## CONTENTS

### FROM THE CHAIR
A Midyear Update .............................................................. 1

### PEOPLE IN TAX
Interview with Evan Phoenix .................................................. 5

### PRACTICE POINTS
TCJA Taxation of Certain Nonresident Sales of Partnership Interests .......................................................... 8

Trust and Estate Distributions in 2020 May Provide 2019 Tax Savings ................................................................. 13

Income Tax Planning with Retirement Accounts ......................... 18

### PRO BONO MATTERS
Providing Pro Bono Assistance at the 2019 Fall Tax Meeting ................................................................. 21

Evolution of Settlement Days .................................................. 22

Recipients of the 2020 Janet Spragens Pro Bono Award: Hardin Matthews, Kelley Miller, and Larry Sannicandro ..................................................... 22

### YOUNG LAWYERS CORNER
The Young Lawyer’s Perspective on Tax Practice ................................................................. 26

Winners of the 19th Annual Law Student Tax Challenge ................................................................. 29

### THE INCOMPETENT AUTHORITY:
QUESTIONS AND ANSWERS ................................................ 31

### PEOPLE IN TAX PODCAST
Alex Parker, Roberta Mann, William Schmidt, Caroline Ciraolo, Eric Solomon, Beverly Winstead, and Travis Thompson ..................................................... 37

### TAX BITS
Mister Tax Collector ................................................................. 38

### DIVERSITY & INCLUSION
Diversity and Inclusion: An Overview of the ABA’s CLE Policy and the Section’s Plan and Committee ..................................................... 39

Call for Applications: Diversity and Inclusion Scholarships to 2020 May Tax Meeting ................................................................. 42

### SECTION NEWS & ANNOUNCEMENTS .......... 43
- Report of the Nominating Committee: 2020-2021 Nominees
- Government Submissions Boxscore
- Coming Soon and Available for Pre-Order: New Edition of *Multijurisdictional Admission to Practice Requirements for State and Local Tax Lawyers*
- TaxIQ: 2020 Midyear Tax Meeting Materials Available
- *The Tax Lawyer*—Winter 2020 Issue Now Available
- *The Practical Tax Lawyer*—March 2020 Issue Now Available
- Support the Section’s Public Service Efforts with a Contribution to the TAPS Endowment
- Get Involved in ATT

### IN THE STACKS
Call for Book Reviews ................................................................. 48

### SECTION EVENTS & PROMOTIONS
Ginsburg Tribute at May Meeting Plenary Session ................................................................. 49

5th International Conference on Taxpayer Rights ................................................................. 50

Tax Section Adjusts Dates for 2021 May Meeting and 2024 Fall Meeting ................................................................. 51

2020 IRS Nationwide Tax Forums ................................................................. 51

Section Meeting & CLE Calendar ................................................................. 52

Section CLE Products ................................................................. 52

Sponsorship Opportunities ................................................................. 53

### SPONSORSHIP ACKNOWLEDGEMENTS
2020 Midyear Tax Meeting ................................................................. 54

Thomson Reuters | Publishing Sponsor ................................................................. 55
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FROM THE CHAIR

A Midyear Update

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

As is so often the case, the Tax Section continues to be involved in a number of interesting and impactful areas that demonstrate the importance of the Section to our members, tax officials, and the development of tax policy.

Technical Meetings with IRS and the Treasury Office of Tax Policy

On December 10, 2019, members of the Tax Section met with representatives of the IRS and the Treasury Office of Tax Policy (Treasury) to discuss issues of common interest and to share ideas and proposed solutions. We were fortunate to have in attendance IRS Commissioner Charles P. Rettig (a former Vice Chair of Administration) at our meeting with the IRS, and Assistant Secretary for Tax Policy David Kautter at our meeting with Treasury.

At our meeting with the IRS, topics for discussion were wide-ranging, from limitations on IRS requests for client lists in promoter penalty investigations to technical issues arising when individuals are treated both as a partner and as an employee of the same partnership. Other topics included the elimination of attorneys within the IRS Office of Professional Responsibility; the impact of recently proposed regulations on the calculation of built-in gains and built-in losses under section 382; tax matters involving cryptocurrency; interest deductibility; foreign taxes; and various administrative matters.

At our meeting with Treasury, we discussed many of the same topics raised with the IRS, as well as the proposed regulations under section 451 dealing with recognition of income by accrual method taxpayers. Members of the Tax Section, IRS and Treasury continue to work on these issues, and the Tax Section intends to provide comments on some of these issues in the future.

As you may expect, considerable work goes into the preparation and planning for these meetings. The Tax Section is particularly grateful for the help of members who prepared for and participated in these meetings, as well as the representatives of the IRS and Treasury who attended. Like our members, the IRS and Treasury representatives spend considerable time and effort preparing for and participating in these meetings, and we truly appreciate that effort.
The Midyear Meeting

The Midyear Meeting in Boca Raton was extraordinarily successful, attracting more than 1,000 attendees. Our committees provided more than 100 insightful CLE panels on a number of interesting topics, proving again that the Tax Section truly provides best-in-class CLE. Of particular note, I want to recognize the work undertaken by the Young Lawyers Forum (YLF) and the Diversity Committee for presenting an excellent “Tax Bridge to Practice” series. The program included a conversation with Chief Judge Maurice B. Foley of the U.S. Tax Court, a panel dealing with ethical issues that attorneys face when representing clients before the IRS, and a panel involving the exchange of information with state and local tax authorities. If you have not attended the Tax Bridge to Practice series in the past, I invite you to do so at one of our upcoming meetings. The Section must continue to support the impressive work done by our YLF and Diversity members.

This year I was privileged to attend a number of sessions of the Annual Law Student Tax Challenge. This program is in its 19th year, and the J.D. and LL.M. students do an excellent job of preparing and defending answers to thorny real-world tax problems. Congratulations are in order for Amanda Krugler and Scott Sullivan of the University of Kentucky College of Law, who were awarded first place in the J.D. Division, and Jennifer Breton and Joshua Runyan of Temple University Beasley School of Law, who were awarded first place in the LL.M. Division. Information about the competition winners and video clips from oral rounds are available in the Young Lawyers Corner of this issue of ABA Tax Times.

