FROM THE CHAIR

The Tax Section Serving the Tax System

By Eric Solomon, Ernst & Young LLP, Washington, DC

Atlanta Meeting

The Tax Section held its Fall Tax Meeting with the Trust & Estate Division of the Real Property, Trust & Estate Law Section in Atlanta on October 4-6. Over 950 people attended. There was much to discuss, especially the recent regulatory guidance relating to the 2017 Tax Act, including the proposed regulations regarding the new 20% deduction for sole proprietors and owners of pass-through businesses (section 199A of the Code), as well as proposed regulations and expected guidance regarding international tax issues.

As a continuing benefit, registered attendees at Tax Section meetings can access the complete set of meeting materials by clicking on a zip file that was distributed by e-mail after the meeting. In addition, whether you attended the Atlanta meeting or not, all Tax Section members have complimentary access to all the written materials from past meetings, including the Atlanta meeting, on the website: (1) in a static database called TaxIQ, which is organized by meeting and committee name, and (2) in a database on Westlaw made available as a member benefit from the Tax Section’s publishing sponsor, Thomson Reuters. Both options can be accessed from the TaxIQ page, at ambar.org/taxiq. Audio recordings of individual sessions are available through our outside digital conference partner, DCP, at http://www.dcprovidersonline.com/abatx/.

Featured Speaker at the Atlanta Meeting

The featured speaker at the plenary session on Saturday, October 6 was Lafayette G. (Chip) Harter, Deputy Assistant Secretary for International Tax Affairs at the U.S. Treasury Department. Mr. Harter is playing a leading role in international tax guidance, and represents the United States in its dealings with foreign governments and the OECD. Mr. Harter shared his insights about developments in U.S. international taxation and around the world. He discussed the expected timing for issuance of various proposed regulations relating to the 2017 Tax Act. He noted that some regulations will be finalized by the end of 2018 and others by June 2019. He observed that other countries have focused on aspects of the 2017 Tax Act, such as the tax on global intangible low-taxed income (GILTI), to serve as a potential model for laws that will discourage multinational companies from shifting profits to low-tax or no-tax jurisdictions. You can listen to Mr. Harter’s remarks here.

Pro Bono and Public Service

As the largest national member organization of tax professionals, the Tax Section has an important role to promote the advancement of a fair tax system by providing assistance to those who cannot afford it. I am
pleased to report that under the vigorous leadership of Bahar Schippel, our Vice Chair for Pro Bono and Outreach, the Tax Section is active on many fronts in tax-related pro bono matters. Tax Section pro bono activities include: (1) the Elder Law Initiative, which provides tax assistance to the elderly; (2) the Adopt-A-Base program, which helps military personnel prepare their tax returns; (3) the Partnering for Pro Bono program, in which volunteer attorneys work with low-income taxpayer clinics; (4) the Calendar Call program, in which volunteer attorneys provide national coverage at Tax Court calendar calls; (5) the Volunteer Income Tax Assistance (VITA) program, where practitioners help prepare tax returns for low-income taxpayers; (6) pro bono CLE webinars, where experienced low-income tax practitioners share their knowledge and experience; and (7) assistance to victims of natural disasters, where volunteers advise affected individuals regarding the tax implications of their losses.

The Tax Section excels at mobilizing and preparing members to address unmet tax-related needs of the underserved population throughout the country. We are prepared to respond to requests to link tax professionals with specific opportunities to provide services. We also excel at providing training and mentoring to those members ready and willing to serve, but who may not have the necessary background and expertise to address issues faced by the underserved population. The Tax Section is maximizing its pro bono impact by: (1) providing education and training to practitioners interested in participating in pro bono work; (2) providing resources and mentorship for practitioners in their pro bono activities; (3) connecting members to pro bono opportunities, (4) elevating the profile of pro bono work for tax practitioners nationally; and (5) raising funds for the Tax Assistance Public Service (TAPS) endowment and administering the Christine A. Brunswick Public Interest Tax Fellowship (which enables new tax professionals to spend two years providing services to low-income taxpayers).

As mentioned above, one of the Tax Section’s pro bono activities is the Elder Law Initiative, started by our Immediate Past Chair Karen Hawkins. The Tax Section is hosting an event on November 16 in Pittsburgh featuring tax consultations, assistance from the IRS Taxpayer Advocate Service office, healthcare powers of attorney, and referrals.

Also as mentioned above, Tax Section members participate in the VITA program. We encourage members to participate in VITA as a convenient and effective form of providing tax services. VITA volunteers prepare tax returns for free for low-income taxpayers through an IRS-sponsored national initiative. Free training is provided for all volunteers, so no advanced knowledge is required. Registration is happening now.

As part of its pro bono efforts, the Tax Section provides tax assistance after disasters. The Tax Section is focusing on creating materials that can be used by tax professionals in affected areas following a disaster. For example, our website includes free recordings of sessions on disaster response from recent meetings. Our website also includes links to several publications regarding disaster tax assistance, including the chapter called “Assisting Disaster Survivors” in the 7th Edition of the Tax Section publication, Effectively Representing Your Client Before the IRS. On October 25, the Tax Section participated in the ABA’s Celebrate Pro Bono week by offering a free webinar on the tax issues facing disaster survivors and how to assist with appeals of FEMA denials. You can listen to this webinar here.

Pro Bono Pledge Program

As part of our efforts to elevate the profile of pro bono work, the Tax Section has officially launched a Pro Bono Pledge program. The goal is to encourage Tax Section members to perform pro bono work or make a donation to the TAPS fund. There is a simple form that can be completed online or by filling out a card at a meeting.
For those who commit to provide pro bono hours, volunteer opportunities will be circulated as they become available. Activity pursuant to the pledge is self-reporting and runs from one May meeting to the next. Those who pledge will receive an email in April asking them to report their pro bono hours. Those who provide pro bono assistance or make a contribution to TAPS will be recognized in the program for the Celebrate Pro Bono Reception at the May meeting and on the Tax Section website. Please consider making a Pro Bono Pledge!

If you have any questions about the Tax Section’s pro bono activities, please reach out to Bahar Schippel (bschippel@swlaw.com), or Meg Newman, the Tax Section’s Counsel responsible for pro bono activities (megan.newman@americanbar.org).

Christine A. Brunswick Public Interest Tax Fellows

I am pleased to report that the 2018-2020 class of Christine A. Brunswick Public Interest Tax Fellows began their positions in the first week of September. Anastasia Kolosova is working with the Accounting Aid Society in Detroit MI to conduct outreach and education activities for vulnerable populations in Detroit and expand the organization’s ability to provide legal representation to low-income taxpayers. Omeed Firouzi is working with Philadelphia Legal Assistance to provide education and legal assistance to workers misclassified as independent contractors and conduct advocacy and awareness efforts to decrease the practice among employers in Philadelphia.

Anastasia and Omeed join Catherine Martin, our Fellow for 2017-2019. Catherine has been working with Community Legal Services of Philadelphia, providing legal representation to low-income individuals facing tax foreclosure of their properties. Read her interview in this issue.

Comment Letters

As a result of the enactment of the 2017 Tax Act, the Treasury Department and IRS are busy drafting and issuing interpretive guidance. The Tax Section has been preparing and submitting comments, including on the proposed regulations under section 199A and the proposed regulations on deemed repatriation of untaxed offshore earnings (section 965). The Tax Section has also recently submitted comments about the proposed new Form 1040. The Treasury Department and IRS highly value Tax Section comments and read them carefully. There are many projects to work on and much work to do, so please volunteer to join a comments project. It’s a great way to connect with other Tax Section members with similar interests and participate in an important task that helps make the tax system function better.

Publications

As previously reported, under the skillful efforts of Julie Divola, the previous Vice Chair for Publications, and Anne Dunn, the previous Director of Publishing, the Tax Section negotiated an agreement whereby the Northwestern University Tax LL.M. program succeeded Georgetown University as the collaborating partner in the publication of The Tax Lawyer. On September 21, Keith Fogg (our new Vice Chair for Publications and Editor-in-Chief), Bill Lyons (Associate Editor-in-Chief) and Todd Reitzel (the Tax Section’s new Director of Publishing) visited Northwestern to meet with David Cameron (the Northwestern professor serving as Faculty Editor) and the student editorial board.

We are pleased to report that the transition to Northwestern is progressing smoothly. The Georgetown students worked diligently through this past summer to complete their final issue, and Northwestern has
recruited a team of LL.M. students who have started editing the Fall 2018 issue. The Tax Section and Northwestern are excited about the new collaboration.

**Financial Situation**

The Tax Section has made considerable strides to improve its financial situation. In recent years, the Tax Section has had significant operating deficits. In the past couple of years, the Tax Section has been compelled to reduce expenses, which has resulted in painful belt-tightening. In addition, during the fiscal year that ended this past August, our Tax Section staff had openings, which reduced our salary expenses. We have also increased our revenues, primarily from our meetings, webinars and sponsorships.

I am pleased to report that for the fiscal year that ended in August, the Tax Section had a small net surplus, the first in many years. I extend my hearty thanks to former chairs Bill Caudill and Karen Hawkins for their efforts in this turnaround. We will need to stay vigilant to ensure that we maintain financial stability in the years ahead.

**Association New Membership Model**

At the annual meeting of the American Bar Association in Chicago in August, the Board of Governors and House of Delegates adopted a new membership model to increase ABA membership. The new model includes a revised Association dues structure, which will reduce the number of categories of Association dues and will lower Association dues for younger practitioners and solo/small firm practitioners. The new dues structure will be effective for the fiscal year starting in September 2019. Dues to join the Tax Section, which are in addition to Association dues, will remain at $75 per year.

Although not part of the dues resolution adopted in August, increasing the value of ABA membership is a critical element of the new membership model. A new large library of free online content for ABA members will be created. The Tax Section will contribute to this library, which will have three parts: (1) material available to the public, such as contact information and marketing material; (2) content available to all ABA members, such as basic substantive material; and (3) content available only to a Section's own members. ABA members who are not Tax Section members will have a limited number of opportunities per month to access matter in the third category (material that is generally available only to Tax Section members). The new online library is expected to be ready at the time the new dues structure is initiated. We are receiving direction from the Association about what, when and how the Tax Section will contribute to the online library.

**Tax Section Membership**

Similar to the Association, the Tax Section is also concerned about membership. Over the past several years there has been a decline in Tax Section membership. The future of the Tax Section depends on increasing the number of members. We need to adapt to provide benefits attractive to the changing needs of our members. We need to increase the number of practitioners in all categories, especially younger practitioners, who hopefully will become Tax Section members for many years. We are focusing on steps we can take to make membership as attractive as possible.

**Diversity and Inclusion**

As part of the recent update of the Diversity and Inclusion (D&I) Plan, the Tax Section has formed a Diversity in the Profession Committee (DIPC) to oversee implementation of the D&I Plan. Recent activities of the
DIPC include placement of signs at the Atlanta meeting emphasizing the commitment of the Tax Section to diversity and inclusion, with a link to the D&I Plan (ambar.org/taxdiversity). In addition, the DIPC is initiating a project to examine the role of committee liaisons to the Tax Section's Diversity Committee and how the liaisons can be more effective.

The Diversity Committee hosts a luncheon and three CLE programs at each Tax Section meeting. Please consider sponsoring the luncheon or a program at a future Tax Section meeting. In addition, the Diversity Committee is seeking CLE program ideas for the upcoming Midyear and May Tax Meetings. Please contact the chair of the Diversity Committee, Lany Villalobos, at lanylv@alumni.upenn.edu to share your ideas or get involved.

**IRS Commissioner**

It is with sadness that we note the passing of Sheldon Cohen, who was IRS Commissioner from 1965 to 1969. He first worked at the IRS during the enactment of the 1954 Code, soon after graduating from law school. He went from the IRS to private practice, where he helped set up the first Presidential blind trust, for Lyndon Johnson. In 1964 he returned to the IRS to serve as Chief Counsel before being named as Commissioner by President Johnson. Among his many accomplishments, Commissioner Cohen is noted for bringing computer technology to the IRS. He was a Tax Section member for more than 50 years and served on several Tax Section Committees.

We also wish to congratulate Chuck Rettig on his confirmation as the new IRS Commissioner. Chuck was a partner with Hochman, Salkin, Rettig, Toscher & Perez, P.C. in Beverly Hills, California. Commissioner Rettig joined the Tax Section in 1981, and most recently served as Vice Chair for Administration (2015 to 2018). He previously was a Council Director (2012 to 2015) and Chair of the Civil and Criminal Tax Penalties Committee (2009 to 2011). He also co-chaired the Tax Section’s annual Criminal Tax Fraud Conference (from 2010 to 2017). We especially want to thank him for his recent efforts as a member of the team that addressed the financial situation of the Tax Section.

**New Orleans**

The Tax Section Midyear Tax Meeting will be held on January 17-19, 2019, at the Hyatt Regency New Orleans. We look forward to seeing you there. I promise there will be a lot to talk about!
PEOPLE IN TAX

Interview with Patricia A. Cain

By Thomas D. Greenaway, KPMG LLP, Boston, MA

Q I’m Tom Greenaway, here with Professor Patricia Cain of Santa Clara University. Welcome Professor, and welcome to the Tax Times.

A Well, thank you very much. I’m flattered to be here.

Q Professor, how did you get into tax?

A One name. Chuck Saunders. He was my tax professor in law school the summer after my first year. I took tax that summer because it was reputed to be a difficult course and I thought I should take care of the requirement quickly. Chuck Saunders had an inquiring mind and was always very thorough. I remember going up to his office and saying, “I’ve got this problem and I have thought about it and thought about it. Here’s what I think the answer would be.” He said, “Wait a minute, Pat. Let’s see what the Code has to say about it.” And he pulled out a Code and read through the relevant language. It was such a great lesson. You know, the facts change, and the meaning of a Code section changes with different facts.

I took that lesson with me, even when I went into practice. I often wanted to answer clients’ questions right away, but I would refrain until I had a chance to run their particular situation through the Code language. So he was just an idol of mine in some ways. And it’s a good thing I took that tax course that summer because that was the building block course that enabled me to take every other tax course that was offered. This was at the University of Georgia, in the early 1970s—and they offered a lot of tax courses.

Q Can you tell us about how you built the bridge from your interest in tax during law school to where you are now as a tax scholar?

