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FROM THE CHAIR

Salve et Vale

By Eric Solomon, Washington, DC

Sitting down to prepare my final *ABA Tax Times* column, I am once again reminded how quickly time passes. My term as Chair has rushed by—time flies when you are busy! It seems like yesterday that Karen Hawkins passed the baton to me to lead the Tax Section. It has truly been an honor to be Chair, and a privilege to have served in Section leadership for many years.

I have always known about the many contributions the Tax Section makes to our tax system, but I did not fully appreciate the extent of these contributions until this past year in my role as Chair. Our meetings, comment letters, publications and pro bono services are recognized as excellent, and are especially noteworthy when you remember that all of the work is done by Tax Section members on a volunteer basis. A particular example of the Section’s contribution in 2018-2019 has been our response to the tax legislation enacted in December 2017, commonly referred to as the TCJA. Our members have invested many hours preparing extensive and thoughtful comment letters on TCJA guidance. Treasury and the IRS deeply appreciate the feedback, and the comments help improve the final guidance product.

I especially wish to commend the Tax Section administrative staff. Under John Thorner’s able leadership, the staff deals with Tax Section matters efficiently and effectively, including affairs specific to the Tax Section as well as interactions with the American Bar Association umbrella organization.

Ty Hansen, the Associate Director, is a storehouse of institutional knowledge, particularly about the Tax Section’s finances, and is an accomplished problem-solver. When the ABA umbrella organization changed its website last year, resulting in meeting registration difficulties, Ty quickly identified and contracted with an outside vendor to register our members for meetings, substantially lessening the confusion and frustration.

Haydee Moore, Director of Meetings, leads the team that organizes Tax Section meetings. Haydee and her team do the planning and preparation, make the arrangements, and deal with all the issues that arise on the spot at our events. The logistics of the meetings are seamless because of their efforts.

Chris Tank, Director of CLE, has many years of experience making sure the educational aspects of our meetings and webinars are well executed.

Meg Newman, Chief Counsel, has had her hands full shepherding all the comment letters about TCJA guidance. In addition to various other duties, she has worked closely with Bahar Schippel, the outgoing Vice Chair for Pro Bono and Outreach, to coordinate the Tax Section’s pro bono activities.
In addition to the Tax Section staff members I have specifically named, I wish to thank all the other members of the staff for their outstanding efforts to serve the Section and its members.

I am also grateful for the work of our Chair-Elect and our Vice Chairs. Tom Callahan, our Chair-Elect, has served the Tax Section for many years and is well prepared to take the helm. Pro bono work is among the Tax Section's most important contributions, and Bahar Schippel deserves kudos for her leadership in this area. Larry Campagna, Vice Chair for Administration, has kept a close eye on the Tax Section's revenues and expenses, a critically important task to help ensure the viability of the Section into the future. Eric Sloan, Vice Chair for Government Relations, has been instrumental in the review of the numerous comment letters on TCJA guidance. Megan Brackney, Vice Chair for Committee Operations, has shown great enthusiasm overseeing the operating aspects of all the committees. Fred Murray, Vice Chair for CLE, has applied focused attention overseeing the Tax Section's educational programs, and Keith Fogg, Vice Chair for Publications, has helped manage the smooth transition of The Tax Lawyer from Georgetown University Law Center to Northwestern Pritzker School of Law. I cannot thank each of these Vice Chairs enough for their efforts.

I also wish to recognize Dick Lipton and Armando Gomez, the Tax Section's two members of the ABA House of Delegates. They are the Tax Section's eyes and ears with respect to the ABA umbrella organization. Their role is exceedingly important, and much appreciated, especially during this period of enormous change for the umbrella organization that potentially could have significant effects on the Tax Section down the road.

Finally, I want to thank Karen Hawkins, the previous Chair of the Tax Section. She has been engaged with the Tax Section for approximately 40 years, and is an essential part of the fabric of this organization. In her first Chair’s letter two years ago, she said she was eager to give back to the Tax Section in payment for all the benefits she had received as a member in the form of academic improvement, skill development and personal bonding. On behalf of all of us, I can say that Karen has given far more than she has received. We are grateful for her longstanding commitment to the Tax Section, including her commitment to pro bono service, her commitment to small-firm and solo practitioners, her commitment to the advancement of women and people from diverse backgrounds, and her commitment to the integrity of the tax system as a whole.

Looking forward, the Tax Section’s greatest challenge is to remain relevant to our members and potential members, especially to young and diverse professionals who are an increasing portion of our profession. The Tax Section is a preeminent tax organization because it serves the tax system and tax professionals, and it must make sure it continues to do so in the future. Leaders of the Tax Section must recognize the needs of tax practitioners, and adapt the Section's offerings accordingly. We must also emphasize and actively publicize the benefits of membership, including the educational programs and publications, the ability to interact with government officials through comment letters and meetings, the opportunity to participate in pro bono activities, and the creation of personal relationships with fellow members that last a lifetime.

In closing, I wish to say how privileged I am to have served in the Tax Section for many years. I look forward to continuing to serve in the future. I am one in a long line of Tax Section Chairs, hoping to pass the baton to my successor, as I received it from my predecessor, with the organization well positioned to enjoy the opportunities and face the challenges in the years ahead, continuing to provide the best service possible to the tax system and our members.
FROM THE CHAIR-ELECT

Building on Success

By Thomas J. Callahan, Thompson Hine LLP, Cleveland, OH

It is an honor and a privilege for me to have the opportunity to serve as Chair of the Tax Section for 2019-2020. In looking forward to my tenure as Chair, I want to take a moment to pause and reflect on the accomplishments of the past year under the outstanding leadership of our current Chair, Eric Solomon. I have had the benefit of working with Eric on a number of significant initiatives, including expanding membership, transitioning to a new website format, and continuing to support the Section's flagship pro bono and public service activities. I want to thank Eric for his energetic and passionate work on behalf of the Section over the past year, and I look forward to his continued advice and support as I take over as Chair for the coming year.

Goals for the Coming Year

I have three goals for the coming year:

- Attracting younger members from diverse backgrounds, and finding ways for the Section to be relevant to those members in the future;
- Continuing the promotion of the Section's outstanding pro bono and public service activities;
- Continuing to focus on the quality and timeliness of comments that are submitted by the committees to the government.

Membership

It is critically important that we attract new members to the Section, and that we find ways to make the Section's programming and activities relevant to new members. For example, the Section plans to reach out to law professors and LLM students to showcase the benefits of Section membership and to encourage those who have not participated in the past to join and become active in the Section.

I also want to recognize the important roles that the Section's Diversity Committee and Young Lawyers Forum play in attracting new members. The Diversity Committee presents informative programs that attract lawyers from diverse backgrounds. The YLF sponsors the highly successful Annual Law Student Tax Challenge and the Tax Bridge to Practice program.

On a personal level, I’d like to invite readers to help with the Section’s recruiting activities as well. I still remember attending my first Section meeting and wondering how I got here and what I could possibly add
to the deep tax expertise that was being showcased at Section programs. Fortunately, several members encouraged me to get involved, and the Section has become an integral part of my life. So, please introduce yourself to young members and attend the Section’s Welcome Reception. If you are in leadership, please keep an eye out for new members, and encourage them to get involved in committee activities. It is up to all of us to help build the future of the Section.

**Pro Bono and Public Service**

The Section is known for its commitment to pro bono and public service programs, and I fully support the Section's activities. Members of the Section participate in initiatives such as the Adopt-A-Base (led by Wells Hall) and VITA programs where training and assistance is provided in the preparation of tax returns for low-income individuals and members of the military, the Tax Court calendar call program where attorneys assist pro se individuals in navigating the Tax Court process, and Partnering for Pro Bono where members work with LITCs to represent low-income taxpayers across the country. I encourage all Section members to get involved in at least one pro bono program. Despite our busy schedules, the personal satisfaction that comes from helping others makes the time and effort very worthwhile. For further information on volunteer opportunities, please contact Meg Newman, the Section's Chief Counsel, at megan.newman@americanbar.org.

Finally, I encourage you to contribute to the Taxpayer Public Service (TAPS) endowment. Through the TAPS endowment, the Section sponsors a fellowship (named in honor of the Section’s former Executive Director, Christine Brunswick) for two recent law school graduates to provide representation to low-income taxpayers. The Section's various pro bono and public service activities require adequate funding, and your contribution to TAPS will help to fund the Section's good work into the future.

**Government Submissions**

The volume of comments prepared by our committees and submitted to the government has been particularly impressive over the last year. Under the able leadership of Eric Sloan (Vice Chair Government Relations), the Section has submitted 35 comment letters to the government since the beginning of this fiscal year. In that regard, the 2017 tax legislation will continue to provide opportunities for committees to respond to requests for comments on rules and regulations that are being drafted in response to that legislation. Government officials take the Section’s comments very seriously, and I encourage members of the Section to get involved in comment projects. The experience is very rewarding.

**The Coming Year**

We have three CLE-packed meetings to look forward to over the coming year—the Fall Tax Meeting with RPTE in San Francisco, the Midyear Tax Meeting in Boca Raton, and the May Tax Meeting in Washington. For the Fall Tax Meeting, we are looking forward to hearing the remarks of Martin Sullivan, chief economist and contributing editor of *Tax Notes*, at the Plenary Session.

