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EDITORIAL POLICY

ABATAX 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.

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May Tax Meeting

The Tax Section held its May Tax Meeting in Washington, DC, on May 9-11. Fortunately, unlike the January meeting in New Orleans during the government shutdown, IRS and Treasury representatives were able to attend the May meeting and shared their perspectives on recent developments. Similar to recent meetings, various panels addressed guidance relating to the 2017 Tax Act, such as additional proposed regulations regarding qualified opportunity funds and international tax guidance.

The featured speaker at the plenary session on Saturday, May 11, was IRS Commissioner Charles P. Rettig. Chuck has served in various roles in the Tax Section, including most recently Vice Chair for Administration. He was previously a Council Director, Chair of the Civil and Criminal Tax Penalties Committee, and for a number of years Co-Chair of the Tax Section's annual Criminal Tax Fraud Conference. In his plenary session speech before an audience of approximately 300 people, he stressed his efforts to rebuild the morale and staffing at the IRS. He announced that the IRS is now hiring to rebuild its ranks after years of attrition.

Chuck and Chief Counsel Michael J. Desmond also attended the First Time Attendee, Young Lawyer & Law Student Reception, where they urged young tax professionals to join the Tax Section to take advantage of the opportunities for professional development and to build lifelong personal relationships. In addition, Chuck spoke at the Tax Bridge to Practice session, where he talked about his life and career in tax law. At the Administrative Practice and Court Procedure & Practice luncheon, Chuck received the Jules Ritholz Memorial Merit Award, which is given in recognition of outstanding dedication, achievement, and integrity in the field of civil and criminal tax controversies.

In addition to his remarks at the First Time Attendee, Young Lawyer & Law Student Reception, Chief Counsel Desmond was the featured speaker at the Administrative Practice and Court Procedure & Practice luncheon. Michael previously served in several roles in the Tax Section, including as a Council Director, Chair of the Standards of Tax Practice Committee, and Chair of the Tax Shelters Committee.

At the Welcome and Celebrating Pro Bono Reception on May 9, we recognized Nina Olson, who is retiring as the National Taxpayer Advocate on July 31. She has served in that role since March 2001 and has been a longstanding supporter of the Tax Section. This year she received the Janet Spragens Pro Bono Award for her multi-decade commitment to pro bono programs, including low-income taxpayer clinics (LITCs). Nina had previously received the Tax Section's Distinguished Service Award in 2017. We applaud Nina for her contribution to the tax system, and we extend our congratulations on her retirement from the
IRS. Nonetheless, we do not expect Nina to retire completely. We anticipate that she will move on to new ventures dedicated to improving the tax system.

As always, the Tax Section staff did an outstanding job organizing the meeting. 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.

This meeting was the last meeting at the Grand Hyatt. Next year’s May Tax Meeting will be held in roomier space at the Marriott Marquis Washington, DC.

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 distributed by e-mail after the meeting. In addition, whether or not you attended the May Tax Meeting, all Tax Section members have complimentary access to all the written materials from past meetings in TaxIQ, the Section’s meeting archive at ambar.org/taxiq. Audio recordings of individual sessions are available through DCP, our outside digital conference partner, at http://www.dcprovidersonline.com/abatx/.

**Distinguished Service Award**

At the plenary session of the May Tax Meeting, Emily A. Parker of Thompson & Knight in Dallas received the Distinguished Service Award. This annual award was first given in 1995 to recognize outstanding service to the tax profession. The award honors individuals with distinguished careers in tax law who have provided an aspirational standard for all tax professionals to emulate.

As I said in remarks at her award presentation, I met Emily in the early 2000s when she was Deputy Chief Counsel and then Acting Chief Counsel at the IRS. I admire Emily for her intelligence, legal skills, common sense, and no-nonsense direct approach in dealing with people and solving problems.

Emily was the first woman attorney at Thompson & Knight. She was promoted to partner and rose through various leadership positions at the firm and ultimately became the firm’s managing partner. She has had a highly successful career as a tax litigator and is an active member of the Tax Section, having served in numerous roles over the years, including as a Council Director, Vice Chair of Professional Services, Vice Chair of Government Relations, Vice Chair of the Appointments to the Tax Court Committee, and Chair of the Natural Resources Committee. Emily has held leadership positions in the Dallas Bar Association and the State Bar of Texas, and serves her Dallas–Fort Worth community, working especially with organizations advocating on children’s issues. She is a founding member of the Women’s Foundation of Dallas and serves her law school alma mater, Southern Methodist University, as a member of the Executive Committee of the Dedman School of Law. For her outstanding legal career, for her pioneering efforts on behalf of women, for her service to our government, for her contributions to the Tax Section and other professional organizations, and for her service to her community, Emily has earned the Tax Section’s highest honor, the Distinguished Service Award.

Emily is the third woman in a row to win this award, but only the fifth woman since the award’s inception. A biography of Emily is included in this issue of *ABA Tax Times*. Readers may view her remarks at the award presentation here. You can learn more about the Distinguished Service Award at www.americanbar.org/groups/taxation/awards/DSA/.
Christine A. Brunswick Public Service Fellowships

At the May Tax Meeting we announced the recipients of the Christine A. Brunswick Public Service Fellowships. Developed in 2008, this program seeks to address the growing need for tax legal assistance and to foster a greater interest in tax-focused public service through funding and other support to young lawyers engaged in tax work in underserved communities. The fellowships are named after Christine Brunswick, who was the Tax Section’s Executive Director for more than 20 years. Christine was a strong proponent of advancing public service efforts in tax law and fostering a fair and equitable tax system. You can learn more about the Christine A. Brunswick Public Service Fellowships at www.abatapsendowment.org/public-service-fellowship.html.

The recipients of the 2019-2021 Brunswick Fellowships are Evan Phoenix and Andre Robinson. Evan will work in Los Angeles with Bet Tzedek Legal Services to provide tax education, advocacy, and representation on behalf of current military service members, veterans, and ESL (English as a second language) taxpayers. Andre will work with the Low-Income Taxpayer Clinic at Southeast Louisiana Legal Services in New Orleans to provide education and tax services to taxpayers returning to society after being incarcerated, as well as to micro-business and small-business owners.

Evan and Andre will join the 2018-2020 Brunswick Fellows, Omeed Firouzi and Anastassia Kolosova, who are continuing in the second year of their fellowships. Omeed is working in Philadelphia with Philadelphia Legal Assistance to provide education and legal assistance to workers misclassified as independent contractors and conduct advocacy and awareness efforts to decrease the practice among employers. Anastassia is working in Detroit with the Accounting Aid Society to conduct outreach and education activities for vulnerable populations in Detroit and expand the organization’s ability to provide legal representation to low-income taxpayers.

John S. Nolan Fellowships

At the May Tax Meeting we also announced the 2019–2020 class of recipients of the John S. Nolan Fellowships. These fellowships are awarded to a select group of talented young lawyers who are actively involved in the Tax Section and have shown leadership qualities. The fellowships are named after John S. Nolan, a distinguished member of the tax bar, a substantial contributor to the activities of the Tax Section, and the first recipient of the Distinguished Service Award. You can learn more about these fellowships at www.americanbar.org/groups/taxation/awards/nolans/.

The 2019–2020 Nolan Fellows are:

- Arielle Borsos of Caplin & Drysdale in Washington, DC
- Phillip Colasanto of Agostino & Associates in Hackensack, NJ
- Sarah Haradon of Holland & Hart in Denver, CO
- Travis Thompson of Sideman & Bancroft in San Francisco, CA
- Shamik Trivedi of Grant Thornton in Washington, DC
- Lany Villalobos of Dechert in Philadelphia, PA

Association New Membership Model

As I have discussed in previous columns, the American Bar Association has 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. As a result of the Tax Section’s separate Memorandum of Agreement with the Association, which provides the Tax Section a certain measure of financial independence from the Association, 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 content 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

As I discussed in my previous column, in October 2018 the ABA launched a new website. The new website has advantages compared to the previous website, but unfortunately also has some problems, such as functionality relating to login, event registration, and product purchases. The Association is continuing to work with its outside contractor to address these issues. While the Association is working to resolve the issues, the Tax Section has engaged its own outside contractor to handle meeting registration.

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

The Tax Section continues to excel at mobilizing and preparing members to address unmet tax-related needs of the underserved population throughout the country.

With respect to education and training, the Tax Section hosted a webinar in its ongoing free CLE series for private attorneys interested in representing low-income taxpayers on a pro bono basis. The webinar took place on March 7 and focused on advanced topics related to collections matters (it was the fourth in the series on collection work). The next free CLE webinar in the series will be held on June 27 from 1:00-2:30 pm EDT and will focus on liens and levies. In addition, the Tax Section hosted a webinar regarding the impact of the government shutdown on IRS services.

The Pro Bono and Tax Clinics Committee put on an excellent CLE program at our May Tax Meeting, featuring a panel regarding tax implications for caregivers, a panel including National Taxpayer Advocate Nina Olson on due process rights of taxpayers, and a panel about a new Tax Section initiative regarding “Settlement Days” (more on this subject below). In addition, as it does for each of the three annual meetings, the Tax Section provided scholarships to four low-income taxpayer clinicians to help defray expenses to attend the May Tax Meeting.

The Tax Section continues to create strategic partnerships nationally to connect members to local pro bono opportunities in tax law. We are working on launching a program that will add support to our existing
Calendar Call program by hosting Settlement Days prior to a scheduled calendar call in a given city. The Tax Section will provide training and best practice guides to pro bono attorneys and low-income taxpayer clinicians interested in meeting with unrepresented taxpayers to discuss settlement potential with the IRS attorneys assigned to their cases. This process will allow the pro bono attorneys more time to understand the legal issues in the case and provide guidance to taxpayers in a setting where the IRS is able to negotiate a settlement agreement and avoid taking the case to Tax Court. We will notify interested Tax Section members of the opportunity to participate in Settlement Days in their localities. We are excited to see this program develop over this coming summer and fall.

With respect to elevating the profile of pro bono work nationally, the Tax Section hosted its second annual Welcome and Celebrating Pro Bono Reception to kick off the May Tax Meeting. The event featured quotations from Tax Section leaders reflecting the importance of pro bono service on posters and in a program distributed to attendees. I was pleased to have the opportunity to honor in person our 2019 Janet Spragens Pro Bono Award winner, Nina Olson, who was unable to attend the Midyear Tax Meeting, where we announced her as the winner of the award. Attendees at the Pro Bono Reception had the opportunity to learn more about our pro bono programs and donate to the TAPS endowment, which funds the Christine A. Brunswick Public Service Fellowships. We look forward to continuing this tradition of annually celebrating the efforts and resources that Tax Section members devote to pro bono service.

At the May Tax Meeting, we also celebrated the completion of the first year of the Section’s Pro Bono Pledge Program. We recognized the inaugural group of participants at the Pro Bono Reception and will now be kicking off the second year. The goal of the program 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. I hope you will join me in making a Pro Bono Pledge to be fulfilled between now and the next May Tax Meeting.

If you have any questions about the Tax Section’s pro bono activities, please reach out to Bahar Schippel (bschippel@swlaw.com), Vice Chair for Pro Bono and Outreach, or Meg Newman, the Tax Section 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 numerous comment letters, including recently on proposed regulations regarding the definition of interest under section 163(j), the treatment of corporate taxpayers and consolidated groups under section 163(j), the impact of section 163(j) on real estate, the impact of section 163(j) on passthrough entities and their owners, foreign tax credits, section 168(k) expensing for consolidated groups, and the base erosion and anti-abuse tax (BEAT). The Tax Section has also submitted a comment letter on final regulations regarding the section 199A deduction for owners of pass-through entities and sole proprietorships, as well as comment letters about the interaction of section 108 and section 163(j), and issues arising under new section 1061 relating to carried interest.

The Treasury Department and IRS highly value Tax Section comments and read them carefully. Please volunteer to join a comments project. For more information, contact the leadership of the relevant committee.