A Well, I practiced for a very short time, in Montgomery, Alabama. I enjoyed representing taxpayers before the IRS. You know, that means writing protest letters and fighting with the IRS. I always
thought the taxpayer was right. I had great respect for the IRS, but I really enjoyed that part of the practice. On the other hand, I wasn't as interested in working with forms and transactions.

Then I became interested in academia. I had not had a single female tax professor—in fact, no female professor at all in law school. There were very few female professors in law schools generally in the early '70s. I called the head of the appointments committee at the University of Georgia, a man who was also somewhat of a friend. And I said, “You have no women on your faculty, and you just lost two tax professors. Would you consider hiring me to come teach tax at Georgia?”

He said, “Pat, I can get you a job at a much better place than Georgia.”

And before I knew it, he called me back and said, “Send your resume to the University of Texas.”

And I said, “Texas would consider hiring me? I’m not a Harvard or Yale person. I mean, they’re a topnotch school.”

“Oh, yeah, Texas will consider hiring you. Believe me.”

Well, of course they would, because HEW (Health, Education, and Welfare as it was then known) had been on its campus along with a lot of other law school campuses around the country saying, “Why do you not have any women? You are in violation of our antidiscrimination laws.” So they hired me because I was a woman. One of the faculty even told me they hired me because I was a woman.

I now know how to respond to that. My friend Barbara Babcock at Sanford was asked when she became the head of the civil division at Justice Department, “How does it feel to get this job just because you’re a woman?” And she said, “A hell of a lot better than it would feel not to get this job just because I’m a woman.” I’ve been through that. I’ve been denied jobs. And they would tell you to your face: “Oh, we don’t hire women. We’ll interview them but we don’t hire them.” That’s what the early 1970s were like.

Q When you refer to HEW, are you saying that the federal government was pushing for women to be hired? Was that because of Title IX?

A Yes.

Q I honestly wasn't aware that the federal government was pushing universities to diversify hiring in academia that far back.

A Well, they were, in state institutions specifically. I believe that UCLA hired three women the year before I took the job at Texas. I have a number of female law professor friends who understand that the reason that they were hired was primarily because they were women. And I was the first woman to be hired on the tenure track at Texas. My spouse, Jean Love, was the first woman to be hired on the tenure track at UC Davis. And she was hired just two years before I was.

Q Now this generation has come of age, and I want to come back to that in terms of the fullness of your scholarship. But let's first introduce a new aspect here, and that's your activism. You moved from practitioner to a professor. How about being an activist in tax? Is that different or is that of a piece?

A Well, it's part of what I see as public service. You can't be too much of an activist. A scholar has to keep an open mind and not do politics, and I try to do that. But of course, there are things that I think...
should be changed, usually for the benefit of the underprivileged. So early in my career in Texas, in 1977, a national organization put on a conference in Madison, Wisconsin called the Women in the Law Conference. For the first time ever, they had a section of panels that were called the Lesbian Law panels. And I thought, “Wow, we don’t even say that word in Texas.” I went to those panels and then I went back to Texas.

I was teaching wills, so I decided to use an example of a lesbian couple. I used the word, and there was silence throughout the room. That was stunning to me. I thought, “We’ve got to make this population more visible.” I began giving talks, usually about estate planning because that’s what people were concerned about—i.e., a client who says, “I want to leave everything to my partner; the family may contest the will; what can I do to protect it?”

Of course, nobody knew what any tax rules were with respect to these people because the IRS never talked about unmarried couples at all, whether they were same sex or opposite sex. That meant there was a lot to do. You couldn’t be wrong as a scholar writing about these issues because there was no law. You could just make interesting arguments about what the law should be and find some authority to back up that argument. So it was challenging. It was creative, and I’m told it made some difference.

Q Estate planning is one of the most private elements of practice. It’s interesting to hear you talk about your activism in that context. We’re talking about estate planning and teaching wills in the ’70s. How did any of this become public outside of very intimate, quiet, private family conversations?

A In 1973, Lambda Legal Defense was formed. It was the first, largest, and oldest organization supporting gay rights—other than the ACLU, which hadn’t really supported gay rights much until that time. Lambda was formed specifically to be a public interest law firm for lesbians and gay men. It was dealing with discrimination, but also trying to help move the law along. I became involved with them in 1984; I was on their board of directors. They were only in New York then, and I was on the board of directors until 1992. I also hooked up with other people in the community who were doing estate planning in the LGBT community and who had questions. I was writing materials and outlines and Lambda publications to help these people. It became public because people started talking about it.

Q What was the government’s response to your planning? Presumably these returns were prepared and filed taking these positions and making these arguments before the Service. Did the government’s response ever change? Was it always the same?

A It was silence. I mean, we really were an invisible community. There were no rules that specifically applied to us. There’s very little authority from that time.

There’s one reported decision involving an unmarried couple that split up (it was a man and a woman). When they split up, the man made regular payments in intervals to the woman under the terms of a settlement agreement. She claimed they were gifts, so she did not report them. She was audited, and the IRS essentially said “No, this is payment for all your past services of being his partner and his companion for all those many years.” The Tax Court, in a memorandum decision, decided neither was right. These were Marvin-style payments based on the 1976 Marvin v. Marvin case out of California. That was a property division case. She had equitable claims to his property. He was paying her for her interest in the property, the car, the various things that he ended up with for which he needed to compensate her. Nobody had given any evidence as to what her basis was in this property. So the court said there was no gain.

I’ve never seen the case cited since, except incorrectly. And it’s surprising to me that there have not been more audits of unmarried couples, because they are basically in the same situation of lacking appropriate
rules to guide them, whether they’re same-sex or opposite-sex couples. The *Marvin* case in 1976 brought this topic up because it recognized that contracts could be enforced between unmarried couples. Before that, the majority rule was that a contract between a man and a woman who are living together, in sin so to speak, is unenforceable if it has to do with cohabitation because it’s against public policy, and we don’t enforce contracts that are against public policy. *Marvin v. Marvin* changed that presumption and made a lot of these arguments more visible: you could argue for positions of the cohabitant which you couldn’t argue for before.

Q Let’s skip forward to when these planning postures became more public, when the federal government took a position on these issues by enacting the Defense of Marriage Act (DOMA).

A That was in 1996. No issue then, because you couldn’t get married if you were a same-sex couple anywhere in the world in 1996. Nonetheless, the federal government passed DOMA, a law that said the federal government will not recognize marriages except between a man and a woman.

The real point was the federal government’s decision not to recognize same-sex marriages, even though the federal government usually relies on state law in this context. No issue arose in the United States until 2004, which is the first year that a state—Massachusetts—recognized same-sex marriage. You could get married in Canada as early as 2003, so some people did. DOMA clearly applied to such married couples, and so they wouldn’t file a joint return at the federal level even though they were married.

Of course, there were some people who wanted to challenge the law. Ultimately, that’s how we got cases in the works. There were a lot of arguments that DOMA was unconstitutional because it simply was not rational. It just gave tax breaks, in effect. You could avoid the marriage tax penalty if you were a married same-sex couple. Wouldn’t opposite-sex couples love to avoid it as well? Of course, it is hard to argue that a particular tax law is unacceptable because it is “irrational”: all tax laws are in some sense irrational because they are just products of politics. As more and more states recognized marriage, DOMA became more of an issue. Then we had states that were recognizing marriage-equivalent statuses, such as registered domestic partnerships. The first was Vermont in 2000 when it recognized civil unions. That raised issues at the federal level as to property rights and family rights of registered domestic partners and civil union partners.

Early on, we got an announcement out of the Social Security Administration that your civil union partner’s child would be your child, because that child qualifies as a step child under state law. DOMA has nothing to do with it because we’re not talking about marriage but about civil unions and registered domestic partners.

So this is when I became more and more active because there were more and more questions raised. How should the alternative statuses be treated? How should you treat marriage when it’s recognized at the state level, but it’s not recognized at the federal level? And what is the best way to challenge the federal law? Then the head of the civil rights litigation team for GLAD (Gay and Lesbian Advocates and Defenders), an organization in Boston, called me up and said, “You’ve been working on this, and I’ve talked to you a lot over the years. I wanted you to be the first to know. We’re filing suit today.” And she sent me a copy of the complaint. It was a perfectly planned suit to challenge DOMA. Because it had many different plaintiffs, many different situations, many different tax issues, whether to file jointly, whether to get the marital deduction, whether to get certain survivor’s benefits, whether to get employment benefits. It wasn’t just about tax issues. The case raised issues about marital status and federal benefits in many areas. It was a typical civil rights-type case. And it was well lawyered.
It was about that time that I started telling people to file protective refund claims. They needed to avoid the statute of limitations, which would otherwise prevent them from claiming refunds once DOMA was struck down. And I was predicting that it was just a matter of time before DOMA was going to be ruled unconstitutional. For any tax year that's open, of course, couples could go back and claim a refund so long as they've met the statute of limitations requirements.

An interesting story one of the lawyers in the GLAD case told me was that when they planned the case, they filed a claim for refund. They knew that was the best way to challenge the law tax-wise—i.e., not to file jointly but to file singly, and then file a claim for refund. But the refund was granted. They had to call up the IRS and say, “No, no, no. You don’t understand: we need standing in this case. Please deny our refund.”

I talked to a number of people around the country around this time, because I’d become known for my expertise on this project. There was a couple in Oregon who were simply registered domestic partners, and they were fed up with how they were being treated by the federal government. So they simply filed a claim for refund saying “We are filing jointly. That’s the way we should file, because that’s how we file under state law.” They didn’t say anything about being married or registered domestic partners, and they got their refund.

Q God bless the Service Center.

A Well, yes. People kept saying, I bet there’s somebody who’s working there on our side. And then I said, “No. This is just everyday practice at the IRS.”

Q Now, take us to the end. How did that litigation come to a head and how was it finally resolved?

A Well, the Windsor case jumped ahead. It was a pure tax case. I like it that it was a tax case, an estate tax case dealing with the marital deduction. Edie Windsor was just upset. If she had been in a heterosexual marriage, she wouldn’t have had to pay any estate tax because when her spouse died she would have gotten the marital deduction. The district court ruled in her favor. The Second Circuit ruled in her favor in 2012; and ultimately, so did the US Supreme Court in 2013. That’s the point at which all the federal agencies had to figure out how they were going to treat the court ruling, because there were a lot of states at that time that still did not recognize same-sex marriage. The IRS had to figure out whether to recognize marriages on the basis of the laws in the place of celebration, or on the basis of the laws that existed in the couple’s state of residency or domicile.

The IRS came out with its revenue ruling in August of 2013. They came out with it the very day that I was scheduled to do a talk at the Santa Clara bar. I was reading it furiously before going to give my talk: I just threw away my prepared remarks. The IRS ended up adopting a place-of-celebration rule, which made it a lot easier for everyone. There were a lot of different parties interested in having a simple, applicable rule, which the place-of-celebration rule turned out to be. I did a lot of writing at that time. I’ve been told that some of my memos got to the right people in the IRS and that they were helpful.
You never lobbied the IRS? You never sat down at a table at 1111 Constitution to talk issues through?

There are a couple of issues that have come up over the years. I have in fact gone to the Treasury building and met with someone to make an argument, which was flatly rejected. It goes back to working with a local attorney here, Don Reed, on a request for a private letter ruling that registered domestic partners in California should be subject to the *Poe v. Seaborn* income-splitting rule. That's an entirely different issue. They aren't married, and DOMA was still in effect when these discussions took place, but those couples did have community income under state law. We were trying to get the IRS to issue a ruling to help inform people about the tax consequences, because people in California were being told not to register because of the tax uncertainty. That seemed bad public policy to me. The best rule, I thought, would have been to recognize that *Poe v. Seaborn* did apply. Even knowing that it did not apply would have been helpful. They never would rule on our private ruling request; instead, they asked us to withdraw it. We didn’t. Then they came out with a CCA that said *Poe v. Seaborn* does not apply. It only applies to married couples, not to registered domestic partners. They gave no analysis whatsoever. That was in 2006. Some years later, a friend at the IRS called me and suggested we re-submit that request. We did. I know some of the people who worked on it. In the end, they issued a CCA in our favor in 2010 and said that RDP income was community income for federal tax purposes. That was the right result.

And that’s the answer today?

That’s the answer today. So even today, if you’re a registered domestic partner in California and you’re not married, then you are not recognized as spouses. That’s due to another part of the ruling that followed *Windsor*. It said that registered domestic partners will not be treated as spouses. I had argued otherwise.

I was giving a talk at an ABA meeting in San Francisco that fall, and I got to meet one of the coauthors of the ruling. I said, “I think you did a great job.” And he said, “No, you don’t. There’s one thing I know you disagree with me on, and it was the registered domestic partners.” That was the moment I knew that my memos on how to treat same-sex married couples under tax law had reached the right desks at the IRS.

I do believe registered partners should be treated as spouses under tax law, because California gives registered domestic partners all the same benefits as spouses. They’re required to file a joint return at the state level. But the Service’s position is that they’re not spouses because California doesn’t call them spouses.

But as you know, in tax, sometimes form trumps substance.

Correct. If I chose the form, they can argue substance. I can be stuck with the form if I chose it though.

I guess on that theory, choosing to be a registered domestic partner rather than choosing marriage is your choice and you take the consequences.

It’s your choice. And that’s fine going forward. It’s the people who died when they could not get married and so were only registered domestic partners. Those taxpayers were not allowed the marital deduction and that bothered me. I argued for a semi-retroactive application of spousal status. It was
unconstitutional to deny them marriage; why isn’t it unconstitutional to deny them the marital benefits that came with registered domestic partnerships?

Q  You are one of the few tax practitioners I know who can claim an unconstitutional win. So how does that feel?

A  Well, I don’t think I can claim the unconstitutional win.

Q  I mean on the issue, on your involvement against DOMA and being part of that larger issue.

A  Those were exciting times. It’s less exciting today, because there’s no conflict between state and federal recognition of married same-sex couples, thanks to the Obergefell decision. Thank goodness for that.

There is one other litigated issue I felt strongly about. I got involved in a Ninth Circuit case on this one. I worked with a public interest law firm to submit a pro bono amicus brief. The issue was the mortgage interest deduction. I’d written a couple of times about that. A lot of people disagree with me, but I do think my position is supported by the Code. If you’re married, the Code treats you as one taxpayer for mortgage interest deduction calculations. I think that’s wrong, but that’s what the Code says.