In addition to the extensive programming at the three meetings, the Section is involved with a number of other tax conferences, including the 36th National Institute on Criminal Tax Fraud in December. Members of the Section also participate in telephone conferences and webinars on a wide variety of topics. I invite you to take advantage of these learning opportunities as they represent the best-in-class CLE anywhere.
The Leadership Team

The Section has a superb leadership team for the coming year. As most of you know, Joan Arnold is the incoming Chair-Elect. I am excited to be working with Joan, and I am looking forward to having the benefit of her experience and energy. Sheri Dillon, the incoming Vice-Chair (Pro Bono and Outreach), takes over for Bahar Schippel, who provided exemplary leadership of the numerous Pro Bono and Outreach programs offered by the Section, including launching the Pro Bono Pledge program and expanding the VITA program. Thank you Bahar! The continuing Vice-Chairs include Larry Campagna (Administration), Megan Brackney (Committee Operations), Fred Murray (CLE), Eric Sloan (Government Relations), and Keith Fogg (Publications). I am thrilled to be able to work with such talented and dedicated individuals.

I am also very fortunate to have the support and guidance of our two Section Delegates to the ABA House of Delegates, Richard Lipton and Armando Gomez. Both Dick and Armando have a long-term perspective on the activities of the Section and the ABA, and they do a wonderful job of representing the Section in the House of Delegates.

The Section is also indebted to our Council Directors who are responsible for the smooth running of our committees. The 2019-2020 Council Directors include: Gregg Barton, Jaye Calhoun, Katherine David, Catherine Engell, Diana Erbsen, Mary Foster, Cathy Fung, George Hani, Anthony Infanti, Peter Lowy, Eileen Marshall, Julie Sassenrath, Robert Turnipseed, David Wheat, and Lisa Zarlenga. Robb Longman will take over as Secretary, and our new Assistant Secretary will be Christine Speidel. Finally, I want to recognize the valuable contributions of our outgoing Council Directors: Adam Cohen, Sheri Dillon, Ronald Levitt, Christopher Rizek, and Melissa Wiley.

The Section Staff

It is important to acknowledge the outstanding job done by our Section staff. Our Section meetings, submissions to the government, publications, and CLE are in no small measure due to the efforts of our dedicated staff. I want to thank John Thorner (Executive Director), Ty Hansen (Associate Director), Haydee Moore (Director of Meetings), Chris Tank (Director of CLE), Meg Newman (Chief Counsel), and Arnyae Neal (Director of Membership and Marketing), as well as their talented staff, for all of the excellent work they do on behalf of the Section.

In closing, I anticipate that 2019-2020 will be another busy year for the Section, and I look forward to your ideas and input as we move through the coming year.
A Wealth Tax Is Constitutional

By Calvin H. Johnson, John T. Kipp Chair in Corporate and Business Law, University of Texas*

As most readers who follow the 2020 campaign proposals are aware, Elizabeth Warren has proposed an annual wealth tax of 2% for wealth greater than $50 million and 3% for wealth greater than $1 billion. Various pundits have said that the tax is “probably unconstitutional”¹ and that the Supreme Court could “stop the wealth tax dead in its tracks.”²

Warren’s wealth tax is constitutional under the standards laid down by the Founders, as this article will demonstrate. Apportionment of a wealth or land tax by population would now require the injustice of substantially higher tax rates in poorer states: when that happens, under the Founders’ standards, the tax is not a direct tax for which apportionment is required. Apportionment was not written to protect wealth from assault, as proponents of its unconstitutionality now claim, but rather to reach wealth by what was thought to be the best then available measure of wealth.

The Constitution, Article I, section 9, clause 4, requires that a “direct tax” must be apportioned among the states by population.³ For the Founders, a necessary element to be a direct tax is that apportionment among the states by population must be reasonable and just. Thus import taxes (the impost), excise taxes, duties, carriage taxes and now real estate and wealth taxes have been expelled from the definition of direct tax, sometimes by the operation of ordinary language and sometimes by Supreme Court decision.

Real estate and wealth taxes were once considered direct taxes because they were the taxes that the states would use to satisfy a requisition and because real estate and wealth were presumed to be equal among the states. Today, however, apportionment of a wealth tax among the states by population is neither just nor reasonable. Wealth per capita in poor Mississippi is under half of the per capita wealth in relatively rich District of Columbia.⁴ Apportionment by population would mean that tax rates in Mississippi would have to be more than twice the rates in DC. The result would tax residents of poor states much more harshly than residents of wealthy states. That result has no justification in history or policy; it would simply arise by

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¹ John Kartch, Michael Bloomberg: Warren wealth tax “probably is unconstitutional,” Americans for Tax Reform (Jan. 29, 2019).
² Supreme Court could stop Elizabeth Warren’s wealth tax dead in its tracks, CNBC, Feb. 1, 2019.
³ See also U.S. Const. art. I, section 9, cl. 4 (also prohibiting “capitation” tax except in proportion to census).
⁴ For 2017, the Census Bureau, American Community Survey, lists DC per capita income at $40,797 and lists Mississippi per capita income at $19,232. Per capita income distribution understates per capita wealth inequality because wealth is skewed upward more than income, but per capita income is an available indicator that is sufficient to make the point.

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* A listing of short form citations for collections used repeatedly in footnotes is found at the end of this article. The argument here draws substantially from Johnson, The Four Good Dissenters in Pollock, 32 J. of S. Ct HiSt. 162 (2007) and from Wealth Tax, http://balkin.blogspot.com/2019/03/a-wealth-tax-is-constitutional.html.
necessity from the fact that Mississippi has a smaller tax base over which to spread its quota. Thus, when it was recognized that wealth and real estate are not equally distributed per capita so that apportionment forced substantially higher tax rates in poorer states, the taxes on wealth and real estate could not be treated as direct taxes. Apportionment would not be just or reasonable.

The Founders believed in wealth taxes: they considered that they would need taxes on wealth for the common defense in the inevitable next war. Various leaders made this clear. The power to provide for the common defense, one J. Choate told the Massachusetts ratification convention, “can be no other than an unlimited power of taxation, if that defence requires it.”

“Wars have now become rather wars of the purse than of the sword,” Oliver Ellsworth told Connecticut. “A government which can command but half its resources is like a man with but one arm to defend himself.” Hamilton put it quite clearly.

A constitution cannot set bounds to a nation’s wants; it ought not, therefore, to set bounds to its resources. Unexpected invasions, long and ruinous wars, may demand all the possible abilities of the country. Shall not your government have power to call these abilities into action? The contingencies of society are not reducible to calculations. They cannot be fixed or bounded, even in imagination.

No hobble that made wealth taxes impossible would have been tolerated at the time, and apportionment, which was only intended to provide a reasonable formula for calculating tax shares when workable, would have been a hobble. The idea that Congress would nonetheless have to raise federal taxes by an intolerable injustice when it badly needed the tax revenues misunderstands what the Constitution is about. The consequences of apportionment by population when the per capita tax base is uneven rebuts the use of apportionment.

The Rise of Allocation by Population

The term “direct tax” first appeared in America in reference to requisitions—that is, taxes directly on the states—under a pre-Constitution 1783 proposal to reform the Articles of Confederation. The 1783

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5 J. Choate, Speech to the Massachusetts Ratification Convention, Jan. 23, 1788, in 2 Elliot’s Debates 79.

6 Oliver Ellsworth, Connecticut Ratifying Convention (Jan. 7, 1788), in 2 Elliot’s Debates 191; see also The Federalist No. 23, at 147 (Hamilton) (Dec. 18, 1787) (saying “[t]he circumstances that endanger the safety of nations are infinite and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed”); The Federalist No. 26, at 164 (Hamilton) (Dec. 22, 1787) (saying that “[t]he idea of restraining the Legislative authority, in the means of providing for the national defence, is one of those refinements, which owe their origin to a zeal for liberty more ardent than enlightened”); The Federalist No. 30, at 191 (Hamilton) (Dec. 28, 1787) (arguing that a government always half supplied cannot provide for security or advance prosperity); The Federalist No. 31, at 196 (Hamilton) (Jan. 1, 1788) (saying that the duties of national defense and of securing the public peace against foreign or domestic violence have “no other bounds than the exigencies of the nation and the resources of the community”); Edmund Randolph, Debate in Virginia Ratifying Convention (June 6, 1788), in 3 Elliot’s Debates 115 (“Wars cannot be carried on without a full and uncontrolled discretionary power to raise money in an eligible manner.”).

7 Alexander Hamilton, Speech to the New York Ratification Convention, June 27, 1788, 4 Elliot’s Debates 351.

8 Letter of Eliphalet Dyer to Jonathan Trumball Sr., March 18, 1783 20 Letters 45 (referring to “direct tax on each state, justly proportioned”).
proposal had two elements: (i) requisitions upon the states, which was called “direct tax” and (ii) a new national tax on imports, the “impost,” which was called an “indirect tax.” 9 Under the Articles, the Congress had no power to collect tax revenue from any individual or transaction other than through requisitions on the states. The Articles determined state quotas under a requisition according to the value of real estate and improvements within the state. 10 The formula did not work well. Pennsylvania put in assessments that cut its quota to half of Virginia’s, and the other states thought that Pennsylvania was cheating by trying to pay less than its fair share. 11 The Congress, however, had no employees nor means to correct the assessments of value submitted by the states. 12 The 1783 proposal was to amend the allocation formula by using the population of the states to determine a state’s wealth. 13 In allocating state tax between Philadelphia and the rest of Pennsylvania or between Boston and the rest of Massachusetts, the Framers found, it made no substantial difference whether the state used population or real estate value. 14

At the Constitutional Convention, Madison argued that population would inevitably be a sufficient measure of wealth, as long as movement of people was allowed, because people move to the cities and fertile farm land where wealth was to be had, so the more people a state had, the wealthier the state would be. 15 Because states could and would cheat on real estate valuations, population was seen as the best estimate the Founders had for relative wealth. Measuring wealth by population was not intended to force a head tax, an equal amount of tax on each person, since the Founders abhorred the idea of a head tax, calling it “odious” and “abhorrent.” 16 The number of persons was merely used as a reasonable index of wealth, John Adams said, and not the thing to be taxed. 17 Allocation by population was not a protection of wealth “against assault by mere force of numbers,” as the Supreme Court later erroneously said in Pollock v. Farmers Trust, 18 but in fact a means of reaching for wealth—assaulting wealth—using population as a proxy for wealth.

