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ABA Tax Times (ATT) is published at least four times a year featuring articles covering a wide range of tax topics and areas of tax practice, interviews with diverse tax practitioners, Committee reports, Tax Section comment submissions to the government, and other news and information of professional interest to Tax Section members and other readers.

ATT is presented in digital-only format and is distributed by e-mail to Tax Section members as a benefit of membership. To learn more about joining the ABA and the Tax Section, visit http://www.americanbar.org/groups/taxation/membership.html.

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From the Chair

Your Changing Tax Section

By Eric Solomon, Washington, DC

New Orleans Meeting

The Tax Section held its Midyear Tax Meeting in New Orleans on January 17-19. Because of the government shutdown, IRS and Treasury representatives were not able to attend. Nevertheless, there was much to discuss. Numerous panels addressed the continuing deluge of guidance relating to the 2017 Tax Act, such as proposed regulations regarding qualified opportunity funds and final regulations regarding the 20% deduction for sole proprietors and owners of pass-through entities (section 199A), as well as additional guidance regarding the many new international tax provisions.

The featured speaker at the plenary session on Saturday, January 19 was Richard Rubin, the U.S. tax policy reporter for The Wall Street Journal. It is always interesting to hear the unique insights of someone who is not a practicing tax professional but spends a lot of time observing and reporting on the tax world. Richard explained how he tries to translate complex issues to his readers, who are educated, curious and ideologically diverse, and who want to understand taxes in order to make informed decisions. In his articles he strives to be readable and credible, and in his analysis he strives to be skeptical without cynicism.

At the plenary session Nina Olson, the IRS National Taxpayer Advocate, received the Janet Spragens Pro Bono Award for her commitment to pro bono programs, including low-income taxpayer clinics (LITCs), for more than two decades. Prior to her appointment as the National Taxpayer Advocate, Nina founded and served as the Executive Director of The Community Tax Law Project, the first independent section 501(c)(3) LITC in the United States. While in that role, she worked with Janet Spragens to develop and ensure the passage of section 7526, which authorizes matching grants for LITCs. In her acceptance speech, Nina praised the Tax Section for its longstanding support for pro bono activities. She noted that the LITC program would not have been so successful without the Tax Section’s support. The award presentation and her remarks can be accessed at https://www.youtube.com/watch?v=RotyQ6vKMBq.

In its 18th year and going strong, the Annual Law Student Tax Challenge, organized by our Young Lawyers Forum, held its finals during the New Orleans meeting. Congratulations to the winners and all who participated. The J.D. first place team was Thomas Boland and Jordan Fruchter of Albany Law School. The LL.M. first place team was Kasia Parecki and Christine Kuglin of the University of Denver Sturm College of Law. The J.D. best written presentation was by Janette Duran and Luis Garcia of the University of New Mexico School of Law, and the LL.M. best written presentation was by Deborah Kelessidis and Arpine Khachikyan of Loyola Law School of Los Angeles. Thanks to the judges who volunteered their time to read
and hear the arguments. The competition winners and video clips from the oral rounds are available in the Young Lawyers Corner section of this issue of ABA Tax Times.

As always, the Tax Section staff did an outstanding job organizing the meeting. Because the Tax Section staff handles the logistics so well, attendees are not aware of all the work necessary to put on such a large meeting, and may not notice how well all the details are addressed. Special thanks to meeting planners Haydee Moore, Sarah Deschauer, Michelle Chuang, and Genevieve Lynn for their great work. Also, thanks to Director John Thorner and all the rest of the Tax Section staff for everything they do to make Tax Section meetings a success.

As discussed in previous columns, registered attendees at Tax Section meetings can access the complete set of meeting materials by clicking on a zip file that was distributed by e-mail after the meeting. In addition, whether or not you attended the New Orleans meeting, all Tax Section members have complimentary access to all the written materials from past meetings on the website at ambar.org/taxiq. Audio recordings of individual sessions are available through DCP, our outside digital conference partner, at http://www.dcpvidersonline.com/abatx/.

Association New Membership Model

As discussed in my previous column, the Board of Governors and House of Delegates of the American Bar Association have adopted a new membership model to increase ABA membership. The new model includes a revised Association dues structure, which will reduce the number of categories of Association dues and will lower Association dues for younger practitioners and solo/small firm practitioners. The new dues structure will be effective for the fiscal year starting in September 2019. Dues to join the Tax Section, which are in addition to Association dues, will remain at $75 per year for 2019-2020.

The change to the new dues structure is likely to have a detrimental effect on Association revenues, at least in the short run, until the anticipated increase in Association membership occurs. The Tax Section has a separate Memorandum of Agreement (MOA) with the Association that provides more operating flexibility to the Tax Section. Under the MOA, the Tax Section does not receive funds from the Association, unlike other ABA sections and divisions. As a result of the MOA, we do not anticipate that the Tax Section will be negatively affected to any significant degree by any cost cutting the Association might need to undertake as a result of the anticipated short-term decrease in Association revenues.

Increasing the value of ABA membership is a critical element of the new membership model. Accordingly, the ABA is creating a large, new library of free online content for ABA members. The Tax Section is contributing to this library, which will have three parts: (1) material available to the public, such as contact information and marketing material; (2) content available to all ABA members, such as basic substantive material; and (3) content available only to a Section’s own members. ABA members who are not Tax Section members will have a limited number of opportunities per month to access matter in the third category (material that is generally available only to Tax Section members). This online library is expected to be accessible at the time the new dues structure is initiated.

ABA Website Issues

In October 2018 the ABA launched a new website. The new website has a clean design, simplified navigation and improved search capabilities. It is now possible to browse the ABA website on a mobile
phone or tablet, enabling the ABA to capitalize on trends toward mobile devices as the primary means for internet engagement.

Unfortunately, there are problems with the site’s functionality, including login, event registration, and product purchases. The Association is working with its outside contractor to address these issues and hopes to resolve them soon. In the interim, however, these problems have negatively affected the Tax Section. For example, a significant number of members of the Tax Section had difficulty registering for the New Orleans meeting. We asked members experiencing difficulties registering for the New Orleans meeting to reach out directly to Tax Section staff.

While the Association is working to resolve the issues, the Tax Section has engaged its own outside contractor to handle registration for upcoming meetings this spring. We hope that this temporary solution for the Tax Section will solve the registration problems.

If you experience any problems with the ABA website, please reach out directly to Tax Section staff at (202) 662-8670 or tax@americanbar.org. We continue to work to ensure our members are appropriately served.

**Pro Bono and Public Service**

As the largest national member organization of tax professionals, the Tax Section excels at mobilizing and preparing members to address unmet tax-related needs of the underserved population throughout the country. The Tax Section is prepared to respond to requests to link tax professionals with specific opportunities to provide services. We also provide training and mentoring to those members ready and willing to serve, but who may not have the necessary background and expertise to address issues faced by the underserved population.

The Tax Section is maximizing its pro bono impact by: (1) providing education and training to practitioners interested in participating in pro bono work; (2) providing resources and mentorship for practitioners in their pro bono activities; (3) connecting members to pro bono opportunities; (4) elevating the profile of pro bono work for tax practitioners nationally; and (5) raising funds for the Tax Assistance Public Service (TAPS) endowment and administering the Christine A. Brunswick Public Interest Tax Fellowship (which enables new tax professionals to spend two years providing services to low-income taxpayers).

With respect to education and training, the Tax Section has been active in a number of areas. It hosted its annual Low-Income Taxpayer Representation Workshop, which provides a day of training to LITC practitioners and other pro bono attorneys. This workshop took place in Washington DC on December 3, the day before the Taxpayer Advocate Service’s national LITC conference. Our thanks to Sheri Dillon and Morgan Lewis & Bockius for the use of the firm’s Washington office for the workshop. The Tax Section also participated on a plenary panel at the Taxpayer Advocate’s conference, helping to build a deeper connection between the Tax Section’s pro bono program and the national LITC program. In addition, the Pro Bono and Tax Clinics Committee put on an excellent program at our Midyear Meeting in New Orleans.

For Pro Bono Week (the last week in October), the Tax Section hosted a free webinar about disaster readiness. In addition, the Tax Section hosts a quarterly free pro bono webinar, to be held this year on February 28. These quarterly pro bono webinars focus primarily on collection matters, the greatest area of need for pro bono assistance nationally.

The Tax Section provides scholarships to low-income taxpayer clinicians to help defray expenses to attend Tax Section meetings. The scholarships are given to four clinicians for each Tax Section meeting.
With respect to resources and mentorship, the Tax Section’s Tax Connect page for the Pro Bono and Tax Clinics committee has over 1,000 active participants sharing numerous questions and suggestions each day. This resource, which is not restricted to Tax Section or even ABA members, was especially helpful during the IRS shutdown, allowing participants to brainstorm about ways to assist taxpayers.

The Tax Section also continues to connect members to pro bono opportunities. Through the Adopt-A-Base program, Tax Section members are connected to opportunities to teach basic tax law to military personnel who provide free tax assistance on military bases. The program is run by the IRS Stakeholder Partnerships, Education and Communication (SPEC) office, which regrettably was closed throughout the training season by the IRS shutdown. Nevertheless, Tax Section volunteers persevered and conducted more than 30 trainings at military bases. Without the commitment of the Tax Section and its members, the trainings would have been postponed and potentially cancelled, which could have caused some military bases to suspend tax assistance. The Tax Section expresses special appreciation to Wells Hall, Melanie Kletz and others from Grant Thornton nationally, Rachael Rubenstein and her colleagues at the Texas Bar Association, and numerous Tax Section members and their firms as well as LITC practitioners for their support of the Adopt-A-Base program.

In November, the Tax Section’s Elder Law Initiative hosted an event in Pittsburgh to assist seniors. The Elder Law Initiative is also providing input to the IRS in the development of a new Form 1040SR focused on senior tax filers.

With respect to elevating the profile of pro bono work nationally, on December 13 the Tax Section had its annual meeting with the IRS (discussed more below) to discuss various tax administration issues. The agenda included issues relevant to low-income taxpayers, including transcript delivery and collection due process. Besides this meeting, the Tax Section has otherwise provided valuable input to the IRS about transcript delivery.

**Pro Bono Pledge Program**

In December, the Tax Section officially launched the Pro Bono Pledge program. As I mentioned in a message in December as well as in my previous column, the goal is to encourage Tax Section members to perform pro bono work or make a donation to the TAPS fund. The simple form can be completed online.

For those who commit to provide pro bono hours, volunteer opportunities will be circulated as they become available. Those who satisfy their pledge by providing pro bono assistance or making a TAPS contribution will be recognized in the program for the Celebrate Pro Bono Reception at the May Tax Meeting and on the Tax Section website. I hope you will join me in making a Pro Bono Pledge!

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

**Comment Letters**

As a result of the enactment of the 2017 Tax Act, the Treasury Department and IRS continue to draft and issue substantial amounts of interpretive guidance. The Tax Section continues to prepare and submit comments, including on proposed regulations about global intangible low-taxed income (GILTI) and qualified opportunity funds. The Tax Section also has submitted comments on recent changes to the IRS transcript delivery system, as well as on implementation of the 2017 Tax Act provision in section 512(a)(6) about
tax-exempt organizations with more than one unrelated trade or business and the 2017 Tax Act provision in section 1297(f) about the qualifying insurance corporation exception from passive foreign investment company status.

The Treasury Department and IRS highly value Tax Section comments and read them carefully. There is an endless pipeline of projects to work on, so please volunteer to join a comments project.

Meetings with the IRS and the Treasury Office of Tax Policy

On December 13, the Tax Section held its annual meetings with the IRS and the Treasury Office of Tax Policy to discuss issues of common concern. Commissioner Charles P. Rettig (who previously was Vice Chair for Administration, among other Tax Section roles) joined us for part of the IRS meeting and shared his initial impressions of his new role.

At the IRS meeting we discussed the proposed changes to Form 1040, changes to the transcript delivery system, the availability of determination letters for qualified retirement plans, potential IRS guidance on the 2017 Tax Act changes to the alimony deduction, the processing of collection due process requests, and cryptocurrency. There are ongoing interactions between the Tax Section and the IRS on these matters.

At the meeting with the Treasury Office of Tax Policy, we discussed selected technical issues regarding various aspects of the 2017 Tax Act, including the 20% deduction for sole proprietors and owners of pass-through businesses (section 199A), expensing (section 168(k)), carried interest (section 1061), GILTI (section 951A), and tax accounting (section 451(b)).

The meetings were quite productive. The engagement at the meetings by the government officials and their appreciation for Tax Section comment letters demonstrate some of the value the Tax Section brings to improving the tax system.

Publications

We are pleased to report that the transition of The Tax Lawyer to our new collaborating partner, the Northwestern University Law School Tax LL.M. program, continues to progress smoothly. Northwestern students have now edited their first issue, for Fall 2018. The student editors attended the New Orleans meeting of the Publications Committee with their faculty advisor Professor David Cameron. The student editors provided a useful window into their editing process. It is clear that the collaboration between the Tax Section and Northwestern is going extremely well.

The Tax Section is also making some needed changes to the content selection process for The Tax Lawyer to ensure that articles reach readers in a timely manner. Starting this year, The Tax Lawyer will include state and local tax (SALT) items throughout the year rather than publishing a single issue dedicated to SALT. Don't forget to submit your work to The Tax Lawyer at http://ambar.org/TaxLawyerJournal.