If you can have one million dollars of acquisition debt as a single individual, two single individuals ought to be able to claim the deduction on one million each of acquisition debt. If you’re a married couple, however, the IRS has taken the position that together you only have one million. I call it another example of a marriage tax penalty in the Code. The IRS audited and claimed that a same-sex couple had claimed too much mortgage interest because they were claiming it on $2.2 million, which was then the aggregate amount that would be allowed if each individual took the full deduction. (Qualified debt at the time included $1.0M of acquisition indebtedness plus $100,000 of home equity indebtedness.)

In 2009, the IRS had issued a CCA saying that the allocation was per residence, not per taxpayer. If two individuals claimed mortgage interest deductions on the same residence that they shared, they would be limited to $1.1 million of qualified debt just as a married couple would be. That made a lot of people in the LGBT movement upset because the tax law did not give us spousal rights, since DOMA was still in effect. The IRS would not recognize our marriages because of DOMA, but for this purpose they were treating us as married. That didn’t seem fair. Well, that inequality argument is a tricky argument to make. I thought the better argument to make was that if you read the Code correctly, the $1.1 million limitation should be construed as applying “per taxpayer.” Then to my surprise, the Tax Court ruled against that position, and the taxpayers in that case were not planning to appeal to the Ninth Circuit. I think they had had their fill of the courts. Their lawyer had represented them at a reduced rate, and they didn’t think they had the money for an appeal. Finally, their lawyer called me because I had talked to him earlier. Their lawyer said, “You know, they’re changing their mind but they need an attorney and I can't do it. They think it is an important thing to do for the LGBT community when they are denied spousal rights in all other areas and then treated as spouses when it is harmful to them.” I said, “If I can find them a pro bono attorney, will they take it to the Ninth Circuit?” The taxpayers agreed and that’s what we did. Aubrey Hone, a San Francisco tax attorney, agreed to represent them and Emily Kingston (Sideman and Bancroft) agreed to make the oral argument. We won at the Ninth Circuit, so that felt good.
Q And did the Ninth Circuit agree with you that the proper reading of the Code is per taxpayer, not per residence?

A Yes. They agreed it was per taxpayer, in Voss v. Commissioner. One of the arguments I made in my amicus brief was that the Code says that the interest must be paid per period. Taxpayers have yearly tax reporting periods; residences do not. It makes no sense to say this rule applies per residence. I felt good that they got that argument. They didn’t cite the amicus brief, but they did cite that argument in their opinion.

Q So where do we go from here? Where’s the next challenge?

A Well, that’s a good question. In the LGBT community, it’s not so much tax as it is discrimination. So now everybody says, “You’re married on Sunday and fired on Monday because so many states don’t have protections for LGBT people.” Discrimination and religious liberty are the key issues coming up. In the tax field, my current focus is on the so-called marriage tax penalty. I’ve been arguing about this for years, but I have never come up with a perfect solution (though I do think there is one). The question is whether we ought to assess taxes on an individual basis or on a joint basis. If it’s joint, who should be covered jointly? I think it should be per taxpayer. I would like to get rid of the marriage tax penalty. The government always says, “We don’t tax marriage.” But we do: we tax marital status differently because Congress wrote the laws that way. There are all these provisions built in, whether it’s the rates or the mortgage interest deduction or the capital loss deduction. The capital loss deduction is $3,000 against ordinary income per taxpayer, but a married couple only gets $3,000 for the two of them. Sometimes I call that tax coverture. It makes the husband and wife or the two spouses one again for tax purposes. So I’ve been working, giving a lot of talks, and working out drafts. But I haven’t yet published what I really want to publish about how we should assess taxes and avoid the marriage tax penalty.

Q Do you see an administrative or a judicial remedy to that problem, or do we have to go to Congress?

A That’s the problem. The marriage rules are built into the Code. Congress has to change the rate structure. Under my solution, you wouldn’t have joint returns as they are structured today. You’d have to change the whole reporting method. Congress has become more sensitive to the marriage tax penalty. They’ve taken it out in the rate structure at the lowest rates. But at the higher marginal brackets it comes back in, and it comes back in other places in the Code. I don’t know that anyone in Congress has really looked at it in any detail, but they seem amenable to getting rid of the marriage tax penalty. If that’s the primary argument, and especially if it would do something to simplify tax law, then I think you could get the attention of Congress. Maybe not this Congress, but some future Congress.

Q This is not an LGBT issue per se; this is a marriage issue, right?

A It’s a marriage issue. I mean, it’s a couples issue. And I would like the rules to be a lot clearer for unmarried couples. A lot of couples, whether they’re same sex or opposite sex, decide for whatever reason to live together rather than marry. Now states are beginning to recognize this status—cohabitation. In the state of Washington, if you are in such a relationship when you split up, you’re treated as though you have quasi-community property and that property gets split evenly. Same thing at death. No other state has gone quite that far. Other states deal with the Marvin v. Marvin remedy for that problem rather than
creating quasi-community property or even quasi-marital property in separate property states. But there ought to be property law rules to protect those couples, and there ought to be tax rules that are predictable to protect those couples. So there’s still this important tax question. I am working right now on issues for unmarried couples. The two issues—taxation of cohabitants and taxation of married couples—are not disconnected. How unmarried couples should be treated is not so different today from how married couples should be treated.

Q Any last thoughts as we finish our conversation?

A I just wish I had more time. To write. To study. To get this done.

Q Don’t we all? Professor, thank you so much for your time, and all the best.

A Thank you. It’s been a pleasure.
AT COURT IN BRIEF

Update on U.S. Tax Court’s Opinion in Altera

On July 27, 2015, the Tax Court decided Altera Corp,¹ ruling for Intel (Altera’s parent company) on the basis that the government had failed to engage in “reasoned decisionmaking” in issuing the cost-sharing regulations.² The Tax Court result held the government to a rigid interpretation of section 482's arm's-length standard as an empirical standard that must be based on “evidence or known transactions” with uncontrolled taxpayers, in spite of the non-commensurability of affiliate transactions to other market transactions. This July, the Ninth Circuit reversed the Tax Court in a split opinion including Judge Reinhardt, who died before the opinion was released, in the majority with Judge Thomas.³ That opinion upheld the government's cost-sharing regulations requiring stock-based compensation to be taken into account for transfer pricing purposes. Nonetheless, because Judge Reinhardt had died before it was issued, the opinion was withdrawn shortly after by the Ninth Circuit and set for re-deciding by a reconstituted panel with Judge Susan Graber substituting for Judge Reinhardt.⁴ Amazon had filed an amicus brief in the original Ninth Circuit case in support of Intel arguing against the authority of the government to use anything other than the traditional arm’s-length standard for cost-sharing arrangements. Several tax professors—including Stephen Shay (Harvard), Daniel Shaviro (NYU), and Reuven Avi-Yonah (Michigan)—have now filed an amicus brief in support of the government position, arguing that the stock-based compensation cost-sharing regulations are consistent with the arm’s-length standard and reasonable under section 482. ■

¹ Altera Corp. v. Commissioner, 145 T.C. No. 3 (July 27, 2015).
² Tax Court in Altera Invalidates the Cost Sharing Regulations Provision Governing Stock-Based Compensation: The Treasury Failed to Engage in 'Reasoned Decisionmaking' as Required by the APA, Bloomberg News (Sept. 11, 2015).
³ Altera Corp. v. Commissioner, Nos. 16-70495, 16-70497, ___F.3d, 2018 WL 3542989 (9th Cir. 2018); see also Richard Rubin, IRS Wins Court Case Over Intel Corp, Wall St. J. (July 24, 2018).
PRACTICE POINT

Hotel Valuation: Deduction for the Return on FF&E

By Gauri S. Samant, Fredrikson & Byron P.A., Minneapolis, MN

An operating hotel is an amalgamation of distinct but essential components that contribute to its value: real property (land and improvements) as well as non-realty items including: (1) personal property (furniture, fixtures, and equipment or FF&E) and (2) intangible property (such as franchise brand or flag, goodwill, contracts, and reputation). As many jurisdictions tax only real property, valuing a hotel for property tax purposes involves distinguishing the real property components from the personal property components and the intangible property components.¹

There is widespread agreement that in extracting the hotel's personal property components, a deduction is allowable under the income approach methodology for (1) a cash reserve for periodic replacement of FF&E in the future as existing FF&E is no longer serviceable (the replacement allowance), and (2) a recovery for the invested capital in FF&E (the return of FF&E). A source of contention, however, and the impetus for conflicting state tax court decisions across the nation, is whether an additional deduction is allowable for the amount received as income for use of the investor’s investment in the FF&E until that invested capital is fully consumed and requires replacement (the return on FF&E). Opponents to the additional deduction consider it to double-count values, asserting that the deductions for the replacement allowance and for the return of FF&E fully extract the value of the existing FF&E currently used in hotel operations.²

Supporters, however, conclude that the double-counting argument offers a myopic view that conflates the precise and distinct purpose for each deduction. The replacement allowance does not provide a return based on the value of the existing FF&E; it is simply a reserve to replace existing items of FF&E as they wear out. The deduction for the return on and return of FF&E is needed to provide a complete return with respect to the value of the existing FF&E under the income approach: it does not provide any return for FF&E put in use in the future after the current FF&E wears out and is replaced.

Simply put, no investor would invest capital without expecting complete recovery of the invested capital plus a payment for the use of capital. Some courts have concurred in this holistic understanding, allowing

---


a deduction for the return on and of existing FF&E as well as for reserves for future FF&E. Without quantifying and removing each one of these three items, the underlying role of FF&E in hotel operations and the investment rationale for investing in FF&E is vitiated.

PRACTICE POINT

States Work to Avoid Impact of TCJA Limitation on State and Local Tax Deduction and IRS Weighs in on Attempted Workarounds

By Jaye Calhoun, Kean Miller LLP, New Orleans, LA

Since the amendment of Internal Revenue Code section 164(b)(6) to limit joint filing taxpayers’ deduction for state and local taxes to $10,000 annually (pursuant to the 2017 tax legislation, frequently called the Tax Cuts and Jobs Act or TCJA, P.L. 115-97), a number of states have considered or enacted various workaround measures to avoid or mitigate the effect of the new limitation on their residents. State efforts have taken several forms, including state legislation allowing for “charitable” contributions intended for use by a state or local governmental entity and linked to a corresponding credit against state or local taxes, as well as voluntary and deductible employer payments of what would otherwise have been an employee’s tax obligations, to the more radical idea of imposing an entity-level income tax on otherwise pass-through entities, with a corresponding credit to the owners of the pass-through entity for the tax “paid” by their entity.

With respect to the former, states have considered legislation allowing for direct “donation” of funds to state or local governmental entities,1 or creating public charities under section 501(c)(3) to which taxpayers could make “voluntary” contributions, which donations or contributions would then be delivered to specified governmental entities and used to fund certain state or local government operations. In exchange, the donor/taxpayer would receive a complete or partial credit against specified state or local taxes and, theoretically, the payment would also be deductible as a charitable contribution under section 170 for federal income tax purposes. Some commentators have questioned whether a “contribution” made to a state or local government, when creditable against one’s own tax liability, could be considered “voluntary” within the meaning of section 170, and whether any such scheme could be viewed as other than a disguised tax payment, and whether, even if made to a separate charitable organization, if that organization could be viewed as other than an agent of the intended recipient government.2

The Internal Revenue Service doesn’t seem to be buying at least some of these workaround efforts. On August 23, 2018, the IRS published proposed regulations3 making it clear that, to the extent state or local tax credits are granted in return for a contribution to a section 170(c)-qualified organization, the payor’s

1 A voluntary contribution to a state or local government or a political subdivision can be deductible as a charitable contribution under section 170(c)(1) if made for a public purpose.
2 Peter Faber, Do Charitable Contributions Avoid the TCJA SALT Deduction Limit?, STATE TAX NOTES (Apr. 23, 2018).
federal charitable deduction is reduced dollar for dollar. The proposed regulations state that the rule applies to contributions to all section 170(c) organizations, not just to entities formed by state or local governments, but the regulations allow for a de minimis exception if the amount of the state tax credit does not exceed 15% of the contribution.

The IRS, in issuing the proposed regulations, attempted to shoot down several of the grounds on which proponents of this type of workaround had relied. Specifically, Chief Counsel Advice 201105010 was downplayed as not controlling and not precedential. Further, the state tax credit technique was said to undermine congressional intent in limiting state and local tax deductions. The regulations, once they are finalized, are currently stated to be retroactively effective to August 28, 2018, suggesting that the IRS will not challenge contributions that were made to pre-existing programs before that date. A public hearing on the proposed regulations is scheduled for November 5, 2018. Reportedly, approximately 7,300 comments were filed with the IRS with respect to these proposals. On September 5, 2018, in a news release, the IRS offered a “clarification for business taxpayers: payments under state or local tax credit programs may be deductible as business expenses.” However, panelists at the ABA Tax Section meeting in Atlanta pointed out several ambiguities in this news release.

Of particular concern in light of the proposed regulations is the fate of student tuition or scholarship granting-organizations (STOs), most of which existed long before the TCJA and subsequent state workaround attempts. California, new to the concept, had proposed legislation (which ultimately did not pass) to allow taxpayers to make voluntary contributions to certain qualifying tuition-paying entities and receive an 85% state tax credit for their contribution. Nonetheless, 18 other states have had laws authorizing the formation of private, nonprofit organizations to fund tuition and books for low-income or needy students, many of whom are hoping to leave a failing or under-performing school, or simply to allow for school choice: those states have historically provided a limited state tax credit to donors in exchange for their contributions to these organizations. For example, Louisiana law allows for such programs that have relied on contributions made by citizens seeking a credit or rebate to provide scholarships to low income students throughout the state.

A number of these organizations have approached the IRS seeking to be excluded from the scope of the final regulations. Bruce Ely, of Bradley Arant Boult Cummings LLP, in Birmingham, AL, is part of the effort to correct this for historical STOs. He notes:

The IRS cast far too wide a net here as evidenced by the fact that their warning shot—Notice 2018-54—said nothing about targeting these scholarship-granting organizations that have been around long before there was even a discussion of a SALT cap. The IRS and certain Treasury officials may view these organizations and the kids they benefit as collateral damage, but I wonder if they’re prepared to help my clients choose which children lose their scholarships if we witness a substantial drop-off in donations as a result of these over-reaching regulations. These STOs relied on numerous items of IRS guidance, and not just one 2011 CCA, when they made these scholarship commitments—and those commitments

---

4 IR-2018-178.
5 See SB-227 Education Finance: Local Schools and Colleges Voluntary Contribution Fund: personal income taxes: credits; & SB-581 State Contributions: California Excellence Fund.
6 Alabama, Arizona, Florida, Georgia, Louisiana, Illinois, Montana, Nevada and South Carolina are among the states offering this kind of tax credit for contributions.
7 Louisiana Scholarship Program/Tuition Donation Program, see La. R.S. 43:6301 (B)(C)(ix).
usually last until the child graduates from high school or his or her family’s income rises above the poverty level.