There was a hard fight in 1783 between North and South as to how much slaves contributed to wealth for the purpose of allocating requisitions. The South argued that slaves contributed only half as much as free

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9 “Connecticutensis, To the People of Connecticut,” Am. Mercury, Dec. 31, 1787, 3 Documentary History 513 (“indirect tax[es, meaning] duties laid upon those foreign articles which are imported and sold among us”).
10 Articles of Confederation, art. VIII (March 1, 1781), 19 JCC 214, 217 (1781).
11 Report of the North Carolina Congressional Delegates to Governor Alexander Martin (March 24, 1783), in 20 LETTERS 90.
12 Rufus King, Speech to the Massachusetts Ratification Convention (Jan. 17, 1788) in 3 FARRAND’S RECORDS 255 (saying that apportionment under the Confederation was according to surveyed lands and improvements, which Congress could never ascertain).
13 24 JCC 260 (Apr. 18, 1783).
14 James Wilson, Speech to the Federal Convention (July 11, 1787) in 2 FARRAND’S RECORDS 587-588 (Philadelphia and the rest of Pennsylvania); Nathaniel Gorham, id. at 587 (Boston and the rest of Massachusetts).
15 Id. at 585-86. See also Samuel Chase (Md.), July 12, 1776, in 4 LETTERS 438 (population was a tolerable good criterion of wealth).
16 Francis Dana, Debates in Massachusetts Ratifying Convention (Jan. 18, 1788) in 2 ELLIOT’S DEBATES 43 (saying that “a capitiation tax is abhorrent to the feelings of human nature”); Letter from James Madison to Jos. C. Cabell (Sept. 18, 1828) in 4 ELLIOT’S DEBATES 605 (“the odious tax on persons”).
17 John Adams (Mass.), Debate in the Continental Congress (July 12, 1776) in 4 LETTERS 439 (Jefferson notes).
18 157 U.S. at 583.
persons did to a state’s wealth, as demonstrated by the fact that wage rates in the South were half of wage rates in the North.19 The North argued that slaves contributed at least what free persons did to a state’s wealth because free northern farmers did not continue to work following the first freeze and northern women did not work in the fields.20 The 1783 proposal compromised by counting slaves at three-fifths of a person, both sides “despairing of doing any better.”21

The 1783 proposal never took effect as proposed. The Articles of Confederation required unanimous consent of all the states for an amendment to take effect.22 New York vetoed the 1783 proposal for a reason unrelated to the apportionment formula for requisitions: it wanted to preserve New York’s exclusive right to tax New York harbor traffic, which it had already begun to do.23 New York’s veto of the impost proposal is plausibly the proximate cause of the Constitution because the nation desperately needed the impost tax revenue. As Hamilton put it, “impost begat convention.”24 Even so, population (with the 3/5ths ratio) was carried over into the Constitution as a measurement of wealth, because it was a settled compromise between North and South over a hot wire issue—how much slaves contributed to wealth.

The impost that was included in the 1783 proposal was not a direct tax because the imports that landed at the docks of one state were distributed to many states, making it impossible to determine which state should get credit for the tax against its quota. A tax that could not reasonably be allocated among the states was not a direct tax, so direct tax and impost were opposites.25 With the failure of the 1783 proposal, all federal taxes allowed before the Constitution was adopted were direct taxes because the Congress had only the power to raise revenue by requisitions, that is, taxes directly on the states.

The term “direct tax” came to refer to internal or dry land taxes imposed by the states.26 These were state taxes that would be used by the state to satisfy a requisition, as evidenced by a 1796 Treasury inventory of “Direct Taxes”—a list of the existing state taxes—to prepare for a proposed federal requisition to be imposed on the states.27 In the debates on constitutional ratification, the speakers could not accurately list all the state taxes, even for their home states, but they did know the functional definition that direct taxes were the state taxes that were part of the requisition system.

Expelling from “Direct Taxes” Those Not Reasonably Apportioned

As noted, “direct tax” under the Articles included all federal taxes because Congress could raise tax revenue only by requisitions on the states. Over time taxes that could not reasonably be apportioned among the states were expelled from being considered a direct tax, by ordinary language usage or Supreme Court

19 Benjamin Harrison, (Va.), July 30, 1776, 4 Letters 440 (Jefferson notes).
22 Articles of Confederation, Art. XII. (March 1, 1781), 19 JCC 214, 221.
25 James Madison, Debates in the Virginia Ratification Convention, June 11, 1788, 9 Documentary History 1146 (saying that the Southern states will bear more of the impost because they import more, but the inequality will be lessen if Congress could also impose direct taxes).
26 James Iredell, Debate in the North Carolina Ratification Convention, July 28, 1788, 4 Elliot’s Debates 146 (saying that because North Carolina had no harbors,“(our state legislature has no way of raising any considerable sums but by laying direct taxes”). In the Virginia Ratification Convention, John Marshall argued that direct taxes were ‘well understood’ to include taxes on land, slaves, stock and ‘a few other articles of domestic property.’ Marshall, Debates in the Virginia Ratification Convention (June 10, 1788) in 9 Documentary History 1122.
decision. Consistently over time, a direct tax required ease of apportionment, and recognition that some
taxes were not apportionable changed with time.

The Constitution gave the national government its own power to tax “to provide for the common defense
and general welfare” 28 without need for requisitions, but many assumed requisitions would continue as the
primary federal tax system. 29 The Constitution also gave the national government exclusive authority over
the impost, ending state imposts. 30 The Constitution picked up the 1783-proposed federal ratio counting
slaves at three-fifths if Congress should choose direct taxes on the states.

“Excises” and “duties” were expelled from “direct tax” by silent operation of ordinary language because it
was simply not possible to apportion them among the states by population. Early in the ratification debates,
important speakers used excises and duties as examples of a direct tax. 31 Excise taxes and duties were
internal taxes that were part of the package of state taxes used to satisfy requisitions, the federal taxes on
the states in the status quo system that the Constitution was changing. James Madison, the most important
shaper of the Constitution, called the excise tax on whiskey a direct tax 32 and assumed that duties, i.e., the
stamp tax, would have to be apportioned. 33 John Taylor of Caroline argued that the carriage tax was a direct
carriage tax that could not be imposed unless apportioned by population. 34

Treating excises and duties as apportionable was impossible once the Constitution was adopted. The
Constitution requires that excises and duties have uniform rates across all states. 35 One cannot simultaneously
comply with uniform rates in all states and also apportion the tax to the states by population, especially
counting slaves at three-fifths. 36 If the federal government has the power to lay excises or duties, which
the Constitution authorizes, then excises and duties can no longer be “direct” taxes. As the ratification
debates went on, it became more common to see excises and duties explicitly excluded from the meaning
of direct tax. 37 They were eliminated from the category of direct taxes once speakers realized they could not
be apportioned, without any court holding or attention given to the expulsion. Common sense had already
expelled the impost under the 1783 proposal from direct tax because the tax paid could not be conveniently
allocated to a state: the expulsion of excises and duties was consistent. Apportionability was a defining
characteristic of a direct tax.

28 U.S. Const. art. I, sec 8, cl. 1.
29 Roger Sherman and Oliver Ellsworth to Governor Samuel Huntington, ‘The Report of Connecticut’s Delegates to the Constitutional
Convention’ (Sept. 26, 1787) in 13 Documentary History 470, 471 (arguing that the authority over direct tax need not be exercised if each
state will furnish its quota).
30 U.S. Const., art. 1, sec 10, cl. 2.
31 See, e.g., “Brutus V to the People of the State of New York,” Nov. 27, 1787, N.Y.J. (Dec. 13, 1787), 14 Documentary History 427
(opposing national power over “direct taxes; these include excises, duties on written instruments”).
32 James Madison, Speech to the House of Representatives, Dec. 27, 1790, 14 Documentary History of the First Federal Congress 189,
190 (William C. diBiasiamento et al. eds., 1995).
33 Letter from James Madison to Alexander Hamilton (Nov. 19, 1789), 12 JM 450.
34 John Taylor, Argument in the Circuit Court in United States v. Hylton, at 5, quoted in 4 The Law Practice of Alexander Hamilton at 318
(Julius Goebel, Jr. & Joseph H. Smith, eds., 1980).
35 U.S. Const. art. 1, sec. 8, cl. 1.
36 Technically, if the tax base per capita were the same in all states, both uniform rate and apportionment would be possible but the
odds are clearly against that occurring, and a change in the base or of a person by the end of the day would destroy the possibility of both
uniformity and apportionment.
37 See, e.g., Samuel Spencer, Debate in the North Carolina Ratification Convention, July 26, 1788, 4 Elliot’s Debates 75–76 (arguing that
Congress might be allowed to lay imposts and excises, but not direct taxes); Benjamin Gale, Speech Before Killingworth Town Meeting in
Connecticut (Nov. 12, 1787), 3 Documentary History 424 (arguing that they will not only tax “by duties, impost, and excise but to levy direct
taxes upon you”); Francis Dana, Speech to the Massachusetts Ratification Convention (Jan. 18, 1788), 2 Elliot’s Debates 42 (arguing that
Congress would not levy direct taxes unless imposts and excises were insufficient).
In 1796, in *Hylton v. United States*, 38 the Supreme Court held that a carriage tax was not direct because apportionment of the tax by population was not reasonable or just. Carriage taxes were listed under the Treasury’s 1796 direct tax inventory, 39 and they were common taxes in the states. 40 Under Hamilton’s hypothetical, New York had 10 times as many carriages per capita as Virginia. Virginia rates on carriages therefore would have to be 10 times higher than N.Y. rates if apportionment were required. Virginia had too few carriages over which to spread its quota determined by population. Requiring apportionment in this case to impose 10 times higher taxes in Virginia than New York was unjust. Indeed, any time the tax base varies per capita from one state to another, apportionment by population would unfairly require higher tax in the state with the smaller per capita base. The situation could be even more absurd. If Kentucky has no carriages, for example, then the state’s entire quota would descend on the first carriage crossing the state line. The carriage tax would make no sense if it had to be apportioned by state population.

