzi schemes discovered to their chagrin. Most cases have held that the duties of an IRA custodian are limited to those it accepted in its contract with the IRA owner, a contract almost always drafted by the custodian. Attempts by the DOL and the SEC to extend fiduciary rules to IRAs and broker-dealers are highly controversial and appear to be bogged down for the time being. Fourth, employer plans often offer lower fees, typically provide more transparent fee disclosures, and give better access to advice.

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Suggestions for Improvement

A March 2013 General Accountability Office report (GAO 13-30, *401(k) Plans—Labor and IRS Could Improve the Rollover Process for Participants*, http://www.gao.gov/assets/660/652881.pdf) found that rollover processes are inefficient, that IRAs are heavily marketed, and that participants are often given incomplete, misleading, or false information about IRA rollovers. In some cases, the advice was given by a party that had a direct financial interest in steering the participant to a particular IRA provider. The report recommended action by DOL and the Service, including (1) standard guidance for participants about distribution options and (2) guidance for plans about accepting rollovers that are later found not to be qualified. In a letter to the GAO, Assistant Secretary of Labor Phyllis Borzi said that, "We believe our work regarding the definition of fiduciary is key to addressing conflicted investment advice and related problems your report identifies." *See* Hazel Bradford, *401(k) rollover study triggers call for action*, PENSIONS & INVESTMENTS, Apr. 15, 2013, http://www.pionline.com/article/20130415/PRINT/304159962/401k-rollover-study-triggers-call-for-action.

The Center for Retirement Research at Boston College issued a report on this topic in February 2013. Alicia H. Munnell, Anthony Webb & Francis M. Vitagliano, *Will Regulations to Reduce IRA Fees Work?*, http://crr.bc.edu/briefs/will-regulations-to-reduce-ira-fees-work/. Its recommendations included:

> **Making all rollover transactions subject to ERISA:** "Such a change would mean that an adviser could recommend a rollover only when it was solely in the client's interests, as the adviser would be subject to the higher standard required of 401(k) fiduciaries."
>
> **Extending ERISA protections to all rollover IRAs:** "The rationale is that rollover money has been accumulated in the employer plan arena, which is protected by ERISA's fiduciary standards and fee disclosure, and that the concern for protecting these funds is not lessened by their movement into another form of account."
>
> **Controlling Fees**: "options include: establishing benchmarks for 401(k) fees; requiring reporting and benchmarks for IRA fees; requiring 401(k) plans to offer index funds; and eliminating high-cost, actively-managed funds."

The GAO report also suggests that plan fiduciaries may have duties relating to rollovers, particularly where the rollover advice comes from a provider of services to the ERISA plan, such as a record keeper. Plan participants are likely to assume that the advisor has been endorsed by the plan fiduciaries. In the absence of clear guidance, it may be prudent for plan fiduciaries to monitor the services and advice provided to participants in connection with plan distributions.

The Financial Industry Regulatory Authority (FINRA), which regulates broker-dealers, recently issued an investor alert, *The IRA Rollover: 10 Tips to Making a Sound Decision*, http://www.finra.org/Investors/ProtectYourself/InvestorAlerts/RetirementAccounts/P436001. In December 2013, FINRA issued Regulatory Notice 13-45, *Rollovers to Individual Retirement Accounts*, which notes that a recommendation to roll over plan assets to an IRA typically involves securities recommendations subject to FINRA rules regarding suitability, and that related marketing must be "fair, balanced and not misleading." https://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p418695.pdf. FINRA released its 2014 regulatory and examination priorities on January 2, 2014, http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p419710.pdf, and the SEC released its examination priorities on January 9, 2014, http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2014.pdf. Both sets of priorities include practices related to recommendations to roll over assets from an employer-sponsored plan to an IRA.

In its examination priorities, FINRA stated that it "shares the GAO's concerns that investors may be misled about the benefits of rolling over assets . . . to an IRA," and that it will evaluate securities recommendations to determine whether they comply with FINRA's suitability standards. The SEC's examination priorities indicate that it will focus on the practices of broker-dealers, as well as investment advisers, with respect to IRA rollovers. *See generally* John V. Ayanian, Lindsay B. Jackson, Daniel R. Kleinman & Michael B. Richman, *FINRA and SEC to Focus on IRA Rollover Practices in 2014*, Feb. 6, 2014, http://www.morganlewis.com/pubs/EB_IM_LF_FINRAandSECFocusOnIRARolloverPractices_06feb14?source=homepg.

Conclusion

What conclusions should we draw? First, a decision to make a rollover IRA should not be made lightly, wantonly or unadvisedly: the decision has very important ramifications for the individual's future financial security. Even a modest rollover by a young individual may feature largely when he or she comes to retire. Second, plan fiduciaries should consider taking steps to explain better the options available to a participant taking a distribution and to monitor the types and sources of advice he or she receives in connection with the distribution. Such precautions may help the participant make a better decision and may also protect the fiduciary against claims that it failed to satisfy its responsibilities under ERISA. ■

POINTS TO REMEMBER

Apply the Rule As Written: When Does a Section 83 Transfer of a Beneficial Interest in an Investment Partnership Profits Interest Occur?

By Timothy J. Riffle and Michala Irons*

For more than 20 years, the Service has been flummoxed over the appropriate treatment of a transfer of a partnership profits interest in exchange for services, and the question has become a subject for proposed legislation and even a presidential election campaign issue. The Obama administration continues to press for legislative changes. *See* Department of the Treasury, *General Explanation of the Administration's Fiscal Year 2014 Revenue Proposals* 159 (Apr. 2013), *available at* http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2014.pdf. But why, when the solution to the riddle lies within the existing language of Regulation section 1.83-3?

In this article, we submit that the Service has stumbled in the application of the central question of *when* the "transfer" occurs, and that a straightforward application of the "transfer" principles set forth in Regulation section 1.83-3(a) would result in the proper tax treatment of the transferee of a profits interest.

Treasury Regulation Section 1.83-3(a)

Regulation section 1.83-3(a) is a curious provision, which begins with a general rule providing that "a transfer of property occurs when a person acquires a beneficial ownership interest" in the property, but then continues with a series of principles describing circumstances where such a transfer has *not*, at least yet, occurred. The first such principle, in Regulation section 1.83-3(a)(2), is that the grant of an option to purchase property does not constitute a transfer of property. Similarly, Regulation section 1.83-3(a)(4) provides that "[a]n indication that no transfer has occurred is the extent to which the conditions relating to a transfer are similar to an option." Finally, Regulation section 1.83-3(a)(6) provides that "[a]n indication that no transfer has occurred is the extent to which the transferee does not incur the risk of a beneficial owner that the value of the property at the time of transfer will decline substantially."

Regulation section 1.83-3(a)(7) Example (2) illustrates the "similarity to an option" and "risk of loss" principles. In this example, E (presumably, an employee) acquires shares of stock in W (presumably, his employer) in exchange for a nonrecourse note, secured solely by the acquired shares. The face amount of the note equals the fair market value of the acquired stock. No payments, other than interest, are due on the note until a year subsequent to the year of the acquisition. The example finds that because E has no personal liability on the note, and has made no payments toward the face amount, E bears no risk that the stock will decline in value. The example concludes that no "transfer" occurred on the date of the purchase, but that E, instead, was granted on that date an *option* to purchase the shares.