It should be noted that the long-standing IRS policy of tolerating state tax credits in situations in which federal charitable contribution deductions were also available might be viewed as having established a precedent allowing states to now create “workarounds” for what would otherwise be a non-deductible state or local tax. It is not clear why the newly enacted state responses to federal tax changes are any less reasonable than the comparable state programs that have existed for some time.

Not addressed in the proposed regulations (which were, of course, issued under the Code provision providing for charitable deductions), however, is the other main approach taken by, or under consideration, in heavily impacted states. For example, the State of New York took a different path looking to provide some relief to its citizens. New York passed legislation allowing for the transfer of non-deductible personal income tax paid by employees in the state to a deductible payroll tax paid by employers. In that case, if an employer opts in to an optional payroll tax regime by December 1 of the preceding year, the employer will pay a voluntary tax on wages paid to the extent such wages exceed $40,000 per employee (1.5% in 2019, 3% in 2020, 5% in 2021 and thereafter) and may decrease the employee’s compensation to take this additional tax payment into account. In turn, the employee receives a corresponding credit against personal income tax, which credit is expressly not linked to payment of tax by the employer. Since payroll taxes are withheld from wages paid by the employer and deductible as wages paid by the employer, this alternative mechanism of payment of the tax to the state directly by the employer ensures that the state receives the same amount of tax, the employer receives the same amount of deduction and the employee pays less in tax overall (to offset the loss of the employee’s federal tax deduction).

Whether or not the IRS is comfortable with this scheme, there are many potential issues for employers who would incur increased administrative cost, and for employees, particularly non-New York employees who may pay tax in other states on the same income for which they will no longer get a credit for taxes paid to New York.

Connecticut, in turn, enacted legislation attempting to shift the liability of individuals for the payment of SALT to an entity-level liability, enacting a pass-through entity tax and corresponding credit for pass-through owners. For taxable years beginning after December 31, 2017, pass-through entities doing business in the state of Connecticut will be subject to an entity level income tax of 6.99%. In turn, partners, members, and shareholders of the pass-through entities will be entitled to a Connecticut tax credit equal to 93.01% of their direct or indirect share of the pass-through entity's state tax liability.

New Jersey has enacted a law that allows its state residents to declare property taxes as charitable donations. This will allow the property owners to “donate” up to 90% of their tax bill to charitable funds set up by municipalities in exchange for tax credits.

Not simply content to rely on state legislation to address these issues, in July, the states of New York, New Jersey, Connecticut, and Maryland filed suit against the IRS and the Department of Treasury challenging the constitutionality of the deduction limitation. Stay tuned for further developments!

---

8 Article 24, New York Tax Law, Employer Compensation Expense Program.
9 CT Public Act 18-49.
10 NJ S1893.
PRO BONO MATTERS

Georgia on My Mind

By Francine J. Lipman, William S. Boyd Professor of Law, University of Nevada, Las Vegas, NV

“Georgia, Georgia
The whole day through
Just an old sweet song
Keeps Georgia on my mind”¹

Pecans, peaches, peanuts, a possum named Pogo, and a progressive state income tax made Georgia the perfect place for the Section's October 2018 meeting. Georgia, named after King George II of Great Britain, was the last of the original thirteen colonies founded in 1733 as a refuge for released debtors and the poor. In 1788, Georgia joined the Union as its fourth state, but in 1861 Georgia left the Union for the Confederacy. After the Confederacy lost the Civil War, Georgia rejoined the Union in 1870, as the last of the southern states to return.

“I said a Georgia, Georgia
A song of you
Comes as sweet and clear
As moonlight through the pines”

A state of many contrasts, Georgia was literally the place that the civil rights movement was born. Atlanta was not only Reverend Dr. Martin Luther King's birthplace but also home to the Southern Christian Leadership Council (SCLC), Student National Coordinating Committee (SNCC) and many historically black colleges and universities. Michael King, Jr. was born in Atlanta on January 15, 1929 to Reverend Michael and Alberta King. Inspired by Martin Luther, the Protestant Reformation leader, Reverend King, Sr. changed his own name as well as his son's name in 1934. When King, Jr. completed his extensive education and training, he and his spouse, Coretta Scott King, moved back to Atlanta to pastor at their beloved Ebenezer Baptist Church.

In the 1960s, Atlanta boasted vibrant professional and middle-class African American communities and became a cultural catalyst for civil rights activities. SCLC and SNCC, groups advocating nonviolent protests (remindful of today’s public kneelings against racist police violence), selected Atlanta as their headquarters. SNCC staged massive sit-ins at Atlanta department store lunch counters where Dr. King and many students were arrested in late 1960. With students refusing bail and straining government resources

¹ In 1979, Georgia on My Mind, written in 1930 on a cold and stormy evening in New York City by Hoagy Carmichael and Stuart Gorrell, was designated as the official Georgia song.
while demonstrations caused significant reductions in business, community leaders negotiated an end to segregation at the downtown lunch counters. Nevertheless, segregation continued throughout Atlanta leading to additional sit-ins until the landmark passage of the Civil Rights Act of 1964.

As history books illuminate, King’s nonviolent protests led to countless arrests and at least 29 incarcerations. Federal and state tax charges were also part of the relentless harassment King and his family suffered. In February 1960, King became the only person ever prosecuted under Alabama’s income tax perjury statute for falsifying his 1956 and 1958 tax returns.

In King’s own words:

The white Southern power structure […] indicted me for perjury and openly proclaimed that I would be imprisoned for at least ten years. This case was tried before an all-white Southern jury. All of the State’s witnesses were white. The judge and the prosecutor were white. The courtroom was segregated. Passions were inflamed. Feelings ran high. The press and other communications media were hostile. Defeat seemed certain, and we in the freedom struggle braced ourselves for the inevitable. There were two men among us who persevered with the conviction that it was possible, in this context, to marshal facts and law and thus win vindication. These men were our lawyers—Negro lawyers from the North: William Ming of Chicago and Hubert Delaney from New York.

They brought to the courtroom wisdom, courage, and a highly developed art of advocacy; but most important, they brought the lawyers’ indomitable determination to win. After a trial of three days, by the sheer strength of their legal arsenal, they overcame the most vicious Southern taboos festering in a virulent and inflamed atmosphere and they persuaded an all-white jury to accept the word of a Negro over that of white men. The jury, after a few hours of deliberation, returned a verdict of acquittal.2

“I said, Georgia, oh Georgia
No peace I find
Just an old sweet song
Keeps Georgia on my mind”

Today, Atlanta is a vibrant global city with almost 500,000 residents, the majority of whom are African American and almost one-half of whom are college graduates. Atlanta is an economic engine for Georgia and the entire southeast enjoying top rankings for a successful business climate for the past five years. Economists cite the busiest airport in the world, Hartsfield-Jackson Atlanta International Airport, and more than 250,000 college students at Emory, Georgia Institute of Technology, Georgia State University, Morehouse College, and Spellman College (among others), as vital to Atlanta’s booming economy. Almost 30 Fortune 1000 companies including Coca-Cola, Delta Airlines, Home Depot, Turner Broadcasting and United Parcel Service are headquartered in Georgia.

In addition to strong businesses and residents, Georgia benefits from tax lawyers with the “indomitable determination to win” at two low-income taxpayer clinics.

The Phillip C. Cook Low-Income Tax Clinic at Georgia State University (GSU) in Atlanta is a nationally recognized component of GSU’s Center for Clinical Programs and Center for Access to Justice. Clinic Director W. Edward ‘Ted’ Afield, Associate Director Tameka Lester, and Clinic Fellow Emily Yaun work with GSU law students to develop professional judgment “to promote justice and public good.” The clinic’s motto, “Education Through Service,” is reflected in a mission dedicated to helping students bridge the gap between the substantive knowledge gained in traditional doctrinal law school courses and the practical knowledge needed to effectively perform as legal professionals committed to providing access to justice for low-income taxpayers. The clinic accomplishes this mission by providing students practical experience in resolving taxpayer disputes with the Service and exposure to real world professional and ethical issues. The clinic is currently in its 26th year of operation and in that time about 1,000 clinic students have saved millions of dollars in tax liabilities for thousands of grateful Georgia taxpayers.

J.C. Vision & Associates, Inc. in Hinesville, Georgia operates a low-income taxpayer clinic that provides representation to qualifying households who have federal tax disputes or debt collection matters with the Service. J.C. Vision has operated this tax program since 2003 for taxpayers residing throughout middle and southeast Georgia.

These two LITCs provide critical access to tax justice for those in need in Georgia. Despite the booming economy Georgia suffers a 16 percent poverty rate among its almost 10.5 million residents. The poverty rate in Atlanta, Georgia’s capital and economic engine, is fifty percent higher at 24 percent. Since 2000, Atlanta has seen its high-poverty neighborhoods triple as it suffers the “suburbanization of poverty.”

Providing access to tax justice is how tax lawyers help fight poverty and fulfil Dr. King’s dream. Georgia’s two LITCs, led by passion warriors Professors Afield and Lester, among others, not only provide Georgians with access to skillful advocacy and tax justice, but at GSU’s Cook Clinic they train a flourishing pipeline of future tax lawyers. These lawyers exponentially benefit Georgia and beyond.

King’s epiphany regarding tax justice after his 1960 acquittal is illuminating:

I am frank to confess that on this occasion I learned that truth and conviction in the hands of a skillful advocate could make what started out as a bigoted, prejudiced jury, choose the path of justice. I cannot help but wish in my heart that the same kind of skill and devotion which Bill Ming and Hubert Delaney accorded to me could be available to thousands of civil rights workers, to thousands of ordinary Negroes, who are every day facing prejudiced courtrooms.3

“Other arms reach out to me
Other eyes smile tenderly
Still in the peaceful dreams I see
The road leads back to you”

This passion warrior for tax justice has Georgia on her mind and in her heart. ■

3 Id.
PRO BONO MATTERS

An Interview with 2017-2019 Christine A. Brunswick Public Service Fellow Catherine Martin

Throughout the country, cities have taken steps to revitalize urban neighborhoods to attract young, upwardly mobile residents who prefer to live in dense urban areas. As these neighborhoods increase in attractiveness, property tax values also increase. Long-time residents are often unable to keep up with the increased property tax burden. Philadelphia, Pennsylvania is no exception. The lack of affordable housing and rise in property taxes have put many families at risk of experiencing homelessness through foreclosure. This is especially threatening for low-income taxpayers who live on a fixed income, such as Social Security, and may not be able to cover the property tax billed to them annually. Even when additional aid is factored in, such as Supplemental Security Income, roughly one-in-four Philadelphians still lives below the city's median income. Some cities have amended local tax laws to allow for reduced property taxes for long-time home owners to avoid displacing residents.

Catherine Martin, the 2017-2019 Christine A. Brunswick Public Service Fellow, works at the Community Legal Services of Philadelphia (CLS) to help prevent homelessness among low-income families. In addition to providing court representation for homeowners facing foreclosure, she advocates for changes in the local tax laws and improved tax assistance programs. Catherine’s service at CLS has helped many Philadelphians stay in their homes and has created systemic change to avoid these problems in the future.

ABA Tax Times (ATT) recently contacted Catherine (CM) to discuss the important work she is doing through her Fellowship.

ATT: Can you tell us a little bit about your background and prior work experience, both in and out of tax?

CM: My life has been an adventure. I grew up in New Orleans and have lived in eleven cities in seven states. In my twenties, I was a Naval Officer’s wife, which made it difficult to hold a job outside the home, especially after 9/11 took my spouse away from home for long stretches of time. I had a dream of being an attorney and working to improve access to justice. As my thirties dawned, I found myself a single parent to three little kids. I decided the time was right and went to law school. I know what it means to struggle financially, and I think that helps me relate to my clients. I was immediately drawn to tax law and

---

1 Alfred Lubrano, Philadelphia’s population increased, but it’s not all good, according to Census data, The Inquirer (Mar. 22, 2018).
3 City of Philadelphia, Division of Housing and Community Development, Consolidated Plan 2017-2022.
consumer law and sought volunteer experiences in law school to help me learn more about practice in those areas. I am thankful for my fabulous federal tax professor, Ruth Mason, who made taxation so interesting that I did not mind our class meeting at 8:30 on Friday mornings. She explained well how tax systems are and are not fair and how they can incentivize certain behaviors. This allowed me to think about tax systems in an entirely new way, which is vital to the work I do now in trying to improve the system in Philadelphia.

**ATT:** What inspired you to apply for the Christine A. Brunswick Public Service Fellowship?

**CM:** I was honored to begin my legal career at Community Legal Services of Philadelphia (CLS) in 2015 immediately after law school. As a recipient of the University of Virginia’s Powell Fellowship in Legal Services, my work on property taxes was funded for two years at CLS. As that funding was ending, my advocacy was expanding and I was at a point at which I had a real chance of effecting sustainable and systemic change. I had spent two years building relationships with other advocates, city officials, and the court, but I had not yet been able to change the system in a meaningful way. I applied for the Christine A. Brunswick Public Service Fellowship so that I could build upon the groundwork created during my first fellowship and have a chance to create something that would last after I left. The two-year length of many fellowships seems like a lot of time to commit to a project, yet systemic advocacy often takes longer. Although there are still things I hope to improve, this Fellowship’s additional funding allowed me to work with the city to create the Tax Foreclosure Prevention Program. That is a first-of-its-kind program that offers the sort of sustainable change that improves the whole community.

**ATT:** Could you tell us about Community Legal Services of Philadelphia and how you came to choose that organization?

**CM:** Community Legal Services of Philadelphia has been providing free legal services to low-income Philadelphians for more than 50 years. It is nationally recognized as a model legal services program. CLS has eight substantive practice areas, which makes it possible to provide comprehensive legal aid to low-income seniors and families who may have myriad legal issues with which they need help. During law school, I interned and volunteered extensively with Legal Aid Justice Center in Charlottesville, Virginia (another fantastic legal services program!), where I took on a number of consumer law cases. For my second summer, I hoped to get more experience in consumer law while making new connections at another organization. (That’s good career advice for any law students who may read this.) I landed a summer internship in CLS’s Homeownership & Consumer Rights Unit. Instead of consumer law, I ended up working on tax law for low-income Philadelphians at risk of losing their homes to tax foreclosure. I found real joy in untangling the Pennsylvania Municipal Claims and Tax Liens Act of 1923 and building upon my grounding in tax law and how it incentivizes behavior. CLS selected me to sponsor for a fellowship, and I continue to be thrilled to work and practice tax law at such an excellent organization.