The *Hylton* court wisely held that carriage taxes were not direct taxes as a matter of law because apportionment was not reasonable. As Justice Chase put it, “the Constitution evidently contemplated no taxes as direct taxes but only such as Congress could lay in proportion to the census. *The rule of apportionment is only to be adopted in such cases where it can reasonably apply.*” 41 “As all direct taxes must be apportioned,” Justice Iredell wrote, “it is evident that the Constitution contemplated none as direct but such as could be apportioned.” 42 *Hylton* is a functionalist definition of direct tax that looks not to the object of the tax in question, but whether the tax can be reasonably apportioned. Each of the Justices in *Hylton* had participated actively in the originating debates on apportionment and each contributed at least a few paragraphs to the historical record. 43 They were the Founders, and they knew the history. They were in a personal position to say, “apportionment with that effect is not what we meant.”

The *Hylton* functionalist definition of direct tax was settled doctrine for the next 100 years. In 1868, the Supreme Court held that a Civil War tax on the income of insurance companies was constitutional although not apportioned. 44

> The consequences which would follow the apportionment of the tax ... in the manner prescribed by the Constitution, must not be overlooked. .... Where [insurance] corporations are numerous and rich, it might be light; where none exist, it could not be collected; where they are few and poor, it would fall upon them with such weight as to involve annihilation. It cannot be supposed that the framers of the Constitution intended that any tax should be apportioned, the collection of which on that principle would be attended with such results. The consequences are fatal to the proposition. 45

In 1875, in *Scholey v. Rew*, 46 the Court held on the same logic that a tax on succession by death was not direct.

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38 3 U.S. (3 Dall.) 171 (1796).
39 Wolcott, supra note 27.
40 Id. (including Connecticut, Pennsylvania, New Jersey, and Virginia taxes on carriages in the Treasury inventory).
41 3 U.S. (3 Dallas) at 174 (1796)(emphasis added).
42 Id. at 181.
43 Samuel Chase, Speech to the Continental Congress, July 12, 1776, 4 LETTERS 438 (arguing that the number of inhabitants within the state is a “tolerably good criterion of property” for apportionment of tax given the difficulties of valuation); James Iredell, Debate in the North Carolina Ratification, July 28, 1788, 4 ELLIOT’S DEBATES 146 (arguing in favor of giving federal power over direct taxes).
45 Id. at 446.
46 90 U.S. (23 Wall.) 331 (1875).
If all taxes that political economists regard as direct taxes should be held to fall within those words in the Constitution, Congress would be deprived of the practical power to impose such taxes, and the taxing power would be ... crippled; for no Congress would dare to apportion, for instance, the income tax.47

Finally, in Springer v. United States48 in 1881, the Court held that the Civil War income tax on individuals was not direct on the logic and authority of Hylton.

It was well held [in Hylton] that where such evils would attend the apportionment of a tax, the Constitution could not have intended that an apportionment should be made. This view applies with even greater force to the [income] tax in question in this case. Where the population is large and the incomes are few and small, it would be intolerably oppressive.49

The ill consequences of apportionment determined that it would not be required.

Real Estate Tax

A tax with a base that is equal or nearly equal per capita among the states can be apportioned by population without causing the drastically higher tax rates where the tax base is thinner. It was presumed in the early history of the issue that real estate value was equal per capita across the states, and that a real estate tax would qualify as a direct tax.50 The presumption could not be challenged because of administrative and political considerations. The sponsors of the 1783 proposal sought to replace allocation of requisitions by value of real estate with allocation by population. They assumed that population and land value were sufficiently equal to each other because they wanted to tax wealth (mostly at the time attached to land) but could not accurately determine land values for tax purposes. The 1783 proposal also worked within a system in which the only tax Congress had was requisitions, so all federal taxes at the time were direct taxes that had to be apportioned among the states. Similarly, the 3/5ths rule was a political settlement of a dangerous fight that no one was willing to reopen, so the presumption was that population (counting slaves at three-fifths) measured wealth.

The presumption was also forced by the need for coalition in the Constitutional Convention. The key nationalists, Madison and James Wilson, hated the rule of equal votes per state under the Articles of Confederation because it gave too much power to states with low population and too little to states with a high population.51 To defeat that rule, even just in the House of Representatives, the nationalists needed the votes of a large minority contingent at the Convention who believed that votes in Congress should be determined by wealth.52 The dispute between those who believed that the House should represent wealth

47 Id. at 343.
48 102 U.S. 586 (1881).
49 Id. at 600.
50 Tax on real estate tax was commonly cited as a direct tax. See The Federalist No. 21 at 130 (Alexander Hamilton) (head tax, capitation, and a tax on land were direct taxes); Hylton v. United States, 3 U.S. (3 Dall.) 171, 176 (1796) (Paterson, J.) (“both in theory and practice, a tax on land is deemed to be a direct tax”).
51 See, e.g., Madison, Constitutional Convention (July 14, 1787), 2 Farrand’s Records 8 (saying that votes in Congress should be proportional to population); Madison, Constitutional Convention (July 7, 1787) 1 Farrand’s Records 554 (saying that equal votes per state would allow a minority to govern a majority).
52 See, e.g., Rufus King (Mass.), Debate in the Constitutional Convention, July 6, 1787, 1 Farrand’s Records 562 (arguing that representation should follow property because property was the primary object of society).
and that the House should represent people was settled on the assumption that the wealth and population of states would always be the true measure of each other.\textsuperscript{53}

At some point in history, however, this presumption of equality of wealth and population had to be cast aside. Real estate and wealth taxes ceased to be direct taxes because per capita wealth or land value so varied among the states that apportionment by population would require drastically higher tax rates in poorer states. Drastically higher tax rates required by apportionment by population entails that apportionment is not required because the tax is not direct.

To be sure, the Anti-Federalists opposed a federal direct tax—by which they meant a dry land or internal tax other than the impost. In fact, opposition to a federal direct tax was the topic most popular to the opposition. Future President and Anti-Federalist James Monroe declared that to render the Constitution safe and proper, he would take away one power only—“I mean that of direct tax.”\textsuperscript{54} But Anti-Federalist opposition to direct taxes had no influence on the constitutional text. The Federalist victors in the Constitutional Convention were not about to limit the taxing power of the new national government. As Washington explained to Jefferson in far-off Paris, if the new Congress was not to have the direct tax, how was it to repay the war debts and redeem the Congressional honor? If it did not have the direct tax, the country might as well revert to the confederation form.\textsuperscript{55} No hobble on federal tax was intended or tolerable in the adoption of the Constitution.

\textbf{Pollock’s Error}

In 1895, in \textit{Pollock v. Farmers’ Loan & Trust Co.},\textsuperscript{56} the Supreme Court ruled that a federal tax on income was a direct tax that had to be apportioned, overruling 100 years of wise precedents going back to the Founders. The majority made up a “pseudo history”\textsuperscript{57} and rationale for the apportionment rule, saying that it was designed “to prevent an attack upon accumulated property by mere force of numbers.”\textsuperscript{58} Justice Field announced, apocalyptically, that the income tax’s assault upon capital is but a stepping-stone to others, leading to a war of the poor against the rich. “If the court sanctions the [graduated income tax], it will mark the hour when the sure decadence of our present government will commence.”\textsuperscript{59} Apportionment, the majority opinion said, was “one of the bulwarks of private rights and private property.”\textsuperscript{60}

\textit{Pollock} is an ignorant misreading of history and the meaning of the apportionment clause, as discussed in the prior sections to this article. The Founders’ purpose for the apportionment clause was not to protect wealth from the force of mere numbers but rather to apportion a requisition to reach the wealth of the

\textsuperscript{53} See, e.g., William Samuel Johnson (Conn.), July 12, 1787, 1 FARRAND’S RECORDS 593 (arguing that wealth and population were the true equitable rules of representation, but the two principles resolved themselves into one, “population being the best measure of wealth”).

\textsuperscript{54} James Monroe, Debates in the Virginia Ratification Convention (June 10, 1788), in 9 DOCUMENTARY HISTORY 1109.

\textsuperscript{55} Letter from George Washington to Thomas Jefferson (August 31, 1788), in 30 GW 82-83.

\textsuperscript{56} 157 U.S. 429, 158 U.S. 601 (1895).

\textsuperscript{57} LAWRENCE FRIEDMAN, HISTORY OF AMERICAN LAW 496 (1973).

\textsuperscript{58} 157 U.S. at 583.

\textsuperscript{59} Id. at 607.

\textsuperscript{60} Id. at 583.
states. Population was considered an appropriate index of wealth. Apportionment was not an individual taxpayer right vis a vis the government, but a means of allocating taxes in a way that could reach that wealth. The rules regarding direct taxation were never intended as an impediment on the taxing power of the United States.