Publications

ABA Tax Times was launched as an electronic news publication to allow the Tax Section to use innovative methods to keep members more timely informed about our profession. We are, therefore, pleased to launch
a pilot podcast series of interviews with tax professionals about their careers. The People in Tax podcast interviews are conducted by James Creech and will be distributed online in a number of ways, including through Tax Times, social media, and podcast feed. Tax Times will continue to publish its series of People in Tax text-based interviews. You will find a link to the first podcast interviews in this issue.

If you have any questions about the Tax Section’s publications, please reach out to Keith Fogg (kfogg@law.harvard.edu), Vice-Chair for Publications, or Todd Reitzel, the Tax Section’s Director of Publishing (todd.reitzel@americanbar.org).

**Tax Section Membership Recruitment**

As I have discussed in previous columns, 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, especially younger practitioners who hopefully will become Tax Section members for many years. Accordingly, we will soon set in motion an action plan for member recruitment to reach out more effectively to potential members and to retain current members. The action plan will focus particularly on attracting young and diverse professionals. The action plan will emphasize the many benefits of joining and staying in the Tax Section, including the educational programs and publications, the ability to interact with government officials through comment letters and meetings, the opportunity to participate in pro bono activities, and the creation of personal relationships with fellow members that last throughout one’s career.

**International/State and Local Tax Meetings**

The Tax Section was one of the organizers of the 19th Annual U.S. and Europe Tax Practice Trends Conference, April 3-5, in Paris. Other organizers included the Taxes Committee of the International Bar Association and the USA Branch of the International Fiscal Association. The conference featured a keynote speech by Grace Perez-Navarro, Deputy Director of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development (OECD), which was one of the co-sponsors of the event. Grace described the global tax challenges for the 21st century, including the current debate about taxation of the digital economy. Market countries are seeking to tax inbound digital commerce. The key questions are whether there is sufficient nexus to the market jurisdiction and, if there is sufficient nexus, how much profit should be allocated to the market jurisdiction. Grace described the urgency of the debate and future action steps by the OECD and its Inclusive Framework of countries. The conference also featured numerous panels on current international tax issues, with European and American panelists presenting their perspectives.

The Tax Section will host the 12th Annual U.S. and Latin America Tax Practice Trends Conference on June 12-14 in Miami. This conference will 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 hosted the annual ABA/IPT Advanced Tax Seminars in New Orleans on March 11-15, covering state and local income, sales/use, and property taxes. These seminars featured a distinguished multidisciplinary faculty who provided a practical examination of current state and local tax issues. The attendance at all three segments was outstanding, with record attendance at both the income and the sales/use tax segments. Next year’s program will be held March 16-20, 2020 in New Orleans.
Fall Tax Meeting in San Francisco

The Fall Tax Meeting will be held October 3-5, 2019, at the Hyatt Regency in San Francisco. This meeting will present an excellent opportunity to hear about the latest developments from government officials and experts in private practice.

Our plenary speaker at the Saturday lunch will be Martin A. Sullivan, Chief Economist and Contributing Editor for Tax Analysts. You will not want to miss his insights focusing on the intersection of economic and tax policy.

Can you believe that we are already talking about the fall? It will be here before you know it. We look forward to seeing you in San Francisco in October.
FROM THE EDITOR

Tax Section Launches Podcasts

By Linda M. Beale, Wayne State University, Detroit, MI

We are delighted to announce the launch in this issue of the ABA Tax Times of a new feature, People in Tax Podcasts. James Creech, serving as our interviewer, will talk with a diverse array of new and experienced tax professionals from across the Tax Section, including lawyers in private practice, government officials, and tax academics. These conversations will provide insight into the various careers in tax enjoyed by our members and information about career trajectories, from education through involvement in the Tax Section’s many activities. Please don’t hesitate to participate if asked—recording will be conducted at a convenient location during the Tax Section’s regular meetings.

In this issue, People in Tax Podcasts features an interview with Lany L. Villalobos, an associate at Dechert LLP practicing in the area of employee benefits and executive compensation.

People in Tax Podcasts will be featured in each issue of ABA Tax Times and will also be published at least twice a month by the Tax Section on an external platform. Look for upcoming podcasts featuring Keith Fogg, Karen Hawkins, Amy Spivey, Jonathan Strouse, and Valerie Vlasenko. The podcasts will be available via RSS feed in Apple Podcasts, Google Play, TuneIn, Stitcher, and Spotify. ABA Tax Times will also continue to publish text interviews in the People in Tax feature. ■
PEOPLE IN TAX PODCAST

Lany Villalobos

In S01E01, James Creech and Lany Villalobos discuss the Christine Brunswick Fellowship, diversity, mentorship, and tax representation as social justice. (*Interview at the 2019 Midyear Tax Meeting, New Orleans, LA.*)

Listen here.
PRACTICE POINT


By Patricia A. Brown, Director of the Graduate Program in Taxation, University of Miami School of Law; Victor Jaramillo, Caplin & Drysdale, Washington, DC; Vincent van der Lans, Loyens & Loeff, New York, New York; Floris Verweijmeren, Loyens & Loeff, New York, New York; and Diane Ring, Professor and Dr. Thomas F. Carney Distinguished Scholar, Boston College Law School

We are amidst a major change in the world of taxation, focused in substantial part on deterring tax abuse in both the developed and developing world. Governments are now automatically exchanging financial account information. The International Monetary Fund, Organization for Economic Co-operation and Development (OECD), United Nations, and World Bank Group have taken aim at the disposition of assets through the use of offshore indirect transfers.1 Moreover, the publication of the OECD/G20 Base Erosion and Profit Shifting (BEPS) reports has sparked a number of reforms. The common goal of these initiatives is “compliance,” which creates the impression that everyone is paying their “fair share” of the tax burden.

Complicating these efforts is the persistent—perhaps inevitable—information gap between tax authorities and taxpayers. This information asymmetry may be quite simple. For example, the taxpayer knows that he has an unreported bank account in a bank secrecy jurisdiction and the tax collector does not. Some simple problems can be attacked through technology—the development of standardized and automated information reporting, exchange, and matching systems. This work is largely complete.2

More complicated is the problem of combating aggressive or abusive tax planning strategies. For these purposes abusive or aggressive tax planning strategies are those that comply with the literal requirements of the law but produce results that contradict or defeat the “purpose” or “spirit” of the law. For many years, tax authorities could only play a version of “Whac-a-Mole”—providing guidance to stop one abusive transaction only to find that the market had already moved on to the next structure. While a reporting system certainly can support the game of Whac-a-Mole by identifying which taxpayers have engaged in previously identified transactions, a more useful reporting requirement would actually help tax authorities identify abusive transactions earlier or cause taxpayers not to engage in them at all. To that end, over the past several decades, governments have sought to enlist the very people who gave taxpayers their edge—the creative advisors and intermediaries who were one step ahead of the tax authorities.

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2 See I.R.C. §§ 1471-1474, and the regulations thereunder; see also OECD, Common Reporting Standard (CRS).
The Origins of a Reporting Strategy

"At the heart of every abusive tax shelter is a tax lawyer or accountant." Although Senator Charles Grassley spoke these words in the wake of the explosion of abusive corporate tax shelters in the United States in the late 1990s, the statement is equally true today. In many respects the United States is a pioneer in combating aggressive tax planning strategies. U.S. courts use the “substance over form doctrine,” “sham transaction doctrine,” or “economic substance doctrine” to demarcate the permissible from the impermissible. Other countries may apply similar tools to draw this line.

Such line-drawing exercises implicate one of the fundamental roles of tax advisors — to function as gatekeepers, “ably representing their clients and faithfully working for the tax system taxpayers deserve.” The U.S. disclosure regime, largely adopted in response to the proliferation of corporate tax shelters in the late 1990s, built on this gatekeeper role by requiring disclosure not only by the taxpayers participating in “reportable transactions” but also by their “material advisors.” This disclosure regime has been expanded and modified over the past several decades.

The United States is not alone in leaning hard on those who facilitate aggressive or abusive tax planning. The adoption of Council Directive (EU) 2018/822 (DAC6) on May 25, 2018 will result in new reporting obligations for tax advisors within the European Union (EU). DAC6 places an obligation on EU Member States to implement rules in their domestic law requiring qualifying intermediaries (e.g., tax advisors) and, in certain circumstances, taxpayers to disclose information about reportable cross-border arrangements to the competent authorities of one or more EU Member States. DAC6 also requires the automatic exchange of this information among EU Member States.

The following sections describe first the U.S. system of reporting, then the outlines of the new EU obligations. The final section will set out some of the differences in how the systems are likely to operate.

Overview of U.S. Disclosure of Suspect Transactions

The U.S. disclosure regime for “reportable transactions” was “designed to provide the Service with better information about tax shelters and other tax-motivated transactions through a combination of registration and information disclosure by promoters and tax return disclosure by corporate tax payers.” In the United States, the disclosure regime is triggered by a taxpayer participating in a specific type of transaction identified by the IRS in regulations or notices, and by a tax advisor being classified a “material advisor.”

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3 Mortimer Caplin, The Tax Lawyer’s Role in the Way the American Tax System Works, 24 Virginia Tax Rev. 969, 976.
4 Economic substance is now codified in section 7701(o)(1) of the Internal Revenue Code of 1986, as amended (the Code). A transaction has economic substance only if: (1) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer’s economic position, and (2) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.
5 See, for example, the extra-statutory ‘sham transaction doctrine’ and ‘abuse of law (fraus legis) doctrine’ developed by the Supreme Court (Hoge Raad) of the Netherlands.
7 Council Directive (EU) 2018/822 of May 25, 2018 (as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements). Technically, DAC 6 is an amendment to the existing Directive on Administrative Cooperation in the Field of Taxation (Directive 2011/16/EU), which provides for information exchange obligations between EU Member States in certain situations (such as the automatic exchange of tax rulings).
Which Transactions Must be Disclosed

The evolution of the U.S. disclosure regime highlights the inherent tension in requiring tax advisors to disclose abusive (or potentially abusive) transactions to tax authorities and also subjecting them to penalties for failing to do so. On the one hand, setting vague standards on reportable transactions may lead to over-reporting by practitioners and, thus, less useful data for tax authorities because routine, non-abusive transactions may be reported. On the other hand, tax advisors have a penchant for creativity, so an exclusive list would do little to provide tax authorities with the information necessary to combat abuse.

The U.S. disclosure regime strikes a reasonable balance between these competing options. U.S. taxpayers participating in a reportable transaction, and their material advisors, must disclose the transaction to the IRS. “Reportable transactions” are limited to the following categories:

1. Listed transactions—A tax avoidance transaction (or one substantially similar thereto) identified by the IRS in a notice, regulation, or other form of published guidance as a listed transaction.

2. Confidential transactions—A transaction offered to a taxpayer under “conditions of confidentiality.” Such conditions exist where an advisor places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction, and where the limitation on disclosure protects the confidentiality of that advisor’s tax strategies. The conditions of confidentiality need not be legally binding. A minimum fee threshold also applies.

3. Transactions with contractual protection—A transaction where the taxpayer (or a related party) has the right to a full or partial refund of fees if all or part of the intended tax consequences are not sustained, or where fees are contingent on the taxpayer’s realization of the transaction’s tax benefits.

4. Loss transactions—A transaction resulting in a taxpayer claiming a loss that exceeds a threshold amount, either in one year or over six years, under section 165 of the Code.

5. Transactions of interest—A transaction (or one substantially similar) identified by the IRS as a transaction of interest in a notice, regulation, or other form of published guidance.