The Tax Section presented a number of awards and honors at the Midyear Meeting in recognition of the achievements of deserving members. For the first time in the Tax Section’s history, there were three recipients of the Janet Spragens Pro Bono Award. The Section honored Hardin Matthews for his tireless work on behalf of low-income taxpayers in the Boston area, and Kelley Miller and Larry Sannicandro for their important contributions to a project to provide tax relief to exonerated individuals. Congratulations to these three recipients for all of their hard work on these pro bono activities.

Equally important is recognition of the work of our Public Service (Brunswick) Fellows. The Tax Section, through the Tax Assistance Public Service (TAPS) fund, sponsors a two-year fellowship for recent law school graduates to provide tax-related legal assistance to the underserved. Each year, the Tax Section sponsors up to two fellows who work for sponsoring non-profit organizations. Our current fellows are Omeed Firouzi, who works with Philadelphia Legal Services, and Evan Phoenix, who works with Bet Tzedek Legal Services in Los Angeles. These two are doing outstanding work on behalf of the Tax Section and underserved populations. ABA Tax Times interviewed Omeed Firouzi in the Summer 2019 issue, and this issue features an interview of Evan Phoenix.

At our Plenary Session, Patricia (Trish) Refo, the ABA President-Elect, spoke to the Section about the importance of its volunteer work and government submissions. Trish encouraged attendees to become active in pro bono matters, and to recommend ABA and Tax Section membership to others because of the value that such membership provides. Trish is a partner of our former Vice Chair for Pro Bono and Outreach, Bahar Schippel.

The keynote speaker at the Plenary Session was IRS Chief Counsel Michael J. Desmond. Michael, of course, was formerly a member of the Tax Section’s Council and an active participant in the Section’s Standards Committee. Michael focused on the role of litigation in tax administration. He noted the IRS’s role in
balancing a taxpayer’s rights to go to IRS Appeals with the need for IRS to designate a case for litigation. Michael described the internal IRS review process where the IRS decides whether to deny a taxpayer’s request for Appeals review, and he is personally involved in that review process. You can listen to Michael’s remarks [here](#).

**TAPS Endowment**

The TAPS fund is an endowed fund with the mission of supporting tax-related public service programs of the Tax Section. As an endowed fund, only the income earned on the TAPS fund may be used to support the Tax Section’s public service programs. Currently, the income from the TAPS fund is used to support the Brunswick fellows. Please make a commitment to [donate](#) to the TAPS fund so that the Tax Section can increase its support of worthwhile pro bono activities.

**Budget**

I am pleased to report that budgetary cuts made by Council over the past five fiscal years have resulted in a permanent reduction of over $500,000 in Tax Section annual expenses.

Tax Section leadership continues to look for ways to reduce expenses and still provide the superior level of services that our members have come to expect. In that regard, Tax Section leadership is looking at ways to reduce hotel expenses over the mid- to long-term. Because of our need for substantial meeting space, the Tax Section has had only a limited number of cities in which it can book space. Moreover, hotels must be booked four to five years in advance in order to obtain the best deal for the Tax Section. As part of the planning process, Tax Section staff will be looking at ways to reduce the need for meeting space so that the Tax Section may take advantage of holding meetings in lower cost venues. This will be a long-term initiative, and we welcome the input of our Committees and members in this process.

Despite our cost-cutting initiatives, and the fantastic work of Tax Section staff in generating revenue and holding down expenses, the Tax Section is projected to incur meaningful deficits on a going-forward basis. To alleviate those projected deficits, Council voted at the Fall Meeting to increase membership dues from $75 per year to $105 per year. The ABA Board of Governors approved the dues increase on February 13, 2020, effective for the fiscal year beginning September 1, 2020. Members will see the dues increase in invoices to be mailed in May.

I want to let you know that Council did not take this action lightly. First of all, unlike other Sections, Divisions and Forums of the ABA, the Tax Section receives no general revenue support from the ABA. In return for conceding ABA general revenues, the ABA has granted the Tax Section more autonomy with respect to certain of its activities. In effect, the Tax Section is “on its own” with respect to revenues and expenses, and Council determined that the fiscally sound approach was to increase dues and thereby reduce projected deficits.

Tax Section leadership continues to look for ways to generate new revenue (e.g., additional sponsorships) and control expenses. We invite our members to share their thoughts with Tax Section leadership concerning revenue generation and cost containment. We all want the Tax Section to continue to be on a firm financial footing so it can continue to support pro bono activities, and continue to provide the level of services that our members expect and deserve.
Tax Section Staff

Special thanks are due to our Tax Section staff for their hard work in connection with the Midyear Meeting. The Midyear Meeting went off flawlessly, and the Section has received a number of compliments on the food and location. Great job!

The Upcoming May Meeting

There is considerable excitement around the upcoming May Meeting. First of all, the Section will change the May Meeting hotel location for the first time in decades. The new location will be the Marriott Marquis, and the May Meeting runs from April 30 to May 2, 2020. In addition to world-class CLE, we will have the formal launch of the “Women in Tax Forum” initiative. The Plenary Session will feature a tribute to Justice Ruth Bader Ginsburg and the late Professor Martin D. Ginsburg for their contributions to gender equality. Justice Ginsburg will attend the Plenary Session. Registration is now open – and I look forward to seeing you there!
PEOPLE IN TAX

Interview with Evan Phoenix

By Tameka E. Lester, Georgia State University College of Law, Atlanta, GA

Editor’s Note: ABA Tax Times interviewer Tameka Lester (ATT) recently spoke with Evan Phoenix (EP), a 2019-2021 ABA Tax Section Christine Brunswick Fellow, about his work at Bet Tzedek Legal Services and his experiences as a Brunswick Fellow. Bet Tzedek is a non-profit based in California that is internationally recognized for its work on human and poverty rights issues.

ATT: Evan, can you tell us something about your background?

EP: I was born in Los Angeles, and I earned my Bachelor of Arts degree in Social and Behavioral Sciences from California State University, Monterey Bay. While pursuing my undergraduate studies, I studied abroad for two years in Germany. I took a year off after undergrad before attending law school at St. Thomas University School of Law in Miami. I also am trilingual—speaking English, Spanish, and German fluently.

ATT: What piqued your interest about tax practice? What inspired you to apply for the Christine A. Brunswick Public Service Fellowship?

