



FROM THE CHAIR

Giving Back to the Tax System

By Armando Gomez*

As tax professionals, members of the Tax Section derive our livelihood from the tax system. There are many ways in which we can all give back to the tax system that supports us. This is not just the right thing to do, but under the *Model Rules of Professional Conduct*, each of us has a professional responsibility to provide legal services to those unable to pay. Rule 6.1 encourages lawyers to perform at least 50 hours of pro bono services each year, and suggests a number of ways in which lawyers can meet this aspirational goal. This column illustrates how those suggestions might be applied by members of the Tax Section. I also encourage you to read the remarks of the Section's 2015 Janet R. Spragens Pro Bono Award recipient Keith Fogg and the article by Wells Hall on the Section's Military Adopt-A-Base program in this issue of the *NewsQuarterly*.

Representation of the Underserved

The Model Rules encourage lawyers to devote a substantial majority of their pro bono hours each year to providing services to persons of limited means, or to charitable or governmental organizations in matters that are designed primarily to address the needs of persons of limited means. Members of the Tax Section regularly devote their time and talent to assist low-income taxpayers in tax controversies. For example, through the Tax Court calendar call program, lawyers can assist pro se taxpayers, most of whom do not understand the Tax Court procedures and often do not have a firm grasp on the tax law requirements necessary to support the claims made in their Tax Court petition. Even if you have never

represented a taxpayer in Tax Court before, most tax lawyers will have a better grasp of the rules than pro se taxpayers. And through the dedication of Tax Section members throughout the country, there is a network of experienced lawyers who can provide training and guidance to those interested in helping pro se taxpayers through this program.

Of course, tax controversy work is not for everyone, but there are plenty of other opportunities for Tax Section members to meet their pro bono obligations. Each year a number of our members help low-income taxpayers prepare their tax returns through the Volunteer Income Tax Assistance (VITA) program. There are two ways that you can participate in VITA. First, you can become certified as a VITA volunteer,

and help prepare returns for low-income taxpayers at designated VITA sites. Through an agreement that the Tax Section reached with the Service, our members can become certified on-line, without having to attend classroom instruction on basic tax topics. As a volunteer, you will then help low-income taxpayers meet their annual tax compliance obligations. Second, you can become a VITA instructor, and through the Tax Section's Adopt-A-Base program, you can help train members of the military on how to prepare returns through the VITA program.

For a number of our members, pro bono presents an opportunity to provide legal services outside of the tax arena. Many law firms and local bar associations have referral

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ABA Model Rules of Professional Conduct

Rule 6.1: Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
 - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

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by ensuring that exchangers properly identify exchange properties within the required time period, that they acquire like-kind property, and that they complete exchanges within the required time period. Even if most accommodators help ensure that exchanges comply with the law, surely some are “accommodating accommodators” that will assist exchangers with transactions that do not satisfy the requirements. For example, such a bad apple could help an exchanger back date documents to create the appearance that the client satisfied the identification requirement. A bad apple could also knowingly facilitate the transfer of property such as a mortgage or a contract, which is not like kind to other real property, to an exchanger as part of an intended real property section 1031 exchange. In extreme cases, accommodators have mismanaged or embezzled exchange proceeds, causing inefficiencies and delaying disbursement of exchange proceeds. Even if there are only a few

bad apples, they could have an outsized impact and cause the proverbial spoiling of the whole barrel.

Fortunately, defalcations appear to be the exception to the general practice of good accommodator behavior. Without regular audits of accommodators, however, taxpayers cannot assess whether they should incur the costs of intermediation. The FEA may not be suited or designed to regulate its membership in such a way that encourages accommodators to help ensure that exchangers comply with the section 1031 requirements. If not, then there appears to be limited justification for the complex, accommodator-facilitated method we currently have. One of us (Jay) is, however, convinced through his work in this field that the current system of intermediation helps the vast majority of taxpayers and provides economies of scale that make it substantially certain that the benefits of intermediation outweigh the costs.

A rollover system would most likely result in lost revenue because more

transactions would qualify for section 1031 nonrecognition, but Congress could make up for that lost revenue by narrowing the definition of like-kind property and by limiting section 1031 nonrecognition to small transactions. Thus, although a “simpler” rollover version of section 1031 would have appeal on its face, it could require major modifications to an area of the Code that already functions reasonably well and that arguably is among the least of many pressing tax problems. U.S. tax law, by universal agreement, is overly complex and confusing. At the very least, great care would need to be taken to ensure that a rollover provision eased complexity rather than simply shifting it to other areas. It should also not provide fodder to unscrupulous tax preparers, to whom a rollover may prove a tempting target for new sources of fast refund claims or even identity theft. If that care is taken, any new costs that result from a rollover provision could potentially be offset by the savings that result from reducing intermediation costs. ■

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networks that can help provide you with opportunities to take on pro bono assignments. Whether it be volunteering to help prepare wills for the terminally ill, learning how to serve as a guardian ad litem to help protect the interests of children or seniors, or defending the rights of low-income tenants in disputes with their landlords, there are myriad opportunities to give back in every community. Another priority that the American Bar Association has identified is providing representation for juveniles caught up in immigration proceedings. And if civil rights or criminal justice is your passion, there are always opportunities to help out, including in habeas proceedings for indigent defendants, preparing amicus briefs, or advocating or educating others on these important issues.