The reportable transaction categories provide tax advisors with an understanding of the types of transactions that interest the IRS (especially in the listed transaction and transaction of interest categories), while at the

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11 Treas. Reg. § 1.6011-4(b)(3)(i). The minimum fee is $250,000 if the taxpayer (looking through partnerships or trusts) is a corporation, or $50,000 for all other transactions. Treas. Reg. § 1.6011-4(b)(3)(iii).
13 Treas. Reg. § 1.6011-4(b)(5)(i). The claimed loss must be: (i) at least $10 million in a single taxable year or $20 million in any combination of taxable years for corporations or partnerships with only corporations as partners; (ii) at least $2 million in any single taxable year or $4 million in any combination of taxable years for other partnerships, individuals, S corporations, and trusts; or (iii) at least $50,000 in any single taxable year for individuals or trusts if the loss is attributable to a section 988 transaction. Id. The term “any combination of taxable years” means losses claimed in the taxable year in which the transaction is entered into and the five succeeding taxable years. Treas. Reg. § 1.6011-4(b)(5)(ii).
14 Treas. Reg. § 1.6011-4(b)(6).
same time incorporating a “substantially similar” standard to prevent tax advisors from circumventing the disclosure rules.\textsuperscript{15}

**Who Must Disclose**

The U.S. disclosure rules apply to both taxpayers participating in “reportable transactions” and “material advisors.” A material advisor is a person who both (1) provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and (2) receives a minimum fee. A person satisfies the first prong if he or she makes a “tax statement” to or for the benefit of a taxpayer or a material advisor required to disclose the transaction. A tax statement is any oral or written statement (including another person’s statement) that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction. Being classified as a material advisor also implicates the list maintenance rules (discussed below). A tax advisor that does not make any statements relating to the U.S. federal tax aspects of the transactions cannot be a material advisor.

**What Transaction-Related Information Must be Disclosed**

A taxpayer participating in a reportable transaction must file Form 8886, *Reportable Transaction Disclosure Statement*, with its income tax return for each year in which it participates in the reportable transaction.\textsuperscript{16} In the first year in which it participates in the transaction, the taxpayer must also file a copy of the form with the Office of Tax Shelter Analysis.\textsuperscript{17}

Any material advisor to such a transaction must file Form 8918, *Material Advisor Disclosure Statement*, by the end of the month following the end of the calendar quarter in which the tax advisor becomes a material advisor with respect to the transaction.\textsuperscript{18} A tax advisor becomes a material advisor when: (1) he or she provides material aid, assistance, or advice; (2) he or she derives gross income in excess of the threshold amount; and (3) the taxpayer (or other material advisor) to whom the tax advisor made the tax statement enters into the reportable transaction.\textsuperscript{19} If a transaction is later identified as a listed transaction or transaction of interest, the tax advisor becomes a material advisor at that time.\textsuperscript{20}

A material advisor is also required to maintain records relating to the transaction and keep detailed lists regarding the participants — the so-called list maintenance rules. These rules require that a material advisor: (1) maintain a list with information on the taxpayers participating in the reportable transaction (e.g., identifying information, amount invested in the reportable transaction, the tax treatment that each person is intended or expected to derive, and the name of other known material advisors);\textsuperscript{21} (2) a detailed description describing both the tax structure and the purported tax treatment of the transaction; and (3) copies of any additional written materials, including tax analyses or opinions, relating to each reportable transaction.

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\textsuperscript{15} The regulations define substantially similar as “any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy.” Treas. Reg. § 1.6011-4(c)(4). They also state that it should be broadly construed in favor of disclosure. \textit{Id}.

\textsuperscript{16} Treas. Reg. § 1.6011-4(e)(1).

\textsuperscript{17} Treas. Reg. § 1.6011-4(e)(1).

\textsuperscript{18} See Treas. Reg. §§ 301.6111-3(a) and (d)(1).

\textsuperscript{19} Treas. Reg. § 301.6111-3(b)(4)(i). A material advisor must make reasonable and good faith efforts to determine whether the person to whom they made a tax statement entered into the transaction. Treas. Reg. § 301.6111-3(b)(4)(ii).

\textsuperscript{20} \textit{Id}.

\textsuperscript{21} Treas. Reg § 301.6112-1(b)(3)(i).
transaction. A material advisor must maintain only those documents that are material to an understanding
of the purported tax treatment or tax structure of the transaction that have been shown or provided to any
person who acquired an interest in the transaction, or to their representatives, tax advisors, or agents, by
the material advisor or any related party or agent of the material advisor. A taxpayer has 30 days from the
date he or she becomes a material advisor to prepare this list. The IRS can request production of these
documents; however, the materials may be protected by the attorney-client privilege.

The regulations require a “complete” disclosure by the taxpayer and any material advisor. To be complete
a disclosure must: (1) describe the expected tax treatment and all potential tax benefits expected to result
from the transaction; (2) describe any tax result protection with respect to the transaction; and (3) identify
and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the
reportable transaction and the identity of all parties involved in the transaction. Multiple advisors can
designate a single material advisor to file the disclosure statement by signing a designation agreement.
The material advisor will receive a reportable transaction number after filing his or her disclosure form,
which he or she must provide to the taxpayer within 60 days of receipt. A taxpayer must report any
reportable transaction numbers received on the Form 8886 when it is filed.

Ensuring Compliance

The U.S. disclosure regime has sharp teeth, imposing harsh penalties on both taxpayers and the material
advisors who fail to make required disclosures. A taxpayer who fails to disclose his or her participation
in a reportable transaction (other than a listed transaction) must pay a penalty equal to 75 percent of the
decrease in tax resulting from participation in the transaction. The penalty has a floor of $5,000 and
a ceiling of $10,000 in the case of a natural person (and between $10,000 and $50,000 in all other
cases). If the transaction is a listed transaction, the ceiling is raised to $100,000 in the case of a natural
person ($200,000 in all other cases). In the case of a material advisor who fails to comply, the penalty is
$50,000. If the transaction is a listed transaction, the penalty is the greater of $200,000 or 50% of the
gross income received for its advice.

The IRS cannot waive the penalty imposed if either the taxpayer or a material advisor fails to disclose a
listed transaction. In all other cases, only the Commissioner of the IRS can rescind the penalty for failure
to disclose a reportable transaction, and then only if rescinding the penalty would promote compliance

22 Treas. Reg § 301.6112-1(b)(3).
24 Treas. Reg § 301.6112-1(b)(1).
25 Treas. Reg § 301.6112-1(e)(2).
26 The term tax result protection includes insurance company and other third-party products commonly described as tax result
insurance. Treas. Reg. § 301.6111-3(c)(12).
27 Treas. Reg § 1.6011-4(d).
28 Treas. Reg. § 301.6111-3(f).
29 Treas. Reg. § 301.6111-3(d)(2).
30 Treas. Reg. § 1.6011-4(d).
31 I.R.C. § 6707A(b)(1).
32 I.R.C. § 6707A(b)(2).
33 I.R.C. § 6707(b)(1).
34 I.R.C. § 6707(b)(2).
35 I.R.C. §§ 6707(c) and 6707A(d)(1).
and effective tax administration. The failure to rescind a penalty cannot be reviewed in any judicial proceeding.

A Backstop to the Reportable Transaction System

For the first decade or so after the introduction of the U.S. disclosure regime, the IRS regularly identified listed transactions and transactions of interest. The number of specifically identified transactions seems to have dropped off since taxpayers have been required to report uncertain tax positions on a Schedule UTP. Such reporting is required whenever a taxpayer records a reserve for any income tax position in an audited financial statement, or when no reserve is recorded because the taxpayer expects to litigate the position. Accordingly, the IRS receives information regarding such transactions when a company’s auditors believe they are subject to challenge, without needing to identify them as listed transactions or transactions of interest in advance.

The EU Mandatory Disclosure Rules

Although the United States has operated disclosure rules for decades, the rest of the world generally followed significantly later. The OECD/G20 BEPS project recommended in 2015 that countries introduce a regime for the mandatory disclosure of aggressive tax planning arrangements. The BEPS project did not, however, define any minimum standard for compliance.

In May 2016, the ECOFIN Council invited the European Commission (EC) to consider legislative initiatives on mandatory disclosure rules inspired by the BEPS project, with a view to introducing more effective disincentives for intermediaries who assist in tax evasion or avoidance schemes.

Subsequently, the recommendations in the BEPS project were elevated to a minimum standard within the EU through the adoption of DAC6. DAC6 places an obligation on EU Member States to implement rules in their domestic laws that require qualifying intermediaries (e.g., tax advisors) and—in certain circumstances—taxpayers to disclose information about reportable cross-border arrangements to the competent authorities of one or more EU Member States. In addition, DAC6 introduces automatic exchanges of these disclosures among EU Member States.

The necessary legislation to implement DAC6 must be enacted by EU Member States by December 31, 2019 and applied as of January 1, 2020. Despite this application date, DAC6 has retroactive effect for all reportable arrangements of which the first step was implemented on or after June 25, 2018.

The European Commission has not issued guidance or clarification to the wording of DAC6, other than in the preamble. In the absence of further guidance by the EC, guidance and clarification will be required upon implementation of DAC6 into the domestic laws of the EU Member States.

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36 Id.
37 Id.
38 EU Council, Council conclusions on an external taxation strategy and measures against tax treaty abuse, Press release (May 25, 2016), point 12.
39 Article 1(2) DAC6, point 12. Such arrangements must be reported ultimately by August 31, 2020.
Reportable Cross-Border Arrangements

For an arrangement to be reportable, it needs to be considered cross border and fall within the scope of one of the hallmarks detailed below. A cross-border arrangement concerns either more than one EU Member State or an EU Member State and a non-EU country, and is inter alia present if not all of the participants are tax resident in the same jurisdiction, one of the participants is a dual tax resident, the transaction relates to a permanent establishment (PE) of a participant, or the participant carries on an activity in another jurisdiction without being a tax resident in that jurisdiction or having a PE in that jurisdiction. A cross-border element is furthermore present if the arrangement has a potential impact on the automatic exchange of information or the identification of ultimate beneficial ownership.40

Purely domestic situations and situations without any link to an EU Member State therefore do not fall within the scope of DAC6. This is not surprising—EU Member States retain substantial sovereignty over their domestic laws because direct taxes are not part of the competence of the legislative institutions of the EU. Directives relating to direct taxes must be adopted unanimously by the Member States.

Although the main objective of DAC6 is to combat tax avoidance and the preamble refers to aggressive tax planning, the application of DAC6 appears to be broader than arrangements perceived as aggressive tax planning. Any cross-border arrangement that satisfies at least one of the hallmarks listed in Annex IV to DAC6 is reportable. These hallmarks are a broad range of characteristics and features that present an indication of a potential risk of tax avoidance.

Some hallmarks focus on traditional pressure points, such as the intragroup transfer of hard-to-value intangibles, the acquisition of loss-making enterprises, or the implementation of hybrid mismatch arrangements. In other cases, the hallmark does not relate to the substance of the transaction but to the circumstances in which it took place, such as whether there were confidentiality provisions in place, the arrangement involved a non-transparent legal or beneficial ownership chain, or the same product was marketed to multiple taxpayers.41 There is no requirement that any tax benefit associated with the hallmarks (e.g., a deduction) exist within an EU Member State. DAC6 seems to take a worldwide approach in this respect. For example, a cross-border arrangement involving an EU Member State that meets one of the hallmarks by generating a tax benefit in the United States is also disclosable under DAC6.

The hallmarks are divided into generic and specific hallmarks. The generic hallmarks and some of the specific hallmarks require reporting only if an additional “main benefit test” is satisfied. This test is met if it can be established that the main benefit or one of the main benefits which a person may reasonably expect to derive from an arrangement, having regard to all relevant facts and circumstances, is the obtaining of a tax advantage.

DAC6 may be seen as complementing and supporting the substantive rules of the Anti-Tax Avoidance Directive I & II (ATAD), adopted in June 2016 and May 2017.42 For instance, the ATAD contains a general anti-avoidance rule which obliges EU Member States to ignore, in determining the corporate tax liability of taxpayers, any non-genuine arrangements that are put in place for the main purpose (or one of the main purposes) of obtaining a tax advantage that defeats the object or purpose of the applicable tax law.