EP: Growing up in low-income areas in Los Angeles, I always knew I wanted to come back and help my community. Going into law school, I thought I wanted to be a civil/human rights attorney; however, my focus changed to corporate responsibility when I encountered a professor that specialized in that area. I became her research assistant, and she helped me see how I could do that type of work and still do good things for the community. While helping her prepare for various projects and speaking engagements, I noticed the impact her work had on working class individuals and families. As a third-year law student, I enrolled in an introductory tax course to improve my ability to recognize tax-related issues and know when I needed to solicit the assistance of a tax attorney. One introductory course quickly became a passionate interest as I learned what a powerful tool an in-depth technical understanding of tax law could be. I also saw how it could be a powerful tool for change and social justice work to help people from low-income communities.

After law school, I earned my Master of Laws (LLM) in Taxation at the University of Florida and learned more about the Low Income Taxpayer Clinic (LITC). Upon graduation, I clerked for Bet Tzedek Legal Services’ Tax
Clinic. I enjoyed how the LITC work incorporates not only tax controversy but also education and outreach. The opportunity to serve as a Christine A. Brunswick Public Service Fellow seemed an ideal way to continue the work I was doing as a clerk, particularly when I learned how the fellowship aligned with my personal values.

**ATA:** Could you tell us about Bet Tzedek Legal Services, and how you came to choose that organization?

**EP:** Bet Tzedek—the name is Hebrew for “House of Justice”—provides legal assistance that impacts more than 41,000 people of every racial and religious background each year. Bet Tzedek’s 85-member staff, supported by more than 1,500 active volunteers nationally who effectively leverage our staff resources, assist those most in need with some of the most pressing legal issues faced by our community, including elder abuse, employment rights violations, landlord/tenant and housing matters, real estate fraud and foreclosure prevention, basic estate planning, Holocaust reparations, probate guardianship, low-income tax advocacy, small business development, transgender advocacy, and public benefits. In addition to direct legal representation in each of these areas, Bet Tzedek staff conducts expansive outreach and education programs, and undertakes impact litigation and policy advocacy on issues of significance to our clients. Essential to Bet Tzedek’s work is adherence to certain Jewish tenants—in particular, treating “strangers” with dignity, which comes from Exodus 22:20 “You shall not wrong or oppress a stranger, for you were strangers in the land of Egypt.” Because of this, Bet Tzedek foregoes U.S. Legal Services Corporation funding, allowing the agency to serve the documented and undocumented community equally, regardless of race, religion or status. This commitment really resonated with me, and I wanted to be a part of their team. I started working at Bet Tzedek as a law clerk in April 2018. At the end of my clerkship, I wanted to continue my work with the organization, so I proposed the fellowship. Bet Tzedek enthusiastically agreed to hire me!

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

**EP:** I handle various tax controversy cases, including those involving collection alternatives and innocent spouse relief. For example, I have had two military personnel clients. One client, who was referred to me by a VA Stand Out event, said something that really struck a chord: he had reached out to other places for help, but they were unable to assist him because they did not work with military tax law issues. Based on Nina Olson’s previous Annual Reports to Congress, military personnel have been identified as a high needs population because of the unique tax law treatment and barriers they face. I’m sure his story of searching for help and not finding it is one that others share. I am working to address this by expanding Bet Tzedek’s Tax Clinic services to include military personnel and veterans, as well as those taxpayers who speak English as a second language. Bet Tzedek has demonstrated success in empowering vulnerable communities. Expanding its services to include these communities will also prove successful in addressing the inequities and disadvantages they face through outreach, advocacy, and representation. I have reached out to various organizations specializing in assisting military and ESL communities, including California State University Northridge’s VITA site. It was the first VITA site in the country, and now it has a separate grant to focus specifically on military personnel. My plan is to collaborate with four additional organizations that support military personnel and veterans, as well as five organizations that support the local ESL community.

The low-income communities in Los Angeles are in desperate need of socioeconomic empowerment via effective legal tax assistance to ensure taxpayers’ rights to be informed and to have counsel. The fiscal impact of my proposed expansion of Bet Tzedek’s Tax Clinic to offer free legal tax services, including educational outreach, is significant. According to a recent study, twenty percent of eligible Los Angeles...
County residents are not claiming federal and state Earned Income Tax Credits for which they are eligible. This translates into $566 million dollars not going back to our communities. The IRS has acknowledged that the financial education and asset building necessary for socioeconomic advancement starts by ensuring that low-income taxpayers receive all the benefits to which they are entitled. Taxes can serve as the starting point for a dream leading to stronger financial security.

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

**EP:** I enjoy helping taxpayers better understand the Internal Revenue Code, their rights and responsibilities, and how the Earned Income Tax Credit refunds can help them jump-start their lives. Education is a powerful tool, and I always knew it was going to be part of my path. I love how the LITC mission incorporates not only working on tax-related issues but also expanding education and outreach. In addition to my work in the clinic, I participate in the U.S. Tax Court Calendar Call Program, and I have participated in an IRS Settlement Day with five other clinics. Both of these programs provide qualifying taxpayers with free, independent, and confidential legal tax assistance to ensure a fair and equitable tax system. I have a tremendous amount of respect for the work IRS attorneys do, and Settlement Day offered a great opportunity to foster a cooperative approach to settling cases between IRS Counsel and taxpayers with the assistance of LITC practitioners.

I also enjoy working at Bet Tzedek. They have a collegial atmosphere and provide me with a great support system. I love my cross-collaborative work. As tax-related issues arise, I am able to provide technical consultations for other practice areas. For example, the Employment Rights Project team required a technical consultation on the tax implications of human trafficking benefits they secured for their clients. This gives me an opportunity to work on issues that would not normally arise in the LITC.

**ATT:** What advice would you give to others who are considering applying to the Fellowship program?

**EP:** Pick a project you are passionate about and be thorough in presenting it to the committee. It is important to research the community and the demographic you plan to serve to determine the need, anticipate any challenges, and devise plans for addressing them. I would also suggest you build a support system to make sure you are able to get through the fellowship successfully.

**ATT:** Do you have any immediate plans for your work after the Fellowship ends? How has the Fellowship impacted your career goals?