Applying the Regulation to a Partnership Profits Interest

A typical profits interest in an investment partnership entitles the holder to share in distributions only after the cash investors have received both the return of their initial invested capital and an annual compounded "hurdle" rate of return on the capital invested. Until distributions have been made to investors satisfying both the return of the invested capital and hurdle rate of return, the holder of the profits interest does not share in distributions (a critical element, in our view, of holding "beneficial ownership"). Likewise, the holder of the profits interest, having made no cash investment, bears no risk that the investment property purchased with the invested capital will decline in value before the hurdle rate and original investment have been paid to the cash investors, the other critical determinant as to whether beneficial ownership of the property has been transferred from the investors to the profits interest holder.

Therefore, we submit that the proper application of the transfer definition of Regulation section 1.83-3(a) would result in the transfer of the profits interest to be deemed to occur not when the rights of the profits interest holder are created in the partnership agreement (at the formation of the partnership), but instead at the time when a share of any subsequent distributions would

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become payable to the holder of the profits interest (or, if later, at the time that any applicable risk of forfeiture lapses in accordance with the general rules of section 83). The example below illustrates how the proposed "new reading" of the section 83 definition of "transfer" would work in practice.

Assume investors acquire interests in an investment partnership, paying a total of $20 million, which the partnership invests in two $10 million investments. Under the terms of the partnership agreement, they are entitled to 100% of the distributions until they have received back their initial invested capital. (The annual, compounded hurdle rate of return is treated as 0% in this example for simplicity.) Thereafter, the investors will receive 80% of distributions, while the manager will receive 20% (the 20% profits interest). At the end of year two, the partnership sells one of the two investments for $20 million and distributes the proceeds to the investors, satisfying their right to the return of their original investment. At the time of this sale, the second investment also has a fair market value of $20 million.

Using traditional profits interest analysis, most would conclude that the manager, as the holder of the profits interest, would be allocated $2 million of long-term capital gain from the sale of the first investment (20% of the $10 million of gain), and an additional $2 million long-term capital gain if the second investment were thereafter also sold for $20 million. We think that is wrong: applying the definition of "transfer," as it seems to have been intended to apply, the critical time is upon the sale of the first investment and distribution of the proceeds to the cash investors in full satisfaction of their exclusive distribution rights. At that time, the manager would be deemed to have received a compensatory transfer of a 20% *capital* interest in a partnership holding only the second investment, then having a value of $20 million. The result would be $4 million of ordinary compensation income, realized *at the end of year two*, if the interest is then vested or, if not, a section 83(b) election is then made. (The compensation income could be different if the interest is not then vested and no section 83(b) election is made—in that case, the compensation determination would be made at the time of the subsequent vesting.)

In essence, we are arguing that a "grant of a profits interest," like the non-recourse purchase example, is the economic equivalent of a grant, by the investors, of a right to acquire a percentage interest in the partnership for a strike price of $0, deemed exercisable, and exercised, immediately after the return to the investors of their hurdle return plus their initial investment.

And this seems like the right answer: the compensation element should not be measured prior to the time the manager's beneficial rights as a partner begin, which can occur only after the cash investors' exclusive rights to receive partnership distributions end. Only thereafter will the manager be entitled to a share of partnership distributions and bear a share of the risk of loss in value of partnership property (*e.g.*, if the second investment subsequently declined in value from $20 million to $16 million, the manager's 20% interest would decline in value from $4 million to $3.2 million).

In essence, we are arguing that a "grant of a profits interest," like the non-recourse purchase example, is the economic equivalent of a grant, by the investors, of a right to acquire a percentage interest in the partnership for a strike price of $0, deemed exercisable, and exercised, immediately after the return to the investors of their hurdle return plus their initial investment. The grant of such an option would seldom, if ever, be currently taxable to the holder under the rules of Regulation section 1.83-7, but the deemed exercise of such right would be governed by section 83. Importantly, because a transfer of an option is not an event giving rise to a section 83(b) election opportunity, the current practice of assigning a zero value to the rights embodied in a profits interest would be eliminated. Rev. Proc. 93-27, 1993-2 C.B. 343; Rev. Proc. 2001-43, 2001-2 C.B.191.

Some, we suppose, would argue that the proposed interpretation does not go far enough to cure the world of the plague of the profits interest, since it would not deprive the manager of the benefits of long-term capital gain treatment on subsequent appreciation on the second asset. Others, we are equally certain, will cry foul for suggesting a fresh look be taken at what has become established practice. And there is no doubt that fair market valuation of the investments at the time of deemed exercise would be challenging, but no more so than valuation problems encountered on a daily basis by all taxpayers, tax administrators, and tax advisors. But embedding option-equivalent rights in a document entitled "Partnership Agreement," as opposed to one called "Option Agreement," should not change the tax treatment of the arrangement. ■

PRO BONO MATTERS

The 2014 Janet R. Spragens Pro Bono Award Recipient: Hon. Peter J. Panuthos

By Armando Gomez*

In 2002, the Section of Taxation established an award to recognize one or more individuals or law firms for outstanding and sustained achievements in pro bono activities in the tax law. In 2007, the award was renamed in honor of the late Janet Spragens, who received the award in 2006 in recognition of her dedication to the development of low-income taxpayer clinics throughout the United States. Over the past 12 years, the Tax Section has honored 14 individuals and one law firm. The Tax Section has a longstanding commitment to pro bono work, and the Spragens Award is given to those who truly go above and beyond in this area.

On January 25, 2014, the 2014 Janet R. Spragens Pro Bono Award was bestowed on the Honorable Peter J. Panuthos, the Chief Special Trial Judge for the United States Tax Court.

Judge Panuthos began his career as a trial attorney in the Boston office of the IRS Office of Chief Counsel in 1970, and since 1983 has served as a special trial judge at the Tax Court. He has been the Chief Special Trial Judge since 1992. Those who have seen him on the bench know that he strives day after day to ensure that every taxpayer who appears before him has a fair and just experience.

For many years now, Judge Panuthos has been the driving force behind the establishment and growth of the calendar call program in which members of the Tax Section, including a number of prior Spragens Award recipients, attend Tax Court calendar calls to provide pro bono assistance to low-income taxpayers who do not have legal representation. Over the past few years, the Tax Section has significantly ramped up the calendar call program, and we now have coverage for every calendar call scheduled throughout the country each year. The success of the calendar call program is the result of hard work and dedication of a number of our members, low-income taxpayer clinics, local bar associations, our friends in the Office of Chief Counsel, and the Tax Court. Over the years, Judge Panuthos, together with a long line of Tax Court Chief Judges, has worked tirelessly to implement and improve the calendar call program and to streamline Tax Court procedures to increase access to the court system for pro se petitioners. And while many of our members volunteer to serve at the calendar calls, this program would not be the success that it is today but for the efforts of Judge Panuthos and the other judges at the Tax Court.

Judge Panuthos has also been an active contributor to the Tax Section's Pro Bono and Tax Clinics Committee, providing updates to the members and a receptive ear for practitioners to bring their concerns about challenges facing low-income taxpayers. His dedication to pro bono has inspired countless practitioners to participate in pro bono nationwide.