The Tax Section also continues to publish books with insightful and timely information to assist you in your practice. Last year, in addition to the latest edition of Effectively Representing Your Client Before the IRS, the Tax Section published the 2018 annual updates of the Sales and Use Tax Deskbook and the Property Tax Deskbook. We continue to seek practical, authoritative titles for our books program. If you have a book idea and/or proposal, please contact Todd Reitzel, Director of Publishing, at todd.reitzel@americanbar.org.
Tax Section Membership

The future of the Tax Section depends on our membership. We need to adapt to provide benefits attractive to the changing needs of our members. We need to increase the number of practitioners in all membership categories. We especially need to reach out to younger practitioners, who hopefully will become Tax Section members for many years. Accordingly, we are preparing an action plan on member recruitment to reach out more effectively to potential members and to retain current members.

Diversity and Inclusion

The recently formed Diversity in the Profession Committee (DIPC) oversees implementation of the Tax Section's Diversity and Inclusion Plan. The DIPC has recently determined that the role of committee liaisons to the Tax Section's Diversity Committee needs to be better defined. In the future, the liaisons from other Tax Section committees to the Diversity Committee will be asked to work with the Diversity Committee to: (1) serve as a two-way communication link between their committees and the Diversity Committee; (2) assist in developing programming involving diversity issues sponsored by both their committees and the Diversity Committee; (3) exchange ideas about how diversity is implicated in substantive areas (e.g., opportunity zones, new markets tax credits, and low-income housing credit); and (4) focus on adding diverse individuals on panels, comment letters and other projects. In order to ensure improved communication between committee liaisons and the Diversity Committee, the Vice Chair of each of the committees will serve as the diversity liaison beginning in 2019-2020. The DIPC is also working on a proposal to create a scholarship program to help defray transportation and hotel expenses for diverse individuals to attend Tax Section meetings.

Upcoming Meetings

The Tax Section will host a number of exciting CLE events this spring, both in-person meetings and webinars. Two conferences focus on international taxation, the 19th Annual U.S. and Europe Tax Practice Trends Conference, April 3-5 in Paris, and the 12th Annual U.S. and Latin America Tax Practice Trends Conference, June 12-14 in Miami. Both conferences focus on practical planning strategies for multinational corporations and their advisors and provide insight into how government tax officials view the evolving international tax landscape.

Together with the Institute for Professionals in Taxation, the Tax Section will host the annual ABA/IPT Advanced Tax Seminars in New Orleans March 11-15. These seminars feature a distinguished multidisciplinary faculty that will provide a practical examination of current state and local tax issues.

Also, don’t forget that this year’s Fall Tax Meeting will be in San Francisco on October 3-5.

May Tax Meeting in Washington DC

The May Tax Meeting will be held May 9-11, 2019 at the Grand Hyatt in Washington DC. Featuring numerous government officials, this meeting presents an excellent opportunity to hear from them and other experts about the latest developments that affect your client and practice.

Our scheduled plenary speaker will be Commissioner Rettig. You will not want to miss his reflections about the satisfactions and challenges of his first year as Commissioner.
I am pleased to report that the Distinguished Service Award Committee met in New Orleans and selected Emily Parker of Dallas to receive this year’s Distinguished Service Award. This annual award was first given in 1995 to recognize outstanding service to the tax profession. I had the privilege of working with Emily in government service, when she was Deputy Chief Counsel and Acting Chief Counsel at the IRS. I especially commend Emily for her intelligence, no-nonsense focus and common sense. We will present the 2019 Distinguished Service Award to Emily at the plenary session on Saturday, May 11.

We will also recognize the 2019-2020 class of Nolan Fellows, a select group of the Tax Section’s talented young tax lawyers. In addition, we will announce the next class of Christine Brunswick Public Service Fellows, who will receive Tax Section funding for public service positions for two years.

This May meeting will be the last meeting at the Grand Hyatt. In 2020 the Tax Section will host its May meeting in roomier space at the Marriott Marquis DC.

Spring is right around the corner. We look forward to seeing you in Washington in May.
PEOPLE IN TAX

Interview with Jeremiah Coder

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

Jeremiah Coder is a tax policy adviser at the Organisation for Economic Co-operation and Development (OECD), with prior experience in private practice and as a contributing editor at Tax Analysts.

Q I’m here with Jeremiah Coder from the OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes. Thank you, Jeremiah, for agreeing to be interviewed for the Tax Times.

A Great talking to you, Tom.

Q Jeremiah, how did you get into tax?

A I’d known for a very long time, since a teenager, that I was interested in tax. A good family friend was an accountant and based on his encouragement, I decided to follow that same route. So I got an accounting degree. But as part of that process I had a fascinating business law professor who really made the law seem fun. I decided to keep my tax focus, but in the legal realm, so I went to Notre Dame for my J.D. From there I’ve had a very unique career path.

Q Let’s talk about that path.

A Sure. After law school I went to Washington, D.C. to clerk for Judge Mark Holmes at the U.S. Tax Court, which was a very formative experience of seeing tax play out in a wide variety of circumstances. As Judge Holmes would tell his clerks, tax cases are not really so much about tax, oftentimes, but just integrated stories in the larger unfolding of real life. At the Tax Court, you see everything, from very small individual innocent spouse cases all the way up to intricate technical issues in large corporate cases, with all sorts of fun procedural twists. So it was a great formative experience. After that, I wasn’t sure what I wanted to do, but because I enjoyed writing so much, I went to Tax Analysts, which offered me the chance to dive into both technical and policy questions confronting the tax profession. I was there for a number of years as a contributing editor. I think one of the best things that came from that experience was developing such a great network of tax professionals across the U.S.
Tax Analysts provided me a unique opportunity to be a tax generalist. You never knew what issues would bubble up each day. It could be tax accounting one day to international tax the next, from employment tax to fuel tax issues. It really keeps you on your toes, having to write under a daily deadline, to quickly shift topic areas, and to quickly adapt to new issues. You have to communicate to the general public, but you also have to be technically correct because readers rely on you to communicate important news and trends.

**Q** Do you have any good stories from your time at Tax Analysts?

**A** One of the most unique experiences was going to the Supreme Court to cover a couple of tax cases that the Justices heard during my time, which is generally rare. Seeing that dialogue in person upfront from the reporter’s gallery, where you’re not allowed anything but a pad and pen. It’s quite an intense experience trying to capture the Justices’ quick-fire questioning and the responses from the arguing attorneys. It was very interesting to see them all at work during oral arguments.

**Q** So then from Tax Analysts, you moved into private practice.

**A** I appreciated the opportunity to have a wide range of client matters that allowed me to further develop my technical skills as a lawyer, especially in procedural issues. I enjoyed the continuing mentorship and dialogue with colleagues across the U.S. I don’t think many people understand the friendliness of tax lawyers in our community. It takes everyone sharing their experiences of how to confront issues, how to address unique problems that clients face. Being able to share one’s experience and learn from others—both new and old in the profession—is key.

**Q** And you’ve been coming to Tax Section meetings for a while, initially as a clerk, then as a journalist, and now as a member. How has the Section helped you build your professional network and understanding over time?

**A** My first ABA meeting was in 2006 and I’ve attended most of them since then. The Section is critical in bringing together professionals who are really interested in the issues that confront the tax community. Even though tax can often seem, from the outside, very technical and narrow-minded, there’s great breadth in the tax profession. So having meetings such as the three Section meetings each year gives us that opportunity to network and really find out what’s going on in other areas of tax. Again, if you have a fairly general tax practice, you never know what types of issues are bubbling up with your friends in other areas. Having an eye on current developments and also a network of colleagues when you are confronting something for the first time or just need to bounce an idea off another practitioner is very helpful. The variety of ways to be engaged in the Section is limitless, from speaking on panels or helping writing comment letters that are really appreciated and listened to by government officials. Again, it’s the fundamental engagement with fellow practitioners; it’s all rewarding and it fills a critical role, regardless of where you are in your career.

**Q** So you moved from private practice to the OECD, which is a mystery to most of us. Can you tell us what the OECD is and what you do there?

**A** Yes. Well, the OECD is an international organization of member governments that was founded after the Marshall Plan following World War II. It’s largely focused on economic development issues, but that plays out in a host of areas. Within the OECD, I work for the Global Forum on Transparency and Exchange of Information for Tax Purposes, which is housed in the OECD Center for Tax Policy and Administration. There
are so many important issues being worked on in CTPA, but I primarily work on exchange of information issues. Right now that involves giving lots of technical assistance to developing countries, helping them to develop capacity for the exchange of tax information—both exchange of information on request, which is the traditional process, as well as the fairly new automatic exchange of financial account information under the Common Reporting Standard. The work has many aspects, such as developing legislation that needs to be put in place in the legal framework, ensuring adequate supervision, as well as developing capacity for their tax administration operations. I had really wanted to get back into the policy realm, and being here it has been very rewarding to have the opportunity to travel the globe and work one-on-one with jurisdictions, to see the progress being made for their domestic revenue collection capabilities that in turn funds economic progress in their own territories.

Q And a lot of our members will be jealous to learn that you do all of this from Paris.

A Paris, obviously, is a great place to be. The food and the culture there is quite an experience.

Q Does your seat in Paris give you a fresh perspective on trends in international tax administration? Especially, as those trends might affect us here in the United States?

A Well, certainly, anyone reading the tax press will know that there’s a lot going on in terms of international tax policy, with quite a lively debate in terms of the nature of unilateral versus multilateral approaches to international tax. At the OECD, supporting the development of common agreed frameworks that countries can use to come together to jointly approach some of these very difficult issues is very hard work, but rewarding. Obviously, there’s a debate as jurisdictions try to understand whether certain problems can be tackled on an agreed approach globally, versus whether perhaps political considerations or any local needs are forcing them to act independently. So I think we’ll see, both in 2019 and going forward, a lot of continued discussion as jurisdictions continue to engage, which is a great thing. We’ll all be keenly interested in seeing the outcomes.

Q Jeremiah, any last thoughts as we conclude this interview?

A I’d just reiterate the benefits of really being engaged in the Tax Section and the tax profession generally. My career has been propelled by a number of very good mentors who took a keen interest in me and helped me succeed professionally and supported my interest in policy, in part through Section activities, and so I encourage everyone to use the Section for those same opportunities.

Q That’s great. Well, thank you, Jeremiah.

A Thank you.
PRACTICE POINT

Get Ready for Form 8867 and Related Due Diligence

By Aaron Borden, Meadows Collier, Dallas, TX

The “Paid Preparer’s Due Diligence Checklist” (otherwise known as Form 8867) and the related due diligence regulation\(^1\) have historically been associated with the Earned Income Tax Credit and only occasionally required. Each will have a much more prominent role in most return preparers’ practices beginning in the 2019 filing season. In fact, as a result of several recent legislative changes, return preparers will likely find that the regulation’s due diligence is required for almost every Form 1040 return impacted by dependents.\(^2\)

The first factor expanding the required due diligence arises from the combined impact of the 2015 Protect Americans from Tax Hikes Act (the PATH Act) and the 2017 tax legislation (the TCJA). The PATH Act extended the section 6695 regulatory due diligence requirements to tax returns claiming the Child Tax Credit.\(^3\) The impact of this change (which increased the frequency of due diligence) will be compounded for the 2018 through 2025 tax years as a result of the TCJA’s significant expansion of the Child Tax Credit. For those tax years, the Child Tax Credit essentially replaces the dependency exemption for most taxpayers. Almost all individual taxpayers with qualifying dependents will be able to claim a Child Tax Credit because the credit does not begin phasing out until modified AGI reaches $400,000 for joint filers and $200,000 for all other filers.\(^4\) In addition, the TCJA expands the categories of dependents that qualify for the Child Tax Credit by creating a $500 credit for qualifying relatives. Prior to the TCJA, children under the age of 17 were qualifying children for child tax credit purposes. Under the TCJA, the taxpayer’s children ages 17 through 23, lineal ancestors, stepparents, aunts, uncles, nieces, nephews, certain in-laws, and certain other dependents who live with the taxpayer are qualifying relatives that may give rise to the child tax credit.

The second factor is required due diligence in new areas. The PATH Act expanded regulatory due diligence requirements to tax returns claiming the American Opportunity Credit and the Additional Child Tax Credit,\(^5\) and the TCJA expanded the associated due diligence requirements for claiming head of household filing status.\(^6\)

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\(^1\) Treas. Reg. § 1.6695-2.

\(^2\) While the dependency exemption is temporarily removed by the TCJA, the determination of dependents remains relevant, for instance head of household filing status and the Child Tax Credit require a consideration of taxpayers’ dependents.


\(^4\) 26 U.S.C. § 24(h). The pre-TCDATA phase-out began at a $110,000 for joint filers, $55,000 for married filing separately, and $75,000 for heads of households.


Due Diligence Required

Under the final regulations promulgated under section 6695 on November 5, 2018, completing Form 8867 (based on information provided by the taxpayer) is an essential part of the due diligence process. There are, however, additional due diligence requirements that return preparers often overlook, including (1) completing the applicable worksheets prescribed by the Service or recording in one or more documents the method and information used to make the computations,7 (2) meeting the knowledge requirements concerning the basis for the benefits claimed on the return and contemporaneously documenting inquiries and responses related to meeting the knowledge requirements,8 and (3) retaining the documents used in preparing the return for three years.9 A return preparer who completes and files Form 8867 but fails to comply with the additional regulatory requirements may be subject to penalties.

Penalties for failure to be diligent are usually associated with the return preparer’s failure to meet the knowledge requirements. This provision states that a return preparer: (1) must not know that any information used to determine the taxpayer’s eligibility is incorrect, (2) must not have reason to know that any information used to determine the taxpayer’s eligibility is incorrect, (3) may not ignore the implications of information furnished to, or know by, the return preparer, (4) must make reasonable inquiries if the information appears to be incorrect, inconsistent or incomplete, and, arguably most important, (5) must contemporaneously document in his or her file any inquiries made and the responses to those inquiries.10

As detailed below, the examples in the regulation focus on when information should appear incorrect, inconsistent, or incomplete to the return preparer and when a return preparer can rely on existing knowledge.