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40 Article 1(1)(b) DAC6, points 18 to 20.
41 A more extensive description of DAC6, including a complete list of the hallmarks, is provided in Loyens & Loeff, Mandatory Disclosure Directive (Oct. 2018).
wording of the general anti-avoidance rule in the ATAD is similar to the wording of the main benefit test in DAC6.

In addition, the ATAD obliges EU Member States to implement measures to counter hybrid mismatch arrangements that arise in the autonomous application of differing tax classification methods by and between EU Member States and between EU Member States and non-EU countries. In certain circumstances, application of these anti-hybrid mismatch rules may result in an arrangement not being reportable under DAC6, because it no longer satisfies one of the specific hybrid mismatch-related hallmarks.

Intermediaries Required to Report

The obligation to report a cross-border arrangement satisfying one or more of the hallmarks is primarily borne by persons classified as intermediaries. An intermediary is any person that designs, markets, organizes, makes available for implementation, or manages the implementation of a reportable cross-border arrangement.43

The already broad definition of intermediary is made even more comprehensive by including persons that could reasonably be expected to know that they have undertaken to provide aid, assistance, or advice with respect to designing, marketing, organizing, making available for implementation, or managing the implementation of a reportable cross-border arrangement.

The broad definition of intermediaries should include all tax advisers, accountants, lawyers and other professionals that are advising taxpayers on cross-border transactions. It may also include professionals involved in managing the implementation of transactions, such as professionals providing corporate services, financial institutions, and family offices.

Only intermediaries with a link to an EU Member State will be regarded as an intermediary for this purpose. The intermediary should either be (i) resident in an EU Member State; (ii) have a PE in an EU Member State through which the services with respect to the arrangement are provided; (iii) be incorporated in or governed by the laws of an EU Member State; or (iv) be registered with a professional association related to legal, taxation, or consultancy services in an EU Member State.

U.S. law firms may become subject to these rules if and to the extent they have offices in any EU Member States. In addition, it cannot be excluded that individual U.S.-based lawyers may have an obligation to report if they are also admitted to practice law in a certain EU Member State. Any potential reporting obligation for such individual lawyers will depend on the implementation and interpretation of DAC6 in the relevant EU Member State.

If multiple intermediaries are involved in the same arrangement, all intermediaries have the obligation to report, unless sufficient proof (in accordance with domestic laws of the relevant EU Member State) is available that information on the arrangement has already been filed by another intermediary.44

EU Member States may give intermediaries the right to a waiver from filing information where the reporting obligation would breach the legal professional (client-attorney) privilege under the domestic laws of that EU Member State. If an intermediary is entitled to a waiver, the intermediary has to notify any other intermediaries involved to which the obligation is passed. If no other intermediary is involved, or all intermediaries are

43 Article 1(1)(b) DAC6, point 21.
44 Article 1(2) DAC6, point 9.
entitled to a waiver (or have no link with an EU Member State), the intermediary must notify the taxpayer that the obligation to report shifts to the taxpayer.45

Implications for Taxpayers

The reporting obligation may not be enforceable upon an intermediary due to legal professional privilege or because the intermediary does not have a link with an EU Member State. Additionally, there may be no intermediary involved because a taxpayer designs and implements a reportable arrangement in-house. In these circumstances, the disclosure obligation should shift to the taxpayer. There does not appear to be a geographical limitation to qualify as a taxpayer to whom the reporting obligation applies.46

Based on the above, a U.S. taxpayer that designs an arrangement that involves an EU Member State and satisfies one of the hallmarks may have a reporting obligation in an EU Member State, provided the reporting obligation is not enforceable upon an EU intermediary. Accordingly, U.S. lawyers should become familiar with the new EU disclosure rules under DAC6, including the hallmarks, in order to be able to properly advise their U.S.-based clients who have EU activities.

Disclosed Information and Automatic Exchange

The competent authority of an EU Member State where the information is filed shall, by means of automatic exchange, communicate the information to the competent authorities of all other EU Member States quarterly through a centralized database (i.e., also to EU Member States that are not directly involved in the arrangement).47

A standard template for the exchange of information will be developed by the EC and will include: (a) identification of the intermediaries and relevant taxpayers; (b) details of the relevant hallmarks; (c) a summary of the content of the arrangement; (d) the date of the first step of implementation; (e) details of the national provisions forming the basis of the arrangement; (f) the value of the arrangement; (g) the EU Member States involved in the arrangement; and (h) identification of any other person in an EU Member State likely to be affected by the arrangement.48 It is expected that at least this information should be disclosed by the relevant intermediary or taxpayer.

The database will not be made accessible to the public and the EC will have access only to the extent needed to monitor the functioning of DAC6. The EC will not have access to the identity of intermediaries, relevant taxpayers, and any other persons likely to be affected by the arrangement, nor the summary of the content of the arrangement.49

The automatic exchange of information will take place within one month after the end of the quarter in which the information was filed. The first information will be exchanged by October 31, 2020.50

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45 Article 1(2) DAC6, point 5.
46 Article 1(2) DAC, points 6 to 8.
47 Article 1(2) DAC6, point 13.
48 Article 1(2) DAC6, point 14.
49 Article 1(2) DAC6, point 17.
50 Article 1(2) DAC6, point 18.
Reporting Deadlines

From July 1, 2020 onwards, the person(s) with whom the reporting obligation lies must file the information on the reportable cross-border arrangements within thirty days beginning: (i) on the day after the arrangement is made available for implementation; (ii) on the day after the arrangement is ready for implementation; or (iii) when the first step in the implementation has been made—whichever occurs first.51

Penalties

DAC6 leaves the decision on the applicable penalties for intermediaries and taxpayers who violate the domestic provisions of the implementation of DAC6 to the EU Member States, with the only requirement that the penalties be effective, proportionate, and dissuasive.52

Conclusion

Both the U.S. and EU disclosure regimes are intended to combat aggressive tax planning strategies by mandating disclosure and requiring that tax advisors function as gatekeepers. Both regimes identify specific aggressive transactions but also target transactions on the basis of the process by which they were entered into (such as confidentiality agreements or provisions related to whether the tax planning is successful).

The U.S. regime, however, benefits from the fact that it relates to one tax system, while the EU regime currently covers 28. In addition, the EU regime only applies to cross-border tax planning arrangements and takes a worldwide approach as to where the benefit of such tax planning is generated. Accordingly, the descriptions of covered transactions in the EU Directive are necessarily vague. Just as beauty is in the eye of the beholder, what one person deems permissible tax avoidance another may perceive as impermissible tax evasion. This leaves open the possibility that the guidance eventually released by the various EU Member States may have inconsistencies, or that the guidance may be so vague that intermediaries on opposite sides of a transaction may have different views on whether a transaction needs to be reported.

The U.S. advisor is more likely to know whether disclosure is necessary under the U.S. regime, either because the transaction has been identified by the IRS or by the taxpayer’s auditors when the tax reserves were established. That being said, the U.S. advisor now also needs to be familiar with the new EU disclosure rules in order to be able to properly advise clients who have EU activities. ■

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51 Article 1(2) DAC6, point 1.
52 Article 1(6) DAC6.
Back-to-back opinions released by the United States Tax Court on May 20 and May 21 of 2019 serve as compelling reminders that what we learned in kindergarten is true: the same rules really do apply to everyone. When the IRS does not follow required procedures, the Tax Court will not hesitate to invalidate an assessment and find for the petitioner.

In Jevon Kearse v. Commissioner, a retired professional football player claimed a deduction of almost $1.4 million due to a business bad debt expense. The IRS examined his return and disallowed the deduction. What happened next is unclear. The IRS claims to have sent the taxpayer a notice of deficiency dated May 11, 2012, to his last known address. Mr. Kearse, on the other hand, says he did not receive the notice of deficiency. On November 5, 2012, the IRS assessed the additional amount due that was proposed in the Notice of Deficiency, and just 29 days later, on December 5, 2012, filed a Notice of Federal Tax Lien and apprised Mr. Kearse of his rights to contest the NFTL in a Collections Due Process (CDP) Appeal. From the very first communication between the taxpayer and the IRS hereafter, the taxpayer claimed he did not receive the notice of deficiency and argued that the assessment was invalid. The CDP Appeals officer claimed to have obtained verification that all requirements were followed with regard to the proposed enforced collection. But how could this be? In the Tax Court litigation, the Commissioner stipulated that Mr. Kearse never received the Notice of Deficiency and stipulated that the Commissioner was unable to produce a USPS Form 3877, Firm Mailing Book for Accountable Mail, or equivalent IRS certified mailing list bearing a USPS date stamp. Put another way, the IRS stipulated that the taxpayer did not receive the notice of deficiency and that the IRS had no actual proof that it was mailed. And this...
stipulation is important. Once parties stipulate to facts in Tax Court, it is almost impossible to “take it back.”

Without proof of mailing of the Notice of Deficiency, and in light of Mr. Kearse’s timely and repeated assertion that he never received it, the Tax Court took issue with the Appeals officer’s cursory determination that the statutory requirements for an assessment were met, as well as reliance on computer records in light of the taxpayer’s repeated assertion that he did not receive the notice. Indeed, the only reason Mr. Kearse was able to challenge the liability at issue in the CDP Tax Court case is because both parties stipulated that he never actually received the notice of deficiency. Because the Court found that the Appeals officer did not actually verify timely and properly mailed notice of deficiency—despite cursory claims to the contrary, the Court held that the failure constituted an abuse of discretion. One might read this case and think the result was unfair to the Commissioner, because the Commissioner later did produce what it claimed to be proof of mailing. Proof of mailing later, however, could not reverse the stipulation to the contrary, and could not change the fact that the Appeals officer did not verify mailing back when it was required: during the CDP hearing.

Romano-Murphy v. Commissioner is another case resulting from a CDP hearing. In Romano-Murphy, the taxpayer was COO of a nurse staffing company from 2002-05. For the second quarter of 2005, the company failed to pay employment taxes. The IRS sought the trust fund recovery penalty from the taxpayer, sending her Letter 1153 in July 2006. Letter 1153 stated that the IRS intended to assess the penalty against her and explained what she needed to do to protest the penalty at IRS Appeals. She followed the instructions in the letter and submitted a protest within the time permitted. The IRS then assessed the trust fund penalty against her in October 2007 without ever holding the Appeals conference that the taxpayer requested. Because there was no Appeals conference, the IRS never made a final administrative determination. The IRS’s assessment set off IRS collection actions, including a notice of intent to levy and notice of lien on the taxpayer’s property. In September 2008, the taxpayer received notice that the IRS had filed a notice of lien to facilitate collection of the assessed amount, and she again timely requested a hearing. Appeals did give her a conference this time and upheld the penalty assessment. The taxpayer then received a notice of determination and timely petitioned the Tax Court.

11 Id. at *15. The IRS later did produce what it claims to be proof of mailing, but because the stipulation was already entered, the Tax Court held the IRS to the stipulation. Id.
12 Id. at *12-13.
13 Id. at *8.
14 Id. at *15.
15 Id. at *12.
16 152 T.C. No. 16 (May 21, 2019).
17 Id. at *6.
18 Id. at *7.
19 Id.
20 Id.
21 Id.
22 Id. at *8.
23 Id. at *5.
24 Id. at *8.
25 Id.
26 Id. at *9.
27 Id. at *10.
The Tax Court upheld the determination at Appeals, holding that taxpayers have no right to a pre-assessment hearing at Appeals, even if timely requested, and that the IRS was not required to make a final administrative determination before assessment. The taxpayer appealed to the Eleventh Circuit, which vacated and remanded. The Eleventh Circuit held that a pre-assessment hearing, if requested, must occur before assessment, and that the IRS was required under section 6672(b)(3) to make a final administrative determination before assessing a trust fund recovery penalty. It remanded to the Tax Court to determine whether the IRS’s failure to hold the pre-assessment hearing was harmless error.