Judge Peter Panuthos (L) and Section Chair Michael Hirschfeld (R)

In recognition of his dedication to providing access to justice for all taxpayers appearing before the Tax Court, the Tax Section selected Judge Panuthos to receive the 2014 Janet R. Spragens Pro Bono Award. ■

In Remembrance

As the Section celebrates the accomplishments of this year's Janet R. Spragens Pro Bono Award recipient, Judge Peter Panuthos, it also mourns the loss of Mark Moreau, co-recipient of the Section's 2013 award. Mark passed away on February 25, 2014, after a courageous battle with kidney cancer. To read more about Mark's work and legacy, visit the Section's pro bono website at: http://www.americanbar.org/groups/taxation/tax_pro_bono.html.

* Skadden, Arps, Slate, Meagher & Flom LLP, Washington, DC.

PRO BONO MATTERS

The Face of Poverty Is a Working Mother's Face: Interview with Public Service Fellow Susanna Birdsong

By Francine J. Lipman*

"More than 100 million Americans either live near the brink of poverty or churn in and out of it, and nearly 70 percent of these Americans are women and children."—Maria Shriver (2013)

On January 8, 1964, in his first State of the Union Address, President Lyndon Baines Johnson declared war on poverty, naming Sargent Shriver, Maria's father, as his top general and architect. While the war on poverty was not won by the time Shriver stepped down or even by the time he passed away in 2011, many hard-fought, life-changing battles were won. The poverty rate declined by 43% between 1964 and 1973 as a result of Shriver's visionary, innovative, and highly successful new programs, including VISTA, Head Start, Upward Bound, Adult Education Programs, Job Core, Food Stamps, Child Nutrition Lunch and Breakfast Programs, Migrant Assistance, Community Action Programs, Small Business Loans, Minimum Wage and Social Security Benefits expansions, College Work-Study, and Legal Services.

Nevertheless, as a result of the Great Recession and exploding income, wealth and education gaps resulting from wage stagnation, increasing concentration of capital, and reduced funding of countless government social programs, poverty rates have once again soared. But most dramatically, the middle class is merging into the growing ranks of fully employed working poor Americans. Among those that are suffering this slide today are 70 million women and children who are suffering in or at the precipice of poverty.

The face of poverty is a mother's face. Neither the path nor the math is challenging to understand. Forty percent of all households with children include mothers who are the sole or primary source of income, and nearly two-thirds of American minimum-wage workers are women. Seventy percent of minimum wage workers do not receive any paid sick days. As a result, homelessness has risen in most major cities, as minimum wage workers can no longer afford rising rents. Elementary school teachers and social workers are increasingly challenged by children trying to learn while enduring the physiological, psychological, and emotional stresses of poverty.

> "Mommy, me, and sissy slept in our car. We had to because we have no home. We went to the IHOP and got one pancake and shared it. That was our breakfast."
>
> —*Jasmine, age 7*

Fortunately, there are heroes among us who are continuing to fight everyday battles for the millions of families' like Jasmine's. One of these amazing young lawyers is Susanna Birdsong, one of our 2013-2015 Tax Fellows, who is working at the National Women's Law Center in Washington, D.C. The National Women's Law Center works to enact and enforce laws and public policies that benefit women and their families. The Center's lawyers and staff work on issues that cut to the core of women's lives in education, employment, family, economic security, and health and reproductive rights—with special attention focused on the needs of low-income women and their families. At the Center, Susanna is working on tax policy issues. These include education and outreach regarding federal and state family-focused tax credits, including the new Affordable Care Act Premium Tax Credit (Premium Tax Credit).

In Susanna's own words …

NQ Can you describe your background and your work experience in and outside of tax?

SB I grew up in a small town in western North Carolina—a town that has been hit hard in the last couple of decades by a stagnant economy, particularly due to the decline of American textile and furniture manufacturing. I know far too many families who have lost jobs, lost houses, and lost hope as a result. This personal experience resulted in a desire to find work that increased

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Susanna Birdsong

economic security for low-income families. I became a social worker, and had many opportunities to witness the important role that tax policy played for low-income working families. I worked with numerous clients who were able to use the Earned Income Tax Credit (EITC) to access housing, fix a car so that they could get to work, or further their education to increase their income and long-term economic security. I also worked for policy and advocacy organizations that aimed to decrease long-term homelessness by increasing affordable housing stock and the availability of social services. When I moved to Washington, D.C., for law school, policy internships increased my awareness of the historical role that tax policy has played in increasing economic security and decreasing income inequality for low-income families—as well as its potential to do even more.

NQ What made you first apply for the Fellowship?

SB In the summer before my last year of law school, I began searching for fellowship opportunities that would allow me to work for a nonprofit and focus on economic security policy. Because most nonprofits aren't able to hire new full-time staff without new grant funding, I knew that I would have to find funding for my position. I was interning at the National Women's Law Center at the time, and my supervisor told me about the Fellowship. I read the description and knew immediately that I wanted to apply.

NQ What made you choose the National Women's Law Center as your host organization?

SB Over the years, I became increasingly interested in women's economic security, specifically because I came to know that women are more likely to be poor, are disproportionately represented among minimum wage earners, and that over half of all children currently living in poverty live in households headed by women. The National Women's Law Center, founded in 1972, works to expand, protect, and promote opportunity for women and girls. The Center has long been a leader in promoting economic justice through tax policies that benefit the poor, and I knew that I could benefit greatly from the staff's institutional knowledge and work history in that area. I interned at the Center, working specifically on tax and budget issues, in the summer before my last year of law school. I came away from that experience wanting more—I really wanted to continue working on tax policy issues, and to continue learning from the Center's dedicated staff. I knew that choosing the Center as my host organization would allow for meaningful work, a great learning experience, and the opportunity to work on a couple of unique and timely projects—including implementation of the Premium Tax Credit, and state efforts to improve access to high quality, affordable child care through the provision of tax credits.

NQ Can you give examples of the types of tax issues you deal with in providing tax assistance to low-income working families?

SB While I don't work directly with clients, I do a lot of work with state advocates and others who do interact with clients on a daily basis. My work on their behalf includes providing information about family tax credits, including the EITC, the Child Tax Credit, the Child and Dependent Care Tax Credit, and the Premium Tax Credit to help people afford health insurance. I deliver presentations on these tax credits for specific populations, including advocates who work with domestic violence survivors and those working to unionize child-care workers. I also work with state advocates to develop legislation that will improve state level tax credits for working families—including, most recently, working on state legislation that would make a state's Child and Dependent Care tax credit refundable, and therefore more responsive to the needs of low-income families.

Tax credits can offer a financial boost to a survivor and her family, and can help to ease the financial burdens that often accompany leaving a violent home.

NQ What has been your most rewarding experience as a fellow?

SB It has probably been the work that I've done with domestic violence advocates. The economic barriers to permanently escaping an abusive relationship are huge, and women often stay with abusive partners because they don't have the financial resources to leave. Tax credits can offer a financial boost to a survivor and her family, and can help to ease the financial burdens that often accompany leaving a violent home. I have had the opportunity to work with advocates in several states so far, and knowing that the information I provide will make a difference for

women and their families in these places means a great deal to me. I am currently working to expand the Law Center's tax credits outreach to domestic violence advocates in more states, so that by next tax season we can reach an even broader audience.

NQ What has been your biggest challenge in the position?