**EP:** I would like to continue working for Bet Tzedek. I believe in the organization’s mission, enjoy the work, and like being a part of this team. If not, I would like to continue serving low-income taxpayers at another LITC.
PRACTICE POINT

TCJA Taxation of Certain Nonresident Sales of Partnership Interests

By Jim Lynch, Sobel & Co. LLC, Livingston, NJ

The 2017 tax legislation (TCJA) added a section to the Internal Revenue Code—section 864(c)(8)—under which nonresident alien individuals and foreign corporations can be taxed on all or a portion of the gain from the sale of certain partnership interests. This article explains some of the events which led to the enactment of the legislation and discusses the far-reaching effect of this new provision.

I. Revenue Ruling 91-32

The U.S. tax treatment of gain or loss on the sale of a partnership interest by a nonresident alien individual or a foreign corporation has been a perplexing issue. In 1991, the IRS issued Revenue Ruling 91-32 setting forth its position on this issue. The Service began its analysis by pointing out that a nonresident alien individual or foreign corporation that is a partner in a partnership that is engaged in a trade or business in the United States is itself considered to be engaged in a trade or business in the United States. With limited exceptions, income from the sale of personal property by such a partner is sourced to the United States if that partner has a fixed place of business in the United States and if the sale can be attributed to that fixed place of business.

It was already established that a foreign partner is considered to be engaged in a trade or business in the United States if a partnership in which that foreigner is a partner is engaged in a trade or business in the United States. Similarly, if that partnership has a fixed place of business in the United States, any foreign partner in that partnership is also considered to have a fixed place of business in the United States. Finally, income from the disposition of that partnership interest will be attributable to the foreign partner’s (or the partnership’s) fixed place of business in the United States.

The Service pointed out that gain or loss from the sale of a capital asset can be considered effectively connected with the conduct of a trade or business in the United States (ECI gain or loss) and thereby subject to U.S. taxation. One factor to be considered in determining whether gain or loss is ECI is whether the asset sold was used or held for use in the conduct of a trade or business in the United States. Another factor is

1 Section references are to the Internal Revenue Code, unless otherwise indicated.
2 Rev. Rul. 91-32, 1991-1 CB 107 (holding that gain realized by a foreign partner disposing of a U.S. partnership interest is characterized as ECI on an asset by asset basis).
3 Id.
4 See id. (citing § 865(e)(3), Unger v. Commissioner, 58 TCM 1157 T.C. Memo. 1990-15). See also § 865(e)(2)(A) (sometimes called the U.S. Office Rule, treating income from sales of personal property attributable to a U.S. office or fixed place of business as U.S. source).
whether the activities of that trade or business in the United States were a material factor in the realization of that gain or loss.\(^5\)

Indicating that the foreign partner’s gain or loss from the sale of its partnership interest was not realized directly from the conduct of a trade or business within the United States, the Service applied the regulation’s asset use test.\(^6\) The asset use test applies to sales of assets, among other activities. Under this test, gain from the sale of assets is sourced to the United States if the asset sold generates income that is taxed in the United States.\(^7\)

In summary, the Service concluded that a foreign partner in a partnership that has a fixed place of business in the United States is considered to be engaged in a U.S. trade or business that has a fixed place of business in the United States. Accordingly, the value of that trade or business affects the value of the partnership interest and the foreign partner has assets that generate income that is effectively connected with the United States.\(^8\)

The Revenue Ruling also recognized that not all partnership assets may be used in a partnership’s U.S. trade or business. Partnership taxation is sometimes based on an aggregate theory of taxation (that a partnership is an aggregation of interests owned by each of the partners) and is sometimes based on an entity theory of taxation (that a partnership is an entity separate and apart from its partners just as a corporation is an entity separate from its shareholders).\(^9\) The theory of taxation that is applied to a transaction or group of transactions depends on the purpose of the provisions governing the taxation of those transactions. Section 864, which governs the U.S. tax rules for foreign partners (among others) uses an aggregate approach that looks at the activities of each foreign partner.\(^10\) Accordingly, subjecting all of the gain on the sale of a partnership interest to U.S. taxation would be inconsistent with the provision, since it only taxes income that is effectively connected with a U.S. trade or business.\(^11\) Further, taxing all the income could be inconsistent with other provisions, such as section 897(g), which subjects to U.S. taxation gain on the sale of a U.S. real property interest but not gains on the sale of foreign real property interests. Subjecting all of the gain on a foreign partner’s sale of a partnership interest to U.S. taxation, regardless of the source of income generated by the partnership, would be inconsistent with those principles.\(^12\)

Accordingly, the Service concluded that it is appropriate to subject only certain gain on the sale of a partnership interest by a foreign partner to U.S. taxation if the assets of that partnership generate income that is effectively connected with the United States. That gain is based on the gain attributable to the sale of assets that generate ECI. Thus, the gain on the sale of a partnership interest that is subject to U.S. taxation is the total gain multiplied by a ratio of the gain from the sale of assets that generated ECI divided by the total gain on the sale of all of the assets of the partnership.\(^13\) In addition, there are certain limitations that apply in cases of an overall gain when there is a loss on the sale of assets that generate ECI, and in cases of an overall loss when there is a gain on the sale of assets that generate ECI.\(^14\)

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5 Id.
6 Id. (citing Treas. Reg. § 1.864-4(c)(2)).
7 Treas. Reg. § 1-864-4(c )(1)(i).
9 See id.
10 Id. See also § 864.
11 See id.
12 Id.
13 Id.
14 Id.
II. The Tax Court Rejects Revenue Ruling 91-32

This guidance remained valid until 2017, when the Tax Court rejected its validity in *Grecian*.\(^{15}\) Grecian Magnesite Mining (GMM) was a Greek corporation with no connection with the United States until 2001 when it purchased an interest in Premier, a Delaware limited liability company that was treated as a partnership for U.S. tax purposes. Premier owned several mines and industrial properties in the United States and its activities caused GMM to be treated as engaged in a U.S. trade or business under section 875(1). In 2008, Premier redeemed another member’s interest and, under the agreement, had to offer to redeem any other member’s interest on similar terms. GMM accepted the offer and its interest was redeemed.\(^{16}\) The proceeds of $10.6 million were paid in two installments: $5.3 million in July 2008 and the same amount in January 2009. The parties agreed that the effective date of the final transfer of GMM’s interest in Premier was December 31, 2008. From that date, GMM was not considered a member of Premier nor entitled to any profit allocation.