*Pollock* is also a condemnation of close reading of text as a sufficient ground for constitutional adjudication, without an understanding of the history of that text. If you know nothing about the history or original function of the direct tax, then it is easy to misinterpret the language “apportionment by population” as if it were forcing the same amount of tax per person and protecting wealth from mere numbers. That turns the original constitutional meaning upside down.

In any case, *Pollock* was bad history when it was decided, and it quickly became a pariah and shrank in importance. Justice Harlan described *Pollock* at the time as the “decision [that] will become as hateful with the American people as the *Dred Scott* case.”

61 Looking back, Oliver Wendell Holmes, Jr. judged that *Pollock* was an inappropriate overreaction to the populist William Jennings Bryan, a vague terror that was translated into “doctrine that had no place in the Constitution.”

Almost immediately the Supreme Court began retreating from what it later called its “mistaken theory” in *Pollock*,

63 by expanding the definition of “excise tax” elastically to include taxes that were obvious assaults on wealth, including the estate tax,

64 a corporate gross receipts tax,

65 the corporate income tax,

66 and a tax on Chicago Board of Trade commodity transactions.

67 The elastic expansion of “excise” to avoid apportionment of the tax was solely a tool to confine *Pollock* to its facts because the original 1787 meaning of “excise” meant only a tax on whiskey

68 and other sins.

69 The Sixteenth Amendment, passed by two-thirds of both houses of Congress and ratified by three-quarters of the states, allowed a tax on income without apportionment, putting the last nail in *Pollock*’s coffin.

The Founders believed in the wealth tax. Apportionment was designed to reach wealth by taxing states according to a proxy for relative wealth, using the best measurement of wealth that was then available. To turn a requirement designed to make it easier to tax wealth into a rule exempting wealth from taxation is to turn the Founders’ meaning upside down. The progressive idea of a wealth tax, like the estate tax, is clearly constitutional.

61 Edwin R.A. Seligman, *The Income Tax: A Study of the History, Theory and Practice of Income Taxation at Home and Abroad* 589 (2d ed. 1914) (quoting Harlan). See also Senator Joseph Bailey (Texas), Debate over the 16th Amendment, 44 Cong. Rec. 1351 (Apr. 15, 1909) (saying “an overwhelming majority of the best legal opinion in this Republic believes that *Pollock* was erroneous”); Francis R. Jones, *Pollock v. Farmers’ Loan and Trust Company*, 9 Harv. L. Rev. 198 (1895-1896) (condemning the Court for an opinion upsetting a hundred years of precedents that “refines away to the vanishing point two other of its decisions, and thereby cripples an important and necessary power and function of a coordinate branch of the government”).


64 *Knowlton v. Moore*, 178 U.S. 41, 78 (1900).

65 *Spreckels Sugar Refining Co. v. McClain*, 192 U.S. 397 (1904).


68 Jefferson to Sarsfield (Apr. 3, 1789), in 15 TJ 25 (Julian Boyd ed., 1958) (saying that excise is a tax on whiskey but nothing else).

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PRACTICE POINT

California’s Recent Tax Changes and Expansion of Nexus Presumptions

By Adam Giera, CMI, Thompson Tax & Associates, LLC, Sacramento, CA and James Speed Thompson Tax & Associates, LLC, Sacramento, CA

July 2019 marks the second anniversary of the creation of the California Department of Tax and Fee Administration (CDTFA) and the Office of Tax Appeals (OTA). Since the passage of The Taxpayer Transparency and Fairness Act of 2017, also known as A.B. 102, the Golden State has made several modifications to its use tax rationale. The June 2018 U.S. Supreme Court decision, South Dakota v. Wayfair, Inc. et al., and the legislation that followed launched the most significant changes.

Changing of the Guard – Creating the CDTFA and OTA

The “New” CDTFA

Effective July 1, 2017, A.B. 102 established a new department that would shift duties, powers, and responsibilities, other than those imposed by the California Constitution, away from the five-person elected California State Board of Equalization (BOE) which previously had control of sales and use tax administration and the administrative appeals process. Most of BOE’s tax functions, including California sales and use tax administration, are now under the CDTFA which is part of the Executive Branch reporting to the Governor.

Today, the BOE still oversees county property tax administration, prepares the state assessed property roll, administers the Private Railroad Car Tax, and the Tax on Insurers, and is responsible for Alcoholic Beverage Taxes.

The “New” OTA

A.B. 102 also created an independent OTA to replace the BOE as the final administrative appeals body for state taxes.

The OTA hears all appeals cases for taxes administered by the CDTFA and Franchise Tax Board. The OTA is comprised of panels consisting of three administrative law judges. Taxpayers may represent themselves.
in the appeals process as they are not required to be represented by a CPA or attorney. Shortly after its creation, Emergency Regulations adopted late in 2017 provided that past precedents based on BOE cases may be overturned in whole, or in part, by decisions made by OTA's administrative law judges. That is, new cases may not rely on precedents set prior to July 1, 2018. To date, however, the OTA appears to be following BOE precedents in its business tax decisions.

The CDTFA and the OTA are the new sales and use tax authorities for all administrative and appeal matters. As a result of this significant change, there are now five agencies governing taxation:

- Board of Equalization (BOE),
- California Department of Tax and Fee Administration (CDTFA),
- Employee Development Department,
- Franchise Tax Board, and
- Office of Tax Appeals (OTA).

### The Addition of Economic Presence to the Nexus Presumption

In 2011, [A.B. 155](5) amended California’s Revenue and Taxation Code (RTC) section 6203 to temporarily repeal recently passed Assembly Bill ABX1 28 which required collection of use tax by retailers who sold over $1,000,000 during any preceding 12-month period to purchasers in California, when more than $10,000 of those sales resulted from an agreement with an in-state affiliate under which that person, for a commission or other consideration, referred potential customers to the retailer. The effective date for the end of the temporary repeal (i.e., re-enactment of the affiliate nexus provision) was dependent on whether a federal law was enacted to authorize states to collect taxes on sales to instate purchasers without regard to the location of the seller. If no federal law were enacted by July 31, 2012, use tax collection by out-of-state retailers would take effect on September 15, 2012. If such a law was enacted by that date, the change would take effect January 2013. (The change would not apply if the retailer could demonstrate that the referrals under the agreement would not satisfy the requirements of the U.S. Constitution’s Commerce Clause.) No federal law was enacted by the bill’s specified date, so these provisions took effect on September 15, 2012. Amazon began collecting California tax on its own sales that same day, but A.B. 155 left the out-of-state retailers selling on Amazon as the ones solely liable for use tax collection on those sales.

On June 21, 2018, the Supreme Court’s decision in [Wayfair](7) superseded [Quill](6), concluding that the physical presence rule for nexus did not reflect economic reality and that it was an incorrect interpretation of the Commerce Clause. This decision had an almost instant effect on California’s use tax. Although many states needed to draft legislation to respond to the [Wayfair](7) decision, RTC section 6203 had already been modified...

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5 Stats. 2011, Ch. 313 (A.B. 155).
6 [RTC § 6203](c)(5)(E).
7 [Quill Corp. v. North Dakota](6), 504 U.S. 298.
by A.B. 155 to allow for imposition of use tax on remote sellers. The Wayfair decision thus confirmed that there would be no Commerce Clause considerations restricting its application.

Meanwhile, BOE and CDTFA staff had found out-of-state retailers whose only connection to California was contracting with a third-party California warehouse to store and ship goods on their behalf. These warehouses were not involved in marketing or solicitations: their only roles were storing, packing, and shipping. BOE, however, began registering and assessing tax on these retailer’s sales into California, as well as on sales of items shipped from the California warehouses. The assessments were based on either RTC section 6203(c)(1) or RTC section 6010.5.

This year, California passed A.B. 147\textsuperscript{8} to amend RTC section 6203 to refine the use tax collection responsibilities of remote sellers. Like other states’ initiatives mimicking South Dakota’s sales thresholds and economic nexus laws, California initially administratively enacted thresholds of $100,000 or 200 separate transactions into the state. After public feedback and months of consideration, the thresholds were modified by statute by raising the dollar amount to $500,000 and eliminating any reference to the number of transactions. The law became effective April 1, 2019.

California’s statute of limitations, RTC section 6487, specifies an eight-year lookback period when no returns have been filed. RTC section 6487.05 provides a three-year lookback for unregistered out-of-state taxpayers under certain conditions, one of which is not having been first contacted by CDTFA. S.B. 92 provides a three-year use tax collection lookback and penalty relief for qualified retailers for whom the only nexus to the state was through a marketplace facilitator.\textsuperscript{9}

Additionally, A.B. 147 defines a “marketplace facilitator” as a person responsible for the collection of tax from sales made in its marketplace, including websites, media advertising, or any other way customers might be reached. Like the economic nexus threshold, the marketplace facilitator threshold is $500,000. Many states across the country are similarly enacting rules and regulations to address the marketplace idea.

The expansion of nexus in California now covers three different concepts: traditional physical presence (RTC section 6203), economic thresholds (S.B. 92); and marketplace facilitators (A.B. 147). These sales and use tax administrative changes over a short period of time increase the importance of understanding how the rules work. As the entire country shifts to accommodate the digital renaissance, so too is sales and use tax collection adapting. It is important to embrace these changes and be ready to register, collect, and remit. Time will determine the full effect of these major changes to the California sales and use tax administration.

\textsuperscript{8} Stats. 2019, Ch. 5 (A.B. 147).
\textsuperscript{9} Stats. 2019, Ch. 34 (S.B. 92).
PRO BONO MATTERS

The Variety of Work in Low-Income Taxpayer Clinics

By William Schmidt, Low-Income Taxpayer Clinic Director, Kansas Legal Services

This article focuses on unique aspects of low-income taxpayer clinics (LITCs) beyond case work. It hopefully introduces readers to the variety of issues that LITCs address and the way the clinics function and operate that may be somewhat surprising for those who have not been with LITCs in the past.