SB My biggest challenge so far has been trying to get information out about the new Premium Tax Credit, in a way that makes sense and isn't overwhelming, to people who potentially qualify. Recent polling demonstrates that many people are still unaware of the financial assistance that is available to help them pay for health insurance—so clearly the need for information is great. But the newness of the tax credit, combined with the somewhat complex nature of the transaction, make it challenging to get the information out effectively. This is a very rewarding challenge though, and I have made progress. Most recently, I worked with someone on the Law Center's health team to pull together some "mini-webinars"—5-minute or less discrete presentations on specific Affordable Care Act and Premium Tax Credit questions. Our target audience is child-care providers who do not have the time to attend a webinar during regular business hours, but who would benefit from the information if they could access it on their own time. These mini-webinars are now housed on our website, and we're starting to get the word out about them in child-care communities. The challenge remains, but we're making headway.

NQ After the fellowship, do you plan on staying at the National Women's Law Center, and if not, will the position you have created exist after you leave?

SB Although I would love to stay on at the National Women's Law Center and continue to advocate for women's economic security at the federal level, North Carolina is calling me home. At the end of my fellowship, I will most likely leave D.C. for Raleigh. I am extremely hopeful that I will be able to continue advocating for tax policy that responds to the needs and realities of low-income families at the state level. I am hopeful that my position at the Center will remain, but whether that is possible will depend on funding availability.

Susanna Birdsong is one of our amazing young tax lawyers honoring the life and legacy of Christine A. Brunswick as a 2013-15 Christine A. Brunswick Public Service Tax Fellow. Susanna joins a growing number of outstanding Fellows. ■

Since 2009, the Section has funded two Public Service fellows each year, including these amazing young lawyers (Fellowship details are available at http://www.americanbar.org/groups/taxation/awards/psfellowship.html):

2009–2011

Laura Newland (AARP's Legal Counsel for the Elderly, Washington, DC; presently the Section's Pro Bono Tax Counsel)

Vijay Raghavan (Prairie State Legal Services, Rockford, IL)

2010–2012

Douglas Smith (Community Action Program of Lancaster County, PA)

Katie Tolliver Jones (Legal Aid Society of Middle Tennessee and the Cumberlands, Nashville, TN)

2011–2013

Sean Norton (Pine Tree Legal Assistance, Inc., Portland, ME)

Anna Tavis (South Brooklyn Legal Services/Immigrant Workers' Tax Advocacy Project, New York, NY)

2012–2014

Ana Cecilia Lopez (University of Washington, Low-Income Taxpayer Clinic, Pasco, WA)

Jane Zhao (Center for Economic Progress, Chicago, IL)

2013–2015

Susanna Birdsong (National Women's Law Center, Washington, DC)

Susanna Ratner (SeniorLAW Center, Philadelphia, PA)

LAW STUDENT TAX CHALLENGE

The Problem

Editor's Note: For the past three years, *NewsQuarterly* has excerpted the bench briefs after the Law Student Tax Challenge ended. This year, we are taking a different approach. In this issue, we present excerpts from the J.D. problem and reflections on their experience by the faculty coach and team members from the University of Pittsburgh School of Law.

—Gail Levin Richmond, Davie, FL

J.D. Problem Excerpt

Brainy Barry, a calendar-year cash-method taxpayer heads a team of approximately 75 engineers as the managing director of Honeycomb's aeronautical engineering group. He receives a salary of $175,000 per year.

On June 20, 2012, Brainy and his team completed the final touches on the Series 4000X jet engine, a project two and a half years in the making. This engine marked a dramatic improvement in power and efficiency over the Series 3000X. Over the next six months, sales more than tripled Honeycomb's projections.

On December 20, 2012, at Honeycomb's annual holiday party, Honeycomb awarded Brainy Barry the "Honeycomb Engineer of the Year Award" for his stellar performance and leadership. Honeycomb's CEO personally presented him with a plaque and a giant check measuring over 4 feet in length for $100,000. Honeycomb's controller approached Brainy Barry and told him in private that the giant check was just for show; a normal-sized check for $100,000 was already in the mail. Brainy Barry brought the giant check home, had it framed, and hung it on the wall of his living room. Due to the large volume of mail around the holiday season, Brainy Barry did not receive the normal-sized check until January 3, 2013. Except for its size, it was identical in all respects to the giant check. He deposited that check into his bank account at Phoenix Star Bank on the same day.

On February 1, 2013, Brainy Barry purchased $50,000 of Treasury Bills and donated $30,000 to the Phoenix Homeless Shelter, a 501(c)(3) charity, using funds from his $100,000 award. He decided to spend the remaining $20,000 on a celebratory party (which included hotel rooms, gourmet foods, and fine wine) for the engineers in his aeronautical engineering group.

The celebratory party took place on February 5, 2013, at the Phoenix Slots casino and resort. Brainy Barry had never gambled in his life. Within a matter of minutes, he lost the entire $1,000 that he had in his wallet and politely excused himself from the blackjack table.

As Brainy Barry stumbled toward the door, his colleague Lucky Lou suggested, "Why don't you give a shot at the Giant Jackpot slot machine? It has a $5 million jackpot!" Brainy Barry responded that he had already lost $1,000 at the blackjack tables and did not want to lose another penny.

Lucky Lou handed Brainy Barry a $20 bill and said, "Tell you what, this one is on me. I have a good feeling about it." Brainy Barry inserted the $20 bill into the Giant Jackpot slot machine, pulled the handle and hit three 7's. The manager of the Phoenix Slots directed Brainy Barry to the fine print on the Giant Jackpot slot machine, which stated that the $5 million jackpot was payable over 20 years in equal annual installments of $250,000 on January 1 of each year, with the first payment starting on January 1, 2014. The manager presented Brainy Barry with a promissory note for $5 million.

Brainy Barry returned to work at Honeycomb the following day. He told Lucky Lou that he wanted to split the $5 million winnings with Lucky Lou. Lucky Lou asked Brainy Barry how they were going to split a $5 million promissory note. Brainy Barry responded that he would give it some thought.

On March 6, 2013, while watching TV, Brainy Barry saw an advertisement for B.B. Billsworth offering cash on the spot for annuities and structured settlements. Brainy Barry called B.B. Billsworth the following day and was offered $2.4 million in exchange for his promissory note. Brainy Barry agreed on the condition that B.B. Billsworth mailed a check to Brainy Barry for $1.2 million and a separate check to Lucky Lou for $1.2 million. Brainy Barry believed that he would not have to report the $1.2 million check payable to Lucky Lou on his income tax return. On March 12, 2013, Brainy Barry deposited his check for $1.2 million in his bank account at Phoenix Star Bank. On March 14, 2013, Lucky Lou deposited his check for $1.2 million in his bank account at Arizona Sun Bank.

On June 1, 2013, Brainy Barry saw an advertisement on TV for the BattleBots Championship, a competition in Las Vegas to build a remote-controlled armored robot. Brainy Barry recognized that competing in the BattleBots Championship was an extremely expensive and time-consuming endeavor, but he was confident that he

would emerge as the winner and take home the $2 million prize.

Brainy Barry produced a handwritten 32-page plan detailing the steps he would take to win the BattleBots Championship. From June 15, 2013, until September 1, 2013, he spent every minute of his free time converting his garage into a workshop. He outfitted his garage with the most advanced machinery at a cost of $500,000. He spent another $200,000 on some of the highest quality materials available for his robot and $20,000 on some miscellaneous supplies. For each purchase, he recorded the date, cost, and a brief description of the item in an Excel spreadsheet on his personal computer. He kept the 32-page handwritten plan and the original receipts for each purchase in a wooden chest in his garage.