GMM filed U.S. returns, reporting its share of Premier’s income. On its 2008 return, GMM reported its share of income from the Schedule K-1 it received but did not report any gain on the sale of its membership interest in Premier. GMM did not file a tax return for 2009.\(^{17}\)

The Service audited GMM’s returns for 2008 and 2009. The parties agreed that $2.2 million of GMM’s $6.2 million gain was ECI attributable to the sale of GMM’s interest in Premier’s U.S. real estate.\(^{18}\) The Service, however, concluded that GMM should have reported the full $6.2 million gain on the redemption of its interest in Premier as ECI.\(^{19}\)

The court concluded that the correct approach to this problem was to first determine how this sale would be treated under the rules applicable to partnership taxation. Once that had been determined, the court could then look at the treatment of that type of transaction under the principles governing U.S. taxation of international transactions.\(^{20}\) It noted the partnership rules characterizing a liquidating distribution under section 736(b)(1) as a distribution under section 731, under which any gain or loss is characterized as a sale or exchange of the partnership interest under section 741. That section treats gain or loss as arising from sale of a capital asset unless section 751 (relating to unrealized receivables and inventory items) applies.

The Commissioner countered that section 741 applies an entity theory whereas this situation in the international context demands an aggregate theory whereby gain or loss is considered as arising from the sale of individual assets.\(^{21}\) The court rejected this argument, pointing out that section 741 refers to “capital asset” and section 731 refers to the “sale or exchange of a partnership interest.” In both cases, the singular is used, suggesting that Congress intended to apply an entity theory as the general rule for sales of interests.

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\(^{16}\) *Id.* at 67-68.

\(^{17}\) *Id.* at 69.

\(^{18}\) *Id.* at 68-69.

\(^{19}\) *Id.* at 69-70.

\(^{20}\) *Id.* at 70-76.

\(^{21}\) *Id.* at 79.
in a partnership.\textsuperscript{22} The court found the Revenue Ruling lacking in the kind of discussion necessary to make its counterargument persuasive.

The court then considered whether the gain should be treated as U.S.-source income and thus ECI. Having found the Revenue Ruling's analysis unpersuasive on the domestic taxation issues, the court also found its discussion of international taxation inadequate.\textsuperscript{23} Under the default rule on the source of a non-resident's gain from a sale of personal property (including, e.g., a partnership interest), gain will not be U.S.-source unless an exception applies. Since GMM was a nonresident, the court considered that the gain was sourced outside of the United States.\textsuperscript{24}

The Commissioner contended that the U.S. office rule applied here as an exception to the general rule, resulting in gain from the sale of personal property that is attributable to such an office being sourced to the United States.\textsuperscript{25} Since the activities of Premier's U.S. office (which was also thereby GMM's U.S. office) increased the value of GMM's interest in Premier, the gain GMM realized was attributable to the activities of GMM's U.S. office and therefore sourced to the United States.\textsuperscript{26} This argument was rejected on the grounds that the U.S. office rule requires that the office be a material factor in the sale that generated the income in question. The Commissioner did not contend that the U.S. office was involved in the redemption but only that it created added value in the partnership interest over time.\textsuperscript{27} Even if Premier's U.S. office had been a material factor, that gain would have had to have been realized in the ordinary course of business in that office to be attributable to it. Producing and selling magnesite products, not redemptions, were Premier's ordinary course of business. Therefore, the gain was not taxable by the United States.\textsuperscript{28}

III. The TCJA's Reform of Section 864

Shortly after the \textit{Grecian} case was decided, Congress enacted section 864(c)(8) as part of the 2017 tax legislation to provide for the U.S. taxation of gain on the disposition of a partnership interest by a non-resident individual or a foreign corporation. The amount of gain subject to tax is based on the gain allocable to the selling partner that the partnership would have realized on the sale of its assets that produce ECI. Similarly, the loss that would be recognized is based on the loss allocable to the selling partner that the partnership would have realized on the sale of its assets that produce ECI. The legislation, in other words, overturns the \textit{Grecian} holding and sets out a schema that comports with that outlined in the 1991 revenue ruling.\textsuperscript{29} Congress also enacted a 10% withholding provision that applies to the interest buyer or the partnership in certain circumstances.\textsuperscript{30} In December 2018, extensive proposed regulations were issued under both sections 864(c)(8) and 1446.\textsuperscript{31} They provide guidance regarding computation of ECI gain or loss on a partnership interest transfer, coordination with the FIRPTA rules of section 897(g), application to tiered partnerships, and availability of treaty relief. They also include an “anti-stuffing” rule to prevent inappropriate reductions in the amounts of ECI in connection with the interest transfer.

\textsuperscript{22} \textit{Id.} at 79-81.
\textsuperscript{23} \textit{Id.} at 84-85.
\textsuperscript{24} \textit{Id.}
\textsuperscript{25} \textit{Id.}
\textsuperscript{26} \textit{Id.} at 87-88.
\textsuperscript{27} \textit{Id.} at 88-89.
\textsuperscript{28} \textit{Id.} at 93.
\textsuperscript{29} \textit{Compare} § 864(c)(8) with Rev. Rul. 91-32.
\textsuperscript{30} § 1446.
\textsuperscript{31} See Prop. Regs. § 1.864(c)(8), § 1.1446-1 - § 1.1446-7.
What is interesting, and probably not apparent on first glance, is that section 864(c)(8) covers many transactions that may catch the unwary. For example, the provisions will apply to the disposition of any partnership interest if two requirements are met: (i) the seller is a non-resident individual or a foreign corporation (from the U.S. perspective) and (ii) the partnership interest that was sold has income effectively connected with the United States. For example, consider a Serbian individual who is engaged in wine making and invests in a French partnership that makes wine. The French partnership in turn is involved in a joint venture in the United States with U.S. wine distributors who will distribute the French wine in the United States. The French partnership would have ECI with the United States from its joint venture and would pass that income on to its partners, including the Serbian individual. If and when the Serbian partner sells his interest, he could have U.S. tax reporting obligations and be liable for U.S. tax. The joint venture between the French partnership and the U.S. wine distributors could also have a reporting obligation to its French partner. That obligation would be to report the gain or loss the joint venture would have realized on the sale of its assets. This is to enable the Serbian in the example to properly compute his U.S. tax obligation.