Do Low-Income People Have Tax Problems?

This is often one of the first questions we get concerning our clinics. Some people assume that low-income people just do not report income or would not be covered under the reporting requirements. Either way, the assumption is that these people do not file tax returns and thus have no tax problems. Problem solved and no need for this kind of clinic. Why are we wasting everyone's time?

There are several responses to this presumption. It is important to recognize that when a taxpayer comes into the clinic, we are looking at the individual’s current income. The individual may not have enough income now and so qualifies for help from LITCs at this point, but there may nonetheless be a tax problem from earlier times that has not been resolved and is still stuck to the taxpayer. Much like a person caught in quicksand, the taxpayer needs assistance to move away from a sticky situation that cannot be ignored. One example would be a person who made a good amount of money when self-employed, never paid quarterly estimated taxes, and is now without a business, broke, and staring at IRS notices. There are people in this situation who still feel the economic impact of the Great Recession and its aftermath and have to deal with tax debts that are within the 10-year collections statute of limitations.

Furthermore, low-income people have many of the same tax problems that higher income people have. Identify theft and innocent spouse cases are just two examples of problems that arise for low-income and high-income taxpayers alike. While low-income taxpayers may present a more sympathetic case to the Innocent Spouse department, they often have similar issues as their high-income peers.

In addition, tax issues that may exist for many taxpayers can be disproportionately burdensome for low-income taxpayers. Frozen refunds, an increase in income because of IRS adjustments, or the loss of an earned income tax credit can mean the loss of needed money that could take months to resolve or never get resolved. There are often additional issues when working with the elderly, disabled and English as a Second Language clients. When we get positive results for them, it is truly satisfying.

Finally, low-income clients often need help in dealing with the tax bureaucracy. It can be difficult to navigate the waters of tax problems even for sophisticated, high-income clients, but they can generally hire the tax assistance they need. Low-income clients do not have access to such help, so LITCs are able to fill that gap.
For example, it can be difficult for low-income taxpayers to gather or find the paperwork to respond to an audit. We often work as a buffer between the taxpayers and the IRS, guiding clients on what documents to provide and helping them to meet deadlines. Without that assistance, low-income taxpayers have difficulty participating in this process. The resulting tax debt and collection issues can only increase the injustices they face with poverty.

What Kind of Cases Do You Handle in LITCs?

In an earlier Tax Times article, Erin Stearns and Tameka Lester provided an in-depth review of the collection alternatives of installment agreements, Currently Not Collectible (CNC) status, and Offers in Compromise (OIC). That article details the kind of work that LITCs do to help people with little to no money deal with IRS Collections. In short, installment agreements are a payment plan and OICs are a settlement offer to the IRS. CNC status gets the account put on hold with the IRS so that IRS Collections does not take further action to collect on the debt beyond applying refunds to the debt.

LITCs deal with additional issues beyond collection alternatives when it comes to taxpayer liabilities, such as the similarly named injured spouse and innocent spouse cases. Injured spouse cases involve a joint tax return where one spouse’s refund went to pay the other spouse’s government debt: in these cases, the first spouse wants to get that part of the refund back and so files an injured spouse claim. Innocent spouse cases also involve a joint tax return, but the parties have a liability. Since joint tax returns bring joint and several liability, both spouses are liable for the debt even when one spouse dies or there has been a legal action such as a divorce or legal separation. A spouse can file for innocent spouse relief to divide the liability so that a portion or all of the liability goes from one spouse to the other. Factors the IRS uses to evaluate whether to grant relief can include the education of the parties, how involved they were with tax filing, and if there was domestic abuse during the marriage.

LITCs also assist taxpayers dealing with identity theft issues that affect their taxes. Identity theft cases usually come in two varieties, refund-related identity theft or employment-related identity theft. For refund-related identity theft, the impersonator takes a false action to try to intercept the taxpayer’s refund. For employment-related identity theft, the impersonator provides a false tax identification number, like a social security number, to an employer to get work. The problem is that the IRS may contact the person who actually has that social security number about unreported income.

Often, a client has received an IRS letter and needs assistance of some kind. For example, a taxpayer will often need assistance when there has been some form of audit or examination. It may be that the IRS states that the client has not reported all income. It also could be that the client claimed credits or deductions on a tax return for which the IRS requests proof. This begins with a client conversation to uncover the truth about the tax filing. From there, it is necessary to determine what paperwork is necessary to prove the client’s case. In a similar fashion, the client may come in and disagree with an audit’s results, asking for an audit reconsideration request. Sometimes this takes considerable one-on-one work to get the client organized well enough to convince the IRS to change its position.

When a debt such as a student loan, mortgage, or car loan is forgiven by a business, the debtor is usually happy but may not realize that the IRS treats that cancelled debt as income. LITCs often work to assist clients who were insolvent or need other assistance to deal with cancellation of debt income that has led to tax problems.

1 Erin H. Stearns & Tameka E. Lester, Navigating IRS Collections and Presenting Special Circumstances, ABA Tax Times (Feb. 2019).
Certain notices regarding liens or levies allow for a taxpayer to file for a Collection Due Process hearing. The Collection Due Process hearing allows for further review of the taxpayer’s case by IRS Appeals and may allow for a collection alternative to be approved. If the taxpayer does not like the decision from Appeals, there is the potential to petition the Tax Court.

Some taxpayers who believe they are employees working for an employer may be shocked when a Form 1099-MISC appears, showing that the business has treated the individual as an independent contractor for tax purposes. This requires that the individual pay the associated employment taxes. That individual may want to file Form SS-8 for the IRS to make a determination of worker status for purposes of federal employment taxes and income tax withholding. LITCs can provide assistance in preparing the form.

Clinics that are able to work with non-citizens may assist with ITIN filing or helping non-citizens take care of tax issues as part of the immigration process. ITIN filing also requires the gathering of documents.

Various notices such as a Notice of Deficiency or Notice of Determination have a deadline for filing a petition with the U.S. Tax Court. The Tax Court is based in Washington, D.C. and sends judges to select cities throughout the year. While several of the kinds of cases discussed above deal with a client’s IRS issues on an administrative level, Tax Court cases involve court procedure and litigation for an entirely different type of case. LITCs can provide full representation. This year the Tax Court allows limited entries of appearance during scheduled trial sessions.²

Case work is not the only area that needs focus from LITC employees. We rely on grants from the IRS and other sources to fund our activities. The IRS grant requires that we provide outreach and education to the public regarding tax topics.³ That may require public speaking or writing articles. For example, in addition to this article for the Tax Times, I regularly write for the Procedurally Taxing blog on designated orders from the Tax Court. I also record and produce my own podcast about the LITC called Tax Justice Warriors. We are also required to provide grant reports at different times during the year.

Working in an LITC means being versatile because of the variety of cases. It requires tax knowledge but directing an LITC also takes administrative skills to function and be effective under the IRS grant.

What Differences Are There Between Legal Aid and Law School LITCs?

One of the largest differences between these organizations is the source of their funding. For legal aid, a major funding source other than the IRS grant is funding from the Legal Services Corporation, which has significant restrictions on use of its funding. Some examples that affect the LITC world are restrictions on aid for non-citizens and prisoners. These restrictions are detailed in a handy chart on the Legal Services Corporation website. LITCs at law schools often receive significant funding from the law school or university itself. LITCs that do not fit in those categories may be independent of these funding sources. Each funding source may or may not have restrictions that require navigating. It is always helpful when you can refer a taxpayer in a restricted subject area to another LITC that does not have those restrictions.

Another major difference is the kind of workers available for the LITC. In a legal aid environment there might not be many people who know anything about tax law. In fact, the LITC director might be a staff attorney recruited from another area to fill the slot of tax attorney. That person might not receive much training and

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2 U.S. Tax Court Administrative Order No. 2019-01.
3 IRS Publication 3319 at 38-40.
may learn on the job what they can to represent clients with tax problems. Other attorneys are required to split their time between tax and other areas of law since there may not be sufficient funding to focus fulltime on tax.

At a law school, there are professors and students involved in the clinic. Professors have the tax knowledge and manage the cases (though some of them may also learn in trial-by-fire situations if it is not an area of their expertise). Students work the cases under the supervision of the professors in their own form of on-the-job training. Clinical work at a law school may mean that the client has to get acquainted with a new student intern each semester. The student’s tour of duty for the semester also leads to logistics difficulties to insure the student has a power of attorney allowing communications with the IRS before the semester’s end.

Of course, a main difference between law school LITCs and LITCs that are not at law schools is that the law school LITC employees and directors are often doing double duty. They not only try to manage the cases, but they also manage the students with the goal of teaching them at the same time. LITC professors might also teach a class at the law school on tax controversy work or some other tax topic.

**How Does It Work When a Single LITC Covers an Entire State?**

This is an area that does not affect every LITC, but one I think about fairly often. The Kansas Legal Services LITC is the only LITC for the state. In fact, there are 16 LITCs that serve their entire states.4

So the question arises—how can I provide service for everyone in Kansas from the eastern edge of the state? To be honest, I can’t. My client intakes are only a fraction of the tax issues for low-income people within my state. My clinic is relatively new (started in 2015) and I keep trying to get the word out in Kansas that assistance for tax problems is available. I try to build my clientele because I feel a responsibility as the sole LITC providing coverage.

It is also easier for me to focus on the eastern half of the state, which has the larger cities. I think it is difficult to get the word out to the western half, which is more rural and has a larger farming population.