Incorrect information requiring additional inquiries

The regulation provides the following example of a situation where additional inquiries are required because the information provided by the taxpayer should appear incorrect to the return preparer.

W engages Preparer F to prepare her federal income tax return. During Preparer F’s standard intake interview, W states that she is 50 years old, has never been married, and has no children. W further states to Preparer F that during the tax year she was self-employed, earned $10,000 from her business, and had no business expenses or other income. Preparer F believes W may be eligible for the Earned Income Tax Credit. To meet the knowledge requirement, Preparer F must make reasonable inquiries to determine whether W is eligible for the Earned Income Tax Credit, including reasonable inquiries to determine whether W’s business income and expenses are correct, and Preparer F must contemporaneously document these inquiries and the responses.11

The regulation does not explain why additional due diligence is required in this fact pattern. However, the fact pattern suggests that return preparers should suspect that the information provided by the taxpayer may be incorrect when a self-employed individual indicates that he or she did not incur any business expenses. In this example, the facts are particularly suspect because the taxpayer reports self-employment income in an amount that would maximize the taxpayer’s Earned Income Tax Credit. Therefore, the return

7 Treas. Reg. § 1.6695-2(b)(2).
8 Treas. Reg. § 1.6695-2(b)(3).
10 Treas. Reg. § 1.6695-2(b)(3).
preparer must make additional inquiries to confirm that the taxpayer has not omitted business expenses to maximize her Earned Income Tax Credit. 

**Inconsistent information requiring additional inquiries**

The regulation provides the following example of a situation where the information provided by the taxpayer appears to be inconsistent.

In 2018, Q, a 22 year-old taxpayer, engages Preparer C to prepare Q's 2017 federal income tax return. Q completes Preparer C's standard intake questionnaire and states that she has never been married and has two sons, ages 10 and 11. Based on the intake sheet and other information that Q provides, including information that shows that the boys lived with Q throughout 2017, Preparer C believes that Q may be eligible to claim each boy as a qualifying child for purposes of the Earned Income Tax Credit and the Child Tax Credit. However, Q provides no information to Preparer C, and Preparer C does not have any information from other sources, to verify the relationship between Q and the boys. To meet the knowledge requirement, Preparer C must make reasonable inquiries to determine whether each boy is a qualifying child of Q for purposes of the Earned Income Tax Credit and the Child Tax Credit, including reasonable inquiries to verify Q's relationship to the boys, and Preparer C must contemporaneously document these inquiries and the responses.\(^\text{12}\)

In this example, the inconsistent information is clearly the taxpayer's age in relationship to her children's ages, and the return preparer must conduct additional due diligence to confirm the relationship. The regulation also provides an example that indicates additional due diligence is required when a 32-year-old taxpayer seemingly qualifies for the American Opportunity Tax Credit.\(^\text{13}\) The regulation does not explain why that fact pattern is inconsistent, but it may be that the Service believes a reasonable return preparer should question whether a 32-year-old taxpayer may not be qualified to claim the American Opportunity Credit because the taxpayer (a) has previously finished four years of higher education, (b) claimed the American Opportunity Credit (or the former Hope credit) for more than four tax years, or (c) is not pursuing a degree or other recognized educational credential.

**Incomplete information requiring additional inquiries**

The regulation provides the following examples of situations where additional inquiries are necessary because the taxpayer did not provide complete information.

In 2018, R, an 18 year-old taxpayer, engages Preparer D to prepare R's 2017 federal income tax return. R completes Preparer D's standard intake questionnaire and states that she has never been married, has one child, an infant, and that she and her infant lived with R's parents during part of the 2017 tax year. R also provides Preparer D with a Form W-2 showing that she earned $10,000 during 2017. R provides no other documents or information showing that R earned any other income during the tax year. Based on the intake sheet and other information that R provides, Preparer D believes that R may be eligible to claim the infant as a qualifying child for the Earned Income Tax Credit and the Child Tax Credit. To meet the knowledge requirement, Preparer D must make reasonable inquiries to determine whether


R is eligible to claim these credits, including reasonable inquiries to verify that R is not a qualifying child of her parents (which would make R ineligible to claim the Earned Income Tax Credit) or a dependent of her parents (which would make R ineligible to claim the Child Tax Credit), and Preparer D must contemporaneously document these inquiries and the responses.  

In 2019, S engages Preparer E to prepare his 2018 federal income tax return. During Preparer E’s standard intake interview, S states that he has never been married and that his niece and nephew lived with him for part of the 2018 taxable year. Preparer E believes S may be eligible to file as head of household and claim each of these children as a qualifying child for purposes of the Earned Income Tax Credit and the Child Tax Credit, but the information furnished to Preparer E is incomplete. To meet the knowledge requirement, Preparer E must make reasonable inquiries to determine whether S is eligible to file as head of household and whether each child is a qualifying child for purposes of the Earned Income Tax Credit and the Child Tax Credit, including reasonable inquiries about the children’s residency, S’s relationship to the children, the children’s income, the sources of support for the children, and S’s contribution to the payment of costs related to operating the household, and preparer E must contemporaneously document these inquiries and the responses.  

The second example above was modified in the final regulation to clarify that the Service believes additional due diligence is required in that fact pattern because the information is incomplete. This modification, combined with the first example, suggests that the Service believes additional due diligence is required whenever the facts indicate that the qualifying child or other qualifying relative might be a dependent of someone other than the taxpayer.

Reliance on existing knowledge

In certain circumstances a return preparer may satisfy the knowledge requirement based on existing knowledge without having to make additional inquiries. The following examples in the regulation illustrate some of these situations.

Returning to taxpayer Q above (a 22 year-old taxpayer, that has never been married and has two sons, ages 10 and 11), as part of preparing Q’s 2017 federal income tax return, Preparer C made sufficient reasonable inquiries to verify that the boys were Q’s legally adopted children. When preparing Q’s 2018 federal income tax return, Preparer C is not required to make additional inquiries to determine the boys’ relationship to Q.  

Returning to taxpayer R above (an 18 year-old taxpayer, who has never been married, has one child, an infant, and lived with her parents during part of the 2017 tax year), Preparer D previously prepared the 2017 joint federal income tax return for R’s parents. Based on information provided by R’s parents, Preparer D has determined that R is not eligible to be claimed as a dependent or as a qualifying child for purposes of the Earned Income Tax Credit

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or Child Tax Credit on R's parents' return. Therefore, Preparer D is not required to make additional inquiries to determine that R is not her parents' qualifying child or dependent. 17

Such pre-existing knowledge, however, must have been acquired in the context of the tax return preparer’s tax return preparation practice. The return preparer may not rely on pre-existing knowledge acquired from outside social interactions. The following example from the regulation illustrates this distinction.

Returning to taxpayer S above (never married and his niece and nephew lived with him for part of the 2018 taxable year), Preparer E knows from prior social interactions with S that the children resided with S for more than one-half of the 2018 tax year and that the children did not provide over one-half of their own support for the 2018 tax year. To meet the knowledge requirement, Preparer E must make the same reasonable inquiries to determine whether S is eligible to file as head of household and whether each child is a qualifying child for purposes of the Earned Income Tax Credit and the Child Tax Credit, including reasonable inquiries about the children's residency, S's relationship to the children, the children's income, the sources of support for the children, and S's contribution to the payment of costs related to operating the household, and preparer E must contemporaneously document these inquiries and the responses. 18

The above examples also reinforce the requirement to contemporaneously document the inquiries made and the responses to those inquiries. During the regulatory comment period, one commenter recommended that the Service permit return preparers to demonstrate satisfaction of the knowledge requirement through other forms of evidence, such as testimony that additional inquiries were made. The Service rejected this suggestion and reiterated that contemporaneous documentation is an important requirement for improving compliance and reducing the error rate in tax returns.

**Due Diligence Penalty**

Section 6695(g) imposes a $500 penalty 19 on return preparers for each failure to be diligent. Prior to recent changes, each failure to be diligent was a per-return penalty. After the PATH Act and TCJA expansion of section 6695(g), however, the regulation provides for a separate penalty for each credit or head of household status claimed on a return; thus, the Service may impose multiple penalties in connection with a single return. The Service's position is illustrated by the following example from the regulation.

Preparer C prepares a federal income tax return for a taxpayer using the head of household filing status and claiming the Child Tax Credit and the American Opportunity Tax Credit. Preparer C did not meet the due diligence requirements under this section with respect to the head of household filing status and the Child Tax Credit claimed on the taxpayer's return. … Unless the exception to penalty provided by Treas. Reg. 1.6695-2(d) applies, Preparer C is subject to two penalties under section 6695(g) for the failure to meet the due diligence requirements: one for the head of household filing status and one for the Child Tax Credit. … 20

19 The penalty is subject to an annual inflation adjustment and is currently $520 per failure to be diligent.
Penalty Relief

The regulation provides an exception to penalty at the Service’s discretion. The penalty will not be assessed if the return preparer can demonstrate to the satisfaction of the Service that, considering all the facts and circumstances, the return preparer’s normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements, and the failure to meet the due diligence requirements with respect to a tax return was isolated and inadvertent.\footnote{Treas. Reg. § 1.6695-2(d).}

Conclusion

Form 8867, and the related due diligence required under Treas. Reg. § 1.6695-2, will likely be required on a significant number of individual tax returns for the 2018 and subsequent tax years. Return preparers must be alert to situations which require additional due diligence because the information provided by the taxpayer is incorrect, inconsistent, or incomplete. In these situations, the return preparer must make additional inquiries and must be sure to contemporaneously document the inquiries and responses to avoid the $500 penalty imposed under section 6695(g) for each failure to be diligent. ■
Navigating IRS Collections and Presenting Special Circumstances

By Erin H. Stearns, Associate Professor of the Practice of Taxation and Director of the Low-Income Taxpayer Clinic, University of Denver, Denver, CO, and Tameka E. Lester, Clinical Assistant Professor and Associate Director of the Philip C. Cook Low-Income Taxpayer Clinic, Georgia State University College of Law, Atlanta, GA

Receiving a notice from the IRS can be frightening. Tax liabilities arise from any number of issues. Many taxpayers do not have adequate withholding or fail to make estimated tax payments to cover taxes due and then cannot pay the bill when they file their returns. Some taxpayers’ returns are selected for audit, which often results in the IRS concluding that additional tax payments are due. The IRS may also prepare returns for taxpayers who have failed to file returns for themselves. For many of these taxpayers, the IRS will assess the tax and begin collection efforts. Although there will always be some taxpayers who will go to great lengths to avoid paying taxes, many simply cannot pay because their assets or income are insufficient, they have high medical bills or unexpected expenses, or they have experienced increased child care costs, loss of a job, or a failed business venture.

**IRS Initiates Collection Efforts: What’s the Worst That Can Happen?**

A 10-year statute of limitations generally governs the period of time during which the IRS can collect from taxpayers. Once the IRS begins collection efforts, it has various tools that may make the collection situation considerably more difficult for taxpayers.

A potentially harmful but commonly used tool is the Service’s ability to retain future refunds to apply against past-due tax debt. Low-and moderate-income taxpayers often depend on receiving tax refunds to provide budgetary relief to their families and allow them to purchase items they would not normally be able to purchase during the year, such as appliances, vehicles, electronics, and clothing. Not receiving refunds can therefore create stress and worry for taxpayers who cannot make these needed purchases. This is especially true when the IRS keeps refundable credits explicitly designed to help pull families out of poverty, such as the Earned Income Tax Credit or the Additional Child Tax Credit. These credits fail to meet their objectives when they are applied to past debts, and the family must forgo the credit.

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1. In FY 2017, the IRS selected 933,785 individual income tax returns for examination and recommended assessing over $9 billion in additional tax on these returns. See IRS Fiscal Year 2017 Data Book, Table 9a, pages 23-24.
2. I.R.C. § 6020(b) confers this authority.
3. I.R.C. § 6502. Certain events add time to the collection statute, including bankruptcy filings, the period during which the IRS reviews an offer in compromise or installment agreement (including appeals), and the period during which any collection due process hearings are pending.
The IRS may file a Notice of Federal Tax Lien (NFTL) against taxpayers, a remedy ordinarily reserved for taxpayers who owe more than $10,000.\textsuperscript{4} Such a lien impedes the affected taxpayer’s ability to transfer title to real estate and other assets without first satisfying the tax debt or obtaining a withdrawal of the NFTL.\textsuperscript{5} The three major credit reporting agencies—Equifax, Transunion, and Experian—no longer include NFTLs on taxpayers' credit reports (as of April 2018), so credit scores are not affected by NFTLs. The IRS may also levy taxpayers' wages from employment, bank accounts, and even Social Security.\textsuperscript{6} Generally, the maximum Social Security levy is 15% of the total benefit.\textsuperscript{7} In rare circumstances, the IRS may also seize assets such as real property, vehicles, and retirement accounts.\textsuperscript{8}

In 2015, Congress gave the IRS authority to certify seriously delinquent debts of more than $50,000 (including penalties, interest, and an annual inflation adjustment) to the State Department for action.\textsuperscript{9} A debt is not considered “seriously delinquent” until 1) the taxpayer has received notice under section 6323, and 2) administrative rights under section 6320 have been exhausted or a levy is filed under section 6331. Furthermore, debts are not considered seriously delinquent if there is a due process hearing pending or underway, or if section 6015 innocent spouse relief has been requested. The State Department may revoke the taxpayer’s passport until the certification is reversed by payment of the debt.

**My Client Is in IRS Collections: What Can I Do?**

Despite the many tools available to the IRS, representatives have several options to assist their clients in collection disputes. Knowing these collection alternatives exist and understanding when to apply them can allow clients to pay no more than what their financial circumstances permit and can significantly reduce their stress.