From September 1, 2013, until December 1, 2013, Brainy Barry spent approximately 30 hours per week constructing his robot. Brainy Barry paid $10,000 to enter the BattleBots Championship, which took place on December 15, 2013, in Las Vegas. He cruised through the first three rounds. Unfortunately, in the final round, his robot fizzled due to a short circuit. He left the BattleBots Championship with a $5,000 consolation prize.

Devastated by the loss, Brainy Barry decided that he had no further desire to compete in BattleBots. He sold the advanced machinery in his garage to Slick Sue, a fellow competitor at the BattleBots Championship. Slick Sue agreed to pay $350,000, which was the fair market value of the advanced machinery at the time. On December 20, 2013, Slick Sue came by Brainy Barry's garage with a rented truck and picked up all of the advanced machinery. She gave him a cashier's check dated the same day drawn on Arizona Sun Bank for $350,000. The cashier's check appeared legitimate on its face, but Slick Sue had forged the check.

On December 23, 2013, Brainy Barry went to Phoenix Star Bank to deposit the check and learned that the check was a forgery. In a fit of rage, Brainy Barry returned home, grabbed a baseball bat, and started smashing the remaining items in his garage. His robot and the wooden chest were smashed to pieces. The 32-page handwritten plan and most of the receipts inside the wooden chest went missing; Brainy Barry thinks he may have accidentally thrown them out when he cleaned up the wreckage. Brainy Barry can locate receipts totaling $100,000 for the advanced machinery and $40,000 for the materials for his robot. He still has the Excel spreadsheet saved on his personal computer.

On December 24, 2013, Brainy Barry contacted Hemlock Holmes, a private investigator. Brainy Barry paid Hemlock Holmes a non-refundable flat fee of $25,000 to locate Slick Sue and recover the advanced machinery. The fee included the cost of transporting any recovered machinery back to Phoenix.

On December 28, 2013, Hemlock Holmes found 3 pieces of the advanced machinery in an abandoned warehouse in New Mexico. On December 30, 2013, Hemlock Holmes shipped those pieces to Brainy Barry's home in Phoenix. They are scheduled to arrive on January 2, 2014. Brainy Barry originally purchased those pieces for $50,000, but their fair market value has since declined to $20,000. As of December 31, 2013, Hemlock Holmes has several leads on Slick Sue's whereabouts and the location of the remaining advanced machinery, but he has not recovered any additional pieces.

Brainy Barry has come to us for advice on the tax consequences of the events that transpired in 2013. He wants us to minimize his tax liability, but he has been audited three times in the past decade, and he does not want to take any overly aggressive reporting positions on his tax return. ■

Brainy Barry produced a handwritten 32-page plan detailing the steps he would take to win the BattleBots Championship. From June 15, 2013, until September 1, 2013, he spent every minute of his free time converting his garage into a workshop.

LAW STUDENT TAX CHALLENGE

Reflections on One School's Experience

By Anthony C. Infanti*

Over the years, I have coached several teams that have participated in the Tax Section's Law Student Tax Challenge. This year was, however, the first time that I had a team make it to the semi-finals—and the first time that a team from the University of Pittsburgh won Best Written Submission. I could not be prouder of my students, Yelena Cheskidova and Eduardo Santaolalla.

I have always found the Law Student Tax Challenge to be a rewarding experience for me and for my students. It is heartening to see students so enthused about tax that they wish to take on an extra "challenge" on top of their regular course work—and for no reason other than their passion for tax law. As a teacher, watching your students put to use the knowledge and skills that they have learned in class is just about the most rewarding experience that you can have.

But it was even more inspiring to watch how hard Yelena and Eduardo worked to prepare for the oral argument portion of the competition. That is where I truly saw them come together and work as a team. Over a very short time, they worked together to improve their arguments and presentation skills through a series of practice sessions. Their dedication and hard work—and the resulting quick and marked improvement in their performance—amazed us all.

The Law Student Tax Challenge obviously provides an opportunity for tax students to hone their writing skills and, for those lucky enough to make it to the semi-finals, their oral skills as they are asked to explain their work product to a panel of judges. But the Law Student Tax Challenge also teaches law students a skill more rarely taught in law schools, namely, how to work with others cooperatively on a shared task while navigating differences of opinion. It is not easy to teach teamwork—or, for that matter, to get law students to appreciate its importance—but, as Yelena and Eduardo's narrative below illustrates, the Law Student Tax Challenge provides an excellent venue for accomplishing both of these tasks at the same time.

In Yelena's and Eduardo's words ...

When we first learned about the Tax Section's Law Student Tax Challenge, we were intrigued by the unique opportunity to participate in a tax-themed activity. We are both interested in pursuing careers in taxation and thought it would be good experience. Starting out, we never expected to make it to the semi-finals or to win the Best Written Submission Award. Looking back on it, this was one of the most rewarding experiences of our law school careers. It not only challenged our tax knowledge but allowed us to grow as individuals and come together as a team even though our values regarding risk aversion are very different.

Throughout the fall semester, we struggled to come together as a team. Although we are close friends, we found ourselves on opposite ends of the risk aversion spectrum. Very often, we found ourselves viewing the facts very differently. There was one sticky point in particular. To this day, we cannot agree whether the facts support our hypothetical client declaring only $1.2 million of income on his tax return. As we continued to research this issue, supporting the more aggressive position became a fun game of creative lawyering. After weeks of conflict, we finally agreed to present both views to our hypothetical client as alternatives.

As the deadline for submission approached, our team dynamic became even more complicated. We struggled to navigate busy schedules and ended up splitting most of the work to finish separately. We took turns editing the entire memo and client letter a few times, making it a coherent whole reflecting both of our voices. Even at this point, every time one of us edited the memo, the $1.2 million issue would change to be more or less risk averse. Through this back and forth, our argument really evolved.

We were incredibly surprised and excited to learn that we were selected as semi-finalists because we struggled to pull everything together on time. The news infused us with a new energy to work even harder. As soon as we got back to school, we started preparations for our oral defense, doing additional research and practicing with different panels of professors and tax professionals. Each practice session brought new trials forcing us to look critically at our arguments, particularly on the issue we disagreed on. We had to become a team and back a position that made one of us uncomfortable. It took countless hours of research and one-on-one argument to finally come together on the final argument we could assertively present to the panel at the Midyear Meeting of the ABA Section of Taxation.

The Meeting was an amazing experience. It was also intimidating. When we first got to Phoenix, we talked about feeling that we did not belong

* Senior Associate Dean for Academic Affairs and Professor of Law, University of Pittsburgh School of Law, Pittsburgh, PA. This Article includes contributions by Yelena Cheskidova and Eduardo Santaolalla.

there because everyone there was so smart. However, everyone with the Young Lawyers Forum was incredibly welcoming, constantly praising the semi-finalists and finalists for making it so far. At the Orientation and the First-Time Attendees Orientation Dinner, the members of the Young Lawyers Forum encouraged everyone to sit in on committee meetings and to network. The Tax Section's commitment to young lawyers inspired a new confidence in us, which allowed us to relax and have fun with the oral arguments.