A further complication is that section 864(c)(8) covers any disposition in which a partner would recognize a gain on a transaction involving a partnership interest. This could include the gain from a decrease in a partner’s share of the partnership’s recourse or qualified nonrecourse liabilities. Let’s return to the Serbian partner. If he had a tax capital account of (500) and a share of partnership recourse liabilities of 1,000, he would have a U.S. tax basis of 500. Suppose he decided, for whatever reason, to place the partnership interest into a corporation. Suppose further that he could not, or chose not to, make a check-the-box election to treat the corporation as a disregarded entity. He would then have a gain of 500 from the relief of liabilities, resulting in some U.S.-source income, depending on the make-up of assets of the French partnership of which he was a partner and through which he has U.S.-source income.

Readers can certainly develop their own scenarios. Nonresident individuals and owners/officers of foreign corporations will have to be extremely careful if they own U.S. partnership interests. They, or their advisors, must know U.S. partnership tax law so that a determination can be made if they have gain taxable in the United States in any given year.

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32 See § 864(c)(8).
33 See id.
34 See Prop. Reg. § 1.864(c)(8)-1(b).
35 See Prop. Reg. § 1.864(c)(8) referring to “dispositions” of partnership interests.
36 See id.
37 See Treas. Reg. § 301.7701-1 to -3.
38 See Treas. Reg. § 1.752-1(c).
PRACTICE POINT

Trust and Estate Distributions in 2020 May Provide 2019 Tax Savings

By Katie A. Lepore, Miller, Monson, Peshel, Polacek & Hoshaw, APPLC, San Diego, CA

As March comes upon us, practitioners should be cognizant of the 65-day rule for trusts and estates under section 663(b) and a similar rule for charitable deductions under section 642. In a world where most individuals and trusts follow calendar-year reporting, generally actions taken after December 31 will be reported in the following year. Trustees and executors, and their related tax advisors, may have found when receiving year-end statements and Forms 1099 in early 2020 for tax year 2019 that the trust or estate had higher income than expected in 2019 and think it is too late to remedy the underestimation.

Luckily, there is some relief in these situations for select irrevocable trusts and estates to treat distributions made in 2020 as deductions on the 2019 tax return. Namely, it is possible that trusts and estates can receive an income tax deduction for distributions made in the first 65 days of the year on the prior year’s tax return. This means that practitioners should be wary of the upcoming March 5 deadline to determine if the trust or estate can benefit from a distribution made within the first 65 days of 2020. There is a similar rule that extends the ability to deduct some distributions made to charities in the calendar year 2020 on the 2019 fiduciary tax return.

On a somewhat related note, fiduciaries may wish to have capital gains be treated as “income” and taxed at the beneficiary level rather than the trust level to take advantage of the tax arbitrage between trust and individual tax rates. This article summarizes these rules in turn.

65-Day Rule: The Law

Section 663(b) allows a trustee or executor to make an election to treat all or any portion of amounts paid to beneficiaries within 65 days of the close of the trust’s or estate’s tax year as though they were made on the last day of the prior tax year. It is important to note that the trustee or executor must actively make an election on a timely filed tax return to enjoy the benefits: they are not automatically extended to a trust or estate. A fiduciary may make the election for only a portion of the distributions made within the 65-day window, but once the election is made it is irrevocable. Also, this rule is applicable for irrevocable trusts that file their own tax returns. Revocable living trusts and other grantor trusts are subject to different tax rules.

Limitations

The election is not unlimited in amount. The election is limited to the greater of the trust’s accounting income as calculated under section 643(b) for the year in which the election is made, or the trust’s section...
643 distributable net income (DNI) for the year reduced by amounts paid, credited, or required to be distributed in such year.

**Trust Tier Accounting**

Trust accounting uses a tier system to allocate taxable income among beneficiaries. Generally, Tier 1 distributions are made to those who are required to receive the income from the trust or estate, such as a surviving spouse beneficiary in a QTIP trust. Tier 1 distributions are governed by section 662(a)(1). The income must be required to be paid and not merely discretionary. The so-called “Middle Tier” is reserved for amounts paid to or permanently set aside for charities. Tier 2 is all other amounts paid to beneficiaries and is governed by section 662(a)(2). A trust can receive a DNI deduction for the amounts of income paid to beneficiaries which is then taxed via Schedule K-1 to the beneficiaries on their tax returns. In the event that DNI differs from the fiduciary income (such as if deductions are charged against income), the lesser of DNI or the amount actually distributed is to be used for purposes of calculating the deduction on the fiduciary income tax return.

The trust or estate's DNI is first allocated to Tier 1 beneficiaries until the DNI is exhausted. It is possible to have remaining DNI available when calculating Tier 2 beneficiaries (especially if there are no Tier 1 beneficiaries). In the event DNI remains when distributions are made to Tier 2 beneficiaries, the remaining DNI can be allocated to the Tier 2 beneficiaries ratably before treating the distribution as a tax-free return of principal. The amount that is treated as DNI is taxed on the beneficiary’s income tax return since it is income earned by the trust or estate which then received an offsetting deduction on the fiduciary tax return.

**Practical Applications**

The regulations under section 663 contain several examples for practitioners to follow. The 65-day rule can possibly provide substantial tax savings because trusts are subject to higher income tax brackets much more quickly than individuals. For instance, in 2020 trusts reach the highest tax bracket of 37% federally at taxable income of only $12,950; in contrast, married couples filing jointly are subject to the 37% tax bracket at income levels of $622,051.

For example, if a trust has taxable income of $13,000 in 2019 and then subsequently makes a distribution of $13,000 to a beneficiary within the 65-day window in 2020, the trust could potentially reduce its taxable income to zero for 2019, saving approximately $3,150 in taxes (the 2019 trust tax rate is 37% for income above $12,750). If the trust had, instead, $50,000 of taxable income, the savings grow at a much faster rate because anything above $12,950 is taxed at 37%, saving approximately $16,850 in taxes if a $50,000 distribution is made. Of course, this is assuming the distribution qualifies for a DNI deduction. The $13,000 distribution or $50,000 distribution, respectively, would then be taxed on the beneficiary’s tax return at his or her marginal income tax rate (which is likely to be lower than the trust’s bracket).