**ATT:** Please tell me about the work you do. What sort of projects are you working on?

**CM:** I prevent homelessness, preserve intergenerational wealth, and stabilize communities. The best and most affordable home for low-income families and seniors is the home in which they currently live. Over the past decade, Philadelphia increased its property tax foreclosure filings by 1200%, putting thousands of low-income families at risk of homelessness. I provide direct representation to low-income homeowners in court and defend against these foreclosures. I advocate with the courts and city officials to improve tax assistance programs and procedures for all Philadelphians. When I joined CLS in 2015,
homeowners were not entitled to a hearing to verify the facts of the case before the court issued a decree authorizing their home’s sale by the Sheriff. Now all delinquent taxpayers get a hearing. Additionally, this year I created and led two CLE programs to increase the number of private and legal aid attorneys who are knowledgeable on tax foreclosures, so that they feel prepared to take tax foreclosure cases pro bono. I also partnered with another legal services organization to create The Philadelphia Property Tax Handbook, which explains Philadelphia’s various tax assistance programs and how to apply for them. At CLS, we believe no one should become homeless due to a true inability to pay their property taxes. As neighborhoods gentrify, longtime homeowners should be able to enjoy the renewed community and economic development. My work serves to help low-income families and seniors keep their taxes affordable and remain in their homes.

**ATT:** What has been your biggest challenge so far?

**CM:** My biggest challenge has been trying to undo the Sheriff’s sale of a specific client’s home. The client (we’ll call him ‘Bill’ for ease of discussion) came to my office shortly after his home was sold to collect about $2,500 in unpaid property taxes. Having been the shooting victim in a violent robbery twenty years ago, Bill suffers from physical and mental ailments, so his only income is Social Security. He faithfully pays his monthly bills, but unfortunately, the tax bills that come once a year are greater than his monthly income. Although Bill tried his best, he struggled to pay the taxes in full. His home, purchased at auction for about $80,000, is in a rapidly gentrifying neighborhood. Once the home is remodeled, it will likely sell for three to four times as much. The developers hotly contested my motion to set aside the sale of Bill’s home for several legal and equitable reasons, and the judge denied my motion. I have appealed to the Pennsylvania Commonwealth Court, one of two intermediate appellate courts in the state, which is set to hear oral arguments this month (November 2018). It would be tragic if Bill ultimately loses his home. Although it may be too late for Bill, I have worked to ensure that people in Bill’s situation in Philadelphia will not lose their homes in the future.

**ATT:** What has been the most rewarding part of your Fellowship?

**CM:** Knowing that I can give someone peace of mind, that they will not lose their home because of taxes they cannot afford, is truly the best part of my job. Seeing relief wash over someone’s face when I explain that their tax delinquency is resolvable is an experience that I struggle to put into words. It is beyond rewarding to know that I am making a difference with my life, one family at a time. Even better still is knowing that, because of my advocacy, countless other families will be helped.

**ATT:** Do you have any immediate plans for your work after the Fellowship ends? How has the Fellowship impacted your career goals? Do you expect to stay with your sponsor organization after the Fellowship has ended?

**CM:** I am fortunate in that CLS has already indicated I am able to remain after my Fellowship ends. For the foreseeable future, I plan to stay and continue the vitally important work in preventing homelessness. The Fellowship allowed me to build upon my first two years of practice and the relationships I had made and truly change the tax foreclosure process in Philadelphia in a sustainable way. I have learned an immeasurable amount from this experience, and I hope to do more in the future to effect sustainable change. I have found myself more connected to the broader tax law community because of the Fellowship, which I thoroughly appreciate. Tax is such a varied and diverse practice area, and it is always wonderful to learn from other practitioners. Someday, I would love to get an LL.M. and explore tax law further, especially
now that I am entering my fourth year of practice and have experiences and knowledge to draw from. At this time, however, I find the cost of most programs prohibitive. I am eternally grateful for the opportunities the Fellowship has given me, and I can only imagine what future awaits.

Choose the TAPS Endowment for Your Year-End Giving and Supporting our Public Service Fellows

Through the Tax Assistance Public Service (TAPS) endowment fund, the Section of Taxation provides stable, long-term funding for its tax-related public service programs. The TAPS endowment fund primarily supports the Christine A. Brunswick Public Service Fellowship program, which provides two-year fellowships for recent law school graduates to work for non-profit organizations offering tax-related legal assistance to underserved communities.

In its four-year existence, the TAPS endowment fund has supported 18 fellows. Not only have the fellows produced impressive results, but many have secured positions in the field of low-income tax assistance and continue to serve low-income communities and train a new generation of law students to provide these services. Other fellows have clerked for judges of the U.S. Tax Court who value their experiences working with underserved taxpayers and their perspectives gained from their first-hand involvement in low-income tax issues. Fellows who practice tax law in other settings such as major law firms and the government, continue to contribute to the Tax Section by remaining active in pro bono initiatives, speaking on panels, leading committees, drafting comments, and mentoring fellows and other new lawyers. This program has been incredibly successful both in serving taxpayers who otherwise might not have representation, making systemic change in local communities and in providing a springboard to careers in low-income tax services.

Consider giving to the TAPS endowment fund today. Your generous support will help ensure that the Section can continue its mission to provide legal assistance to those in need.

For more information on how to get involved in tax pro bono assistance, please see our website or contact Meg Newman at megan.newman@americanbar.org.
Christine A. Brunswick Public Service Fellows

2018-2020
Anastassia Kolosova (Accounting Aid Society, Detroit, MI)
Omeed Firouzi (Philadelphia Legal Assistance, Philadelphia, PA)

2017-2019
Catherine Martin (Community Legal Services, Inc., Philadelphia, PA)

2016-2018
Laura LaPrade (Community Tax Aid, Inc., Washington, DC)
Catherine Strouse (Legal Aid Society of San Diego, San Diego, CA)

2015-2017
Daniel Knudsen (Oklahoma Indian Legal Services, Oklahoma City, OK)
Frank DiPietro (Ronald M. Mankof Tax Clinic and the Center for New Americans, Minneapolis, MN)

2014-2016
Patrick Thomas (Neighborhood Christian Legal Clinic, Indianapolis, IN)
Lany Villalobos (Philadelphia Legal Assistance, Philadelphia, PA)

2013-2015
Susanna Birdsong (National Women’s Law Center, Washington, DC)
Susanna Ratner (SeniorLAW Center, Philadelphia, PA)

2012-2014
Ana Cecilia Lopez (University of Washington, Low-Income Taxpayer Clinic, Pasco, WA)
Jane Zhao (Center for Economic Progress, Chicago, IL)

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)

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)

2009-2011
Laura Newland (AARP’s Legal Counsel for the Elderly, Washington, DC)
Vijay Raghavan (Prairie State Legal Services, Rockford, IL)
PATHS IN TAX

A Conversation with Drita Tonuzi

Editor’s Note: The following is a lightly edited and abridged version of the May 2018 Tax Bridge to Practice conversation between Kelley C. Miller, Reed Smith, Washington, DC, and Drita Tonuzi, Deputy Chief Counsel for Operations at the Internal Revenue Service.

Kelley C. Miller (KM): It’s a great pleasure to speak with Drita Tonuzi, Deputy Chief Counsel for Operations at the Internal Revenue Service, a person that many of us know very well from signing pleadings that we receive for the Service, business and litigation. Drita is one of those forces of nature. When I started my practice about a decade ago, Drita Tonuzi was everywhere. She was in court, she was at ABA meetings, she was speaking, she was from the government, and she became, for me, a role model of excellence in practice and commitment to service.

Drita Tonuzi (DT): It’s a real honor to be here. But before I get started, I just want to make a public announcement since we are talking about careers: the Chief Counsel is privileged to have some postings for positions across the Associate Chief Counsel in a variety of organizations, including Corporate and PSI. If you know anyone who wants to start a career in the government and wants to work on tax reform, this is the right time. We’re also fortunate to have some positions for field folks, for litigators, in Atlanta, Chicago, Newark, San Diego, San Francisco, Seattle. Cathy Fung of course is a representative of LB&I and will tell you, come to LB&I. I also want to acknowledge Emin Toro, our Tax Court nominee.

KM: Thank you so much, Drita. The tax “Conversations With” program is really about getting to know our interview subjects, so we start with some questions that are not often heard at ABA panels. Could you tell us a little about where you were born and where you grew up? I know that, for you, that’s a very interesting answer.

DT: It is. I grew up in Brooklyn, New York, but that is not where I was born. I was born on the outskirts of Paris in a tiny town called Sucy-en-Brie. My parents were escapees from communism in the country of Albania. That’s Emin Toro’s and my connection: he’s the only American-Albanian tax lawyer that I know, other than myself! I spent the formative years of my life in France. Every country has flaws, but France has an incredible education system. I got an incredible start in France. Apparently I was a smart, young French person, although I’m not a French national, so I accelerated and jumped a class. I had a great beginning in France. When I came to the United States, unfortunately, my immigrant parents, traveling with a large family across the Atlantic did not have any records to show that I had accelerated. I was placed in the
proper age class. It was all for the good. My teacher, Mrs. Wolf, spoke fluent French. What a great pairing! I had a really great start.

**K M:** It was meant to be.

**D T:** It was meant to be. Then I spent that first summer in Buffalo, New York. So that is why you probably think I have a little bit of an accent, but I don't have a thick Brooklyn accent because I learned English in Buffalo. That was my start in the U.S.

**K M:** At what point did you decide about law? In your growing-up years, when your parents came over, did you have exposure to lawyers or the tax system? Or was there anything in your early upbringing that influenced your decision to go to law school and then, eventually, into tax law?

**D T:** Absolutely none. I do remember a pivotal moment, again reminding you that the education system really taught me that there were no limits and that I could do whatever I wanted. I remember an aunt saying to me, “Oh Drita, you’re so great, you will make a terrific secretary or stewardess or nurse.” That was a pivotal moment. I said to her “Oh, actually I’d rather be an attorney, a doctor, or an engineer.” That was the moment in time where I said there are no barriers for me, as an immigrant, because I am an immigrant, naturalized, or for a woman. So I decided right then and there that I would be a lawyer. I have always fought for the underdog, whether it was in school or in my community. I was always the one who was defending the rights of the underdog. And I had a very strong sense of right and wrong from my family, notwithstanding that my family was not well educated. They had a very strong sense of fairness, equity, always doing the right thing. I think that’s really something that has carried through, and I’m very proud of that.

**K M:** How old were you when you had that conversation with your aunt?

**D T:** I was about nine years old. I decided I was going to be a lawyer at that age. Then I really set my mind to doing it. I was, in my family, the first college graduate. My parents couldn't really afford to send me to school, so I applied to Brooklyn College which was free at the time; there was no tuition. Of course, as soon as I got there they imposed tuition. I remember participating in a protest opposing tuition. But it was de minimus: I forget the number, but it was around $600.

**K M:** We would gladly pay it today.

**D T:** We absolutely would gladly pay it today. I got a terrific education at Brooklyn College. Then, for the same reasons, I had to look for a law school that was within my ability to pay. That brought me to Brooklyn Law School: at the time, I think the tuition was $3200 a year. It’s not that long ago; I’m not that old. And once you started with a certain tuition, it carried through your entire three years. I don't think it works that way anymore: I was able to get a full law school education for under $10,000. Then of course I went to NYU for the tax LLM program. One year at NYU—it was proximate in time to Brooklyn Law—cost me over $10,000. So that shows how different the cost was.

I remember the first orientation at Brooklyn Law School. I remember feeling totally out of sorts because I went alone whereas a lot of my student colleagues came with their parents who were judges and lawyers. I remember thinking, am I in the wrong place? Do I really belong here? I have to tell you that law school was the equalizer. Because at the end of the three years, I never felt that I was in the wrong place again.
We were all graduating and we were all fairly equal. Now some of us had better opportunities for jobs than others, but it was never a barrier or an impediment for me.

KM: The bar is there for everyone to pass.

DT: I did pass, by the way, on the first shot, even though like many of us, I had that experience where you think you failed and you don't know what you're going to do if you're not a lawyer.

KM: The world will end.

DT: The world will end. But it all worked out.

KM: What I love about your story is that you had this fundamental sense of fairness and what was right instilled by your great parents and carried that to law school. In law school—because you did your LLM in tax at NYU—what was that moment that brought you to tax law?

DT: It wasn't just one moment but a combination of things. I had an amazing professor, Brian Comerford. He's passed away since then. He made tax come to life. It wasn't boring—we all think about tax law as very number-oriented, but obviously we all know it's not; it's very exciting for all of us. Brian Comerford made that subject come to life for me. So I said, I think I'm going on for my LLM in tax. I didn't take the full complement of tax classes that Brooklyn Law School offered. I did eventually go back to Brooklyn Law School to teach as an adjunct, and so I created their tax practice and procedure class and taught it for ten years. I probably would have benefited from a class like that when I attended law school. I did initially think, because of my international background, that I might want to do international law, maybe work at The Hague or the UN. That never materialized. Tax law was the direction I went in.

I went to work for a small Wall Street firm by the name of Baden, Kramer, and Huffman, headed by former AUSAs civil and criminal in the southern district of New York. They were terrific guys. I don't think that firm is in existence anymore. It existed for almost 30 years and it's been disbanded, but it was a great start. The subject matters that we covered ranged broadly: personal injury litigation, co-op conversions, incorporations (I even admit that I created a corporation in the Netherlands Antilles: little did I know then why they were creating the corporation there), criminal law, domestic relations, but no tax.

I remember Professor Farrell would say, “get malpractice insurance because the opportunity for committing malpractice is great when you first get out of law school.” The varied subject matter that I was expected to master. I even created the Reptile Association. I don't think it's called this anymore, but one of our clients had their items seized at a department store, a high-end department store that had crocodile or alligator items, I forget which. There's an agency that regulates that. The expectation was that these were from endangered species. I had to prove that it was not a skin from an endangered species, so we created the Reptile Association. So I did it all, and I finally realized there's too much opportunity for missteps here. I really should go back to my original thought of going into tax law. Then I went to NYU for my LLM in tax. I did that full time.