The IRS will accept three main collection alternatives. They are discussed in more depth below, but by way of introduction include the following:

- An installment agreement, where the taxpayer pays either some or all of the tax, interest and penalties over time;

- Currently not collectible (CNC) status, where the IRS determines the taxpayer cannot meet necessary living expenses and also pay the IRS. As a result, the IRS places a hold on collection efforts. CNC is typically an option only for low-income individuals or moderate-income individuals with high allowable expenses such as medical bills; and

- An offer in compromise (OIC), which is a settlement that a taxpayer offers to the IRS based on their reasonable collection potential (RCP).\textsuperscript{10} In determining a taxpayer’s RCP, the IRS considers 1) the equity in a taxpayer’s assets, and 2) a taxpayer's average monthly income after expenses projected over the period of time proposed for paying the amount offered in the OIC.

\textsuperscript{4} See e.g., IR-News Rel. 2011-20 (Feb. 24, 2011).
\textsuperscript{5} I.R.C. § 6320; see also I.R.C. § 6323(j).
\textsuperscript{6} I.R.C. § 6330.
\textsuperscript{7} I.R.C. § 6331(h).
\textsuperscript{8} I.R.C. §§ 6331(b) and 6331(j); see also IRS Notice 99-27.
\textsuperscript{9} I.R.C. § 7345. The inflation-adjusted amount is currently $51,000.
\textsuperscript{10} I.R.C. § 7122; see also Internal Revenue Manual § 5.8.5, Financial Analysis.
Taxpayers should enter into only one of the three alternatives, and a representative would want to determine which is most appropriate. The most compelling reason to enter a collection alternative is that it removes the client’s case from IRS Collections and prevents future levies. It is worth noting that the IRS will continue to apply overpayments to unpaid liabilities rather than issue refunds.

**IRS Financial Analysis**

The starting point for determining whether the IRS will accept a collection alternative and which to propose is to go through the same financial analysis undertaken by the IRS. While sometimes the results can be exceptionally favorable and yield a low-dollar settlement or reasonable payment plan, there is little magic to the analysis.

The IRS will first consider the amount of equity in the taxpayer’s assets after factoring in certain exemptions. Second, it will consider the difference between the taxpayer’s monthly gross income and allowable living expenses. There are four main categories of allowable expenses, with caps based on national and local trends:

1. Food, clothing and other items such as housekeeping supplies and minimum monthly payments on credit cards;
2. Housing and utilities;
3. Transportation and vehicle lease and loan expenses; and

The IRS will also allow expenses applicable to the particular taxpayer for items such as health insurance, payment of student loans and other secured debts, delinquent state and local taxes, current year taxes, child support, and union dues, among others. The taxpayer must substantiate payments of these amounts.

Naturally, the parties’ goals are at odds. The IRS’s goal is to determine the most the taxpayer can pay. The representative’s goal is to determine the least amount the IRS will accept. Careful adherence to, and understanding of, the IRS’s guidelines for financial analysis generally leads to a number on which parties can agree.

As indicated above, the general analysis of how much a taxpayer can pay is based on equity in assets, and income less allowable expenses. The IRS will also consider special circumstances where a taxpayer faces economic hardship or if there are special equity and/or public policy considerations.

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11 Internal Revenue Manual § 5.15.1 contains the “Financial Analysis Handbook” and Section 5.8.5 contains the financial analysis applicable to making an OIC.
12 Taxpayers often come to advisors with unrealistic expectations, e.g., believing that the IRS will accept 10% of the total tax owed, or some set dollar amount. Such offers seldom work unless backed up by financial analysis.
13 Internal Revenue Manual § 5.8.5; The equity is calculated by subtracting the quick sale value (80% of the current market value) minus any outstanding loans against the asset. In addition, exemptions are provided for a reasonable amount of equity in bank accounts and vehicles.
14 I.R.C. § 61; In addition to those items of income listed in § 61, the IRS will consider money contributed to support the household by non-liable taxpayers, net rental income, and child support.
15 Internal Revenue Manual § 5.8.11.2
Determining Which Option Is Most Appropriate

We briefly introduced the three main types of collection alternatives above. This section discusses the selection of a most appropriate collection alternative based on the taxpayer’s facts. To make the analysis more specific, assume our client is a single taxpayer who owes the IRS $50,000. She is currently employed earning $36,000 per year. She owns several assets, including a home worth $250,000 that is subject to a $210,000 mortgage, a 10-year-old car, savings and checking accounts worth just under $1,000, and an IRA worth $5,000.

Installment Agreements

The IRS offers several types of installment agreements to taxpayers who cannot pay the balance all at once. Streamlined installment agreements anticipate a taxpayer will fully pay the liability over a period that may extend up to 72 months. Here, our hypothetical client would have to pay at least $695 per month under such a plan to fully pay off the $50,000 tax debt within 6 years. This would likely be too costly since the payment would equal 23% of her gross monthly income of $3,000.

Fortunately, the IRS permits partial payment installment agreements that require a taxpayer to pay any remaining monthly income after all necessary monthly expenses. The taxpayer will be required to continue paying this amount until the collection statute of limitations runs. At that point, the taxpayer will discontinue making payments, even though he or she will not have paid the full amount. Here, we would need to add up the taxpayer’s monthly allowable expenses and subtract them from her gross income of $3,000. Assuming she had $100 remaining each month, the IRS would expect her to set up a $100 monthly payment as a direct debit payment or pay by check or credit card each month.

The IRS will also accept “tiered” installment agreements where the taxpayer pays less in the first year, then more in the remaining years. These are particularly well suited for taxpayers who must reduce their expenses to better align with what the IRS deems “necessary” and allowable.

Installment agreements primarily consider one’s remaining monthly income, rather than assets. The IRS may require, however, that a taxpayer remit the equity in assets before allowing an installment agreement. The IRS may require the taxpayer to complete a Collection Information Statement (Form 433-A) to collect information about assets and remaining monthly income. The 10-year collection statute of limitations is tolled while the IRS is evaluating an agreement. Interest and penalties also continue to accrue until the tax debt is paid.

Currently Not Collectible Status

The IRS will place taxpayers into CNC status when their monthly allowable living expenses exceed their monthly income. CNC status effectively places collection of the tax debt on hold: the IRS will not levy the taxpayer’s income or accounts when the taxpayer is in CNC status.

For our hypothetical client, financial analysis may show that her monthly expenses exceed her income leaving her with no additional funds with which to pay the IRS. We would need to identify all of her expenses for this analysis. In addition, we would want to consider whether she had medical expenses in excess of the current standard amount of $52 per month (or $114 if she is 65 or older), student loan payments, or any

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payment toward delinquent state tax debt. The IRS would consider these allowable monthly expenses in determining our client’s ability to pay each month.

As with the installment agreement, a disadvantage of CNC status is that interest and penalties continue to accrue. Also, the IRS can remove the status in the event the taxpayer’s financial situation improves sufficiently to make payments.

A representative may request CNC status for a client either by mailing a completed Form 433-F, Collection Information Statement, to the IRS or by simply calling the IRS. The IRS typically insists that the taxpayer be current in all tax return filings, but full compliance is not absolutely required for CNC status. The IRS should still place delinquent accounts in CNC status when there are subsequent unfiled returns. It is generally helpful if taxpayers seeking CNC status file any unfiled returns before requesting CNC to avoid potential removal if it is later noted that they owe a balance for a year not initially included in the CNC status determination.

One of the main benefits of CNC status is that it does not add time to the 10-year collection statute of limitations. Therefore, it may be a good option for a taxpayer with debt nearing the end of the statutory period. It also works as a temporary solution for taxpayers whose cases are in collection, and who ultimately plan to submit an OIC but need time to prepare it. Another advantage of CNC is that the IRS will place a taxpayer in this status even if they have some equity in savings or in a retirement account. For example, our client may still qualify for CNC status even though she has some equity in her home and an IRA worth $5,000. Therefore, CNC may be preferable to the other collection alternatives for clients with limited savings that they are unable or unwilling to liquidate.

**Offer in Compromise - Doubt As To Collectability**

The third collection alternative is an OIC for doubt as to collectability, which is a settlement initiated by a taxpayer based on a snapshot of the taxpayer’s financial situation. In many cases, taxpayers can settle large tax debts for significantly less than they owe. The chart below shows acceptance rates for OICs in select years beginning with 1999.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Acceptance Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999:</td>
<td>32%</td>
</tr>
<tr>
<td>2003:</td>
<td>18%</td>
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<tr>
<td>2005-2007:</td>
<td>26%</td>
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<td>2009:</td>
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<td>2016:</td>
<td>43%</td>
</tr>
<tr>
<td>2017:</td>
<td>40%</td>
</tr>
</tbody>
</table>

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17 Generally, the taxpayer or a representative would want to contact the Automated Collection System at (800) 829-7650 and request that the client’s accounts be placed in CNC status. The request will take 7-14 days to appear on the taxpayer’s account. This is the same number one should use in order to request an installment agreement.

18 Viniateri v. Commissioner, 133 T.C. 392 (2009); see also Internal Revenue Manual § 5.16.1.2.9(12).

19 The authors have on numerous occasions been able to compromise clients’ liabilities of more than $50,000 for single offer payments of $10.

20 See IRS Data Book for the applicable fiscal year.
Before submitting an OIC for a client, a representative should review how the IRS completes its financial analysis.21 This allows the representative to determine an appropriate amount to offer and will remove much of the surprise for the client.

The IRS will consider a client’s RCP, including equity in assets after factoring in exemptions and income less allowable living expenses each month. The IRS would expect the client to pay over the remaining monthly income multiplied by either 12 or 24, depending on how quickly the taxpayer will pay the offer amount.

Going back to our client’s facts, the IRS would first consider the equity in her assets, which include her home, vehicle, and IRA. Generally, the equity amount equals 80% of the fair market value of any assets less encumbrances. If her home were valued at $250,000, 80% of this would be $200,000. A mortgage balance of $210,000 would result in no equity in the home for purposes of calculating the RCP. The IRS provides exemptions for vehicles and bank accounts, which may result in finding no equity for these assets. Clients are often surprised to learn that 80% of the retirement account value will be included in the RCP. If our client’s IRA had a fair market value of $5,000, the IRS would consider $4,000 as equity for the RCP.

The IRS would also consider remaining monthly income in calculating the future income amount. The future income amount adds to the equity in assets to determine RCP. Assuming our client had $200 remaining per month, the minimum future income amount the IRS would accept would be $2,400 ($200 x 12). While many taxpayers want to pay the offer amount as quickly as possible to put their debts behind them, our client could elect a longer payment term—up to 24 months.22

For our client, assume the $4,000 from her IRA was her only equity in assets and that she had future income of $2,400. Her offer amount would be the sum of these two items, or $6,400, a good deal to satisfy a $50,000 tax liability.

The advantage of this alternative is that the remainder of the tax debt is forgiven, and once the negotiated terms are satisfied, any liens that may have been filed on a taxpayer’s property are released within 30 days. The disadvantages include adhering to certain compliance requirements for five years after acceptance, such as filing all required returns and paying all taxes due by the filing deadline each year, and forfeiture of any refunds for a period of time. For some taxpayers, these disadvantages will outweigh the fresh start created by the elimination of the excess tax debt.

An OIC proposing to pay less than the amount owed can be requested by completing Form 656-B. The offer form must be accompanied by substantiation of the income received, certain expenses paid, and liabilities owed on noncash assets such as real estate and vehicles—showing the taxpayer has an inability to pay the full balance owed. An application fee and initial payment must also be included with the completed offer, unless the client’s income meets the “Low Income Certification” amount defined in the offer forms.

**Effective Tax Administration Offers in Compromise**

Changing our client’s facts slightly, let’s assume she owns her house outright without a mortgage, and she is elderly and receiving only Social Security income. She could sell her home to pay the $50,000 tax debt but doing so would likely render her homeless because it would be too expensive for her to afford a comparable living situation. In this case, the IRS would generally be willing to consider an Effective Tax Administration

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21 Internal Revenue Manual § 5.8.5 contains detailed guidance for financial analysis for offers in compromise.
22 Internal Revenue Manual § 5.8.5.25; Note that this would increase the offer amount because the IRS would expect her to pay $200 per month for 24 months, therefore resulting in an offer of $4,800.
(ETA) OIC on grounds that it would create a significant economic hardship for our client to have to pay the tax liability.\textsuperscript{23}

A representative would complete the same forms as for the Doubt as to Collectability offer defined above. The representative would indicate that the basis of the offer is ETA and would include a detailed narrative explaining the economic hardship that would result from the client’s having to sell her real estate.

The IRS will also consider ETA OICs on the basis of public policy or equity considerations identified by the taxpayer. Such considerations provide a sufficient basis “only where, due to exceptional circumstances, collection in full would undermine public confidence that the tax laws are being administered in a fair and equitable manner.”\textsuperscript{24} For example, the IRS may consider an ETA offer where a taxpayer owes tax because of circumstances outside the taxpayer’s control, such as where a criminal or fraudulent act of a third party is directly responsible for the tax liability.\textsuperscript{25}

**What Can Be Done by Representatives and the IRS?**

Whether your clients have been ignoring IRS notices regarding previous years’ taxes or they weren’t expecting to have to write checks when they filed last year’s returns, it’s time to take action. The IRS may have an undeserved reputation for being difficult to deal with: as noted above, IRS agents can be quite understanding when individuals are open about their financial situations and any special circumstances they face, and are willing to pay what they can on their tax liabilities.