There is also the 3.8% net investment income tax to consider as well, which may mean that making a distribution within the 65-day window could save more than 37% federally. This analysis does not even take into account state taxes. In high-tax states, trusts and estates can pay another large sum in state taxes. In California, for example, trusts and estates are subject to a top tax rate of 12.3%, which may increase to 13.3% if the income is over $1,000,000 and is subject to the Mental Health Services Tax.
Treating Capital Gains as Income

Due to this differential between fiduciary income tax rates and individual income tax rates, fiduciaries may wish to have as much of the trust’s earnings during the year as possible be treated as fiduciary income, which may be eligible for a DNI deduction and therefore taxed on the beneficiary’s tax return and not the fiduciary return. The vast majority of irrevocable trusts allow “income” to be paid out at least annually, with “principal” available to the beneficiary under an ascertainable standard. This is particularly so in the common marital trusts like QTIP trusts.

The default rule under section 643(a)(3) is that capital gains are considered trust principal, and therefore, not “income” in the fiduciary accounting sense of the term, unless such capital gains are: (1) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (2) paid, permanently set aside, or to be used for charitable purposes. These rules operate, as a general rule, to also exclude capital losses from DNI. Amounts treated as income are eligible for a DNI deduction and therefore possibly taxed at the beneficiary level instead of the fiduciary level.

Per the Governing Document

The regulations expand on the ways that capital gains can be treated as income instead of principal. The section 643(a) regulations state that one must subtract net capital gains to arrive at DNI unless pursuant to applicable law, the terms of the governing instrument and applicable local law, or pursuant to a reasonable and consistent impartial exercise of discretion by the fiduciary (in accordance with a power granted to the fiduciary by local law or the governing instrument, if not inconsistent with local law) those gains are (1) allocated to income; (2) allocated to corpus but treated by the fiduciary on the trust books, records and tax returns as part of a distribution to a beneficiary; or (3) allocated to corpus but utilized by the fiduciary in determining the amount which is distributed or required to be distributed to a beneficiary. 1 This brings up the first way to take advantage of this tax arbitrage by simply defining capital gains as “income” in the governing trust document. That would allow any capital gains to be eligible to pass out to the beneficiary via Schedule K-1 and be taxed at the individual level since capital gains are then income “pursuant to the governing instrument.”

By Regular Practice

If the trustor or the drafter is not comfortable with labeling capital gains as income with such certainty in the trust document, such that the treatment of capital gains cannot be changed other than by an amendment to the trust, the regulations lay out other ways that capital gains can be included in DNI and therefore treated as paid to the beneficiary so they can be taxed at the individual level.

The Service was kind enough to include regulatory examples illustrating these concepts. It is clear that the trustee must “consistently” treat the gains as part of the distribution to the beneficiary(ies) on the trust books, records, and tax returns. 2 It is allowable for the trustee to have the discretion to distribute principal, but the trustee must treat capital gains as part of the distribution each year for the gains to be included in DNI (or in the very least consistently on an asset-by-asset class since “consistently” is not clearly defined). A simple distribution of principal is not enough; the trustee must show that he or she intends to follow a regular, consistent practice of labeling any discretionary distributions of principal as coming first from any

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1 See Reg. § 1.643(a)-3(b).
2 See Reg. § 1.643(a)-3(e), Examples (1), (2), (3) and (5).
gains realized that year from the sale of capital assets before dipping into other trust principal. If a trustee fails to treat a discretionary principal distribution as consisting of capital gains realized that year, the trustee may not be able to treat discretionary principal payments as coming from capital gains in all future taxable years.

First Year of Trust Existence

If a “regular” practice is required, can such treatment still be shown in the first year of the trust’s existence to allow inclusion in DNI that year? The examples in the regulations seem to suggest that is possible. Trustees should be wary though that the actions they take in the first year will obligate them to the same treatment in future years.

How to Implement

To make it possible to treat capital gains as income, the drafting attorney may wish to insert language in the trust document that allows the trustee, in his or her discretion, to treat capital gains as income. Then, in the first year a trust becomes irrevocable, the attorney should have a discussion with the trustee and the trust’s CPA evaluating all the circumstances to determine whether paying out capital gains as income would be the right course of action for that particular trust based on the facts. Paying out capital gains to the beneficiary may have adverse effects as well, such as if the beneficiary does not have enough liquid cash to pay the taxes, or if the payout will cause the beneficiary to have so much income that Social Security payments become taxable, or if the beneficiary is too young or inexperienced to manage a large distribution on his or her own.

Charitable Deductions: Special Rules

Like the 65-day rule, there is a similar rule available for some irrevocable trusts and estates which make distributions to charities allowing a deduction for actions taken in a subsequent tax year. Under the regulations, the trustee can elect to deduct charitable payments made before the close of the next following taxable year on the returns for the preceding taxable year (i.e. deduct in 2019 amounts paid before the tax year ending in 2020). This election must be made not later than the due date of the trust’s income tax return for the year following the year for which election is made (i.e., in the above example, not later than April 15, 2021). Once the election is made, it is irrevocable. It is important that the fiduciary first determine that the payment does in fact qualify for the charitable deduction.

Qualifying for the Charitable Deduction

Charitable deductions for trusts and estates are governed by section 642(c). Estates may claim a charitable deduction for amounts paid to or permanently set aside for charity. Trusts which make a section 645 election will be treated as part of the deceased’s estate and therefore also may take a charitable deduction for amounts paid to or permanently set aside for charity. Trusts which do not or are not eligible to make a section 645 election (and are created after 1969) may claim a charitable income tax deduction only for amounts that are actually paid to the charity. Additionally, the deduction is only available if the donation is made pursuant to the terms of the governing instrument and also paid from gross income.

3 See Reg. § 1.643(a)-3(e), Examples (2) and (3).
4 See Reg. § 1.643(a)-3(e), Example (1).
5 Id.
6 Treas. Reg. § 1.642(c)-1(b).
To determine if the distribution is made from funds “permanently set aside” for charity, one must look to section 642(c)(2) which references section 170(c) or specifies that the money must be “used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit.” If anyone else besides the charity, such as a creditor, can obtain the funds that are set aside, it may be that they are not truly “permanently set aside” for charity.

To determine if the distribution is made “pursuant to the terms of the governing document,” practitioners generally rely on the Old Colony Trust case. So long as the executor or trustee has the discretion to make payments to charity, generally the payment will be considered as being made pursuant to the terms of the governing instrument. However, affirmative action should be taken to actually make a payment or set aside the funds. Payments made to charity that are not directed or authorized by the Will or trust will not be deductible. For instance, in the Heywood case, an estate was not allowed to take a charitable deduction when paying down charitable pledges promised by the decedent during life because the Will did not authorize payment of just debts and expenses. If the Will had authorized payment of the decedent’s debts and expenses, it is likely that the payments would have qualified for a charitable deduction.