The comments to Rule 6.1 make clear that the breadth of pro bono opportunities are intended to ensure that all lawyers can give back to the legal system through pro bono work. For example, the goal of providing at least 50 hours of services to persons of limited means can be accomplished through direct representation, legislative lobbying, administrative rulemaking, and training and mentoring others who will represent persons of limited means. So even government lawyers, whose work restrictions may limit their ability to provide direct representation in certain areas, can still participate in pro bono activities.

If you are interested in learning more about tax related pro bono opportunities, please take a look at the Tax Section’s website (http://www.americanbar.org/groups/taxation/tax_pro_bono.html) or contact the Tax Section’s Pro Bono Counsel, Derek Wagner, who can be reached at the Tax Section’s office in Washington, D.C. For nontax related pro bono opportunities, contact your local bar association or the ABA Standing Committee on Pro Bono & Public Service.

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Tax Law Improvement

Rule 6.1 also encourages lawyers to participate in activities for improving the law, the legal system, or the legal profession. By becoming more active in the work of the Tax Section, you can fulfill this goal. For example, the Tax Section is regularly called upon to provide comments on proposed regulations or other guidance, and we

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REPORT OF THE NOMINATING COMMITTEE

2015–2016 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 2015 Annual Meeting in August. Under the Section Bylaws, the current Chair-Elect, George C. Howell, III of Richmond, VA, becomes Chair of the Section at the close of the ABA Annual Meeting.

Chair-Elect:	William H. Caudill, Houston, TX	Secretary:	Catherine B. Engell, New York, NY (For a one-year term)
Vice Chairs: (For a one-year term)	Charles P. Rettig, Beverly Hills, CA (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) Julie A. Divola, San Francisco, CA (Publications)	Assistant Secretary:	Katherine E. David, San Antonio, TX (For a one-year term)
		Council Directors:	John F. Bergner, Dallas TX (For a three-year term) Thomas D. Greenaway, Boston, MA Roberta Mann, Eugene, OR Carol P. Tello, Washington, DC Gary Wilcox, Washington, DC

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often develop projects on our own to suggest ways in which the Internal Revenue Code or Treasury Regulations can be simplified. Working on comment projects or legislative reports is a great way for Tax Section members to improve the tax system. Getting involved in these efforts is easy: just reach out to the leadership of any of our committees, either at one of our upcoming meetings or through the Tax Section website. If you need ideas for projects where you can volunteer, take a look at the annual submission that the Tax Section makes to the Treasury Department and the Service for input on their annual guidance priority plan. For the vast majority of suggestions included on that submission each year, the Tax Section can prepare a more detailed paper outlining how Treasury and the Service might consider addressing the particular area of guidance.

Another option is to get more involved in the work of the Tax Section. This usually starts by becoming active in a committee, and over time volunteering to move into the leadership of a committee. Tax Section members who

have successfully served as a committee chair are eligible to be nominated to serve on Council. The Nominating Committee typically identifies former Council directors as potential Officers. The process of identifying Tax Section members to serve as Council directors or Officers starts at the fall meeting each year, when the Nominating Committee meets to begin identifying prospective candidates. The committee typically reports its recommendations at the Section's Midyear Meeting and publishes them in the *NewsQuarterly* (see this page above), and the slate of candidates is elected in August at the ABA Annual Meeting. If you have served in committee leadership and are interested in moving up, or if you have suggestions for other Tax Section members who should be considered for leadership positions, please reach out to someone on the Nominating Committee. While the deliberations of the Nominating Committee necessarily are confidential, it is critical that the committee considers a diverse array of members for leadership positions, and your input into the process will help

ensure that we continue to identify and nominate leaders who will represent the breadth of our membership.

Give Back However You Can

Rule 6.1 also encourages lawyers to provide financial support to organizations that provide legal services to persons of limited means. There are worthy organizations in practically every community. If you have not already made a pledge, please consider supporting the Tax Section's Tax Assistance Public Service (TAPS) endowment, through the ABA Fund for Justice and Education (http://www.americanbar.org/groups/taxation/taps_endowment.html). We hope to raise \$2.5 million over the next five years for the TAPS fund, and I am pleased to report that all of the Tax Section's Officers and Council directors have made contributions or pledges to help reach that goal.

Each of us has a responsibility to give back to the tax system. Please do your part by getting involved in pro bono work, volunteering to help the Tax Section, and supporting the TAPS fund. ■