Something that helps is the nature of tax controversy work. For work with the IRS, there may not have to be a public appearance. Often dealing with the IRS may be by phone, fax, or mail. With clients, long distance communication still often works out just as well. It is not perfect since there are some clients who would like the personal touch of an in-person meeting, but we have to work with what we can.

I have tried to make friends with the LITCs in neighboring states. It helps that we are a friendly group, so it is easy to contact another LITC for advice or networking. For example, I have two LITC neighbors in the Kansas City area on the Missouri side: Legal Aid of Western Missouri and the University of Missouri-Kansas City School of Law. It is comforting to know they are available for conference calls, collaboration, or client referrals when there is a conflict of interest.

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4 Publication 4134 provides that Alaska, Alabama, Delaware, Iowa, Kansas, Louisiana, Maine, Mississippi, Montana, Nebraska, New Hampshire, Oklahoma, Rhode Island, South Carolina, South Dakota, and Vermont each have only one LITC within their states. Now, those LITCs may not have the entire state within their coverage area.
Is There Specialization by LITCs?

Some LITCs hold conference calls to work together on specific topics. Those clinics have joined together regarding assistance for farm workers, immigrants, or Native Americans, among other groups. Depending on the state’s population and location of the LITC, that may be a major issue for an LITC’s clientele. Certain clinics are able to prepare more tax returns or ITIN applications than others. It all may depend on funding sources and the setup for the clinic.

Do LITCs Have a Need for Volunteers?

The answer is “yes!” on a couple of levels. There is always work that can be done at an LITC. We welcome volunteers and will do what we can to get them involved. A volunteer can learn about tax law, especially tax controversy work with the IRS, and gain experience.

I always tell people who want to help that they can get involved in the tax issues as much as they would like, and I will guide them through the process. If they want to get more involved, that is fine. Like some students, volunteers often would prefer to provide help that does not require much math.

For CNC status or making an OIC, it is necessary to ask for financial information from a client. It does not take special tax knowledge to get that information from a client. People from non-attorneys to the tax averse would be able to provide assistance to a tax attorney in that fashion.

Another way people providing volunteer assistance for an LITC help is in getting funding. The IRS funding requires other matching funds. A volunteer’s time counts as billable hours for those matching sources. In other words, volunteer time not only provides help with the cases, it also provides help with funding.

Those of us at LITCs appreciate the assistance the ABA Tax Section provides. We appreciate those who have volunteered their time or helped in other ways. If you want to join with those who volunteer at an LITC, we would be grateful as you give back within your community.
PEOPLE IN TAX

Interview with Omeed Firouzi

ABA Tax Times (ATT) recently had a chance to talk with Omeed Firouzi (OF) about the development of his interest in tax practice with low-income clients and his term as a Christine A. Brunswick Public Service Fellow at Philadelphia Legal Assistance.

ATT: Omeed, can you tell us something about your background and prior work experience, both in and out of tax?

OF: Before I went to law school, my background and work experience mostly revolved around politics. I grew up in northeastern Pennsylvania where I got involved in presidential campaigns and worked for my state representative Phyllis Mundy for several years. I went to GW, in the heart of Washington, D.C., for my undergraduate education because I was and am a political junkie. At college, I ran the College Democrats and I also worked for my hometown Congressman, Matt Cartwright. Along the way, my interests in politics and policy specifically led me to take classes on social welfare and anti-poverty programs. I learned about how specific social safety nets work and about the politics and policies surrounding these programs. As I increasingly became interested in tax law, my capstone college paper focused on the Earned Income Tax Credit.

My college experiences solidified my desire to go to law school. I wanted to practice law back in Pennsylvania, so a confluence of personal and professional factors led me to Villanova Law. At Villanova, I became immersed in public interest law and specifically in civil legal aid. My preexisting interest in tax law translated into a stint as the director of Villanova’s VITA volunteer program in 2017. Crucially, while I was a law student, I interned in Philadelphia’s largest civil legal aid organizations: Philadelphia Legal Assistance (PLA) and Community Legal Services (CLS). At PLA, I interned in the low-income taxpayer clinic, a natural fit given my interest in how tax law affects poverty. That internship of course helped bring me to where I am today—an attorney in the LITC at PLA.

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

OF: When I interned in the LITC in the summer of 2016 (the summer of my 1L year) under the supervision of clinic director Lazlo Beh, one of my colleagues was attorney Lany Villalobos. Lany, a fellow Villanova Law alum, was at that time a Brunswick Public Service Fellow. Her mentorship and Lazlo’s subsequent encouragement for me to apply helped familiarize me with the fellowship and inspire me to pursue it. The following summer, I interned at CLS for Cat Martin—who at the time also was a Brunswick Fellow. Cat’s guidance helped solidify my decision to apply. PLA ultimately sponsored me for the application, and I worked with Lazlo to develop a project focused on worker misclassification.
More broadly, I became convinced that tax law, particularly as it relates to the challenges low-income individuals face, was the area in which I needed to practice. I saw how tax law was tied to so many other facets of life—employment, marriage, immigration, and child care, to name a few. Tax law had also become salient in our national public policy discourse as the 2017 tax legislation was enacted the same month that I became a fellowship finalist in December 2017. In light of the increasingly prevalent worker misclassification in the gig economy, I knew this was an issue I wanted to tackle.

ATT: Could you tell us about Philadelphia Legal Assistance and how you came to choose that organization?

OF: Put simply, I love working at PLA. Ever since the beginning of my internship there in June 2016, it has really been a wonderful work family. I wake up every day eager to go to work and to learn from my colleagues. It is a welcoming work environment. I came to choose PLA because I enjoyed the experience of my internship so much.

I had and have a great boss in Lazlo who truly understands how to be an encouraging boss. As a young lawyer, I especially appreciate his open-door policy. He causes me to think about cases in unique ways that I had not considered, and he also allows me to be bold and ambitious when I want to be in certain cases and arguments.

His supervision, the tenacity of this LITC and the successful results it has produced, and the need for strong public interest advocacy in Philadelphia all compelled me to practice here. In August 2017, PLA sponsored me for the Brunswick Fellowship, and they were so helpful to me throughout the application process. We did a mock interview at PLA, Lazlo worked with me on developing a robust project proposal, and they supported me every step of the way.

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

OF: My fellowship project focuses on worker misclassification. I primarily assist low-income taxpayers in Philadelphia in challenging their misclassification before the IRS. I represent workers in filing Forms SS-8 to challenge their misclassification as independent contractors and in subsequently filing tax returns listing their 1099 income as “wages” so that they pay only their employee’s share of Social Security and Medicare taxes. Pursuant to this project, we’ve also filed petitions in U.S. Tax Court for misclassified employees, conducted education and outreach aimed at workers’ rights’ organizations and VITA sites, and consulted with other LITC attorneys on best practices.

We also hope ultimately to file claims under section 7434 to argue that misclassification itself could constitute “fraudulent filing of an information return.” Though the work I do is mainly focused on misclassification, I have a full caseload that includes other cases that touch on a wide range of issues our LITC sees, including EITC audits and helping clients get into collection alternatives.

ATT: What has been your biggest challenge so far?

OF: The most significant challenge so far has been dealing with the frequently occurring reality that a taxpayer who has successfully challenged an employment misclassification will still owe the employee’s share of uncollected FICA taxes. Many of our clients cannot afford to pay these taxes. If their employers had
provided them with W-2s, those taxes would have been withheld from their paychecks, which would have been far easier for the workers.

At that point, we help clients get into collection alternatives. That sometimes seems unsatisfactory because if they were treated from the very beginning as employees for tax purposes, they wouldn’t need to worry about those tax debts for that year. Obviously, filing an SS-8 and listing the income as wages helps these taxpayers significantly reduce their liability. But part of this project now involves considering how we can address this issue more broadly and in more creative ways so that we can assist our clients even further.

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

**OF:** The most rewarding part of my Fellowship has been the successful results we’ve obtained for taxpayers. I truly admire our clients as they seek out our resources, they advocate for themselves, and they make a good faith effort to address a complicated subject that scares so many Americans: taxes.

When our clients get 1099s and realize they’re going to owe taxes, they know to come to us because they want to tackle it, they don’t want to run away from it, they want to try to figure out what happened and how they can resolve it. And when we are able to honor their commitment to fixing an issue like that, it brings joy to my heart. Our clients struggle to make ends meet, their expenses usually exceed their income, and they work hard to provide for their families. It means a lot that we play even a small role in helping them alleviate a burden.

**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?

**OF:** I hope to stay within public interest law in Philadelphia after my Fellowship ends. The Fellowship has only strengthened my desire to continue with this work. I’ve always wanted to do exactly what I’m doing right now, so I truly hope I can continue doing it. I really feel like I am in my dream job, in my dream city, and living my dream life. I am so fortunate to be a part of the well-knit Philadelphia public interest community.

Donations to the Tax Assistance Public Service (TAPS) endowment fund support the Christine A. Brunswick Public Service Fellowship program, which provides two-year fellowships for recent law school graduates working with nonprofit organizations providing tax-related legal assistance to underserved communities. Learn more at [www.abatapsendowment.org](http://www.abatapsendowment.org).
PEOPLE IN TAX PODCAST

Valerie Vlasenko

In S01E02, James Creech and Valerie Vlasenko discuss learning to speak at professional meetings, mentorship, pro bono work, and professional networking. (Interview at the 2019 Midyear Tax Meeting, New Orleans, LA.)

Listen here.

Jonathan Strouse

In S01E03, James Creech and Jonathan Strouse discuss the benefits of tax meetings, planning meeting panels, how young lawyers can get involved in panels, and what makes an engaging speaker. (Interview at the 2019 Midyear Tax Meeting, New Orleans, LA.)