We were really surprised and exuberant to learn that we won the Best Written Submission Award. We never expected to win because we felt so rushed when we turned in our submission. The experience was inspiring, bringing out a new confidence and motivation to learn as much as we can. Our amazing mentors have given us the tools to be great; we just have to have fun doing what we love. ■

Law Student Tax Challenge Winners

The Tax Section congratulates the winners of its 13th Annual Law Student Tax Challenge. An alternative to traditional moot court competitions, the Law Student Tax Challenge asks two-person teams of students to solve a cutting edge and complex business problem that might arise in everyday tax practice. Within the J.D. and LL.M. divisions this year, 88 teams from 46 schools entered the written competition. Ten semi-finalists and finalists were selected to present oral arguments before a panel of distinguished tax lawyers attending the Section's 2014 Midyear Meeting in Phoenix, and the winners were honored at a reception during the meeting. Following is the complete winning roster. For more information, visit the Section website at www.americanbar.org/tax.

J.D. Division

1st Place:
Morgan L. Klinzing and **Benjamin Newell**
University of Georgia Law

2nd Place:
Sam Gonas and **Alexander Martini**
Florida International University College of Law

3rd Place:
Steven Iverson and **Kerrilyn Russ**
Washburn University School of Law

Best Written Submission:
Yelena Cheskidova and **Eduardo Santaolalla**
University of Pittsburgh School of Law

Semi-Finalists:
Maxim Tuminsky and **Aaron Wong**
Loyola Law School, Los Angeles

Luke Stankiewicz and **William Fuchsman**
Quinnipiac University School of Law

LL.M. Division

1st Place:
Julie Ickes and **Sara Heuer**
University of Florida College of Law

2nd Place:
Hanna Lee and **Thai Duong Nguyen**
Northwestern University School of Law

Best Written Submission:
Justin Du Mouchel and **Alexander Dobyan**
Northwestern University School of Law

Finalists:
Patrick Roach and **Philip Farwell**
Georgetown University Law Center

Justin Du Mouchel and **Alexander Dobyan**
Northwestern University School of Law

REPORT OF THE NOMINATING COMMITTEE

2014–2015 Nominees

In accordance with Sections 4.2, 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 2014 Annual Meeting in August. Under the Section Bylaws, the current Chair-Elect, Armando Gomez of Washington, D.C., becomes Chair of the Section at the close of the ABA Annual Meeting.

Chair-Elect:	**George C. Howell, III**, Richmond, VA
Vice Chairs: *(For a one-year term)*	**Leslie E. Grodd**, Westport, CT (Administration) **Thomas J. Callahan**, Cleveland, OH (Committee Operations) **Joan C. Arnold**, Philadelphia, PA (CLE) **Peter H. Blessing**, New York, NY (Government Relations) **C. Wells Hall, III**, Charlotte, NC (Pro Bono and Outreach) **Alice G. Abreu**, Philadelphia, PA (Publications)
Secretary: *(For a one-year term)*	**Thomas D. Greenaway**, Boston, MA
Assistant Secretary: *(For a one-year term)*	**Catherine B. Engell**, New York, NY
Council Directors: *(For a three-year term)*	**Alan I. Appel**, New York, NY **Larry A. Campagna**, Houston, TX **T. Keith Fogg**, Villanova, PA **Kurt L.P. Lawson**, Washington, DC **Cary D. Pugh**, Washington, DC

FELLOWSHIP ANNOUNCEMENTS

2014–2015 Nolan Fellows

The 2014 John S. Nolan Fellows were announced during the Section's Midyear Meeting in Phoenix this past January. Named for the late John Nolan, the Nolan Fellows are young tax lawyers who are actively involved in the Section and have demonstrated leadership qualities.

This year's Nolan Fellows are:

- **Sean M. Akins**, Latham & Watkins, Washington, DC
- **Puneet Arora**, Towers Watson, Arlington, VA
- **Janine Burman**, KPMG, New York, NY
- **Guinevere Moore**, Holland & Knight, Chicago, IL
- **Anne-Marie Diggle Rábago**, Rábago Business & Tax Law, San Diego, CA
- **Michelle Feit Schwerin**, Capes Sokol Goodman & Sarachan, St. Louis, MO

"These outstanding young tax lawyers have actively distinguished themselves in the Section, and we are proud to honor them as Nolan Fellows," said Michael Hirschfeld, Chair of the Section. Each one-year fellowship includes the waiver of meeting registration fees and assistance with travel to Section Meetings. For more information about the Nolan Fellows program, visit the Section website, www.americanbar.org/groups/taxation/awards/nolans.html. ■

2014–2016 Christine A. Brunswick Public Service Fellows

The Section is pleased to announce the recipients of its 2014-2016 Christine A. Brunswick Public Service Fellowships. The Fellows will be providing services to low-income taxpayers through sponsoring nonprofit organizations for two years.

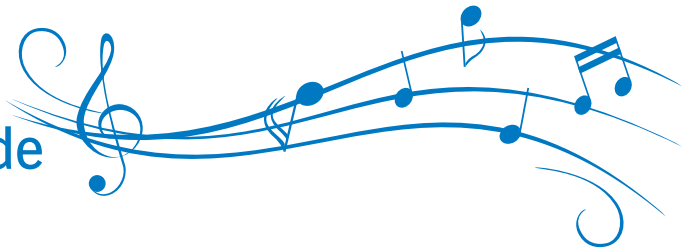
The 2014 Christine A. Brunswick Public Service Fellows are:

- **Patrick Thomas**, a recent graduate of the Indiana University Maurer School of Law, will be working with the Neighborhood Christian Legal Clinic in Indianapolis, IN, to provide direct services to low-income taxpayers, with a focus on expanding outreach efforts to immigrant communities and building partnerships with other organizations working with immigrants.
- **Lany Villalobos**, scheduled to earn her J.D. this year from the Villanova University School of Law, will be working with the Pennsylvania Farmworker Project, a division of Philadelphia Legal Assistance, to expand tax services to Spanish-speaking low-income immigrant farmworkers in rural Pennsylvania.

The Section's Public Service Fellowship program was developed in 2008 to address the need for tax legal assistance and to foster an interest in tax-related public service. In 2013, the program was re-named the Christine A. Brunswick Public Service Fellowship in honor of the late Christine Brunswick, the Section's Executive Director for over 25 years. Christine was a strong proponent of advancing pro bono and public service efforts on behalf of underserved taxpayers and fostering a fair and equitable tax system. Under her leadership, the Tax Section devoted significant resources to further that goal.

The fellowships provide funding for the fellows' salaries and benefits, as well as law school debt assistance, by means of charitable contributions to the sponsoring organizations. All applications are reviewed, and the successful applicants selected, by the Section's Public Service Fellowship Committee. The Section plans to award as many as two fellowships each year. For more information about the program, visit the website at www.americanbar.org/groups/taxation/awards/psfellowship.html. ■

Tax Bites Seasonal Interlude



By Robert S. Steinberg*

It's Beginning to Feel a Lot Like Tax Time

(To the tune of "It's Beginning to Look a Lot Like Christmas," by Meredith Willson)

It's beginning to feel a lot like tax time
April of the year.
You've been scouring your checkbook for
Some charity checks and more,
Taxes on the homestead you love dear.

It's beginning to feel lot like tax time
Must they ruin the spring?
Feel afraid of the debt you'll owe?
Afraid Uncle Sam will know
That you have not reported everything?

Deduct for that family trip, even the wine that you sip,
Claiming everything that you spend or do or use,
Driven miles on the family car, no matter to where or how far.
Self-assessment clouds the mind like booze,
But those who face an audit jam the pews.

It's beginning to feel a lot like tax time.
The moral code eschew.
Who's to prevent you if, you take off for a nifty skiff?
Sailing off into the ocean blue?