While taxpayers and their representatives must be proactive, there is also room for IRS improvement. It could do more to take into account situations where the collections guidelines lead to inequitable results. It should also expand the listing of allowable expenses and exemptions or be more willing to consider each taxpayer’s unique situation.

The calculations currently cap the amount allowed for certain reasonable living expenses based on national and local trends. These tend to be overly broad. For example, if our hypothetical client lived in the District of Columbia, the cap for her housing and utility expenses in 2018 would be $2,211. Within this area, rent prices vary greatly. Also, many low-to moderate-income taxpayers have fewer cost-effective options for rental properties and can be forced into more expensive arrangements because of low credit scores. In addition, a professional in this area may have higher expenses for professional clothing. Furthermore, the caps reflect what taxpayers actually pay, rather than expenditures that would be required to maintain a healthy lifestyle. Many taxpayers have expenses that are not clearly included, such as education costs for dependent children or for themselves. Exemptions should also be allowed for additional categories of expenses such as retirement accounts, to protect at least a portion of a taxpayer’s retirement savings, as this could decrease their likelihood of needing public assistance.

The worst thing your clients can do is be nonresponsive. Contact the IRS to resolve their issues or refer those who cannot afford to pay you to your local Low Income Taxpayer Clinic—there’s at least one in most states.\textsuperscript{26} Take advantage of one of these alternatives and help your clients work toward resolving their issues. They will come out better in the long run. ■

\textsuperscript{23} Internal Revenue Manual § 5.8.11.2.1.7  
\textsuperscript{24} Internal Revenue Manual § 5.8.11.2.2, para. 2  
\textsuperscript{25} Internal Revenue Manual § 5.8.11.2.2.1.  
\textsuperscript{26} See IRS Publication 3134.
PRACTICE POINT

A Primer on Deducting Losses from Real Estate Activities for “the Rest of Us”

By Elizabeth Yablonicky and Guinevere Moore, Johnson Moore, Chicago, IL

Your client has been reading the news about deducting real estate losses and comes to you wanting to know: why didn’t you tell me about all the deductions I could have been taking for my rental real estate losses? And can I pay a lower tax rate on my gains? You explain to your client that it is much harder to deduct real estate losses than the current news makes it seem. But your client, who owns several businesses, only one of which is real estate, wants to know – how do I start taking advantage of this deduction?

Now, imagine your client is a commercial real estate developer who also owns restaurant franchises. He spends most of his time on his real property business: development, construction, management and rental of buildings, free-standing or in malls, at several sites in his home state. When developing a site, his primary goal is to find a profitable tenant to lease the space. But if a suitable tenant cannot be found, this taxpayer opens a restaurant franchise and rents the vacant space to his restaurant company. The taxpayer’s two businesses feed off each other: his restaurant operations experience makes him a better developer and landlord to unrelated restauranteurs, and his real estate activities give him important experience that he uses in his restaurant business.

In today’s “gig” economy, it is becoming increasingly common for taxpayers to have more than one job or business endeavor they are working on at the same time. This article explores how, if at all, a taxpayer who is not exclusively a real estate professional can deduct real estate losses in excess of the passive loss limitations.

Passive Loss Limitations

Individual taxpayers generally cannot deduct losses from passive activities.1 A passive activity is any trade or business2 of a taxpayer in which the taxpayer does not materially participate, and any rental activities of the taxpayer, regardless of the taxpayer’s level of participation.3 “Material participation” means that the taxpayer is involved in the operations of the activity on a regular, continuous and substantial basis.4

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1 I.R.C. § 469.
2 Determining whether a trade or business exists is a factual determination. Higgins v. Commissioner, 312 U.S. 212 (1941). The Supreme Court has held that a trade or business (a) must be undertaken to earn a profit and (b) the taxpayer’s activities must be continuous and regular. Commissioner v. Groetzinger, 480 U.S. 23 (1987).
3 I.R.C. § 469(c)(1), (2).
4 I.R.C. § 469(h)(1).
The regulations offer seven tests that may be used to satisfy the “regular, continuous and substantial” standard.5 The first test provides that a taxpayer will be treated as materially participating in an activity if she participates in the activity for more than 500 hours during the tax year. A taxpayer only needs to meet one of the seven tests to prove material participation, and her participation in an activity may be established by any reasonable means. Contemporaneous daily time reports or logs are not required if her participation can be shown by other reasonable means that identify services performed over time and the approximate number of hours spent performing them during that period, based on appointment books, calendars, or narrative summaries.6 However, taxpayers who keep contemporaneous, thorough records will save themselves a significant amount of time, effort, and professional fees later.7

Given the strong public policy against allowing passive losses to offset tax that would otherwise be due from ordinary income, the Code and regulations seem designed to make it as difficult as possible for people who rent real estate to deduct losses. Taxpayers who rent real estate and participate in a closely related business, however, may be able to take advantage of the grouping rules in the Section 469 regulations to deduct real estate losses. And all taxpayers who deduct real estate losses should take care to document their activities to prove their material participation and consider filing the election to treat all interests in rental real estate as a single activity.

**Grouping rules for passive activities**

Treas. Reg. § 1.469-4 sets forth rules for grouping a taxpayer’s trade or business activities and rental activities for purposes of applying the passive activity loss limitation rules. One or more trades or businesses or rental activities may be treated as a single activity if the activities constitute an “appropriate economic unit.”8 Whether activities constitute an appropriate economic unit depends on the facts and circumstances, and a taxpayer may use any reasonable method of applying the facts to group his activities.9 The regulations give “greatest weight” to the following factors:

5 Temp. Treas. Reg. § 1.469-5T(a). The seven tests are:
1. The individual participates in the activity for more than 500 hours during the tax year.
2. The individual's participation in the activity for the tax year constitutes substantially all of the participation in such activity of all individuals (including individuals who are not owners of interests in the activity) for the year.
3. The individual participates in the activity for more than 100 hours during the tax year, and the individual's participation in the activity for the tax year is not less than the participation in the activity of any other individual (including individuals who are not owners of interests in the activity) for the year.
4. The activity is a significant participation activity for the tax year, and the individual's aggregate participation in all significant participation activities during the year exceeds 500 hours.
5. The individual materially participated in the activity for any five tax years (whether or not consecutive) during the 10 tax years that immediately precede the tax year.
6. The activity is a personal service activity, and the individual materially participated in the activity for any three years (whether or not consecutive) preceding the tax year.
7. Based on all of the facts and circumstances, the individual participates in the activity on a regular, continuous, and substantial basis during the year.

6 Temp. Treas. Reg. § 1.469-5T(f)(4); Estate of Ramirez, T.C. Memo. 2018-196 (daily time sheets not required but uncontested, implausible testimony of time spent also insufficient); Miller v. Commissioner, T.C. Memo. 2011-219 at *5, 102 T.C.M. (CCH) 250 (contemporaneous time spent logs together with “compelling” testimony supported real estate professional finding.
7 The best evidence is always contemporaneous evidence that tells a complete picture: who, what, when, where, why, and most importantly for IRS purposes: how much.
8 Treas. Reg. § 1.469-4(c)(1).
9 Treas. Reg. § 1.469-4(c)(2).
(i) Similarities and differences in types of trades or businesses;
(ii) The extent of common control;
(iii) The extent of common ownership;
(iv) Geographical location; and
(v) Interdependencies between or among the activities (for example, the extent to which the activities purchase or sell goods between or among themselves, involve products or services that are normally provided together, have the same customers, have the same employees, or are accounted for with a single set of books and records). 10

The Tax Court has found that a taxpayer’s commercial and residential real estate development businesses constituted an appropriate economic unit because the businesses were similar, shared common control and ownership, shared an office and consolidated financial reporting. 11 The regulations, however, limit the grouping of rental activities with other trade or business activities, even those that make up an appropriate economic unit, unless:

(A) The rental activity is insubstantial in relation to the trade or business activity;
(B) The trade or business activity is insubstantial in relation to the rental activity; or
(C) Each owner of the trade or business activity has the same proportionate ownership interest in the rental activity, in which case the portion of the rental activity that involves the rental of items of property for use in the trade or business activity may be grouped with the trade or business activity. 12

The regulation then provides an example of married taxpayers filing a joint return, one of whom owns a grocery store trade or business and one of whom owns a building that is rented to the spouse’s grocery store business. 13 The couple are treated as one taxpayer, the sole owner of both the grocery store business and the grocery store rental. 14 The example provides that the grocery store business and the grocery store rental may be grouped together into a single trade or business activity, if the grouping constitutes an appropriate economic unit. 15

A seeming contradiction exists between Treas. Reg. § 1.469-4(d)(1), which clearly shows that a rental business—even a real estate rental business—can be grouped with another trade or business, and Treas. Reg. § 1.469-9(e)(3)(i) (titled “Grouping rental real estate activities with other activities”), which states:

For purposes of this section, a qualifying taxpayer may not group a rental real estate activity with any other activity of the taxpayer. For example, if a qualifying taxpayer develops real property, constructs buildings, and owns an interest in rental real estate, the taxpayer’s interest in rental real estate may not be grouped with the taxpayer’s development activity or

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10 Treas. Reg. § 1.469-4(c)(2).
11 Lamas v. Commissioner, T.C. Memo. 2015-59 at *11-12, 109 T.C.M. (CCH) 1299.
construction activity. Thus, only the participation of the taxpayer with respect to the rental real estate may be used to determine if a taxpayer materially participates in the rental real estate activity under § 1.469-5T.

The IRS asserted in Stanley v. United States\textsuperscript{16} that this regulation prohibits real estate professionals from grouping rental activity with any other activity for all purposes. The court rejected the IRS’s argument, finding instead that Treas. Reg. § 1.469-9(e)(3)(i) limits grouping only for purposes of determining material participation in a rental activity. The court reasoned that the regulation is self-limiting, because it applies only “for purposes of this section,” \textit{i.e.}, only for purposes of Treas. Reg. § 1.469-9, and does not apply to overrule Treas. Reg. § 1.469-4(d)(1).\textsuperscript{17} In other words, there is no contradiction between Treas. Reg. § 1.469-9(e)(3)(i), which applies only to the material participation analysis, and Treas. Reg. § 1.469-4(d)(1), which allows grouping of rental and other activities into an appropriate economic unit if the proportionate ownership of the rental and other activities is the same, or one of the activities is insubstantial compared to the other.

The \textit{Stanley} court held that grouping of rental and other activities is prohibited only for purposes of determining material participation and not prohibited for applying the passive activity loss rules of section 469.\textsuperscript{18} The court therefore considered whether the taxpayer’s real estate rental activities were an appropriate economic unit with his other business activities as president and general counsel of a property management company, and found that they were.\textsuperscript{19} Finally, the court found that the taxpayer materially participated in the grouped activity, as the IRS did not dispute that the taxpayer spent more than 500 hours per year on the combined activity.\textsuperscript{20}

\textbf{Real estate professional rules}

A real estate developer that develops and sells certain properties, and develops and rents other properties, cannot offset losses on his rental activities against income from his sales activity unless he meets the requirements of section 469(c)(7), listed below. In other words, a real estate rental activity is \textit{per se} passive unless the taxpayer meets the requirements of section 469(c)(7).\textsuperscript{21} Section 469(c)(7) provides that a taxpayer’s real estate rental activity will fall outside the general rule that rental activities are passive activities if these two conditions are met:

\begin{itemize}
  \item[(i)] more than one-half of the personal services performed in trades or businesses by the taxpayer in such taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and
  \item[(ii)] such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.\textsuperscript{22}
\end{itemize}

A taxpayer who meets the forgoing two tests is commonly referred to as a “real estate professional,” although the term used in Treas. Reg. § 1.469-9 is “qualifying taxpayer.”

\begin{flushleft}
\textsuperscript{16} 2015 WL 7012853, at *6 (W.D. Ark).
\textsuperscript{17} \textit{Id.}
\textsuperscript{18} \textit{Id. at *7.}
\textsuperscript{19} \textit{Id. at *8.}
\textsuperscript{20} \textit{Id. at *9.}
\textsuperscript{21} I.R.C. § 469(c)(2); \textit{Miller v. Commissioner}, T.C. Memo. 2011-219 at *4, 102 T.C.M. (CCH) 250.
\textsuperscript{22} I.R.C. § 469(c)(7)(B).
\end{flushleft}
The term “real property trade or business” means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.\(^{23}\) That is, all of a taxpayer’s real estate activities are taken into account in determining whether the 750-hour requirement is met, not merely the rental activities.\(^{24}\)

A taxpayer who qualifies as a real estate professional has overcome the presumption that all rental activities are passive. The taxpayer still must prove, however, that he materially participated in the rental real estate activity.\(^{25}\)

For purposes of testing material participation, a qualifying taxpayer (i.e., a real estate professional) may elect to treat all of his interests in rental real estate as a single rental real estate activity.\(^{26}\) The election is made by filing a statement with the taxpayer’s original income tax return for the taxable year in which the election is made.\(^{27}\) Revenue Procedure 2011-34 allows taxpayers to make late elections to treat all interests in rental real estate as a single rental real estate activity in certain circumstances.\(^{28}\) A timely election, however, is always the preferred method for ensuring the best possible tax result.

**Section 199A deduction potentially available to real estate developers**

Section 199A was enacted as part of the 2017 tax legislation (commonly referred to as the TCJA) and applies to taxable years beginning after 2017 and before 2026. Congress enacted section 199A to give a deduction to non-corporate businesses of up to 20% of the taxpayer’s qualified business income from qualified trades or businesses, including those operated through a partnership, S corporation, or sole proprietorship. The stated purpose of section 199A was to give individuals and pass-throughs some parity with the 21% income tax rate applicable to C corporations under the TCJA.