Listen here.

Amy Spivey

In S01E04, James Creech and Amy Spivey discuss attending a tax meeting for the first time, learning about pro bono work, running a low-income taxpayer clinic, cohosting a tax radio show, running calendar calls, and supporting the Tax Assistance Public Service endowment fund. (Interview at the 2019 Midyear Tax Meeting, New Orleans, LA.)

Listen here.

Karen Hawkins

In S01E05, James Creech and Karen Hawkins discuss the launch of the pro bono calendar call program, the first 6015(f) standalone case, and the legislative response.

Listen here.

In S01E06, they discuss working with Tax Court judges, building a practice through networking at Tax Section meetings, and advice on how to take advantage of speaking opportunities.

Listen here.

(Interviews at the 2019 Midyear Tax Meeting, New Orleans, LA.)
YOUNG LAWYERS CORNER

Save the Date: 19th Annual Law Student Tax Challenge (2019-2020)

An alternative to traditional moot court competitions, the Law Student Tax Challenge asks two-person teams of students to solve a cutting-edge and complex business problem that might arise in everyday tax practice. Teams are initially evaluated on two criteria: a memorandum to a senior partner and a letter to a client explaining the result. Based on the written work product, six teams from the J.D. Division and four teams from the LL.M. Division receive a free trip (including airfare and accommodations for two nights) to the Section of Taxation 2020 Midyear Tax Meeting, January 30-February 1, in Boca Raton, FL, where each team will defend its submission before a panel of judges representing the country's top tax practitioners and government officials, including Tax Court judges.

The competition, sponsored by the Young Lawyers Forum, is a great way for law students to showcase their knowledge in a real-world setting and gain valuable exposure to the tax law community. On average, more than 60 teams compete in the J.D. Division and more than 40 teams compete in the LL.M. Division.

IMPORTANT DATES

Problem Release Date: September 4, 2019, released by 5pm EST

Submission Deadline: November 6, 2019, by or before 5pm EST

Notification of Semifinalists and Finalists: December 18, 2019

Semifinal and Final Oral Defense Rounds: January 31, 2020, in Boca Raton, FL
TAX Bits

Paying Taxes

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

(To the tune of “Making Whoopee” by Gus Kahn and Walter Donaldson (1928), as sung by Rudee Vallee, Ella Fitzgerald, or Eddie Cantor (from the play, Whoopee).)

For building bridges
That carry loads,
For fixing ridges
On bumpy roads,
Just one more reason,
Though none are pleasin',
For paying taxes.

And for the Airforce
And the Marines—
The Reds have their Force,
You know that means—
More planes we're making
And Budgets breaking,
And paying taxes.

If you're one who's observant,
You never would forget—
Neighbor's a civil servant,
You're paying her mortgage debt.

Don't buck the system
On which all rests.
Try to resist em':
Face IRS.
They'll cuff and latch you
If they should catch you
Not paying taxes.
IDENTIFYING FUTURE LEADERS:
A MESSAGE FROM THE CHAIR OF THE NOMINATING COMMITTEE

By Karen L. Hawkins, Hawkins Law, Yachats, OR

There are many tasks which need to occur to keep the Tax Section on track and running as smoothly as possible. Some are more visible and obvious than others—like the phenomenal job the staff does pulling together our three meetings a year, so they run seamlessly, and the great advance preparation our committees do to put together relevant and meaningful continuing education panels for each meeting.

One of the least visible, but in my opinion one of the most critical, tasks performed by Section members is participation in the leadership succession planning by serving on the Section’s Nominating Committee. The thirty-three members of each year’s Nominating Committee operate in relative obscurity to identify the future leaders of the Section. About one-third of the committee is selected annually by the Chair-Elect with an eye toward reflecting the diversity of our Section membership in all respects. To further ensure a wide range of perspectives, no more than 20% of the committee can be current members of the Section’s leadership Council. The committee is chaired by a past chair (that would be me this year) with the last retiring chair serving as vice-chair (Eric Solomon this year). The chair-elect (Joan Arnold this year) is the committee’s Council Director. Each year the Nominating Committee meets at the Fall and Midyear Tax Meetings to identify the nominees for five Council Director slots (for three-year terms); six Vice-Chair slots (one-year terms with a maximum of three years in total); the Secretary and Assistant Secretary (two-year terms); and the next Chair-Elect.

While there are no specific criteria for any of the positions, it is generally understood that a natural progression of Section involvement starting with subcommittee work through committee chair will provide the leadership training and institutional knowledge necessary to qualify someone for the next step on the leadership ladder as a member of Council. In the past, the Nominating Committee has worked with lists of eligible individuals who have served in various leadership capacities which qualify them for that next step.

The names of the Nominating Committee members can be found on the Section’s website here. The Nominating Committee invites you to contact any member of the Nominating Committee to identify individuals who you believe have demonstrated their commitment to the Section and its mission, and who are ready to assume greater leadership roles in Section administration. In order to be considered at its meeting in San Francisco on October 4th, the Committee will need to receive your nominations (with a brief statement of rationale) no later than September 27th. This is your opportunity to participate in determining the future leadership of the Tax Section. I encourage you to take advantage of it. ■
SECTION NEWS & ANNOUNCEMENTS

Accepting Applications for the 2020-2022 Christine A. Brunswick Public Service Fellowship

The American Bar Association Section of Taxation is pleased to announce that it is now accepting applications for its Christine A. Brunswick Public Service Fellowship program class of 2020-2022. Developed in 2008, the Fellowship program seeks to address the growing need for tax legal assistance and to foster a greater interest in tax-focused public service through funding and other support to young lawyers engaged in tax work for underserved communities.

The deadline for applications is November 15, 2019. Visit the [Christine A. Brunswick Public Service Fellowship](https://www.abanet.org/tax-section/fellowship) page for more information about the award criteria and to download the [application form](https://www.abanet.org/tax-section/fellowship).

TaxIQ: 2019 May Tax Meeting Materials Available

Original materials from the 2019 May Tax Meeting are now available on TaxIQ. TaxIQ offers online access to the latest committee program materials presented at Tax Section Meetings.

In March, we launched our searchable Section-hosted database, and access to it is an exclusive benefit of membership in the Section of Taxation. [Click here](https://www.abanet.org/tax-section) for access. You will be prompted to log in, so please have your ABA-associated email address and password handy.

The Practical Tax Lawyer—September 2019 Issue Available Soon

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.

- Bradley T. Borden, *Partnership-Related Relatedness: Measuring Partners’ Capital Interests and Profits Interests*
- Robert S. Schwartz, *Centralized Partnership Audit Procedures*
- R. Eric Viehman, *Generation-Skipping Transfer Tax Planning (Part 2 with Sample Language and Forms)*

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

The Tax Lawyer—Summer 2019 Issue Available Soon

The Summer 2019 issue of The Tax Lawyer, the nation’s premier, peer-reviewed tax law journal, will be available soon. The Tax Lawyer is published quarterly as a service to members of the Tax Section.

Summer 2019 Issue (Click here to go to The Tax Lawyer homepage.)

Articles

State and Local Tax
R. Lainie W. Harris, Did SCOTUS Do Congress’ Dirty Work When It Killed Quill? State Sales Tax on Remote Sellers and Wayfair

Recent Developments
Bruce A. McGovern and Cassady V. (“Cass”) Brewer, Recent Developments in Federal Income Taxation: The Year 2018

Support the Section’s Public Service Efforts with a Contribution to the TAPS Endowment

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 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.
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.
SECTION EVENTS & PROMOTIONS

Section Meeting Calendar

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

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<td>FALL TAX MEETING</td>
<td>Hyatt Regency, San Francisco, CA</td>
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<td>January 30-February 1, 2020</td>
<td>MIDYEAR TAX MEETING</td>
<td>Boca Raton Resort, Boca Raton, FL</td>
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<td>April 30-May 2, 2020</td>
<td>MAY TAX MEETING</td>
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<td>September 24-26, 2020</td>
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<td>January 28-30, 2021</td>
<td>MIDYEAR TAX MEETING</td>
<td>JW Marriott LA Live, Los Angeles, CA</td>
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<td>May 6-8, 2021</td>
<td>MAY TAX MEETING</td>
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<td>September 23-25, 2021</td>
<td>FALL TAX MEETING</td>
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Section CLE Calendar

https://www.americanbar.org/groups/taxation/events_cle/

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<td>August 15, 2019</td>
<td>Disgorgement Claims in Injunction Cases</td>
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<td>September 10, 2019</td>
<td>Health Care Update</td>
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<td>September 24, 2019</td>
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<td>October 10, 2019</td>
<td><strong>Plan Expenses: Avoiding Trouble Through Appropriate Use of Plan Assets</strong>&lt;br&gt;CLE Webinar</td>
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<td>October 16-18, 2019</td>
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<td><strong>20th Annual U.S. and Europe Tax Practice Trends</strong>&lt;br&gt;Munich, Germany</td>
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<td>April 30-May 2, 2020</td>
<td><strong>MAY TAX MEETING</strong>&lt;br&gt;Washington, DC</td>
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<td>June 10-12, 2020</td>
<td><strong>13th Annual U.S. and Latin America Tax Practice</strong>&lt;br&gt;Miami, FL</td>
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SECTION EVENTS & PROMOTIONS

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<td>October 3-5, 2019</td>
<td>2019 FALL TAX MEETING</td>
<td>Hyatt Regency San Francisco San Francisco, CA</td>
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<td>January 30-February 1, 2020</td>
<td>2020 MIDYEAR TAX MEETING</td>
<td>Boca Raton Resort Boca Raton, FL</td>
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<td>April 30-May 2, 2020</td>
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