It's beginning to feel a lot like tax time.
Bribe your CPA,
Stick a pin in a voodoo doll, take a loan from your uncle Sol.
Then file your tax return and pray.

Watch the Tax Return You File

(To the tune of "What a Diff'rence a Day Made," by Maria Méndez Grever and Stanley Adams)

Watch the tax return you file
Watch what you put inside it
You've earned income, don't hide it
Report every line true
I'm warning you.

Think that big windfall you'll shelter?
That tax law's helter-skelter?
Think again, you will swelter
In the heat of a jam
A tax exam.

Will happen, then you
Will find grief to your menu
Watch the tax return you file
Because, they're watching you.

Taxitis Blues

(To traditional blues riff)

Verses
I've got a bad case of taxitis
My stomach's tied up in a knot
The doctor says it's not colitis
It's a tax ailment that I've got
I haven't filed my tax return
The worry is making my stomach churn.

I could have filed for an extension
But didn't have the bucks to pay
Now to my wife I dare not mention
That I have missed tax filing day
She wouldn't like that sort of news
And aggravate these mean tax blues.

Bridge
Oh Well I've tried psychology
The doctors told me to confess
I've looked into biology
Found my whole system is a mess
The cause, to quote taxology,
"Everyone's scared to death,
Of the IRS."

Verse
I've got a bad case of taxitis
Worse than I've ever had before
It pains me more than tendonitis
Afraid of every knock at my door
Fearing, one could be the tax collector
I can't handle the stress anymore

Refrain
Feel like a criminal caught in the crime
Next year, I swear, I'll file on time.

We're Drinking to a Big Refund

(To the tune of "White Christmas," by Irving Berlin)

We're drinking to a big refund
Just like the ones we had last year
Been through tax instructions
Need large deductions
A tax return to bring good cheer.

We're drinking to a big refund
Just gave our CPAs the gig
Here's to fate and fortune, a swig
And may all our tax refunds be big.

We're drinking to a big refund
To pay off credit cards we owe
After year-long spending
Sales never-ending
We need a miracle to show.

We're drinking to a big refund
One that won't land us in the brig
Uncle Sam don't be Captain Quigg
See that all our tax refunds are big.

Tax Season's Over

(To the tune of "The Party's Over," by Betty Comden, Adolph Green, and Jule Styne, from the Broadway Musical "Bells are Ringing")

Tax Season's over
This time we'll all celebrate
The last extension is done
No reason for one
To be working late.

Now you can sleep in
Wake feeling fine
Not mired deep in
Forms that perplex, every line.

Tax Season's over
Already profits are spent
Pray that your clients begin
Fat checks to send in
From bills you have sent.

With your spouse make up
Soak up some sun
A hobby, take up
Tax Season's over
It's all over
Wasn't it fun?

* Law Offices of Robert S. Steinberg, Palmetto Bay, FL.

GOVERNMENT SUBMISSIONS

Funding for the Internal Revenue Service

INTRODUCTION: For over 25 years, the Section has endeavored on behalf of ABA policy to urge support from the appropriate agencies and Congress for adequate funding of the Internal Revenue Service. As Congress faces increasing budgetary constraints, cutting funding becomes tempting. While the Section appreciates Congress's difficult dilemma, it is imperative the Service be adequately funded to perform its core functions of serving the taxpayers and administering the laws that Congress enacts. Otherwise, honest taxpayers are deprived of timely service, and the Service is constricted in its collection efforts, leading to lost tax revenues. As with all of its government submissions, the Section's letter of February 10, 2014, to the House and Senate Appropriations Subcommittees on Financial Services and General Government regarding Service funding for fiscal year 2015 is available on the website at http://www.americanbar.org/groups/taxation/policy.html. It is reproduced in this issue of the NewsQuarterly as a service to our members." —*Jesse Tsai, Staff Counsel*

Dear Chairmen Udall and Crenshaw, and Ranking Members Johanns and Serrano:

On behalf of the American Bar Association, I respectfully request your assistance in ensuring that the Internal Revenue Service (the "Service") receives adequate funding for fiscal year 2015. The American Bar Association has consistently supported adequate funding for the Service to carry out its missions of taxpayer service and enforcement of federal tax laws. The American Bar Association has nearly 400,000 members, and over 22,000 of such members belong to the Section of Taxation.

We recognize the intense challenges that the Congress faces regarding the federal budget. In light of those challenges, it is essential that the Service be provided the resources it needs to perform its critical functions of providing taxpayer service and collecting taxes properly due. While the Service has made great strides over the past decade in terms of automating systems and reducing certain costs of its operations, we are gravely concerned that the recent trend of funding reductions for the Service is negatively impacting its ability to properly serve taxpayers and enforce the tax laws that Congress enacts.

As you know, the effects of sequestration during fiscal year 2013 were felt throughout government. Furloughs and other resource limitations negatively affected not only Service employees, but also the taxpayers and representatives with whom they interact on a daily basis. Many senior Service personnel are eligible for retirement and are choosing to leave the agency, and funding limits have precluded the Service from filling many vacant positions. Constraints on training and travel are further hampering the development of new leadership. We have seen a marked decline in the Service's ability to provide timely telephone assistance and answer taxpayer correspondence. The Service has acknowledged that it was able to answer only 61% of the calls it received last year, and has set a goal of improving that percentage to 70% this year—which still would leave 3 in 10 calls unanswered. Funding reductions have also negatively impacted the ability of taxpayers to meet with the Office of Appeals to resolve cases administratively, and the Office of Chief Counsel has had to curtail certain aspects of its advanced ruling program. If the Service does not receive increased funding soon, we fear that more and more important functions will be affected, and the continuing and future investments that are necessary to recruit and train employees, build modern infrastructure, and effectively administer the tax laws will not be made.

These are serious issues for taxpayers and their representatives. Although much has been done to make necessary information and services available on the IRS website, many of the unanswered calls and correspondence are from taxpayers seeking additional information to prepare and file their tax returns, or trying to respond to Service inquiries and notices, including levies and other collection matters. Furthermore, because most of the Service's budget is devoted to personnel costs, budget reductions necessarily reduce staffing available to deal with these and other issues, such as helping taxpayers who fall victim to identify theft.

At the same time that the Service is struggling to meet taxpayer needs, it also is struggling to maintain enforcement activities to close the tax gap, which has been estimated at nearly $400 billion per year. Given that every dollar devoted to tax enforcement yields about $255 in tax collections, reductions in funding for the Service's tax enforcement efforts result in significantly lower tax collections. Moreover, failure to collect taxes properly due increases cynicism regarding our voluntary compliance system, and honest and diligent taxpayers end up paying more to subsidize noncompliance by others.

Funding levels are now significantly below the levels that many believe are necessary for the Service to successfully carry out its traditional responsibilities, not to mention the new roles that the

agency is required by law to perform in the implementation of the Foreign Account Tax Compliance Act ("FATCA") and the Affordable Care Act ("ACA"). The Service is required to administer the laws that Congress enacts, and the Service must assist taxpayers in complying with their legal obligations under FATCA and ACA, and enforce those legal obligations when necessary. The Service's ability to carry out these duties is being compromised by the reductions in IRS funding over the past several years. Given that FATCA was intended to help combat tax evasion, it is crucial that the Service be provided the necessary resources to effectively implement this legislation.