On remand, the Tax Court held that the IRS was required under section 6672 to make a final administrative determination before assessing the trust fund recovery penalty, and that an assessment made in the absence of such a final administrative determination is invalid. In a CDP hearing, Appeals must ensure under section 6330(c) that the IRS made the final administrative determination before assessing the trust fund recovery penalty, and there is no such thing as harmless error in case of a failure. The IRS must comply with procedural requirements contained in the statute as well as its own procedural rules.

These cases serve as welcome reminders that the IRS must follow the rules, just as taxpayers must. They are also equally poignant reminders that the IRS can and sometimes does get it wrong. Practitioners should always request and carefully review the IRS administrative file with a critical eye. And here’s an idea that will be met with skepticism, but nonetheless is worth mentioning. The IRS should consider conceding cases where, as in Kearse and Romano-Murphy, the validity of the assessment is in doubt.

The Commissioner is authorized by section 6404(a) of the Internal Revenue Code to abate assessments of tax, interest, and penalties that are (1) excessive in amount, (2) assessed after the expiration of the statute of limitations, or (3) erroneously or illegally assessed. Section 6404(a) is a long-standing provision in the Code. Since at least 1939, the Commissioner has had the authority to abate taxes and penalties erroneously or illegally assessed:

Except as otherwise provided by law in the case of income, estate, and gift taxes, the Commissioner, subject to regulations prescribed by the Secretary, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected.

The longevity of this provision suggests that it is core to the Code and should be well known to all IRS employees.

In 2010, the IRS Office of Chief Counsel issued Notice CC-2010-012, setting forth the litigation position of the Commissioner in cases involving section 6404(a). The Commissioner’s unsurprising position is that arguments that the Commissioner has authority to abate assessments that are legally permitted, but...
deemed excessive because they are “unfair,” misread the statute. 37 Instead, the Chief Counsel notice clarifies that the Commissioner’s position is that “authority under section 6404(a) to abate assessments that are excessive in amount extends, therefore, only to amounts that exceed the amount determined by correct application of the tax law.” 38

An abatement of the assessments in *Kearse* and *Romano-Murphy* would have saved both the taxpayers and the IRS the time, expense, and aggravation that necessarily follows litigation. Reading these cases and thinking about how section 6404(a) could have applied brought to mind a Field Service Advice memo39 authored by Deborah Butler that I have had hanging on my bulletin board in my office since my first year of practicing law. In this memo, one of the main issues addressed was whether the IRS Office of Chief Counsel had an ethical obligation to advise taxpayers that an assessment made in connection with a partnership was invalid and that the taxpayer should file a refund claim before the statute of limitations expired. 40 Because the IRS Office of Chief Counsel’s client is the IRS, and not the taxpayer or the public, the memo concluded that the Office of Chief Counsel should not inform the taxpayer of the mistake. But the analysis did not end there. Instead, it concluded:

> Our legal practice and conduct should always be characterized by adherence to the highest standards of professionalism, honesty, and fair play. The Internal Revenue Service, in conjunction with its own policy statements must determine whether it will contact the taxpayers and advise them that improper assessment procedures were utilized; however, as counsel to the Internal Revenue Service, we should recommend that the agency notify the taxpayers of the technical defect in the assessments.41

This memo has been in my office as a reminder that professionalism, honesty, and fair play guide all of us tax professionals in our practice. In cases like *Kearse*, *Romano-Murphy*, and any others in which the validity of the assessment at issue is suspect, these principles, together with section 6404(a), provide a path to resolution that does not have to involve litigation. ■
PRO BONO MATTERS

Taxpayer Advocate Service: Not Just for Low-Income Taxpayers

By Andrew R. Roberson, McDermott Will & Emery LLP, Chicago, IL

Many tax practitioners I have talked to over the years are aware of the Taxpayer Advocate Service (TAS), but are unfamiliar with how TAS operates and what kinds of cases it handles. Some have indicated that they view TAS as dealing primarily with issues for low-income taxpayers and not a resource for issues affecting corporate taxpayers or high-income individuals. This article seeks to dispel this common misconception and provide guidance on how TAS can help with all types of taxpayers and issues.

Background on TAS

TAS is an independent organization within the IRS with offices in every state, the District of Columbia, and Puerto Rico. It was originally created in 1979 as the Office of the Taxpayer Ombudsman to serve as the primary advocate within the IRS for taxpayers, and the position was codified in the Technical and Miscellaneous Revenue Act of 1988. The statutory authority for TAS is currently found in section 7803(c). A more detailed discussion of the history of TAS can be found here.

TAS's purpose is to ensure that taxpayers are treated fairly and know and understand their rights. TAS is free, confidential, and tailored to meet taxpayers' needs. Nina E. Olson, the National Taxpayer Advocate (NTA), who currently leads TAS is retiring at the end of July after 18 years.

TAS works in two main ways: (1) helping taxpayers with individual problems; and (2) recommending systemic changes at the IRS or in the tax laws. Individuals, businesses, and exempt organizations may all be eligible for assistance in situations where an IRS problem is causing financial difficulty or an IRS procedure is not working correctly. As set forth on TAS's website, cases fall into four general categories:

1. Where a taxpayer is experiencing some financial difficulty, emergency, or hardship, and the IRS needs to move much faster than it usually does (or even can) under its normal procedures. In those cases, time is of the essence. If the IRS doesn't act quickly (for example, to remove a levy or release a lien), the taxpayer will experience even more financial harm.

2. Where many different IRS units and steps are involved, and the case needs a “coordinator” or “traffic cop” to make sure everyone does their part. TAS plays that role.

3. Where the taxpayer has tried to resolve a problem through normal IRS channels but those channels have broken down.
4. Where the taxpayer is presenting unique facts or issues (including legal issues), and the IRS is applying a “one size fits all” approach, isn’t listening to the taxpayer, or doesn’t recognize that it needs new guidance for those circumstances.

Some of these issues are outlined on TAS’s website. TAS also has statutory authority under section 7811 to issue Taxpayer Assistance Orders (TAOs), which order the appropriate IRS operating unit to take action or stop action in certain situations. The IRS operating unit can either comply with the TAO or appeal it. If disagreements remain, the issue may ultimately be elevated to the NTA and the Commissioner of Internal Revenue. More detailed discussions of the TAO process can be found in PMTA 2017-01, Internal Revenue Manual 13.1.20, and Treas. Reg. § 301.7811-1. Additionally, a discussion of who is a “taxpayer” for purposes of issuing a TAO can be found in Rothkamm v. United States, 802 F.3d 699 (5th Cir. 2015).

Regarding systemic assistance, TAS looks at patterns in taxpayer issues to determine if an IRS process or procedure is not working correctly. If so, TAS recommends steps to resolve the problem. The NTA presents an Annual Report to Congress identifying at least twenty of the most serious problems that taxpayers are facing. Taxpayers and practitioners are encouraged to report systems issues using the IRS’s Systemic Advocacy Management Systems (SAMS). SAMS is frequently used by low-income taxpayer clinics to highlight IRS procedural issues.

TAS is instrumental to the efficient and effective operation of the IRS. Through the efforts of the NTA, Congress enacted the Taxpayer Bill of Rights (TBOR) in section 7803(a)(3) of the Internal Revenue Code. The TBOR, which contains ten fundamental rights for taxpayers, was the subject of an earlier Tax Times article.

**Utilizing TAS Outside the Low-Income or Pro Bono Context**

As noted above, there is a belief by some tax practitioners that TAS is a resource for low-income taxpayers and may not be able to assist with corporate taxpayers or issues involving large dollar amounts. This misconception may result in tax practitioners not understanding how TAS can help them in IRS disputes for specific clients or for industry-wide issues.

As tax practitioners are aware, IRS procedural rules and limited resources can sometimes cause issues to fall through the cracks. For example, taxpayers may have made claims for refund or requests for abatement that are not really in dispute but that are being held up for some unknown reason without any IRS contact person. TAS has helped me in several of these situations to timely correct a problem to ensure that a corporate taxpayer’s account is being properly credited or a refund is being issued. This is just one example of a situation where TAS can assist larger taxpayers.

Another example of TAS’s assistance to corporate taxpayers is illustrated by the recent controversy surrounding the IRS’s administration of the section 965 transition tax. In this situation, the IRS has taken the position (surprising to many practitioners and taxpayers) that for taxpayers making an election under section 965(h) to pay the transition tax over 8 years through installment payments, any overpayments of 2017 tax liabilities cannot be used as credits for 2018 estimated tax payments or refunded, unless and until the overpayment amount exceeds the full 8 years of installment payments. More background on this issue can be found here.

Many tax practitioners and organizations have engaged in discussions to convince the IRS reverse course on this position, which in some situations limits the ability of taxpayers to defer payment of the transition tax and instead results in the creation of a type of advance payment to the IRS for which the taxpayer does...
not receive any credit for foregone interest or use of the funds. To assist with this problem, inquiries were made with TAS.

As a result of these inquiries, TAS advocated for a change in the IRS’s position. The NTA, in a blog post on August 16, 2018, addressed the IRS’s position in detail and explained why the position should be changed. It remains to be seen whether the IRS reverses course, but it is encouraging to see TAS advocating for an issue that largely affects corporate taxpayers.

As the above demonstrates, TAS is a resource for taxpayers of all shapes and sizes. Getting to know your local Taxpayer Advocate and building relationships and connections with TAS can be extremely beneficial in assisting tax clients with IRS disputes that cannot be resolved through normal administrative channels. In certain situations, TAS may decide to issue a TAO or to recommend action with respect to a systemic issue. Through this process, taxpayers are ensured that their voices will be heard within the IRS. In many situations, involving TAS can resolve matters in a timely and efficient matter for taxpayers. ■
A Retrospective Interview with 2014-2016 Christine A. Brunswick Public Service Fellow

Patrick Thomas

In 2014, Patrick Thomas began a two-year commitment with the Neighborhood Christian Legal Clinic, in Indianapolis, IN, through the Christine A. Brunswick Public Service Fellowship. In a previous interview, Patrick described how at Indiana University he developed his interest in helping low-income and immigrant communities. The experience inspired him to get involved with the Indianapolis clinic starting the summer after his first year of law school and led eventually to his broader involvement in the low-income taxpayer clinic (LITC) community.

Patrick is the founder and director of the Notre Dame Tax Clinic, and he (PT) recently discussed with ABA Tax Times (ATT) his experience during and after his Fellowship.

ATT: Could you tell us about the work you did at Neighborhood Christian Legal Clinic in Indianapolis?

PT: Like any attorney at an LITC, I primarily defended clients against IRS enforcement actions, including audits and collections. While this often involved bringing nonfilers and others back into tax compliance, our cases took place in many different procedural settings—all the way from a phone call to IRS collections to litigation in the U.S. Tax Court.

We also focused our efforts on representation and education of Indianapolis’s refugee population, along with others who found it difficult to interface with the IRS. Achieving tax compliance can be difficult for native-born taxpayers; the problem is significantly compounded for someone who speaks English as a second language. Our clinic partnered with local refugee resettlement agencies to hold tax education workshops, which included topics as basic as defining what a “tax” is in the first place, to properly filling out a Form W-4 and choosing a competent tax return preparer.

ATT: What was your biggest challenge there?

PT: Our organization’s biggest challenge was the mismatch between our resources and the community’s need for effective tax representation. While we were blessed with a larger staff structure than many LITCs, the community’s need still often outran our ability to respond. We tried not to turn away any eligible clients, but often clients with less time-sensitive matters had to wait for more pressing cases to resolve before we could assist them.
On an individual level, my fellowship taught me valuable lessons on interviewing and counseling clients in difficult situations, along with balancing my empathy and commitment to clients with my own personal needs. Law students intending to pursue a career in tax law may not expect clients to break down in their office; but clients often came to the clinic with more than just a tax issues. They’d have a tax issue that resulted from a divorce, debilitating accident, or mental illness, among other complications. Effectively responding to the IRS necessitates a deep dive into those underlying facts. Effectively eliciting those facts, building trust with a client, and reckoning with the gravity of these situations was never easy. I cannot say I knew precisely what I was doing with every individual client in these situations. In retrospect, I tried to build a trusting relationship through actively listening and providing honest counsel. It did not always work: sometimes these situations delayed our case plan or even led to our withdrawal from representation.