The benefits of section 199A are limited to taxpayers with income from a trade or business. Regulations finalized on January 18, 2019 (199A Final Regulations), define “trade or business” by reference to section 162 trade or business expenses.\(^{29}\) Treasury deemed the cross reference to section 162 practical because “many taxpayers who will now benefit from the section 199A deduction are already familiar with the trade or business standard under section 162.”\(^{30}\)

Commenters on the proposed regulations asked that the 199A Final Regulations incorporate the real estate professional provisions in section 469(c)(7), under which a taxpayer may treat rental real estate activities as nonpassive if the taxpayer materially participates in the activities. Treasury rejected this request on the ground that the material participation tests “cannot be used to determine whether the activity itself is a trade or business,” asserting that “the § 1.469-5T material participation tests are not a proxy to establish

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\(^{23}\) I.R.C. § 469(c)(7)(C).

\(^{24}\) See Treas. Reg. § 1.469-9(d); CCA 201427016 (Apr. 28, 2014) (time spent on two rental properties and a real property development trade or business may count towards meeting the qualifications of section 469(c)(7)(B)).

\(^{25}\) Treas. Reg. § 1.469-9(e)(1) (“[A] rental real estate activity of a qualifying taxpayer is a passive activity under section 469 for the taxable year unless the taxpayer materially participates in the activity.”); Hoskins v. Commissioner, T.C. Memo. 2013-36, 105 T.C.M. (CCH) 1242; Perez v. Commissioner, T.C. Memo. 2010-232, 100 T.C.M. (CCH) 351 (“[A] taxpayer claiming deductions for rental real estate losses [must] meet the ‘material participation’ requirements of section 1.469-5T, even where the Commissioner has conceded that the taxpayer is a real estate professional pursuant to section 469(c)(7)(B).”).

\(^{26}\) Treas. Reg. § 1.469-9(g)(1).

\(^{27}\) Treas. Reg. § 1.469-9(g)(3).

\(^{28}\) Rev. Proc. 2011-34; see also I.R.M. 21.5.3.4.16.


\(^{30}\) T.D. Preamble, at 12.
regular, continuous, and considerable activity that rises to the level of a trade or business for purposes of section 199A." 31

Treasury also refused to adopt a rule that any rental real estate activity is a section 199A trade or business. Instead, Treasury stated:

In determining whether a rental real estate activity is a section 162 trade or business, relevant factors might include, but are not limited to (i) the type of rented property (commercial real property versus residential property), (ii) the number of properties rented, (iii) the owner’s or the owner’s agents day-to-day involvement, (iv) the types and significance of any ancillary services provided under the lease, and (v) the terms of the lease (for example, a net lease versus a traditional lease and a short-term lease versus a long-term lease).

Neither the Preamble nor the 199A Final Regulations themselves provide any further details on how these factors may be applied, but we surmise that the IRS is more likely to agree that a rental real estate activity is a trade or business if the taxpayer is leasing a number of commercial properties and providing daily, on-the-ground services to lessees under traditional, long-term leases.

Along with the 199A Final Regulations, Treasury issued Notice 2019-07, which includes a proposed revenue procedure with a safe harbor under which a rental real estate enterprise will be treated as a trade or business, solely for purposes of the section 199A deduction. Under the safe harbor, a rental real estate enterprise may be treated as a trade or business if the following requirements are satisfied during the taxable year with respect to the rental real estate enterprise:

(A) Separate books and records are maintained to reflect income and expenses for each rental real estate enterprise;

(B) 250 or more hours of rental services are performed per year with respect to the rental enterprise; and

(C) The taxpayer maintains contemporaneous records, including time reports, logs, or similar documents, regarding the following: (i) hours of all services performed; (ii) description of all services performed; (iii) dates on which such services were performed; and (iv) who performed the services. The contemporaneous records requirement will not apply to taxable years beginning prior to January 1, 2019.

Rental services for purpose of the safe harbor include:

• advertising to rent or lease the real estate,
• negotiating and executing leases,
• verifying information contained in prospective tenant applications,
• collecting rent,
• daily operation, maintenance, and repair of the property,

31 T.D. Preamble, at 15.
• management of the real estate,
• purchase of materials, and
• supervision of employees and independent contractors.

Rental services may be performed by owners or by employees, agents, and/or independent contractors of the owners.

Rental services do not include:

• financial or investment management activities, such as arranging financing,
• procuring property,
• studying and reviewing financial statements or reports on operations,
• planning, managing, or constructing long-term capital improvements, or
• time spent traveling to and from the real estate.

Real estate used by the taxpayer as a residence is not eligible for the safe harbor, and neither is real estate rented under a triple net lease, which is a lease that requires the lessee to pay taxes, fees, and insurance, and to be responsible for maintenance activities for the property. Such leases are common in the commercial context as they allow the landlord to devote more of his efforts to buying and selling other properties.32

Landlords in triple net leases can take small comfort from the fact that failure to meet the safe harbor does not preclude a rental real estate enterprise from being a section 162 trade or business, as such a determination is based on all facts and circumstances.33 But triple net lease landlords also should consider renegotiating those agreements so that the landlord can provide at least 250 hours of services per year (cumulatively as to all leases that the landlord can aggregate). Practitioners already have criticized the safe harbor, saying it accomplishes nothing because taxpayers that spend 250 hours per year on their rental real estate activity likely already satisfy the section 162 trade or business standard, and that the exclusion of triple net leases and taxpayer residence rental from the safe harbor eviscerates it.34

Under the 199A Final Regulations, certain trades or businesses can be aggregated, which potentially increases the taxpayer’s deduction amount. The aggregation rules in the 199A Final Regulations hinge on whether the businesses provide products or services typically sold together; whether they share centralized back-office services; and whether they are interdependent. Some commenters on the proposed regulations pointed out that section 469 already contains grouping rules, which could be leveraged for section 199A, but Treasury rejected the suggestion, saying that it “do[es] not consider the grouping rules under section 469 an appropriate method for determining whether a taxpayer can aggregate trades or businesses for

purposes of applying section 199A.” Treasury is still studying whether the reverse—i.e., use of a taxpayer’s aggregation for purposes of section 199A for section 469 grouping purposes—might be allowed.

The 199A Final Regulations do not cross reference section 469 or any of its regulations. Thus, for now, the aggregation rules of section 199A are completely separate from the grouping rules of section 469.

**Putting it all together: Can the restaurant owner / developer deduct real estate losses?**

Under the facts set out in the beginning of this article, our hypothetical client may deduct real estate losses. All his real estate development, construction, management and rental activities can be grouped under the authority of Treas. Reg. § 1.469-9(d) and CCA 201427016. In addition, the restaurant operations can be grouped with the real estate activities under the authority of Treas. Reg. § 1.469-4(d)(1)(ii) and Stanley, given that the two businesses constitute an appropriate economic unit. The two businesses make up an appropriate economic unit because of their similarities—the taxpayer markets space to the same type of restaurants that he himself operates; he owns and controls both businesses, in the same geographical area; and the businesses are interdependent—each is facilitated by the other.

Our client can prove that he materially participates in the combined activity, by way of the first of the seven tests for material participation, participation in the activity for more than 500 hours during the tax year. If he does not have a contemporaneous log (and we hope he does), we can reconstruct his records using e-mails and phone records with brokers, agents, contractors, city government officials, and tenants, as well as calendar records showing his site visits. We will hope that the records show that the taxpayer spent more than 750 hours per year, and more than half of his total time, on the real estate activity, making him a real estate professional. This means that his combined real estate and restaurant activities are non-passive. Crucially, this taxpayer must file the election under Treas. Reg. § 1.469-9(g) to treat his multiple real estate projects as a single real estate activity, and keep clear, contemporaneous records of his activities and time spent in both businesses to prove his material participation on an annual basis.

**Conclusion**

Despite the high hurdles in the Code and regulations for treating rental real estate as active, taxpayers who have a complementary business and spend substantial time in the combined activity may be able to take advantage of the grouping rules in the section 469 regulations to deduct real estate losses. To sustain their tax return position on audit, taxpayers should carefully document their time spent.

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35 T.D. Preamble, at 61.
36 T.D. Preamble, at 62.
Pro Bono Matters at the Section’s January 2019 Meeting in New Orleans: Because Living’s Not Easy in the Big Easy

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

“People don’t live in New Orleans because it is easy. They live here because they are incapable of living anywhere else in just the same way.”
—Ian McNulty

La Nouvelle-Orléans was named just over three hundred years ago by the Kingdom of France after its Duke, who himself was named after the French city, Orléans. France ceded its Mississippi River port to Spain in resolution of the war with Britain in 1763. Nueva Orleans reverted back to France for roughly one year until Napoleon sold Louisiana to the United States for 3 cents per acre or $15 million in 1803.

“New Orleans makes it possible to visit Europe without leaving the United States.”
—Franklin Delano Roosevelt (1882–1945)

New Orleans became a major trading port on the mighty Mississippi and a thriving, southern, immigrant-rich city. When railways and highways opened up the west, economic dependence on waterways and port cities diminished. Nevertheless, NOLA, a sea level city, is delineated by and too often inundated with excessive amounts of water. It rains incessantly, one out of every three days, making the Crescent City among the wettest in the United States. It receives more than five feet of rain annually.

“How often have I lain beneath rain on a strange roof, thinking of home.”
—William Faulkner (1897–1962), *As I Lay Dying*

“Don’t you just love those long rainy afternoons in New Orleans when an hour isn’t just an hour - but a little piece of eternity dropped into your hands - and who knows what to do with it?”
—Tennessee Williams (1911–1983), *A Streetcar Named Desire*

The United States’ transition from an industrial, manual labor-based economy to knowledge-driven and education-based commerce has not gone smoothly in Lousiana. In the 1970s, NOLA’s population decline and economic slide began. Despite a persistently challenged economy, nothing devastated the City of New Orleans more than Hurricane Katrina. Katrina was a catastrophic living nightmare. She caused so many levees to fail that eighty percent of NOLA flooded with some parts of the city under fifteen feet of water.
More than 1,500 people died and almost 1,000,000 were evacuated. The Big Easy has never quite been the same since Katrina slammed into town in 2005.

“Music in New Orleans has always been the heartbeat that drives the city. It was that even before Katrina, and that’s what we had to rely on after the storm.”
— Trombone Shorty

NOLA is the birthplace of “jazz” and “Dixieland” music, Louie Armstrong, Jelly Roll Morton, and Fats Domino. With a myriad of French, Spanish and immigrant influences, music and food are the gifts that keep on giving to this lazy winding river city. The convergence of phenomenal music and exceptional food has given rise to robust tourism, an industry the city increasingly relies on for jobs, tax revenues, and economic growth.

“New Orleans is unlike any city in America. Its cultural diversity is woven into the food, the music, the architecture—even the local superstitions. It’s a sensory experience on all levels and there’s a story lurking around every corner.”
— Ruta Sepetys

The City of New Orleans is a seductress consistently ranking among the highest of all U.S. cities in the percentage of residents who are home grown. But smooth jazz, bayou blues, and creole cuisine alone cannot soothe the savage beast of poverty. Residents in NOLA and Louisiana have struggled with low rates of high school graduation and higher education attainment and the highest rates of poverty, housing and food security in America. About 900,000 of LA’s 4.6 million residents experienced poverty in 2017.

“I was a very poor young black boy in New Orleans, just a face without a name, swimming in a sea of poverty trying to survive.”
— Tyler Perry

Louisiana ranked 50th among all states and D.C. with an overall poverty rate of 20% and suffered the highest U.S. childhood poverty rate of 28%. The poverty rates are even higher for communities of color: more than one-third of African Americans and one-quarter of Latinxs in Louisiana endure the plague of poverty. Similarly, Louisiana ranks 49th for food insecurity with more than 17% of its population braving hunger at some time during the year. Despite almost thirty four-year universities and more than 200,000 college students, Louisiana has a “brain drain” problem and ranks 51st for the percentage (only 33%) of its permanent residents who hold associate degrees or higher. Although more women than men are enrolled in state colleges, LA has the highest gender wage gap of any state and D.C., with women earning only 68.8 cents for every dollar men earn. Women also suffer higher rates of poverty than men, 21% as compared to 15%. Louisiana has a notably regressive tax structure that contributes to its 49th ranking in income inequality.

“New Orleans listens eagerly to the seductive promises of the future but keeps at least one foot firmly planted in its history.”
— Tom Robbins

Louisiana ranks among the top fifteen states for most regressive tax system in 2018. The lowest quartile of LA residents with just over $17,000 in family income had an effective state tax rate of 11.9% and the highest 1% of households with family incomes of over $470,000 had an effective state tax rate of only 6.2%. Notably the top 1% of households had an effective sales tax rate of only 1.2% while the lowest income quartile braved a 9.2% effective sales tax rate.
“Times are not good here. The city is crumbling into ashes. It has been buried under taxes and frauds and maladministrations so that it has become a study for archaeologists...but it is better to live here in sackcloth and ashes than to own the whole state of Ohio.”
—Lafcadio Hearn (1850 – 1904), Inventing New Orleans

Factors that mitigate the regressive nature of Louisiana’s state tax system are its progressive income tax rates, refundable state Earned Income Tax and child care credits, and the exclusion of groceries from state sales taxes. Factors that contribute to and exacerbate the tax system’s regressivity are a heavy reliance on sales and excise taxes including taxing groceries at the local sales tax level and income tax deductions for federal and state taxes.