KM: That's really fascinating. Many of the tax lawyers in this room, I would suspect, have a similar story of a professor in tax who created our love of the area that we practice in. But then you were wise enough to expose yourself to everything else, and then focus on tax and the LLM. I wish I could say I was that wise
myself. I wasn't. I ended up repeating everything. Were there certain experiences at NYU or certain courses or areas of focus that you particularly found yourself gravitating to?

DT: I had a really terrific course with NYU Professor Michael Salzman, who has since passed away. He wrote the treatise, and it was just a terrific course. I also had Professor Eustice. I had some amazing professors there. I gravitated ultimately to procedure, which is why I spent my career in tax administration. But graduating from NYU, I really didn't expect to be working for the government.

KM: Really?

DT: No. I did on-campus interviewing. I don't think it was based necessarily on merit. It was based on who signed up first and very random. So I ended up with an interview with Shell Oil Company. I had no notion that I would ever move to Texas or Houston, but I was mildly curious and went to the interview. It was the oddest interview I'd ever had. I really didn't have a strong interest in Shell or in Houston. The interviewer said, “I've looked over your resume, looks great. Do you have any questions for me?” That was an odd start, so I said, “no.” We shook hands and I walked out. I was totally dumbfounded when I got a call back for a second interview in Houston. I said “Hmm, okay, let me be open minded about this.” I went to Houston and I did the whole barrage of interviewing with them. Eventually, I sat down and thought about it. Am I seriously going to move to Houston? And the answer was no. I called up and said thank you very much for the opportunity to get to know you better and to interview with you, but I don't think this is viable. I did not go to Shell Oil.

I really didn't expect to be at the IRS either. I had a good friend who had been an IRS revenue agent, with whom I went to law school, and then he returned back as a Chief Counsel employee at the IRS. I didn't know how well things were going for him. After I graduated from NYU, I got married, had a couple of children and had a chance to spend some time with my children which was really important. Several years after my NYU graduation, I thought, “okay, my career is careening down the tubes because I'm not in the marketplace, I'm not really competing with my contemporaries.” But now I'm here to tell you that it did not make a difference.

KM: That's an incredible lesson to just pause and take a moment there. When you graduated from NYU, you didn't go immediately to the Service. You took time to be with family.

DT: Yes. And I have incredible children, and grandchildren now, to prove it. Because of the work-life issues and the need for flexibility with two young children, I eventually called my friend Barry, and Barry said it was just a really great place. He had been doing a lot of litigation, and that was really my passion. I wanted to do litigation. I applied through the Honors Program. I sent my application off to Washington, DC. And believe it or not, I never heard back from Washington, DC. I think it was roughly in the late summer that I sent in my application. Finally toward the end of the year I started getting a little anxious, like many people who apply for jobs. I called Barry, and I said “Barry, I have not heard from Washington. I am interested in the Manhattan office. What should I do?” He put me in contact with the folks in Manhattan, and I was hired and started in early February.

I never did hear back from Washington, and that has left an impression with me. I've always taken care to tell people that it is really important to get back to people, especially if you're not going to give them a job. Because we don't want people to have a false sense of hope that they're going to get a job at the Service. We do have the Career Connector, USAJobs, that is how you apply for jobs with the government. We have
an electronic messaging mechanism. But to me, that is not an acceptable form of communication. I always insist that we issue letters thanking people for their applications and acknowledging that they have terrific resumes, but that we haven’t selected them for an interview. Once we do interview them, we make sure to contact them again if they have not been selected. Whether or not you have a relationship with somebody depends on whether or not it will be a telephone call or a letter. This is really important to me, because after all we are dealing with people.

KM: I think even as much as a decade ago when I went through the process at Georgetown and just anecdotally hearing from my colleagues, that wasn’t the case. People would go into that interview for the Honors Program, or they would send their USAJobs application in, and it goes into an abyss. I think that’s really an important factor. Do you also encourage people to reach out to people that they know in the Service? I think your story is so interesting because your entry into the Service was through a dear friend. Do you recommend that, as well, for people who are looking?

DT: Absolutely. Because then it’s an informed decision. You get to know what’s really happening at the IRS and whether it’s a good fit for you. Sometimes it’s not a good fit. I’ve seen that where, for whatever reason, the candidates make a great impression during the interview, but then they run up against the governmental hierarchy, protocols, and layers of review. If that’s not the right thing for you, if you are more entrepreneurial and you want to do things on your own, then government is not the right place. Everything is scrutinized fairly closely.

KM: That’s a really excellent point. Tell us a little bit about what it was like when you came to the Office of Chief Counsel in Manhattan and started into this role with the government. When you started that February, I imagine it was a very busy office with a lot of different types of cases and work.

DT: Yes. Back then, in the mid to late ‘80s, there were a lot of individual tax shelter cases, big projects. One of the first cases is an interesting story. It was a case where we had lost four years in a criminal trial. It was litigated by Michael Chertoff [former Secretary of Homeland Security, Third Circuit Judge, and Assistant United States Attorney]. Nobody wanted that case because now we had to nail down the civil aspect of the case, including the civil fraud penalty. As the new kid in town, I was fortunate to get this case. I had no clue, so of course I eagerly took the case, developed it, and had quite a number of interactions with the Regional Counsel. First, it was Jules Ritholz [a co-founder of the Civil & Criminal Tax Penalties Committee] who was on the other side of the case. It was me against Jules Ritholtz. He wrote to Agatha Vorsanger (Regional Counsel for the Northeast Region) to complain about the fact that this new attorney was refusing to settle the case. I thought I had a good case because I had read the entire criminal record, including the trial transcript. I couldn’t really understand why we lost the case at the criminal level, and I developed my civil case well. So that was my first case!

KM: There is nothing like having a major case as your first case.

DT: Yes, one of my first cases. Agatha was very supportive. She swept that aside and said “keep doing your job.” Then we were on the eve of trial. I had really delved into the facts of the case, and my recollection was that it was a specific item case. There were 1099s, lots of them, that had not been reported. The last year, more were reported. In my mind, that offered a good way to settle the case: a three-year concession by the taxpayer and a one-year concession by the government. With my manager of course, in tow, we settled the case. Then I got a call from the Regional Counsel again, and I was thrilled because I thought she was going to compliment me for a job well done. I went into the Regional Counsel’s office. I don’t know if any
of you knew Agatha Vorsanger. She was a formidable litigator, a person ahead of her time. She was very stoic and said to me, “You settled this case? It was criminally referred and you did not follow the CCDM procedures of coordinating it with the Regional Counsel.” I had mis-stepped. It was a good lesson to learn early on. I apologized, of course, and said I wasn’t aware. My manager sat silent because she should have been aware. It was a good lesson early on that you’ve got to familiarize yourself with the rules that apply to your specific arena, whether it be the Tax Court rules or the Chief Counsel Directive Manual. I didn’t take it personally. I didn’t wilt; I just went forward.

K: In fact, you succeeded greatly. You have risen up the ranks through the Service. Could you talk about your progression as a career member of Office of Chief Counsel, and how that really works? For people that are interested, either they’re in Chief Counsel now or they’re interested in going into Chief Counsel, tell us something about your career there.

D: My story is unique and not that unique. I never, ever expected to be in Washington DC. I was a New Yorker. I started off as a litigator and expected to be in Chief Counsel for four years, because back then we had a four-year commitment. We have since changed it to three years. All my friends in the office were making their way to the private sector after the obligatory four years. There was a pull. I felt I should be moving on, but I had such a good time with cases in litigation. I have to tell you, it was really hard to get the first case in court. I would prepare the cases, and they would concede. That just kept happening. I had colleagues who didn’t want to have a first trial, and they were settling everything. Finally I got the one case that went to trial for which I felt I was 90% prepared.

K: It’s always that way, right?

D: Yes, but I was prepared enough. You can never prepare 100% for Tax Court because things happen during the court proceeding that totally surprise you. I had a series of trials and really enjoyed the trial work and presenting the case in the Tax Court. I contrast that to the one case I had in private practice where I presented to a jury, and that was quite different. The judges were fantastic. I appeared before a number of great judges: Judge Clapp, Judge Gerber, Judge Halpern, and Judge Tannenwald. Judge Tannenwald was a giant. I remember, he was really tough. He was particularly tough on Counsel attorneys. He knew that he could push us to do better. He called me an idiot; he told me I didn’t know what I was doing; and then we won the case. It was equal opportunity. Trust me. It wasn’t particular to me.

K: To both sides?

D: No, mostly the government lawyers. I always took that as a good sign that I was winning. So I enjoyed continuing to litigate. At some point I recognized an opportunity for me to leave, and knew that if I didn’t leave then I would never leave. I did jump out and go to an accounting firm, Deloitte, around 2000. I should have been really paying attention during the interview because they asked how my marketing skills were. I said “well, I’m sure they’re good. I’ve never been asked to sell anything but I’m sure they’re good.” What I later learned is I was actually starting a tax controversy practice in New York by myself with a partner in Philadelphia.

K: Coming from the government without clients to bring?
DT: Coming from the government, correct. I tend to be entrepreneurial so I embedded myself with the Financial Services Group, and the Banking and Financial Services group, with a great partner, John Rogers. I had interviewed with him. By the way, not only did I not have a book of business, I also had no office, no support person, really nothing. I walked in, went to orientation, and then went straight to John Rogers’ office, sat down and said “okay, what do I do? How do I figure out where I’m going to sit?” The TIRE group, which was the Tax Information Reporting group, was comprised of mostly former IRS people: they had permanent offices, but they sat on a different floor. My business was going to come from that Financial Services group, so I sat with them. It was great. I figured out how to navigate. I was on their directory.

One of the things that impressed me is that the directory, within the year that I was there, completely turned over, except for the partner level. I noticed that was a trend, that there was a lot of movement. People were coming and leaving as well. Then I was that statistic, too, because I ended up going back to the government. But I did things like make pitches to the group, went to speak wherever anybody would have me, formed a group of former IRS Counsel folks at accounting firms so that we could share information, went to speak at outside venues whenever I could. Then I wrote. The IRS would periodically publish Rev Procs and other publications. I saw another opportunity for me to get my name out there. I wrote a tax alert on the comprehensive case resolution Rev Proc. I went to my partner and told him I’d written an article. He didn’t know I was doing it, I just did. I said I’d like to have it published. He said sure, go get it published. I managed to get this national article, a tax alert, published. Then I got calls asking how I did this? What happened? Where’s our quality screening process? I guess they realized that they had to tighten those procedures a little bit. I remember having people from around the country calling me asking how I did that? You have to be entrepreneurial.

KM: So they want to encourage entrepreneurship, but at the same time it sounds like this big firm also has a bureaucracy.

DT: Protocol, right. From there I went back, and at a time when the IRS was changing. I left before Stand Up. For those of you who were around when RRA98 (The Internal Revenue Service Restructuring and Reform Act of 1998) was passed into law, the IRS changed dramatically. So the IRS stood up brand new divisions including LB&I (Large Business and International), SBSE (Small Business/Self-Employed). The structure that we know today stood up around the 2000 timeframe as a result of RRA98. I remember Chief Counsel followed the structure that the IRS put together. I was interacting with my former colleagues and they were telling me how exciting things were. They were forming a new organization, figuring out how to proceed in that context, connecting and having a strong relationship between Counsel in the field and the IRS. I thought that sounded exciting, and so I went back.

After that, things really snowballed for me in terms of my promotion opportunities. I became a Senior Counsel fairly quickly. I then did something that was unusual for the government. Senior counsels are the folks who are doing the work at a higher level. They get the better cases, but they are only accountable for their own cases. I decided I was going from Senior Counsel to a manager position, because I wanted to pay it forward. I wanted to make sure that I had a chance to help develop new attorneys. As the newest manager, I got the thankless task of being the intake person. When the IRS had a question, they would come through me and I would make sure I assigned the case. It was very informal. I would ask the other managers in the office: I’ve got this case, really important, do you have someone to take it? The answer was always no, so I’d assign it to my new attorneys. Some of my new attorneys were dealing with really huge cases. At some point people realized that my group had all the good work, so we created another system for allocating the work more equitably. But it was really important to me to develop my people. My former
lawyers still come to me and say “thank you very much; it was just a really great start.” Some have moved on; some are still here. I have maintained great relationships with all of them.

**KM:** In your role today as Deputy Chief Counsel of Operations, what do you find most rewarding and exciting about what you do? And if you could change anything about the job or the tools or the resources or the circumstances of doing it, what would it be?

**DT:** What I find most rewarding is interacting with the folks. Because in the end it’s about people. I always appreciate helping to make our attorneys’ jobs easier, in small ways and in big ways. I’m all about efficiency, making sure that we are putting the right people on the right cases. One of the things I recently did is see that we’ve got great litigators in SB and we’ve got great litigators in LB&I. The LB&I folks are called Special Trial Attorneys, but in SBSE, we don’t have any Special Trial Attorneys. I wanted to create a Special Trial Attorney program. Of course, I had an ulterior motive. Not only did I want to elevate their standing, but I also wanted us to put some more discipline around the cases we bring forward in litigation—putting our best resources on the most significant cases.

The same thing happened on the whistleblower side. When the whistleblower law first got enacted, the belief was that it would be more in the nature of a contract action. We put that work in our General Legal Services group. These are labor lawyers. They had to learn a new area of litigation—Tax Court litigation. And Tax Court litigation is unique. You know, it has its set of procedures and rules. I think they did a fine job, but they were a much smaller group, so they didn’t have the capacity to expand as the work increased. The work started to increase in the whistleblower arena, so we shifted that work to SBSE and LB&I. These are the Tax Court litigators that we have in Chief Counsel. I’m looking for ways to improve how our attorneys can do their jobs in small and big ways.

**KM:** So, what frustrates you? If you had the ability to wave a magic wand and change something right now, what would it be?

**DT:** One of the questions that you haven’t asked is what was a pivotal moment early on. We had Bob Marino who told us to be proactive. The way he said it was “don’t be a glue butt.” That really resonated with me. It’s been at the base of everything that I’ve achieved and done. You’ve got to be very entrepreneurial, proactive, within the constraints and the rules of the road. So I’m frustrated when people think “I can’t do it. It can’t happen.” It’s too difficult in this structure. If I had had that attitude, we would not have made any inroad in the tax shelter arena, in the promoter penalty arena. You just have to go, and you have to make it happen. That’s my approach: you make it happen. I really get frustrated when we give our client advice where they’ve asked the question and we say it can’t be done. Okay, fine, that may be right. That’s the right legal answer. But what can they do within the confines of the law? What options do they have? There’s always an option. It’s not like it can’t be done and that’s it; let’s move on. There are times when it can’t be done, but at least you have to explore every opportunity.