Although law schools are increasingly equipping students with the framework on secondary trauma (in addition to interviewing and counseling skills), young attorneys may not experience these issues early on if not engaged in a client-facing work setting. Taking a clinic in law school or working for a clinic pro bono early in practice is an excellent way to gain this sort of critical experience.

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

**PT:** My most rewarding experiences occurred when I could solve a problem that was difficult for a client to comprehend or effectively deal with, which could result in a long-term positive impact. For example, I worked with clients who were repeat nonfilers: perhaps one difficult event caused the first year of nonfiling, and the rest resulted from the inertia of the first and fear of the IRS. By the time they walked in the door of our clinic, their problems seemed insurmountable. Our clients' long journeys to tax compliance could be challenging and required patience from both client and attorney; the client's sense of relief on the other end made those challenges worth it.

In a different vein, I also enjoyed engaging in capacity-building work in the LITC. For example, I worked with a retired database consultant to design and construct a new case management database, which helped the LITC attorneys accurately track each case and the statistics required by the LITC program. While I enjoy direct client work, attorneys (believe it or not) only have so many hours in a day. I always enjoyed helping our attorneys reclaim some of those hours to focus on the core mission of legal representation.

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

**PT:** After my fellowship ended, I founded the Notre Dame Tax Clinic, which I currently direct. Like in my prior position, we focus on direct representation before the IRS and in tax litigation. But in an academic clinic, I get to be a force multiplier. That is, in addition to direct client work, an academic tax clinic provides the opportunity to teach emerging lawyers about federal tax procedure and legal skills such as case management, interviewing, counseling, negotiation, research, and writing. Many of my former students have gone into tax practice or have sought out tax-related work in their firms. They regularly note the impact that clinical education had on their careers and value the pro bono work that clinics provide.

In a similar vein, an academic clinic also provides an opportunity to effectively highlight systemic issues in our tax administration system. I now have the time, resources, and credibility to research and speak on these issues. For example, in partnership with Frank DiPietro (current director of the LITC at Indiana Legal Services and another [former fellow](#)), I have been able to advocate before our state department of revenue
on a host of problems, which to their credit the department has significantly improved over the past two years. Hoosiers now no longer need to provide a 20% down payment to establish a payment plan; they can more effectively intervene when faced with a wage levy or bank garnishment; and thanks to recently passed legislation, Hoosiers can now obtain their tax withholding information directly from the department. While individual casework is personally fulfilling because of the individual connections we forge with our clients, these changes are systemically impactful, as they positively affect the lives of millions of Hoosiers, now and in the future.

ATA: How did the Fellowship impact your career trajectory?

PT: I can safely say that I would not be where I am today without the Tax Section’s Public Service Fellowship. It opened previously unknown doors, ultimately leading to my current position at the Notre Dame Law School. Attendance at Tax Section meetings is a requirement of all Public Service Fellows, and it was through those meetings that I have made my most fundamental professional relationships, both among young lawyers and with more experienced mentors. The Fellowship also led to speaking and writing opportunities within the Section. Today, I coedit Effectively Representing Your Client Before the IRS and regularly speak on panels at Section meetings. Becoming a Section member and applying for the Fellowship count among the most important decisions I have made in my legal career.

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

PT: In addition to my writing and speaking activities with the Section, I have been active on some of the Section’s regulatory comment projects, which have given my students an opportunity to participate in influencing administrative policy before it is written. Beyond these purely professional activities, many lawyers that I have met at Section meetings are now some of my closest professional colleagues and friends.

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

PT: First: Apply! Your idea for your fellowship need not be earth-shattering to be considered. There are millions of taxpayers throughout the country in need of some type of tax assistance.

Second: While I do not speak for the fellowship committee, my own take is that the most important factors in selecting a fellow are (1) potential for longevity of the project and (2) commitment and experience of the fellow’s sponsor. To the extent possible, prospective fellows should design their projects to outlive them at their sponsoring organization. Moreover, the sponsor should have the experience necessary to effectively supervise the fellow, along with a demonstrated commitment to do so.

Finally, feel free to contact me or other former fellows for advice in applying. I am always happy to provide time for this important Tax Section initiative.

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.
To many people, the tax field seems like a very narrow niche. The tax profession does require specialized expertise, but tax professionals know that there is actually great diversity in the career paths available to law school graduates. Yet for law students and junior lawyers interested in the tax field, it can be difficult to appreciate the range of possible tax careers and to distinguish between what different tax practitioners do.

Thus, to help aspiring tax professionals easily understand the range of tax careers they might pursue, this article offers a 3-pronged framework for describing tax careers available to J.D.s.¹ There are some more comprehensive resources available to help aspiring tax professionals plan their careers,² but many law students and junior lawyers who are just beginning to consider the possibility of pursuing tax could benefit from a concise and accessible introduction to tax law careers. That is what this article provides.

1. A Framework for Understanding Tax Law Career Options

Tax careers can be categorized along three dimensions: (a) practice area; (b) practice role; and (c) practice setting. Practice area covers the substantive topic(s) about which the tax professional advises. Practice role describes the function that the tax professional serves: Does the tax professional help with planning, compliance, controversy, or some combination? Practice setting describes the type of organization in which the tax professional works.

Any J.D.’s tax career can be categorized using these three dimensions. These dimensions, when taken together, describe the large range of career path options available within tax.

This section briefly explains the options within each dimension.

¹ Whether a law school graduate interested in a tax career should also pursue a tax LL.M. degree is a separate, but important, question. For valuable insights into this question, see Paul L. Caron, Jennifer M. Kowal & Katherine Pratt, Pursuing a Tax LLM Degree: Why and When? (2010).
² For example, the ABA Tax Section’s Careers in Tax Law (2009) provides a series of essays from a diverse set of tax practitioners, each of whom provides insights into an important aspect of their career or career path. The Vault Guide to Tax Law Careers provides a comprehensive discussion of the tax law industry and opportunities within it. Shannon King Nash, The Vault Guide to Tax Law Careers (2004). Both books are long, and while definitely worthwhile for any student committed to pursuing a tax career, neither provides a quick and easy overview of the field.
A. Practice Area

Tax practitioners focus their work on a wide array of substantive areas. Common specialties include:

- corporate tax;
- partnership tax;
- U.S. international tax;
- state and local tax;
- individual income tax;
- estate and gift tax;
- tax-exempt organizations; and
- tax issues related to employee benefits & executive compensation.

These and other practice areas are likely familiar to students from the tax classes offered by their law schools.

Some practitioners have broad tax practice areas that include more than one of the above. Other tax practitioners focus more narrowly and become experts in tax sub-specialties such as real estate investment trusts, taxation of financial instruments, tax issues for venture capital and private equity funds, tax issues for closely-held businesses, oil and gas taxation, transfer pricing, property taxes, employment taxes, low-income taxpayers, and more. And some practitioners have practices that include non-tax issues in addition to tax issues. For example, practitioners focusing on estate/gift tax issues often assist with the non-tax aspects of estate planning in addition to the tax aspects.

B. Practice Role

A tax professional's practice role is about the function they serve when assisting clients. Specifically, does the tax adviser assist with planning, compliance, controversy, or some combination? Thus, is the tax adviser primarily involved before transactions occur, between when transactions occur and when returns are filed, or after returns are filed?

i. Planning

Tax planners help clients arrange their affairs prospectively in order to achieve the client’s business, economic, and financial goals, while minimizing tax. For example, these tax advisers help clients make choice-of-entity decisions, structure cross-border transactions, or plan their estates. Often, tax planning practitioners not only advise clients about how to proceed, but they also draft legal documents to effectuate the planned transactions.

ii. Compliance

Tax professionals doing compliance work help clients determine how to report their tax matters appropriately to government authorities. These tax advisers analyze events that have already occurred to determine how to reflect them on returns, although a tax compliance professional may also be involved during the planning process if the reporting decisions are expected to be particularly complex. These tax advisers also prepare documentation to support return positions, prepare and file returns, and do other work that enables clients to meet their tax reporting and record-keeping obligations.
iii. Controversy

Tax controversy lawyers handle disputes about taxes, including audits and refund requests. These lawyers are typically involved after transactions have occurred and after returns have been filed, but a tax controversy lawyer may be consulted earlier to help preemptively prepare for a dispute if a matter is expected to be contentious. Controversy work is essentially tax litigation, but the process typically begins at the administrative level (e.g., with the IRS) and can progress to court if the matter is not resolved at the administrative level. Tax controversy work can involve not only civil matters, but also—in egregious situations—criminal allegations. Tax controversy matters arise at both the federal level and the state and local level (e.g., with the California Franchise Tax Board).

C. Practice Setting

People with law degrees pursue tax careers with several different types of employers, including law firms, accounting and consulting firms, government, industry, and academia.

i. Law Firms

Many tax lawyers practice at law firms, and tax work is done at law firms of all sizes, from the firms of solo practitioners to the largest multi-national firms. Tax lawyers at law firms tend to do planning and controversy work, but they typically do relatively little compliance work. In addition, tax work at law firms tends to be more qualitative and less quantitative than the tax work done at accounting or consulting firms. For example, lawyers at law firms are more likely to advise a client about what steps to take to achieve tax favorable treatment and less likely to calculate the amount of the client’s tax savings if the favorable treatment is achieved.

ii. Accounting & Consulting Firms

Quite a number of tax-focused J.D.s also work at accounting and consulting firms that provide tax services. These tax advisers commonly perform planning and compliance work and, as a result, are important parts of a client’s team of advisers. It is important to remember, however, that tax J.D.s working at accounting or consulting firms in the U.S. can provide tax advice but may not practice law. As a result, the drafting of contracts or other legal documents that effectuate the results of planning work is generally not done at accounting or consulting firms, and is, instead, typically left to law firms. Similarly, tax advisers at accounting or consulting firms generally do not represent clients in court in controversy matters, and some do not handle controversy matters at all.

iii. Government

Tax lawyers work in many positions throughout government. Tax lawyers handle tax controversies (both civil and criminal) on behalf of the government, respond to ruling requests from taxpayers, and assist with drafting regulations and other administrative guidance, among other responsibilities. Tax lawyers also serve as Tax Court judges or clerks for such judges. In addition, tax lawyers assist with drafting tax legislation.

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3 Whether a firm describes itself primarily as an accounting firm, a consulting firm, a firm that provides tax advisory services or otherwise typically depends in part on the range of services it provides (e.g., whether it includes an audit practice or financial statement accounting/preparation services), on the expertise and credentials of its professionals, and on the firm’s origins, among other factors. Some such firms do not use a particular label, and instead describe themselves based on the types of services provided. Very generally, this is a group of professional firms that provide tax and other services but that are not law firms.

4 See Model Rules of Prof’l Conduct R. 5.4(a) & 5.4(b).
(e.g., working in the Office of Legislative Counsel), serve as experts for various legislative committees (e.g., for the House Committee on Ways & Means), and work on the staffs of individual legislators. There are opportunities for J.D.s to pursue some of these careers, particularly in controversy and legislative/regulatory policy/drafting, at both the federal level and the state and local government level.

iv. In-House

Tax lawyers may also work in-house at for-profit or non-profit organizations. In-house work may involve a combination of planning, compliance, and controversy work. Generally speaking, the larger the organization is, the more specialized the position may become. In most companies, tax professionals work in a tax department that reports up to a Chief Financial Officer, but some in-house tax lawyers may work in a legal department led by the company’s General Counsel. Entry into in-house tax positions, whether at for-profit or non-profit organizations, is typically limited to experienced tax professionals. Thus, most tax-interested law school graduates work for at least a few years at a law firm, accounting or consulting firm, or in government before moving to an in-house position.

v. Academia & Policy Centers

A small number of tax lawyers work in academia, where we teach students about the tax law, perform research, write about the tax law, and participate in the governance of our institutions. A number of tax academics head low-income taxpayer clinics, combining the education of aspiring tax lawyers with a practice that serves vulnerable taxpayers who otherwise may not be able to afford tax advice. Tax lawyers also work for public policy think tanks such as the Tax Foundation or the Tax Policy Center.