“You can live in any city in America, but New Orleans is the only city that lives in you.”
—Chris Rose

Given the high rates of poverty and the regressive nature of the state tax system, it is essential that Louisiana has a low-income taxpayer clinic that protects taxpayers’ rights statewide. Southeast Louisiana Legal Services (SLLS) has been fighting for fairness for fifty years by providing free, civil legal aid to low-income people. SLLS has six offices located in Baton Rouge, Covington, Hammond, Harvey, Houma, and New Orleans. For every dollar spent on civil legal aid in the state of Louisiana, the return is $8.73 to the community. The community’s investment in SLLS has provided an economic value of more than $23 million in 2017 by preserving housing, connecting residents to disaster relief, securing child support, tax refunds and much more for almost 28,000 individuals. The long-term economic impact of this investment in access to justice in Louisiana is over $69 billion. Simply put, the investment return to communities for dollars spent providing access to legal services, including tax matters, is extraordinary. But the personal reward to the specific community members and the sense of purpose for the lawyers involved can be priceless.

“We educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all, both legal and economic justice.”
—U.S. Supreme Court Justice Sonia Sotomayor

So, the next time you visit New Orleans, whether with or without the Section, you now understand the richness and poorness of this unparalleled American treasure. Think about donating your time or money to SLLS, listening to sweet, soulful jazz, eating beignets and drinking café au lait, dancing with a second line brass band, taking a Writer’s Block tour to see the quarters of Tennessee Williams and William Faulkner, among others, but no matter what you choose to do (or not do) laissez les bons temps rouler.
PRO BONO MATTERS

Recipient of the 2019 Janet Spragens Pro Bono Award: Nina E. Olson

By C. Wells Hall, III, Nelson Mullins, Charlotte, NC

At the Midyear Tax Meeting of the Section of Taxation of the American Bar Association, held in New Orleans on January 18-19, 2019, the Section recognized Nina E. Olson as the winner of the 2019 Janet Spragens Pro Bono Award.

This award was established in 2002 to recognize one or more individuals or law firms for outstanding and sustained achievements in pro bono activities in tax law. In 2007, the award was renamed in honor of Janet Spragens, who received the award in 2006, in recognition of her dedication to the development of low-income taxpayer clinics throughout the United States.

Nina (as she is known to all) currently leads the Taxpayer Advocate Service. She is a tireless advocate for taxpayers in general and low-income taxpayers in particular. Her efforts led to major tax reforms that continue to positively affect low-income taxpayers throughout the country.

2018 marked the 20th anniversary of the IRS Restructuring and Reform Act of 1998 (the “RRA 98”). The RRA 98 established new rights for taxpayers and began an institutional shift in the manner in which the IRS interacts with taxpayers. No one has been more instrumental in realizing the potential of RRA 98 than Nina Olson.

Prior to her appointment as the National Taxpayer Advocate, Nina founded and served as Executive Director of The Community Tax Law Project, the first independent 501(c)(3) low-income taxpayer clinic (LITC) in the United States. While in that role, Nina, along with Janet Spragens, conceived of and ensured the passage of Section 7526 of the Internal Revenue Code, which establishes matching grants for low-income taxpayer clinics. Nina and Janet Spragens discussed their initial thinking about the role of tax clinics in the welfare-to-work era in a September 2000 Tax Notes article which motivated the first round of applicants from legal services programs to include federal income tax controversy in the legal services practice. There are currently 135 clinics providing direct representation of low-income taxpayers in tax disputes and engaging in systemic advocacy. Clinics are also the vehicle for scores of tax lawyers in private practice to provide pro bono representation for needy taxpayers. Tax clinics have fundamentally transformed the world of pro bono representation in tax cases, and Nina Olson is a key player in that, not only through the enactment of Section 7526 of the Code, but also through her oversight of the LITC program.
In addition, Nina has included LITCs in the top levels of advocacy within the IRS. She has scheduled meetings with Commissioners, trainings in the operating divisions, and encouraged LITC participation in the regulatory comment process. Nina was instrumental in the change within the IRS to provide relief to individuals impacted by the *Lantz* decision (dealing with the time limitation for equitable Innocent Spouse relief). In recent years, Nina has hosted a series of public forums in cities throughout the United States to solicit feedback from taxpayers and tax professionals on taxpayer interactions with the IRS and initiatives proposed by the IRS. She has also convened several international taxpayer rights conferences to explore taxpayer rights around the world. Her vision and tireless advocacy has led to the passage of the Taxpayer Bill of Rights and numerous other provisions guaranteeing the right of taxpayers to due process and fundamental fairness. Under Nina’s leadership, the Taxpayer Advocate Service, its Local Taxpayer Advocates and case advocates have become a significant force in ensuring that these rights are protected. Nina is a member of the American College of Tax Counsel and delivered the group’s prestigious Griswold Lecture in January 2010. She is very active in the ABA Section of Taxation, particularly the in Pro Bono & Tax Clinics Committee. Nina has served as the chair of the Low Income Taxpayers Committee as well as the Pro Se/Pro Bono Task Force of the Section’s Court Procedure Committee. She is the 1999 recipient of both the Virginia Bar Association’s Pro Bono Publico Award and the City of Richmond Bar Association’s Pro Bono Award. The non-profit Tax Foundation selected her to receive its Public Sector Distinguished Service Award in 2007. Money magazine named her one of 12 “Class Acts of 2004,” and Accounting Today magazine has named her one of its Top 100 Most Influential People in the accounting profession each year since 2004. In 2016, Tax Analysts honored Nina as one of ten outstanding women in tax. In addition, Nina regularly participates in committee meetings at the ABA Tax Section meetings, providing valuable insights and information to those representing taxpayers.

Nina’s acceptance remarks may be viewed [here](#).
PRO BONO MATTERS

A Retrospective Interview with 2011-2013 Christine A. Brunswick Public Service Fellow Anna Tavis

In 2011, Anna Tavis began a two-year commitment with South Brooklyn Legal Services in Brooklyn, NY, through the Christine A. Brunswick Public Service Fellowship. In a previous interview, Anna described how her advocacy began at home when she would fight on behalf of her Russian-speaking grandmother to receive essential government benefits. This experience inspired her to pursue a career in public service and law, eventually becoming a legal advocate for low-income immigrant communities. Through the Fellowship, Anna provided tax assistance to Brooklyn’s struggling families who were experiencing the effects of an economic recession. Today, Anna continues her mission as a Staff Attorney in the Worker’s Rights & Benefits Unit of Brooklyn Legal Services.

ABA Tax Times (ATT) recently contacted Anna (AT) to discuss her experience at South Brooklyn Legal Services and the Fellowship.

AT: Could you tell us about the work you did at South Brooklyn Legal Services/Immigrant Workers’ Tax Advocacy Project in New York?

AT: I began my fellowship in the summer of 2011, during a protracted recession that inflicted substantial economic pain throughout the country. Many low-and middle-income families grappled with major life crises, increasing the demand for legal services. At a time when our Brooklyn communities were struggling, our organization confronted diminished funding and resources, freezing hiring and forcing layoffs. Then Hurricane Sandy battered New York City's shorefront communities in 2012, compounding existing hardship throughout the City. For many clients, securing a substantial tax credit or obtaining relief from collection was one of the fastest ways to help in a crisis.

My fellowship allowed the tax project to expand its existing work in Brooklyn’s low-income and immigrant communities to include education and outreach on taxpayer rights. I focused on Spanish- and Russian-speaking communities, and developed materials that addressed the most common challenges to tax compliance, including worker misclassification, ITIN filing, identity theft, and the complex rules of refundable credits. Concurrently, we increased our controversy work to reach more individuals and their families. I partnered with community-based organizations and traveled throughout the City to conduct taxpayer rights workshops and train service providers on tax issues affecting immigrant workers, domestic violence survivors, seniors, and low-income entrepreneurs. I provided technical assistance to advocates at community-based organizations, and trained practitioners in our offices on common tax issues. In my two years as a Fellow, I advised, trained or represented at least one thousand individuals and their families.
TT: What was your biggest challenge there?

T: The requirements set forth in the Code are often ill-suited to the realities of individuals and families in poverty. Taxpayers who are limited English proficient (LEP), homeless, and/or living in nontraditional family arrangements may struggle to obtain the credits to which they are entitled. Securing the copious records required in an examination of the Earned Income Tax Credit, for example, can be impossible for an LEP client who fled domestic violence with her children and worked odd jobs for cash, moved from friend to friend for her safety, and closed her bank accounts out of fear of abuse-related identity theft. That refundable credit, however, is her ticket to safety and independence. Our work demanded creative approaches to an often inflexible process.

Our project also struggled to reconcile the seemingly unlimited need for our services with our limited capacity as a legal services provider. The Brunswick Fellowship provided critical funding to help address this imbalance. It allowed me to focus on education and community outreach alongside traditional controversy work as a way to counter misinformation in the communities we serve. Our goal was to prevent tax controversies by equipping taxpayers with linguistic and culturally appropriate information, thereby reducing the need for representation.

TT: What was the most rewarding part of your Fellowship?

T: Our clients, without a doubt, both during and after the Fellowship. On an individual level, I am honored to work alongside individuals and families from myriad backgrounds and life circumstances. The resilience of our clients in the face of seemingly insurmountable challenges never ceases to amaze me. Often, I meet with clients for whom a tax matter surfaces after a major life crisis: domestic violence, a disabling illness, the loss of their home in a natural disaster, or exploitation by an unscrupulous employer. Helping a client close that chapter is immensely satisfying. For other clients, their annual tax refund is the only remaining safety net in our post welfare reform era. Assisting clients in securing the credits to which they are entitled can often prevent a major life crisis before it starts; by paying rent arrears to stop an eviction, or giving a client the resources to leave her abuser, or allowing a gifted student to continue his course of study. And finally, equipping taxpayers with accurate and understandable information enables them to comply with tax laws going forward. I've had the satisfaction of checking in with community members who attended my workshops in prior years who subsequently obtained a tax ID number and began filing annual returns.

TT: Tell us about your career since the Fellowship ended: Where have you worked? What issues and client populations have you focused on?

T: I have been extremely fortunate to continue the work that began with the Brunswick Public Service Fellowship and have practiced tax at Brooklyn Legal Services for more than seven years. The focus of our work has shifted slightly over time in response to community need. Currently, we work closely with our immigration unit in representing clients on tax matters who are in immigration proceedings. I continue my outreach and community education work with its focus on immigrant workers, and its importance is particularly acute at this time. The PATH and Tax Cuts and Jobs Acts contain significant changes to the ITIN program and to immigrants’ eligibility for certain credits. Moreover, tax compliance plays an important role in granting clients relief in immigration proceedings. Our goal is to expand our community partnerships and increase our outreach around these topics in 2019.
ATT: How did the Fellowship impact your career trajectory?

AT: Were it not for the Fellowship, I would not be a low-income tax practitioner today. I learned about the Fellowship as a second-year law intern at Brooklyn Legal Services, and discovered, to my surprise, that low-income taxpayer representation was integral to anti-poverty work. The Fellowship enabled me to craft a project that was tailored to my specific interests and skills, and that fostered lasting connections with the communities that we serve. Moreover, my organization committed to expanding tax work at a time when our staffing was diminished, and therefore we were able to continue our work when our other funding sources stabilized in recent years. All of this was possible as a result of the Fellowship. The Section has encouraged and supported my work since 2011.

ATT: How have you been involved in the Tax Section or with Tax Section members during and after the Fellowship?

AT: Throughout my term as a Fellow, I was mentored and supported by many Section members, including academic clinicians, private practitioners who were active in pro bono work, government attorneys, and alumni of the Fellowship. The Section funded my participation in conferences, where I received invaluable training and opportunities to network and discuss emerging issues among low-income taxpayers. Our organization developed pro bono partnerships with law firms as a result of my participation in the Section. After my Fellowship ended in 2013, the Section continued to support and mentor me. I have had the opportunity to participate in countless panels at ABA conferences and CLE webinars, and edit ABA publications for low-income tax practitioners, acquiring new knowledge and skills along the way. The Section sponsored me as a John S. Nolan Fellow from 2016-2017. Earlier this month, I participated in panels at the midyear meeting in New Orleans. In short, the Tax Section makes a commitment to support each fellow throughout her career as a tax practitioner, and I have benefitted immensely from that mentorship and support.

ATT: What advice would you give those considering an application for the Fellowship?

AT: I encourage prospective fellows to reach out to Brunswick alumni. I am always happy to discuss a potential fellow’s project proposal and offer my perspective. Applicants should have an interest in both tax and public service work, and their projects should combine their unique backgrounds and skill sets with an issue area or population that is acutely underserved. I cannot recommend the Fellowship enough!

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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.
IN THE STACKS

The Tax Lawyer Streamlines Publication

By Professor T. Keith Fogg, Director of the Federal Tax Clinic, Harvard Law School, Jamaica Plain, MA

We are pleased to announce that The Tax Lawyer is improving its publication process to ensure timely publication of all the important material on federal, state, and local taxation. Starting this year, the journal will include state and local tax (SALT) articles along with non-SALT articles in every issue.

Beginning in 2007, The Tax Lawyer dedicated its summer issue to the publication of SALT articles. Having a single annual SALT issue, however, meant SALT authors often waited up to 12 months for publication. Moreover, because the summer issue was reserved for SALT articles, non-SALT articles were often held over during the summer for the fall issue, resulting in lack of timely publication for them as well. In order to minimize delays for all authors, the journal has decided to include SALT and non-SALT articles in each of the four annual issues. We are also working closely with our new partners in the LL.M. in Taxation program at Northwestern University to ensure that the editing process can be handled more quickly and that issues are published on schedule.

Accordingly, The Tax Lawyer now welcomes contributions from authors on any tax topic throughout the year. The editors will work with authors to ensure expeditious publication of their articles. Submission instructions may be found at ambar.org/TaxLawyerJournal.
YOUNG LAWYERS CORNER

18th Annual Law Student Tax Challenge Winners

The Section is pleased to announce the winners of the 18th Annual Law Student Tax Challenge, a contest designed to give students an opportunity to research, write about, and present their analyses of a real-life tax planning problem. The competition is open to both J.D. and LL.M. law students. The teams presented oral arguments before a panel of distinguished tax lawyers and tax court judges attending the Section of Taxation 2019 Midyear Tax Meeting in New Orleans, Louisiana, with the winners honored at a reception during the meeting.