**KM:** I think it’s a real revelation to hear that. Do you find that’s a unique perspective that you have in government? Is it changing more?

**DT:** No, I think we have a lot of folks who are very open minded.

**KM:** Good, that’s great. Because you’ve had a great career and a lot of different experiences, what would be the best advice that you would give to someone right now who is looking to join the government, or, just in general, to a member of our bar?
DT: I’ve done a lot of interviewing for attorney positions and other positions. What I look for is folks who really want to be tax lawyers, number one, and in public service. It’s got to be genuine. Obviously, I appreciate that people want to come here and stay for a short time, and we do hire folks like that. But I want people who really want to do this. When you’re interviewing, make sure you really understand the organization and that you’ve done your due diligence. Expect the question, what have you done to prepare for this interview? Maybe talking to somebody in Chief Counsel who has been with the organization a while is helpful.

KM: There was that moment in your career where you were reminded of the protocols you needed to follow. What other piece of advice would you take and give to anyone on the bar?

DT: Whatever you do in life, you have to have fun doing it. I can tell you 100%, maybe not every day, but most days I have had fun doing my job. It’s presented the opportunity for me to make connections with the people that are around me. Because in the end, that’s what it’s about: making connections with people, and making a difference in the law. Have fun and connect with your boss and your boss’s boss. Really enjoy what you’re doing. Once it stops being fun, then it’s time to move on.

KM: As a last question for you, if you could look into the crystal ball and project out for us what you think will be the greatest challenge or opportunity or incident that’s going to come into tax practice from the government, or in private practice in the next few years. What do you think we’re going to all be focused on?

DT: So instead of calling it a challenge, I’m going to call it an opportunity. I am so looking forward to getting past the implementation of tax reform, having the rules in place, and maybe starting down the litigation road in tax reform. I am also extremely excited about Chuck Rettig and Mike Desmond coming on board. I know them both. I think they are phenomenal. I hope that their confirmation process is quick and smooth, and they get on board. Because I think they have an opportunity right now to take this organization in a positive direction. I’m very hopeful and excited. We hopefully will have an opportunity to hire more people, not just at Counsel, but at the IRS. It is an ecosystem. The fewer agents that there are, the less work that is generated, the fewer enforcement dollars that are collected, the less work there is for us and the less work there is for the outside bar. So it is an ecosystem, and really it’s an important ecosystem.

KM: I want to thank you so much for not just your time but ending on that note of mentioning Chuck and Michael. These are wonderful and approachable people.

DT: One last point. Wherever you are, pay it forward. Help the folks who are behind you and alongside of you to move ahead.

KM: Such a good note, and such an appropriate note from you. Thank you so much again for your time.
IN THE STACKS

Review of Concrete Economics

By Bree Ermentrout, U.S. Department of Defense, Springfield, VA


Politicians, economists and policymakers hotly debate the means to economic growth. These debates often focus on the size of government or the scale of government regulation. Berkeley’s Cohen and DeLong argue that today’s ideological debates run counter to the economic history of the United States. They show how historically U.S. economic policy has been pragmatic, with the government repeatedly clearing the way for entrepreneurial innovation to expand and reshape the economy. This policy has also been concrete with policymakers being able to say in advance: “This is the kind of thing we are going to get.” America’s pragmatic and concrete approach created a success story.

However, America lost its policy way in the 1980s. Ideology and abstractions, not pragmatism and concrete thinking based on clear perceptions of where the economy should be going, carried the day. Laissez-faire economics and deregulation moved to the forefront and economic policy became ideological, not pragmatic. The authors’ prescription is simple: U.S. economic policy needs to return to concrete economics.

Those who think economics is the “dismal science” will find comfort in the book’s opening paragraph:

This book does not provide any important new facts. It sets out no new economic theories. It offers no analyses of new data sets. Its uses no statistic tools.

Instead the book delivers a quick and lively dash through history. It is a history of government goal-setting enabling entrepreneurs to step in and do what they do best: innovate. As entrepreneurs innovated, they also expanded and reshaped the economy. In praising the role of government in thus enabling economic growth, the authors do not deny the power of the “invisible hand” but recognize that in the United States and all successful economies, the invisible hand is “repeatedly lifted at the elbow by government, and replaced in a new position from where it could go on to perform its magic.” The heroes of this history are those who lifted the hand: Hamilton, FDR and Eisenhower.

2 Id. at ix.
3 Id. at 2.
The authors call Hamilton “the founding father of the American economy.” He redesigned an agrarian economy that arose under the British mercantile system: America provided raw materials while Britain provided manufacturing, banking, and shipping services. In contrast to Jefferson, who promoted an agrarian ideal, Hamilton “thought liberty could spring from the city as well as the countryside.” Hamilton recognized a prosperous rural nation could not protect itself against foreign empires without a strong manufacturing base.

The Hamiltonian redesign promoted industry, commerce and banking. It had four elements: high tariffs, high spending on infrastructure, assumption of state debts by the federal government, and a central bank. The high tariffs protected a nascent American manufacturing base from English imports. They also provided revenue for infrastructure development needed for territorial expansion and the assumption of state debts. This in turn led to a strong central government and a national debt providing the basis for a new financial market with a central bank.

The Hamiltonian system succeeded by creating opportunities for technological development. Without much detail, the authors state “Department of War money was used to fund the development of promising high-tech industries at the Springfield Arsenal and elsewhere, the pioneers of what would much later be called the spin-off.” More recent examples of government-created opportunities include the development of the internet and IBM’s mainframe computers as well as the explosion of college and university computer science majors.

The Hamiltonian system did not die with his death. It evolved into what the authors call the “American System,” which they describe as “a bet on manufacturing, technologies, infrastructure, commerce, corporations, finance and banks, and government support of innovation.” The Hamilton legacy included American tariffs and infrastructure development. Tariffs were the largest in world by the end of the 19th century. With occasional drops in rates, high tariffs remained until World War II. In the late 19th century the government also took the lead in developing railroads by giving them land. The railroads then “reshaped the economy by opening vast regions to profitable farming and settlement and by accelerating the development of feeder industries such as steel and complementary industries such as telegraph.” Entrepreneurs such as Sears with its catalogue business and Swift with its meats developed alongside the railroads. In another example of a policy “pragmatic and concrete in conception,” the government also gave land to settlers, entailing land rights to prevent giant landholdings and ensure that only families living and working on the land could hold the land.

Government pragmatism continued under both Roosevelts. Theodore Roosevelt’s pragmatism included using antitrust laws to regulate monopolies rather than opting for the ideological response of nationalization. FDR employed “pragmatic experimentalism,” trying and dropping policies to find what worked. Unlike prior government-led redesigns, the New Deal did not try to open a new economic space but focused on reviving a failing economy.

---

4 Id. at 7.
5 Id. at 37.
6 Id. at 42.
7 Id. at 34.
8 Id. at 9.
9 Id. at 10.
Though the New Deal was not itself ideological but rather the ultimate in pragmatic policy experimentation, it became the definition of the ideology that was post-World War II American liberalism: the regulation of finance, a social safety net, mortgage insurance, high marginal tax rates, and big active government. It became the model of what government could and should do.\textsuperscript{10}

The authors’ claim that FDR was not an ideologue, while not new, may leave many readers wincing. There may be a fine line between ideology and pragmatism.

Cohen and DeLong credit Eisenhower with reshaping the U.S. economy in four ways. First, he preserved the New Deal with its safety nets and financial regulation. Second, he created housing and highway programs which “enabled the massive suburbanization that drove the economy and reconfigured the physical, and social landscape.”\textsuperscript{11} Third, he supported financing world-class research universities which contributed to American economic performance. Fourth, primarily through defense spending, Eisenhower supported new technologies such as commercial jet aviation and microwaves. Investments in semiconductors and computers paved the way for the digital era.\textsuperscript{12} As it had done before, big government set the economic direction and picked winners.

Republicans Nixon and Reagan continued this non-ideological, pragmatic approach. They deployed the big government tools employed since the founding of the republic: “infrastructure development, tariff protection, direct picking and promoting of winners, exchange rate devaluation and during the first Reagan administration, a return to selective protectionism through naked import quotas in the form of ‘voluntary’ export restraints.”\textsuperscript{13} Then the climate changed. The authors make clear that this was not a Republican-driven change.

The good times for the United States ended in the 1980s with developments in both Asia and the United States. East Asian economies became Hamiltonian as governments led the way in promoting industrial development. They grew their exports while the United States began importing more than it exported. The United States moved into higher-value activities, but not the economy-transforming manufacturing and engineering industries of the Eisenhower era.

The U.S. economy withdrew from manufacturing and became heavy in finance and real estate and health insurance claims processing. With the memory of the Depression fading, the impetus for regulation also faded. The ideology of deregulation took hold. As an example, the authors cite the removal of Depression banking regulations such as the separation of commercial and investment banking. Beginning in the 1980s, decisions on what industry to promote were “driven not by pragmatic assessment, but by ideological vision wrapped in abstract economic theories.”\textsuperscript{14} Government policy was driven by people who “knew” that the American economy was held back by regulation, had insufficient incentives for entrepreneurs and had too many interest groups.

\textsuperscript{10} Id. at 13.
\textsuperscript{11} Id. at 14.
\textsuperscript{12} Id.
\textsuperscript{13} Id. at 15.
\textsuperscript{14} Id. at 23.
The authors seek to provide policy guidance for an economic redesign, a pivot back to concrete economics. They neither know nor prescribe the content of such a redesign, but they do want to return to concrete economics removed “from the speculative realms of ideology and its handmaiden theoretical abstractions.”

The authors present a lively and informative account. The true historian will want to stop and learn more about individual events. Policymakers looking for concrete ideas will want more guidance. Professors DeLong and Cohen, we eagerly await a follow-on book!
There Is No Place Like the House

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

(To tune of “There is Nothing Like a Dame,” by Rodgers and Hammerstein from the Broadway show and movie, “South Pacific.”)

There is no place like the House
Nothing’s like the House
Need a venue to delouse
There’s a thriving nest in the House.

Nothing else can make us grouse
Like that noble House
Hearing muck that they espouse
We’d be better off with no House.

Nothing irks like the House
Has more jerks than the House
Seldom votes like the House
Self-promotes like the House.

There’s not a thing that’s wrong in the country here
That’s not made worse when they interfere
That greedy, arrogant smugly partisan,
House.

There is no place like the House
Sitting in D.C.
In a bar with patrons soused
Hear more wisdom than in the House.

There is no place like the House
Complacency self-dowsed
Light a fire in there to rouse
Pompous imbeciles of that House.

Nothing lies like the House
Then denies like the House
No place smells like the House,
Reason quells like the House.

With taxes lowered on the one-percent
The middle class can’t pay the rent.
That servile, petty and
Never penitent
House.

---
1 For the film version of the South Pacific song: https://www.youtube.com/watch?v=Ljm9CDRAhMQ.
SECTION NEWS & ANNOUNCEMENTS

Government Submissions Boxscore

Government submissions are a key component of the Section’s government relations activities. Since July 23, 2018, the Section has coordinated the following government submissions. The full archive is available to the public on the website: http://www.americanbar.org/groups/taxation/policy.html.

SUBMISSIONS AND COMMENTS ON GOVERNMENT REGULATIONS, ADMINISTRATIVE RULINGS, BLANKET AUTHORITY and ABA POLICY

<table>
<thead>
<tr>
<th>TO</th>
<th>DATE</th>
<th>CODE SECTION</th>
<th>TITLE</th>
<th>COMMITTEE</th>
<th>CONTACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Tax Court</td>
<td>10/03/2018</td>
<td>n/a</td>
<td>Comments on Tax Court Rules Relating to Appearance and Representation</td>
<td>Court Procedure &amp; Practice and Pro Bono &amp; Tax Clinics</td>
<td>Joshua Odintz, Christine Speidel</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>10/02/2018</td>
<td>n/a</td>
<td>Comments on Guidance Regarding Draft 2018 Form 1040 and Related Schedules</td>
<td>Individual &amp; Family Taxation and Pro Bono &amp; Tax Clinics</td>
<td>James Creech</td>
</tr>
<tr>
<td>Multistate Tax Commission</td>
<td>9/10/2018</td>
<td>n/a</td>
<td>Letter to MTC Regarding the Model Uniform Reporting Statute</td>
<td>State &amp; Local Taxes</td>
<td>Eric Solomon</td>
</tr>
<tr>
<td>Internal Revenue Service, Department of Treasury</td>
<td>8/28/2018</td>
<td>512(a)(7), 4960</td>
<td>Comments Regarding Sections 512(a)(7) and 4960</td>
<td>Employee Benefits and Exempt Organizations</td>
<td>Kurt Lawson, Ralph DeJong</td>
</tr>
<tr>
<td>Internal Revenue Service, Department of Treasury</td>
<td>7/23/2018</td>
<td>199A</td>
<td>Comments Concerning the Treatment of Losses and Certain Other Issues Regarding the Section 199A Deduction</td>
<td>Partnerships &amp; LLCs Real Estate and S Corporations</td>
<td>Ryan Tucker</td>
</tr>
</tbody>
</table>

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.
SECTION NEWS & ANNOUNCEMENTS

Accepting Nominations for the 2019 Janet Spragens Pro Bono Award

The Section of Taxation Pro Bono Award Committee is seeking nominations for the 2019 Janet Spragens Pro Bono Award.

This award was established in 2002 to recognize one or more individuals or law firms for outstanding and sustained achievements in pro bono activities in 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.

The criteria for selection of an individual recipient of the award are that (i) the individual be a tax lawyer, whether living or deceased; (ii) the individual is or was a member of the Section of Taxation; and (iii) the individual has, through years of service, demonstrated an ongoing commitment to pro bono activities, particularly in the areas of federal and state taxation.

The criteria for selection of a law firm recipient are that (i) the law firm includes members of the Section of Taxation; and (ii) the law firm has, through years of service of its attorneys, demonstrated an ongoing commitment to pro bono activities, particularly in the areas of federal and state taxation.