2. Applying the Framework to Understand the Range of Tax Career Options

There are numerous possible combinations of practice areas, practice roles, and practice settings, which means that there are many different tax law career paths. For example, a tax lawyer at a large multi-national law firm may do corporate tax planning work (e.g., advising on the tax aspects of M&A transactions) or international tax controversy work, and a solo practitioner or a tax lawyer at a small law firm may represent individuals in tax controversies or may provide estate planning services. A J.D. at an accounting or consulting firm may do state/local tax compliance work or both planning and compliance work for private equity or hedge funds that are organized as tax partnerships. A tax lawyer working in government could represent the government in controversies involving small business tax issues or could assist with planning for new regulations on international tax issues. These are only a few examples of the many tax career options available to J.D.s.

Not every combination is readily available, however. Some practice areas are more common in certain settings than others. For example, estate planning work is more common in mid-size, small, and solo law firms than in very large law firms. Tax planning work for corporate M&A transactions and transfer pricing planning work for multi-national corporations are typically handled by tax advisers in larger firms (whether in law, accounting, or consulting), often with both U.S. and foreign offices, rather than by those in small or solo practices. Further, as mentioned above, lawyers at law firms, rather than those at accounting firms, typically handle more controversy work and any planning work that involves drafting legal documents, and tax J.D.s at accounting and consulting firms tend to handle much more tax compliance work than do tax lawyers at law firms. Despite some limitations on the available combinations, there is a big world of tax careers available to law school graduates.
Remember also that many law school graduates change jobs over the course of a career. So someone may start by doing tax work in government and then move to private practice, or the reverse. A tax practitioner might start out at a law firm or accounting firm and then move in-house. Some tax advisers, particularly at accounting and consulting firms, start by doing mostly compliance and shift to more strategic planning work as they become more senior. Similarly, someone might start by doing tax planning in a particular practice area and then shift to tax controversy on the same topic, or vice versa. Many people broaden or narrow their practice areas over their careers.

Ultimately, if you enjoy the study of tax law, there are likely to be career options that are right for you. This is true whether you like litigation or prefer to avoid it at all costs; whether you love working with numbers or prefer to take a more qualitative approach; whether you enjoy representing individuals who are personally affected by your work or prefer the emotional distance that sometimes comes with representing larger entities; and whether you want to pursue a career in public service or whether you prefer to work in the private sector.

Whatever your tax career goals, don’t forget that all of us, across tax practice areas, roles, and settings, also have the opportunity to contribute to the public good (e.g., through pro bono work), to the tax profession (e.g., by participating in professional organizations such as the ABA), and to the development of tax policy and the particulars of tax law (e.g., by commenting on legislative or regulatory proposals). I encourage you to seize the opportunities as part of whatever tax practice path you pursue.
It Hurts

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

(To the tune of “Love Hurts” by Boudleaux Bryant, as recorded by Roy Orbison and the Everly Brothers or even Don McLean.)

It hurts, it pains.  
When you reap gains.  
To have to pay a tax.  
Knowing that the tax.  
Cuts into your wealth.  
Lopping like an ax.  
It hurts. It hurts.

It’s raw. It’s mean.  
That Tax Machine.  
Making you bereft.  
Feeling so bereft.  
When you pay a tax.  
Feels more like a theft.  
And it hurts. It hurts.

Some will get a wanderlust.  
Move offshore. Form a trust.  
Those with reasons always just.  
But in the end they’ll pay.

No, you can’t escape.  
The Taxman or your death.  
You’ll be paying—up  
Until your final breath.  
But it hurts. It hurts.
SECTION NEWS & ANNOUNCEMENTS

2019–2021 Christine A. Brunswick Public Service Fellows

The Section of Taxation is pleased to announce the 2019-2021 Christine A. Brunswick Public Service Fellowship class.

Evan Phoenix will work with the tax clinic at Bet Tzedek Legal Services in Los Angeles on a project aimed at assisting service members and reducing barriers for ESL taxpayers.

Andre Robinson will work with the Low-Income Tax Clinic at Southeast Louisiana Legal Services in New Orleans, Louisiana to provide education and tax services to taxpayers returning to society after being incarcerated and micro and small businesses owners.

The Public Service Fellowship program was developed in 2008 to address the need for tax legal assistance, and to foster an interest in tax-related public service among those individuals who participate. In 2013, the Public Service Fellowship was re-named the Christine A. Brunswick Public Service Fellowship in honor of the late Christine A. Brunswick, the Section’s former Executive Director. Christine was a strong proponent of the Tax Section’s role in advancing pro bono and public service and fostering a fair and equitable tax system. Under her leadership, the Section devoted significant resources to further that goal. The Fellowship is funded by the Tax Assistance Public Service (TAPS) endowment fund.

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

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

2019–2020 John S. Nolan Fellowships

The American Bar Association Section of Taxation announced the recipients of the 2019-2020 John S. Nolan Fellowships at the Section’s May Meeting in Washington, DC. Nolan Fellows are young tax lawyers who are actively involved in the Section, have demonstrated leadership qualities and a commitment to the Section’s mission.

The six 2019-2020 Nolan Fellows are:

- Arielle Borsos, Caplin & Drysdale, Washington, DC
- Phillip Colasanto, Agostino & Associates, Hackensack, NJ
- Sarah Haradon, Holland & Hart, Denver, CO
- Travis Thompson, Sideman & Bancroft, San Francisco, CA
- Shamik Trivedi, Grant Thornton, Washington, DC
- Lany Villalobos, Dechert, Philadelphia, PA

“We are pleased to announce these young lawyers as our Nolan Fellows for 2019-2020,” said Eric Solomon, Chair of the Section of Taxation. “Nolan Fellows are young practitioners who have demonstrated superior leadership potential. We hope they will remain active in the Tax Section for many years to come.”

The one-year fellowship includes waiver of meeting registration fees and assistance with travel to Section meetings. For more information about the Nolan Fellowship program, visit the Section website, http://www.americanbar.org/groups/taxation/awards/nolans.html.
2019 Distinguished Service Award Recipient: Emily A. Parker

By Mary McNulty, Thompson & Knight LLP, Dallas, TX, and Lee Meyercord, Thompson & Knight LLP, Dallas, TX

The Distinguished Service Award is the highest honor awarded by the Section of Taxation of the American Bar Association. The award is reserved for individuals who have had a distinguished career in taxation and who have provided an aspirational standard for all tax lawyers to emulate. The 2019 recipient of this award is Emily A. Parker – a landmark tax litigator, passionate and reasoned leader, long-time community advocate, and dedicated and effective mentor.

Texas Roots and Early Career

Emily was born in East Texas and grew up in Henderson, Texas, a small town in the middle of the prolific East Texas Oil Field. She was the youngest, and surprisingly the most laid back and irresponsible, of four children. Her father owned a furniture store, and her mother raised their family. Whether or not solicited, her mother imparted words of wisdom that have had a lasting impact on Emily, including (1) “My mama didn’t raise a fool”; (2) “If you claim the credit, you have to take the blame”; and (3) “People don’t change when they get older, they just get more so.”

Emily excelled at Stephen F. Austin State University, where she began as a pre-med major, before deciding to pursue law. Graduating in three years, Emily left East Texas for Dallas and Southern Methodist University Dedman School of Law. There, Emily began her first year as one of 10 women in a class of 150 students. Although number two in her class, Emily received no summer associate job offers and left Dallas for Los Angeles after her second year. She returned to Dallas and, upon graduation, became the first female attorney at Thompson & Knight in 1973.

Oil and Gas Tax Litigator

For two years, Emily tried a wide variety of cases ranging from dog bites to insurance subrogation. J. Waddy Bullion, a senior partner and nationally renowned oil and gas tax attorney, then told Emily that she was wasting her time and should come work for him as a tax lawyer.

Remembering her mother’s advice, she immediately said yes and learned quickly from the legend. Emily discovered she was well suited for tax law, a practice she considers “intellectually interesting” and “entirely logical in an alternate universe.” Emily enjoys engaging in verbal and written combat, so tax controversy became the perfect fit for her skill set. When firm clients resisted working with a woman lawyer, Waddy scolded them for...
ignorantly choosing not to work with the firm’s best tax lawyer. Clients now describe Emily as their “go-to outside counsel” for issues with no clear answer because her skill and judgment are without parallel.

With more than 20 reported cases and victories in landmark cases from oil and gas taxation to estate tax valuation, Emily built a national reputation and client base. See, e.g., Texaco Inc. v. Commissioner, 98 F.3d 825 (5th Cir. 1997) (transfer pricing case relating to crude oil subject to Saudi Arabian pricing edict); Gulf Oil Corporation v. Commissioner, 914 F.2d 396 (3d Cir. 1990) (case involving platform intangible drilling costs and the ownership of an economic interest in Iran); Sun Company Inc. v. Commissioner, 677 F.2d 294 (3d Cir. 1982) (case involving deductibility of drilling costs of offshore exploratory oil wells); Estate of Bright v. United States, 658 F.2d 999 (5th Cir. 1981) (estate tax valuation case involving community interest in 55% of the stock of closely held corporations); and Texas Instruments Inc. v. United States, 551 F.2d 599 (5 Cir. 1977) (case addressing the investment tax credit on tapes and films with recorded seismic data). A victory in Container Corp. v. Commissioner, 134 T.C. 122 (2010), aff’d, 107 A.F.T.R.2d 2011-1831 (5th Cir.), compelled Congress to change the law to avoid the resulting large potential loss of revenue.

Like Emily, many of her reported cases use colorful language. Some of her favorites: (1) “Although the Commissioner is entitled to change his mind, he ought to do more than stride to the dais and simply argue in the opposite direction.” Transco Exploration Co. v. Commissioner, 949 F.2d 837, 840 (5th Cir. 1992); and (2) a $3 million income tax avoided “by the stroke of the scrivener’s pen,” consistent with Emily’s argument to the Fifth Circuit that, while perhaps “an unintended ‘loop hole’ in the tax law,” it was “in the tax law” and should be left for Congress to change. Petroleum Corp. of Texas, Inc. v. United States, 939 F.2d 1165, 1170 (5th Cir. 1991).

While Emily does not win every case, she is always an aggressive advocate, as the Fifth Circuit recognized when describing one of her briefs as “legal spun sugar.” Burke v. Miller, 639 F.2d 306, 306 (5th Cir. 1981).

A Leader in the Law

Emily became Thompson & Knight’s first female partner in 1979. During the next 40 years, Emily served as the firm’s first woman Practice Group Leader, Hiring Partner, member of the Management Committee, and Managing Partner.

In addition to achieving success in private practice at Thompson & Knight, Emily served as Deputy Chief Counsel of the Internal Revenue Service—the nation’s top job for a tax controversy attorney—from 2002 through 2004. This was a particularly challenging timeframe shortly after the events of September 11, 2001, when there was immense pressure to deal with abusive tax shelters and tax shelter promoters. Emily became “the voice of reason,” dealing with strong personalities addressing problems in the system with “a natural Texas charm that put everyone at ease.”

Beginning in 2003 and through 2004, Emily also served as Acting Chief Counsel of the IRS, making her the only woman in U.S. history to lead the IRS legal team. She had ultimate responsibility for all legal matters, including supervising more than 1,500 attorneys in the Office of Chief Counsel, overseeing all litigation involving the IRS, and approving all published guidance issued by the IRS. Emily also successfully dealt with a wide range of constituencies outside of her comfort zone, including labor unions, Congress, and the press.