We believe that adequate funding for the Service is vital. We urge you and your Committees to restore recent funding reductions so that the Service can fulfill its dual functions of providing taxpayer service and collecting taxes properly due. And because appropriate increases in the Service's budget can result in increased overall revenue, we encourage Congress to consider whether the legislative budgeting process can be adjusted to take into account the Service's unique role. We would be pleased to provide any assistance that you or your staff would find helpful in considering this matter.

Thank you for your consideration.

Sincerely,
Michael Hirschfeld
Chair, Section of Taxation

Boxscore

Since January 1, 2014, the Section has coordinated the following government submissions, which can be viewed and downloaded free of charge from the Section's website at http://www.americanbar.org/groups/taxation/policy.html.

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

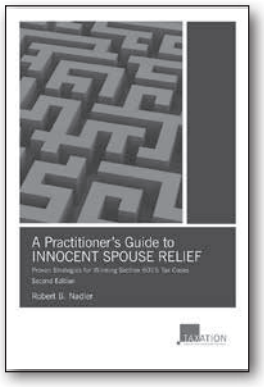
TO	DATE	CODE SECTION	TITLE	COMMITTEE	CONTACT
Internal Revenue Service	3/18/14	482	Comments on Notice 2013-79 Proposed Procedures for Advance Pricing Agreements	Transfer Pricing	Darrin Litsky
Internal Revenue Service	3/10/14	n/a	Comments on Notice 2013-78	USAFTT	Joan Arnold
House and Senate Appropriations Subcommittees on Financial Services and General Government	2/10/14	n/a	IRS Funding	Section of Taxation	Michael Hirschfeld
Internal Revenue Service	1/30/14	various	Comments Concerning Tax Exempt Working Capital Financing, Grants, and Qualified Hedges	Tax Exempt Financing	Nancy Lashnits
Internal Revenue Service	1/24/14	various	Comments Concerning FATCA Regulations Relating to Insurance Issues	Insurance Companies	Mark S. Smith
Internal Revenue Service	1/23/14	n/a	Comments Concerning Issue Price Definition for Tax Exempt Bonds	Tax Exempt Financing	Nancy Lashnits

* The technical comments and blanket authority submissions 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.

ABA SECTION OF TAXATION

Update Your Tax Law Library with these Tax Section Bestsellers

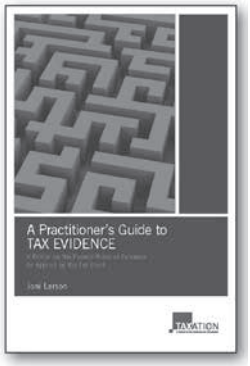
A Practitioner's Guide to Inncoent Spouse Relief, 2nd Edition



Newly updated in 2014, this guide is designed for attorneys, accountants and enrolled agents who represent innocent spouse clients in matters before the IRS and takes the practitioner step-by-step through the Innocent Spouse claim process.

Product Code: 5470811
Publication Date: May 2014
Section Member Price: $79.95

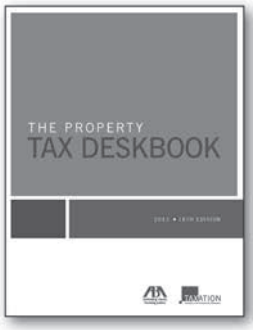
A Practitioner's Guide to Tax Evidence



Designed for Tax Court practitioners, this guide provides a detailed passage through the Federal Rules of Evidence as applied by the Tax Court. The well-organized sections allow the practitioner to easily spot a particular issue or the evidentiary rule at hand, and to find the supporting case. The brief summaries of requirements of the major rules presented along with dozens of practice pointers assist the practitioner in charting the proof necessary to succeed.

Product Code: 5470794
Publication Date: June 2013
Section Member Price: $79.95

The Property Tax Deskbook, 2012-2013 Edition



Updated annually, this multi-jurisdictional resource provides tax managers, attorneys, and accountants with comprehensive information about the property tax in all 50 states. Each state, each chapter also contains important interpretive information—gleaned from rulings, bulletins, and other local lore—that is often impossible for out-of-state practitioners to find.

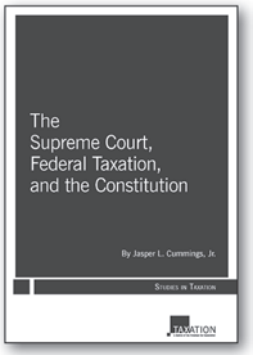
Product Code: 5470795
Publication Date: September 2013
Section Member Price: $225.00

Sales & Use Tax Deskbook, 2012-2013 Edition

Updated annually, this multi-jurisdictional resource provides tax managers, attorneys, and accountants with information about sales and use taxes from every state that imposes them. Each chapter also contains important interpretive information—gleaned from rulings, bulletins, and other local lore—that is often impossible for out-of-state practitioners to find.

Product Code: 5470796
Publication Date: August 2013
Section Member Price: $225.00

The Supreme Court, Federal Taxation, and the Constitution



A followup to *The Supreme Court's Federal Tax Jurisprudence*, this book provides a comprehensive and illuminating analysis of the intersection of the U.S. Constitution and federal taxation going back to the earliest years of the nation. Citing over 1,000 Supreme Court cases, the author has organized and categorized the opinions for maximum accessibility by practitioners and others involved in law practice, law making, and legal scholarship.

Product Code: 5470790
Publication Date: January 2013
Section Member Price: $125.00

Careers in Tax Law: Perspectives on the Tax Profession and What It Holds for You

Designed for those considering or beginning a career in tax, this informative guide presents a series of offerings—autobiographies in miniature—by a broad cross section of working tax professionals. Over 75 contributors share their unique perspectives, knowledge, and experiences.

Product Code: 5470719
Publication Date: April 2009
Section Member Price: $55.00

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Tax Section CLE Calendar

DATE	PROGRAM	CONTACT
April 30, 2014	**FATCA for Those on This Side of the Ocean/Border** Live CLE Webinar and Teleconference	Tax Section www.americanbar.org/tax 202.662.8670
May 8-10, 2014	**2014 May Meeting** Grand Hyatt – Washington, DC	Tax Section www.americanbar.org/tax 202.662.8670
May 21, 2014	**Corporate Tax: Know Your Spin-offs, Split-offs, and Split-ups—A Tax-Free Trifecta to Separate a Company's Business** Live CLE Webinar and Teleconference	Tax Section www.americanbar.org/tax 202.662.8670
June 4-6, 2014	**7th Annual U.S. – Latin America Tax Planning Strategies** Mandarin Oriental Hotel – Miami, FL	Tax Section www.americanbar.org/tax 202.662.8670
June 5, 2014	**Employee Benefits in Mergers & Acquisitions** Executive Conference Center Times Square – New York, NY	ABA JCEB www.americanbar.org/jceb 202.662.8670
June 6, 2014	**M&A Due Diligence for ERISA Attorneys: A Case Study** AON Hewitt – New York, NY	ABA JCEB www.americanbar.org/jceb 202.662.8670
June 12-13, 2014	**Charitable Planning Techniques** Revere Hotel – Boston, MA	ALI CLE www.ali-cle.org/ 800.CLE.NEWS
June 18-19, 2014	**ERISA Litigation** American Bar Association – Chicago, IL	ABA JCEB www.americanbar.org/jceb 202.662.8670
June 20, 2014	**Long-Term Disability Benefits Advanced Seminar** American Bar Association – Chicago, IL	ABA JCEB www.americanbar.org/jceb 202.662.8670
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