The awardees from this year’s competition include:

**J.D. Division**

**1st Place:**
Jordan Fruchter and Thomas Boland
Albany Law School
Coach: Danshera Cords

**2nd Place:**
Emily Eash and Eliana Hoeppner
Western New England University

**3rd Place:**
Luis Garcia and Janette Duran
University of New Mexico Law School

**Best Written Submission:**
Luis Garcia and Janette Duran
University of New Mexico Law School

**Semi-Finalists:**
Scott Lee and Brittany Johnson
Georgetown University

Daniel Rowe and Mark Goshgarian
Loyola Law School

Kaitlyn Cornett and Thomas Koelbl
University of Memphis

**LL.M. Division**

**1st Place:**
Kasia Parecki and Christine Kuglin
University of Denver
Coach: Erin Stearns

**2nd Place:**
Dave Wilson and Gretchen Bundy-Ladowicz
University of Denver

**Best Written:**
Deborah Kelessidis and Arpine Khachikyan
Loyola Law School

**Finalists:**
Ashley Case and Ross Uehara - Tilton
Boston University

Victoria Allen and Lauren Smith
University of Michigan

Watch the winning J.D. and LL.M. students deliver their presentations to a judging panel of tax law experts.

[CLICK HERE TO WATCH THE VIDEO]
My God, It’s Tomorrow

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

(To the tune of “Tomorrow” from the Broadway musical Annie, with music by Charles Strouse and original lyrics by Martin Charmin.)

The debt will come due tomorrow,
And we’ll have no dollars left to borrow
To make do.

Always said we could wait to pay the Piper.
Now the Piper is near,
And wants her pay.

Our pockets are full of sorrow;
You and I get poorer each tomorrow.
Nothing’s new--

Tomorrow, tomorrow,
My God, it’s tomorrow.
Tomorrow is now today.

When we’re stuck with a buck that’s muck and worthless,
Know the rich will get richer
Come what may.

The promises all were hollow.
What a bitter pill to have to swallow.
What dismay.

Tomorrow, tomorrow,
My God, it’s tomorrow.
Tomorrow is now today.

1 For readers unfamiliar with the song, you can hear it at one of the following links:
Charles Strouse (the composer) singing “Tomorrow”, at https://www.youtube.com/watch?v=eAolyxF59bc;
The 1999 Annie production of “Tomorrow,” at https://www.youtube.com/watch?v=oUusX_vyzxY; or
The 2014 Annie production of “Tomorrow,” at https://www.youtube.com/watch?v=nNF1Rh1RQFo.
SECTION NEWS & ANNOUNCEMENTS

Report of the Nominating Committee:
2019-2020 Nominees

In accordance with Sections 4.2, 6.1, and 6.3 of the Section of Taxation Bylaws, the following nominations have been submitted by the Nominating Committee for terms beginning at the conclusion of the 2019 Annual Meeting in August. Under the Section Bylaws, the current Chair-Elect, Thomas J. Callahan of Cleveland, OH, becomes Chair of the Section at the close of the ABA Annual Meeting.

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<th>Role</th>
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<td>Chair-Elect</td>
<td>Joan C. Arnold</td>
<td>Philadelphia, PA</td>
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<tr>
<td>(For a one-year term)</td>
<td>Larry A. Campagna</td>
<td>Houston, TX (Administration)</td>
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<td></td>
<td>Megan L. Brackney</td>
<td>New York, NY (Committee Operations)</td>
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<td>Fred F. Murray</td>
<td>Gainesville, FL (CLE)</td>
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<td>Eric B. Sloan</td>
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<td>Sheri A. Dillon</td>
<td>Washington, DC (Pro Bono and Outreach)</td>
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<td>T. Keith Fogg</td>
<td>Jamaica Plain, MA (Publications)</td>
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<td>Secretary:</td>
<td>Robb A. Longman</td>
<td>Bethesda, MD (For a one-year term)</td>
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<td>Assistant Secretary:</td>
<td>Christine S. Speidel</td>
<td>Villanova, PA (For a one-year term)</td>
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<td>Council Directors:</td>
<td>Jaye A. Calhoun</td>
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<td>Katherine E. David</td>
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<td>Eileen C. Marshall</td>
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<td>J. Robert Turnipseed</td>
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<td>Lisa M. Zarlenga</td>
<td>Washington, DC</td>
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SECTION NEWS & ANNOUNCEMENTS

Government Submissions Boxscore

Government submissions are a key component of the Section’s government relations activities. Since October 3, 2018, the Section has coordinated the following government submissions. The full archive is available to the public on the website: https://www.americanbar.org/groups/taxation/policy/.

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

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<td>Partnerships &amp; LLCs</td>
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The technical comments and blanket authority submissions listed in this index represent the views of the ABA Section of Taxation. They have not been approved by the ABA Board of Governors or the ABA House of Delegates and should not be construed as representing the policy of the ABA.
SECTION NEWS & ANNOUNCEMENTS

Tell the Tax Section What’s Missing in Your Tax Law Library

What do you need in your tax law library? Help the Section of Taxation fill the gap by letting us know what topics or digital tools we could publish for you and your tax practice succeed. Click here to complete the survey: https://americanbar.qualtrics.com/jfe/form/SV_0keNKxAC5DbfBy7.

TaxIQ: 2019 Midyear Tax Meeting Materials Available

Original materials from the 2019 Midyear Tax Meeting are now available on TaxIQ. TaxIQ offers online access to the latest committee program materials presented at Tax Section Meetings. Using either our static, Section-hosted website—TaxIQ—or a searchable database powered by Westlaw, access is only a few clicks away.

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

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.

The Practical Tax Lawyer – March 2019 Issue Coming 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. For more information, visit PTL’s webpage: https://www.ali-cle.org/legal-periodicals/PTL.
The Tax Lawyer – Fall 2018 Issue Is Available

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

Reports

American Bar Association Section of Taxation, Revenue Service Priority Guidance Plan Related to the Act

American Bar Association Section of Taxation, Second Set of Recommendations for the 2018-2019 Department of the Treasury and Internal Revenue Service Priority Guidance Plan

American Bar Association Section of Taxation, Comments on the Tax Treatment of Hard Forks

American Bar Association Section of Taxation, Comments on Sections 864(c)(8) and 1446(f ) as Added to the Internal Revenue Code of 1986 by P.L. 115-97 on December 22, 2017

American Bar Association Section of Taxation, Comments on the 2014 Offshore Voluntary Disclosure Program and the Streamlined Procedures

American Bar Association Section of Taxation, Comments on Notice 2017-73, Request for Comments on Application of Excise Taxes with Respect to Donor Advised Funds in Certain Situations

American Bar Association Section of Taxation, Comments Concerning H.R. 5444 “Taxpayer First Act”

American Bar Association Section of Taxation, Memorandum of Agreement Dated April 11, 2018, and Review of Tax Regulations Under Executive Order 12866

Articles

Herbert N. Beller, Section 355 Revisited: Time for a Major Overhaul?

David Berke, More of the “Same”: Section 6621(d) in the Federal Circuit

Brian Gallagher, Section 4960: Unpleasant Surprises and Unanswered Questions for Tax-Exempt Entities with 457 Plans

Monica Gianni, OECD BEPS (In)Action 1: Factor Presence as a Solution to Tax Issues of the Digital Economy

Jeffrey D. Hochberg, Fast-Pay Stock

Michelle M. Jewett, A Model of Complexity and Uncertainty: Redemptions of Partnership Interests
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!

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

Through the [Tax Assistance Public Service (TAPS) endowment fund](https://www.abanet.org/taxation/endowment), 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](https://www.abanet.org/taxation/fellowship) program, which provides two-year fellowships for recent law school graduates to work for non-profit organizations offering tax-related legal assistance to underserved communities.

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

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

For more information on how to get involved in tax pro bono assistance, please see our [website](https://www.abanet.org/taxation/probono) or contact Meg Newman at megan.newman@americanbar.org.
SECTION EVENTS & PROMOTIONS

Section CLE Calendar

[www.americanbar.org/groups/taxation/events_cle.html](http://www.americanbar.org/groups/taxation/events_cle.html)

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<td>Health Plan Savings with Direct Contracting with Health Care Providers – How to Structure and Avoid Compliance Pitfalls</td>
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<tr>
<td>June 12-14, 2019</td>
<td>12th Annual U.S. and Latin America Tax Practice Trends Conference</td>
<td>Tax Section 202.662.8670</td>
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<tr>
<td>October 3-5, 2019</td>
<td>2019 FALL TAX MEETING</td>
<td>Tax Section 202.662.8670</td>
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SECTION EVENTS & PROMOTIONS

2019 IRS Nationwide Tax Forums

Registration for the 2019 IRS Nationwide Tax Forums opens March 1, 2019. Designed for tax professionals, the IRS Nationwide Tax Forums offer three full days of seminars with the latest word from IRS leadership and experts in the fields of tax law, compliance and ethics. For more information, visit https://www.irs.gov/tax-professionals/irs-nationwide-tax-forum-information.

<table>
<thead>
<tr>
<th>DATE</th>
<th>CITY</th>
<th>HOTEL</th>
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<tbody>
<tr>
<td>July 9 - 11, 2019</td>
<td>National Harbor, MD (D.C.)</td>
<td>Gaylord National Harbor</td>
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<tr>
<td>July 23 - 25, 2019</td>
<td>Chicago, IL</td>
<td>Hyatt Regency Chicago</td>
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<td>August 6 - 8, 2019</td>
<td>New Orleans, LA</td>
<td>Hyatt Regency New Orleans</td>
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<tr>
<td>August 13 - 15, 2019</td>
<td>Orlando, FL</td>
<td>Hyatt Regency Orlando</td>
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<tr>
<td>September 17 - 19, 2019</td>
<td>San Diego, CA</td>
<td>Town &amp; Country Resort</td>
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4th International Conference on Taxpayer Rights

On May 23 - 24, 2019, the National Taxpayer Advocate of the U.S. Internal Revenue Service is convening the fourth International Conference on Taxpayer Rights, hosted by the University of Minnesota Law School, in Minneapolis, Minnesota, and sponsored by Tax Analysts, with technical assistance by IBFD. This conference connects government officials, scholars, and practitioners from around the world to explore how taxpayer rights globally serve as the foundation for effective tax administration.

For two days, they will consider:

- The existence and analysis of taxpayer charters and taxpayer bills of rights around the world.
- An analysis of the treatment of taxpayer rights, including common and civil law.
- The impact of big data on the right to privacy in the context of tax administration.
- The availability of administrative guidance, its role in fostering compliance, and administrative or statutory vehicles for obtaining access to that guidance.
- Taxpayers’ reliance on published administrative guidance, how authorities treat that reliance, and remedies for taxpayers harmed by such reliance.
- The role of “whistleblowers” in tax administration, including access to tax information, and protections for both the whistleblower and the subject taxpayer.
- The impact of increasingly digital delivery of taxpayer assistance on vulnerable taxpayer groups.
- The ability of taxpayers to bring cases to court.

For more information, including conference rates, agenda, media, sponsors, and testimonials, visit: www.taxpayerrightsconference.com. Questions? Email tprightsconference@irs.gov.
SECTION EVENTS & PROMOTIONS

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New Law, New Regulations, New Practitioners: Legal and Ethical Obligations When Advising Taxpayers in an Uncertain Legal Environment

The IRS's Modern Use of Artificial Intelligence and Big Data in Tax Enforcement

Transparency Tide or Tsunami? The New Wave of Global Reporting Rules and IRS Tools to Unearth Foreign Financial Accounts

Repatriation of Foreign Earnings (Real or Imagined, Voluntary or Otherwise)

Tax Planning for Law Firms Under the 2017 Tax Act – The Effects of The Proposed Regulations

Back to the Drawing Board? Evaluating State Tax Nexus Post-Wayfair

Nuts & Bolts Collections Part II: Next Steps in Assisting Pro Bono Clients with Collections Matters

New Law, New Regulations, New Practitioners: Legal and Ethical Obligations When Advising Taxpayers in an Uncertain Legal Environment

The 2017 Tax Act and Its Impact on Corporate Transactions

Nuts & Bolts Collections Part II: Next Steps in Assisting Pro Bono Clients with Collections Matters

What Tax Reform Means for Affiliated and Related Corporations

Nuts & Bolts Collections Workshop: A Guide to Assisting Pro Bono Clients with Collection Matters

Tax Reform and Implications for Financial Transactions

C Corporation or Pass Through? Analyzing the Decision in the Wake of the 2017 Tax Act

Keepin’ It Real: Limitations on 1031 Exchanges Under the New Tax Act

U.S. Tax Reform: Are You and Your Clients Prepared?

Changes to S Corporation, Partnership and LLC Taxation under the Tax Cuts and Jobs Act

Captives and Pooling After Avrahami
SECTION EVENTS & PROMOTIONS

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

Sponsorship Opportunities are now available for the following meetings:

- **March 11 - 15, 2019**
  - 2019 ABA/IPT ADVANCED STATE INCOME, SALES/USE & PROPERTY TAX SEMINARS
  - Ritz-Carlton New Orleans – New Orleans, LA

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

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

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

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

For additional information on the above conferences or any of our other conferences, please visit [https://www.americanbar.org/groups/taxation/sponsorship/](https://www.americanbar.org/groups/taxation/sponsorship/) or contact our Sponsorship Team at taxmem@americanbar.org or at 202/662-8680.
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