Service to the Profession and Community

Emily’s leadership and accomplishments extend beyond Thompson & Knight and the IRS, touching those throughout legal and local communities. Emily has devoted her time to serving the ABA Tax Section throughout her career. She served as Chair of the Natural Resources Committee from 1989 to 1991 and as Vice Chair
of the Appointments to Tax Court Committee from 2000 to 2002, when government service required her to resign from that position. She served on Council from 2006 to 2009, as Vice Chair, Professional Services, from 2009 to 2011, and as Vice Chair, Government Relations from 2011 to 2012. Emily has also served as a member of the Nominating Committee, Appointments to Tax Court Committee, Court Procedure & Practice Committee, and Administrative Practice Committee. She has been a frequent speaker at the ABA Tax Section meetings, including before the Court Procedure & Practice Committee, Administrative Practice Committee, and Partnership Committee. She also gave the entertaining and insightful presentation “Stroke of the Scrivener's Pen: Role of a Tax Planner and Litigator” at the 2016 Erwin N. Griswold Lecture before the American College of Tax Counsel.

Emily served as the Chair of the Dallas Bar Tax Section from 1981 to 1982 and served on the Council of the State Bar of Texas Section of Taxation from 1985 to 1987. Emily is a fellow of the American College of Tax Counsel, American Bar Foundation, Texas Bar Foundation, and Dallas Bar Foundation and served on the Board of Regents of the American College of Tax Counsel from 2009 to 2011. She is Board Certified in Tax Law by the Texas Board of Legal Specialization. The State Bar of Texas Tax Section bestowed its highest honor on Emily in 2012, naming her as the “Outstanding Texas Tax Lawyer.”

Emily’s dedication to the Dallas–Fort Worth community runs parallel to her service to the legal profession and her peers. She is a tremendous asset to numerous local organizations with an emphasis on nonprofit organizations that advocate on behalf of children, including CASA (Court Appointed Special Advocates), Child Abuse Prevention Center, Child Care Dallas, and Easter Seals of Dallas. She was also a founding member of the Women's Foundation of Dallas. Today she continues her many years of service on the Executive Committee of the SMU Dedman School of Law.

Emily leads by example. She was the first to step through many doors previously closed to women and has inspired other female attorneys to achieve their own successes. As a dedicated and effective mentor, teacher, and coach, she helps associates meet her high expectations and standards by patiently answering their questions, listening, and advising. She creates opportunities for lawyers to succeed based on their unique skills, without preferential treatment or coddling. Emily’s keen intellect and vast knowledge of the tax law make working with her challenging and informative, and her passion and sense of humor keep it fun.

Emily’s success in rising to the very pinnacle of her profession is a testament to her intellectual curiosity, exemplary professional judgment, strong leadership skills, and commitment to excellence personally and on behalf of her clients and colleagues. For these many reasons, the Tax Section is honored and pleased to recognize Emily Parker as the recipient of its 2019 Distinguished Service Award.
**SECTION NEWS & ANNOUNCEMENTS**

**Government Submissions Boxscore**

Government submissions are a key component of the Section's government relations activities. Since February 12, 2019, 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/](https://www.americanbar.org/groups/taxation/policy/).

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<tr>
<td>Internal Revenue Service, Department of Treasury</td>
<td>5/15/2019</td>
<td>59A</td>
<td>Comments on Proposed Regulations Addressing Section 59A</td>
<td>Foreign Activities of U.S. Taxpayers</td>
<td>Kimberly Tan Majure, Jesse Eggert</td>
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<td>Internal Revenue Service, Department of Treasury</td>
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<td>163(j)</td>
<td>Comments on the Proposed Regulations under Section 163(j) and its interaction with Section 108</td>
<td>Collection, Bankruptcy and Workouts</td>
<td>Jason Dexter, Joshua Tompkins, Anthony Sexton</td>
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<td>Internal Revenue Service, Department of Treasury</td>
<td>4/18/2019</td>
<td>199A</td>
<td>Comments on the Final Regulations Under Section 199A</td>
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<td>Internal Revenue Service, Department of Treasury</td>
<td>3/28/2019</td>
<td>168(k)</td>
<td>Comments on Proposed Guidance under Section 168(k) Regarding Consolidated Return Issues</td>
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<td>Bryan Collins, Steve Fattman</td>
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<td>Internal Revenue Service, Department of Treasury</td>
<td>3/22/2019</td>
<td>1061</td>
<td>Comments on the Treatment of Applicable Partnership Interests Under Section 1061</td>
<td>Partnerships &amp; LLCs</td>
<td>Ben Applestein, Michael Scaramella</td>
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<td>Internal Revenue Service, Department of Treasury</td>
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<td>78, 861, 901, 904, 960, and 965</td>
<td>Comments on the Proposed Regulations Concerning Foreign Tax Credits</td>
<td>Foreign Activities of U.S. Taxpayers</td>
<td>Michael J. Caballero</td>
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<tr>
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<td>Section</td>
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<td>Internal Revenue Service, Treasury</td>
<td>3/7/2019</td>
<td>163(j)</td>
<td>Comments on the Impact of the Proposed Regulations under Section 163(i) on Passthrough Entities and their Owners</td>
<td>Partnerships &amp; LLCs S Corporations</td>
<td>Eric Hahn, Craig Gerson, Katie Fuehrmeyer</td>
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<td>Internal Revenue Service, Treasury</td>
<td>2/28/2019</td>
<td>163(j)</td>
<td>Comments on the Impact of the Proposed Regulations under Section 163(i) on Real Estate</td>
<td>Partnerships &amp; LLCs Real Estate</td>
<td>Ossie Borosh</td>
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<tr>
<td>Internal Revenue Service, Treasury</td>
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<td>163(j)</td>
<td>Comments on Treatment of Corporate Taxpayers and Consolidated Groups in Proposed Guidance under section 163(j)</td>
<td>Affiliated &amp; Related Corporations</td>
<td>Greg Fairbanks</td>
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<td>Internal Revenue Service, Treasury</td>
<td>2/12/2019</td>
<td>168(k)</td>
<td>Comments on Treatment of Partnerships in Proposed Regulations under 168(k)</td>
<td>Partnerships &amp; LLCs</td>
<td>Ari Berk, John Franco</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 to succeed. Click here to complete the survey: https://americanbar.qualtrics.com/jfe/form/SV_0keNKxAC5DbfBy7.

TaxIQ: 2019 May Tax Meeting Materials Available

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

In March, we launched our searchable Section-hosted database, and access to it is an exclusive benefit of membership in the Section of Taxation. Click here for access. You will be prompted to log in, so please have your ABA-associated email address and password handy.

The Practical Tax Lawyer – May 2019 Issue Now Available

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

Theodore M. David, Learn To Love the IRS

Bradley T. Borden, Investing in a Qualified Opportunity Fund: A Viable Alternative to a Section 1031 Drop-Swap Cash-Out

Frank Agostino, Anson H. Asbury and Ronald Levitt, Give It Away Now: An Update on Conservation Easements, Charitable Deductions, and Substantial Compliance (Part 2)

R. Eric Viehman, Generation-Skipping Transfer Tax Planning (Part 1) (with Sample Language and Forms)

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

Audio Edition of The Tax Lawyer Available from ModioLegal

How much is an hour of your desk-time worth? Listen to the same content as the print edition of The Tax Lawyer without forgoing billable time – approximately 40 hours of content per year!
The Tax Lawyer – Winter and Spring 2019 Issues Are Available

The Winter and Spring 2019 issues of The Tax Lawyer, the nation’s premier, peer-reviewed tax law journal, are now available. The Tax Lawyer is published quarterly as a service to members of the Tax Section.

**Winter 2019 Issue** ([Click here to read or download the complete issue.](#))

**Reports**

American Bar Association Section of Taxation, *Initial Comments Concerning the Aggregation and Disaggregation of Trade or Business Activities for Purposes of Section 199A*

American Bar Association Section of Taxation, *Comments Concerning the Specialized Service Trade or Business Activities for Purposes of Section 199A*

American Bar Association Section of Taxation, *Comments Concerning the Treatment of Losses and Certain Other Issues Regarding the Section 199A Deduction*

**Articles**

Sean Anderson and Andrew Morrison Stumpff, *Proposal for a Non-Subsidized, Non-Retirement-Plan, Employee-Owned Investment Vehicle to Replace the ESOP*

Philip G. Cohen, *The Compulsory Tax Constraint for Foreign Tax Credits Post TCJA & Coca-Cola Co. v. Commissioner*

David Hasen, *Asset Basis in Acquisitive Reorganizations: General Utilities Hangover*

Calvin H. Johnson, *No Orchard, No Capital Gain*

Walter D. Schwidetzky, *In Defense of the PIP Regulations*

**Spring 2019 Issue** ([Click here to read or download the complete issue.](#))

**Articles**

Karen C. Burke, *Section 199A and Choice of Passthrough Entity*

Eric Lopresti, *What’s Wrong with Strict Liability and Non-Monetary Penalties? The Case for Reasonable Fault-Based Civil Tax Penalties and Procedural Protections (Paper from the 3rd International Conference on Taxpayer Rights)*

Erwin R. Griswold Lecture

Richard M. Lipton, *Proper Application of the Judicial Doctrines and the Elimination of Section “I Don’t Like It”*

**Comment**

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

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

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

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

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

Get Involved in ATT

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

See full list of events at [www.americanbar.org/groups/taxation/events_cle.html](http://www.americanbar.org/groups/taxation/events_cle.html)

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<tr>
<td>June 18, 2019</td>
<td><a href="#">Arbitration: Is There Anything Different About ERISA?</a></td>
<td>JCEB</td>
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<td></td>
<td>CLE Webinar</td>
<td>202.662.8676</td>
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<td>June 20, 2019</td>
<td><a href="#">Advanced ERISA Disability Mediation Techniques</a></td>
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<td>June 25, 2019</td>
<td><a href="#">A Deep Dive: Who Is an Employee?</a></td>
<td>JCEB</td>
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<td>June 27, 2019</td>
<td><a href="#">Nuts &amp; Bolts Collections Part V: Liens &amp; Levies</a></td>
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<td>CLE Webinar</td>
<td><a href="#">Free for Tax Section Members</a></td>
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<td>July 31, 2019</td>
<td><a href="#">GILTI, FDII, and Consolidated Groups: An Introduction</a></td>
<td>Tax Section</td>
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<td>October 3-5, 2019</td>
<td><a href="#">FALL TAX MEETING</a></td>
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<td>October 28-29, 2019</td>
<td><a href="#">2019 Philadelphia Tax Conference</a></td>
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<td>Philadelphia, PA</td>
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<td>October 28-29, 2019</td>
<td><a href="#">Health and Welfare Benefit Plans National Institute</a></td>
<td>JCEB</td>
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<td>Arlington, VA</td>
<td>202.662.8676</td>
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<td>November 7-8, 2019</td>
<td><a href="#">Executive Compensation National Institute</a></td>
<td>JCEB</td>
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<td>Washington, DC</td>
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<td>September 24, 2019</td>
<td><a href="#">ERISA for NON-ERISA Lawyers</a></td>
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<td>Free CLE Webinar</td>
<td>202.662.8676</td>
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<tr>
<td>January 30-February 1, 2020</td>
<td><a href="#">MIDYEAR TAX MEETING</a></td>
<td>Tax Section</td>
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<td>Boca Raton, FL</td>
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<td>April 30-May 2, 2020</td>
<td><a href="#">MAY TAX MEETING</a></td>
<td>Tax Section</td>
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<td>Washington, DC</td>
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*Note: All events are subject to change and registration requirements.*

Nuts & Bolts Collection Series Part IV: Addressing More Complicated Issues in Preparing an Offer-in Compromise

Affiliated and Related Corporations and Proposed 163(j)

Post-Tax Reform Planning for Cross-Border Investments by Private Funds

Section 1202: Tax Planning in Light of the 2017 Tax Act

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)
SECTION EVENTS & PROMOTIONS

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