Nominations should include a brief statement addressing how the nominee satisfies the above criteria and must be submitted by Friday, December 7, 2018, to Arthur Atkin at: arthur.atkin@americanbar.org. All nominations will be maintained in confidence by the Pro Bono Award Committee.

Accepting Nominations for the 2019 Nolan Fellowships

Named for the late Jack Nolan, a dedicated and respected Tax Section member, the Nolan Fellow distinction is awarded to young lawyers who are actively involved in the Section and have shown leadership qualities. Each one-year fellowship includes waived Meeting registration fees and assistance with travel to some Section meetings.

The deadline for nominations for the 2018 Nolan Fellowships is March 1, 2019. Visit the Nolan Fellowships webpage for more information about the award criteria and to download the nomination form.

ABA-Wide Cyber Monday 2018 Sale

Save this season on the ABA Section of Taxation’s bestselling titles! The ABA is hosting a Cyber Monday sale on Monday, November 26, 2018, where you can save 40% at checkout. Visit www.ambar.org/taxpubs to preview the Section’s complete catalog of tax titles. Be sure to check www.shopABA.org on November 26 for the Cyber Monday promo code!
TaxIQ: 2018 Fall Tax Meeting Materials Available

Original materials from the 2018 Fall Tax Meeting are now available on TaxIQ. TaxIQ offers online access to the latest committee program materials presented at Tax Section Meetings. Using either our static, Section-hosted website—TaxIQ—or a searchable database powered by Westlaw, access is only a few clicks away.

Access to these databases are an exclusive benefit of membership in the Section of Taxation. Click here to access the Westlaw and TaxIQ databases. You will be prompted to log into the websites, so please have your ABA-associated email address and password handy.

The Tax Lawyer – Summer 2018 Issue Is Available

The Summer 2018 Issue of The Tax Lawyer, the nation’s premier, peer-reviewed tax law journal, is now available. The Tax Lawyer is published quarterly as a service to members of the Tax Section. Click here to read or download the complete issue.

Articles

ABA Section of Taxation, State and Local Taxes Committee, An Examination of Unclaimed Property Laws after the Adoption of RUUPA: Suggestions for Continued Advancement

Niki Ford, Tax Reform in a “World Without Chevron”: Will Tax Regulations Withstand the Review of Justice Gorsuch?

Dan M. Smolnik, The Connecticut Municipal Property Tax: Its Roots and Branches

Comment

Stephen Ratner, Taxation of Autonomous Vehicles in Cities and States

Index

Volume 71, Numbers 1, 2, 3, and 4

Audio Edition of The Tax Lawyer Available from ModioLegal

How much is an hour of your desk-time worth? Listen to the same content as the print edition of The Tax Lawyer without forgoing billable time – approximately 40 hours of content per year!

Call for Content: The Tax Lawyer, State and Local Tax Edition

The Tax Lawyer provides scholarly articles, notes, and comments on topics of interest to members of the Section of Taxation of the American Bar Association and others in the tax community. The summer edition focuses on topics related to state and local taxation.

The editors of the summer edition welcome inquiries, proposals and submissions of content for the 2019 edition. Send your inquiry, proposal or submission to Summer Edition Editor-in-Chief Lindsay LaCava at Lindsay.LaCava@bakermckenzie.com. Submissions are due by January 2, 2019.

All submissions should follow The Tax Lawyer Submission Guidelines.
The Practical Tax Lawyer – November 2018 Issue Is Available

Produced in cooperation with the Tax Section and published by ALI-CLE, The Practical Tax Lawyer offers concise, practice-oriented articles to assist lawyers with all aspects of tax practice. The articles are written by practitioners and are reviewed by an expert board of editorial advisors who are members of the ABA Tax Section and are appointed by the Section. Published four times yearly, each issue of The Practical Tax Lawyer brings you pragmatic, nuts-and-bolts advice on how to solve your clients’ tax problems. The new issue features the following articles

Theodore M. David, Learn To Love the IRS

Claire Taylor and Evan Davis, CCTP Updates—Important Developments: Criminal

Seth M. Colwell, Bunching of Itemized Deductions Provides Greater Benefit under the New Tax Law

Christi Mondrik, Burden of Proof in State Tax Cases: What Happens When the Legislature Changes It?

Dannae L. Delano and Roberta Casper Watson, An Employer’s Guide to Navigating the ACA Reporting Requirements


Dean S. Shulman, Sara B. Zablotsnay and Margaret R. T. Dewar, Upended: The Impact of Tax Reform on Up-C Structures

Bradley T. Borden, Code Section 1031 After the 2017 Tax Act

For more information, visit PTL’s webpage: https://www.ali-cle.org/legal-periodicals/PTL.

Get Involved in ATT

ABA Tax Times (ATT) is looking for volunteers to join its ranks as associate editors to assist in writing and acquiring articles for publication. This opportunity is open to Section members with significant writing or publication experience, a genuine interest in helping ATT attract great content, and a willingness to commit to at least one article a year. You can find more information about our submission guidelines here. If you are interested in a regular writing and editing opportunity with ATT, contact Linda M. Beale, Supervising Editor, at lbeale@wayne.edu.
Join the ABA Tax Times Community on ABA Tax Connect

The ABA Section of Taxation has launched ABA Tax Connect, a new way for Section members to network, exchange ideas, and interact with fellow tax professionals. The ABA Tax Times Community offers Section of Taxation members an opportunity to share resources or discuss articles with fellow members, lawyers and legal professionals with whom you share similar interests.

How can I get started?

Step 1: Login

Visit https://connect.americanbar.org/home and click the “Login” button on the upper right-hand corner. You will need your myABA login credentials to get started.

If you have trouble logging in, you can reset your password by clicking “forgot my password” or contact the ABA Service Center at service@americanbar.org or call 800-285-2221.

Step 2: Join the ABA Tax Times Community

Visit the ABA Tax Times Community and click “Join Community” to discuss recent articles with your fellow readers or pose questions to the authors!

Have a question about the ABA Tax Times Community or ABA Tax Connect?

Feel free to reach out to our ABA Tax Connect community administrators: Daniel Swenson (daniel.swenson@americanbar.org) and Arthur Atkin (arthur.atkin@americanbar.org).
# SECTION EVENTS & PROMOTIONS

## Section CLE Calendar

www.americanbar.org/groups/taxation/events_cle.html

<table>
<thead>
<tr>
<th>DATE</th>
<th>PROGRAM</th>
<th>CONTACT INFO</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 3, 2018</td>
<td><strong>2018 Low Income Taxpayer Representation Workshop</strong></td>
<td>Tax Section 202.662.8670</td>
</tr>
<tr>
<td></td>
<td>Washington, DC</td>
<td></td>
</tr>
<tr>
<td>December 13-15, 2018</td>
<td><strong>35th Annual National Institute on Criminal Tax Fraud</strong></td>
<td>ABA-CLE 800.285.2221</td>
</tr>
<tr>
<td></td>
<td>Las Vegas, NV</td>
<td></td>
</tr>
<tr>
<td>January 17-19, 2019</td>
<td><strong>2019 MIDYEAR TAX MEETING</strong></td>
<td>Tax Section 202.662.8670</td>
</tr>
<tr>
<td></td>
<td>New Orleans, LA</td>
<td></td>
</tr>
<tr>
<td>March 11-15, 2019</td>
<td><strong>2019 ABA/IPT Advanced Tax Seminars</strong></td>
<td>Tax Section 202.662.8670</td>
</tr>
<tr>
<td></td>
<td>New Orleans, LA</td>
<td></td>
</tr>
<tr>
<td>April 3-5, 2019</td>
<td><strong>19th Annual Tax Planning Strategies US and Europe Conference</strong></td>
<td>Tax Section 202.662.8670</td>
</tr>
<tr>
<td></td>
<td>Paris, France</td>
<td></td>
</tr>
<tr>
<td>May 9-11, 2019</td>
<td><strong>2019 MAY TAX MEETING</strong></td>
<td>Tax Section 202.662.8670</td>
</tr>
<tr>
<td></td>
<td>Washington, DC</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Miami, FL</td>
<td></td>
</tr>
</tbody>
</table>

**NEW DATES:**

**2019 FALL TAX MEETING**

October 3 - 5, 2019

Hyatt Regency – San Francisco, CA
SECTION EVENTS & PROMOTIONS

ABA Section of Taxation CLE Products

Listen at your convenience to high-quality tax law CLE on a variety of topics. ABA CLE downloads are generally accepted in the following MCLE jurisdictions: AK, AR, CA, CO, GA, HI, IL, MO, MT, NV, NM, NY, ND, OR, TX, UT, VT, WV. Recordings and course materials from the following recent Tax Section webinars and more are available at www.shopABA.org.

6 Months After Tax Reform - What Is the Impact of the International Provisions?
A Renewed Focus on CoGS, Keeping Up with the BEAT
The Nuts and Bolts of the Section 965 Proposed Regulations - A Close Look
The 2017 Tax Act and Its Impact on Corporate Transactions
Nuts & Bolts Collections Part II: Next Steps in Assisting Pro Bono Clients with Collections Matters
Tax Planning for Law Firms under the 2017 Tax Act
What Tax Reform Means for Affiliated and Related Corporations
Nuts & Bolts Collections Workshop: A Guide to Assisting Pro Bono Clients with Collection Matters
Tax Reform and Implications for Financial Transactions

C Corporation or Pass Through? Analyzing the Decision in the Wake of the 2017 Tax Act
Keepin’ It Real: Limitations on 1031 Exchanges Under the New Tax Act
U.S. Tax Reform: Are You and Your Clients Prepared?
Changes to S Corporation, Partnership and LLC Taxation under the Tax Cuts and Jobs Act
Captives and Pooling After Avrahami
Cloud Computing: Current Sales Tax Issues
Dawn of a New Era – the New Partnership Audit Rules Will Soon Be Upon Us
The Ethical Duty of Technology Competence
Sponsorship Opportunities

ENHANCE YOUR VISIBILITY. GROW YOUR NETWORK. EXPAND YOUR REACH.

ABA Section of Taxation Sponsorship Provides Invaluable Returns.

ABA Section of Taxation Meetings are the premier venues for tax practitioners and government guests to connect on the latest developments in tax law and practice. Section Meetings draw up to 2,000 tax practitioners from across the U.S. and internationally. With over 150 panel discussions presented over two days by the country’s leading tax attorneys, government officials, and policy makers, Section Meetings are your opportunity to maximize your organization’s visibility and build relationships with key figures in the world of tax law.

The Section of Taxation is the largest, most prestigious group of tax lawyers in the country, serving nearly 16,000 members and the public at large.

- Over 10,000 Section members are in private practice
- 1,100 members are in-house counsel
- 32% of meeting attendees represent government
- 25% come from firms of over 100 attorneys
- 23% come from firms of 1-20 attorneys

Sponsorship Opportunities are now available for the following meetings:

- **January 17 - 19, 2019**
  - **MIDYEAR TAX MEETING**
  - Hyatt New Orleans – New Orleans, LA

- **April 3 - 5, 2019**
  - **19TH ANNUAL U.S. - EUROPE CONFERENCE**
  - Le Meridien Etoile Paris – Paris, France

- **May 9 - 11, 2019**
  - **2019 MAY TAX MEETING**
  - Grand Hyatt – Washington, DC

- **June 12 - 14, 2019**
  - **12TH ANNUAL U.S. - LATIN AMERICA CONFERENCE**
  - Mandarin Oriental Miami – Miami, FL

- **October 3 - 5, 2019**
  - **2019 FALL TAX MEETING**
  - Hyatt Regency San Francisco – San Francisco, CA

For additional information on the above conferences or any of our other conferences, please visit [http://www.americanbar.org/groups/taxation/sponsorship.html](http://www.americanbar.org/groups/taxation/sponsorship.html) or contact our Sponsorship Team at taxmem@americanbar.org or at 202/662-8680.
### Thank You To Our 2018 Fall Tax Meeting Sponsors

#### PLATINUM

<table>
<thead>
<tr>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chamberlain Hrdlicka</td>
<td>Attorneys at Law</td>
</tr>
</tbody>
</table>

#### SILVER

<table>
<thead>
<tr>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston University</td>
<td></td>
</tr>
<tr>
<td>EY</td>
<td>Building a better working world</td>
</tr>
<tr>
<td>Northwestern</td>
<td>PRITZKER SCHOOL OF LAW Tax Program</td>
</tr>
<tr>
<td>Morgan Lewis</td>
<td></td>
</tr>
</tbody>
</table>

#### CONFERENCE EVENT SPONSORS

<table>
<thead>
<tr>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbury Law Firm</td>
<td>Tax Counsel</td>
</tr>
<tr>
<td>Caplin &amp; Drysdale</td>
<td>ATTORNEYS</td>
</tr>
<tr>
<td>Hochman - Salkin</td>
<td>RETTIG - TOSCHER &amp; PEREZ, P.C.</td>
</tr>
<tr>
<td>Kostelanetz &amp; Fink</td>
<td></td>
</tr>
<tr>
<td>Thompson Hine</td>
<td></td>
</tr>
<tr>
<td>Thompson &amp; Knight</td>
<td>ATTORNEYS AND COUNSELORS</td>
</tr>
<tr>
<td>Miller &amp; Chevalier</td>
<td></td>
</tr>
</tbody>
</table>

#### EXHIBITORS

<table>
<thead>
<tr>
<th>Sponsor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston University</td>
<td></td>
</tr>
<tr>
<td>Northwestern</td>
<td>PRITZKER SCHOOL OF LAW Tax Program</td>
</tr>
<tr>
<td>Levin College of Law</td>
<td>Graduate Tax Program</td>
</tr>
</tbody>
</table>

For Information on Sponsorship Opportunities Click [Here](#)
Adapt to a changing landscape

Tax law is alive. It is constantly changing, growing and evolving. That’s why it’s not enough to just keep up with these shifts. Today’s demands require immediate, actionable research that breathes life into continually morphing regulations. But what if you could get the whole picture of a tax research question in one place? And what if you could use that knowledge to open up a new world of revenue opportunities?

See the clarity, color and context you need to fully understand each business tax issue and take action with award-winning Thomson Reuters Checkpoint Catalyst.

“We’ll look at a transaction or a question that a tax payer or a client has, and we find ourselves branching out into other new areas because of Checkpoint Catalyst.”
— Kym Anderson, CPA, CVA, CGMA, Director, Jones & Company

Checkpoint Catalyst
Get your free trial at checkpointcatalyst.com