To determine if the distribution is made from “gross income,” subchapter J essentially requires the tracing of the funds used for the donation. Although capital gains are generally considered trust “principal” rather than “income,” capital gains can be used to calculate “gross income” for purposes of determining the charitable deduction in the year earned.

It is important to note as well that trusts that claim a charitable deduction may need to file an informational return pursuant to section 6034 and regulations section 1.642(c)-3(f) and split-interest trusts may need to file Form 5227.

**Conclusion**

These few small decisions could add up to huge tax savings for trusts and estate. Tax return preparers and attorneys alike should be cognizant of these potential tax savings to properly advise clients where possible.

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7 Old Colony Trust Company v. Comm’r, 301 U.S. 379 (1937) (indicating that payments are made “pursuant to” the deed when authorized, though not imperatively directed).

PRACTICE POINT

Income Tax Planning with Retirement Accounts

By Oleg Ikhelson, PagnatoKarp, Reston, VA

Most people understand the value of contributing to retirement accounts during their productive years of gainful employment and then living off the accumulated nest egg after they retire. Certainly, the government’s tax policies today encourage deferring earned income until retirement. There is a good reason for this: for most Americans, Social Security is only designed to replace about 40% of pre-retirement earnings, according to the Social Security Administration.¹ For the rest, there are myriad qualified and non-qualified plans in place to ensure comfortable living during the golden years for those able to save.

At its core, the current taxation system’s appeal is based on the assumption that our contributions into qualified plans will not only grow tax-free until withdrawn, but we will also pay less tax on the retirement income when we start taking it out than we would have paid when we earned it. That holds true in most cases for traditional IRAs and 401Ks. There are, however, other (if more subtle) planning techniques around retirement accounts that deserve to be explored and, if needed, exploited to maximize benefits afforded to us by the current federal and state tax laws.

Converting to a Roth IRA

It has been almost ten years since Congress lifted the AGI-based Roth conversion restriction, making the conversion available to everyone regardless of their income level.² Nonetheless, it is still one of the most overlooked tax savings opportunities, albeit dealing more with long-term benefits than immediate savings. That said, in certain situations a partial, or sometimes even full, Roth conversion can be very attractive. A Roth IRA’s two most extraordinary features are its superior deferral potential and next-generation tax benefits. Unlike Traditional IRAs, Roth IRA owners do not need to take any distributions during their lifetimes,³ thereby letting the balance in their retirement accounts balloon tax- and RMD-free. Secondly, future distributions from the inherited Roth IRA are completely tax-free to next-generation beneficiaries.⁴

¹ Understanding the Benefits, Social Security Administration.
² P.L. 109-222, sec. 512 (striking § 408A(c)(3)(B)).
³ § 408A(c)(5).
⁴ § 408A(d)(2)(A)(ii).
In most cases, though, a Roth conversion is an expensive proposition, since the converted amount is generally included in the gross income during the year of conversion. That may not matter if the taxpayer has a year with a large loss event or a relatively flat year with modest income and unusually high business or itemized deductions. In such cases, it is worth weighing the option of converting a part of a traditional or rollover IRA into a Roth IRA at a nominal tax cost, as future benefits of such conversion could be enormous.

**Qualified Charitable Distributions from IRAs**

The Qualified Charitable Distribution (QCD) is yet another provision that was languishing in relative obscurity until the 2017 tax legislation breathed new life into it. The law was introduced by the Bush Administration in 2006 as a two-year incentive for charitably inclined retirees and had suffered continuous expirations and subsequent revivals by Congress at the end of each congressional term for nearly ten years, until it was finally made permanent in late 2015. This provision has often been misunderstood, even though it merely allows retired taxpayers aged over 70½ to re-route all or some of their IRA RMDs to a charity of their choice (subject to a $100,000 maximum), without having to include the RMDs in gross income. When most high-net-worth seniors itemized their deductions (and could thus simply donate the cash and include it on their schedule A as a charitable contribution), the benefits of QCD were tenuous at best. They were thus mostly relegated to planning around Pease limitations that are now suspended until 2026.

Enter the 2017 tax legislation. Starting with 2018, SALT deductions are all but gone, and the miscellaneous itemized deductions for items like advisory fees are eliminated until 2026. On top of that, a retired couple over 65 years old can take a standard deduction of up to $27,000 in 2019, which oftentimes now exceeds their dwindling list of what still qualifies as an itemized deduction. As a result, married couples without a mortgage will not see the same tax bang for their charitable buck, as they were used to in the past. If they donate their RMD to charity, however, it will totally bypass their tax return. An added bonus to this approach is that monthly Parts B and D Medicare premiums are based on the previous year’s modified AGI. Omitting the RMD from AGI could save thousands of dollars in future years in reduced Medicare premiums.

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5. Treas. Reg. § 1.408A-4, Q&A 7(a).
7. P.L. 114-113, sec. 112 (striking subparagraph (F) of § 408(d)(8)).
8. § 408(d)(8)(A).
9. § 164(b)(6), as amended by 2017 TCJA sec. 11042(a).
10. § 67(g), as amended by 2017 TCJA sec. 11045(a).
11. § 63(c)(3), (5).
Converting IRA Contributions into Deductible Charitable Giving

For those inclined to be charitably generous during their future retirement, but still fully employed now, a new strategy has emerged. If you anticipate that in the years after you turn 70½ you will not itemize your deductions (for the reasons discussed above), you can make maximum contributions to one or more traditional IRAs during your working years. This will allow a full contemporaneous deduction on your current return.\textsuperscript{13} Then, when you reach age 70½, you can make charitable donations by way of QCDs from your IRA, without having to include that portion of the distribution in taxable income.\textsuperscript{14} As a result, this strategy allows you, in effect, to convert otherwise nondeductible charitable contributions that you will make after you turn 70½ and in later years into currently deductible IRA contributions and reductions of AGI, without ever including distributions from these IRAs in your future income.

There are numerous other ways to structure retirement accounts planning to harvest various tax benefits, but the techniques described here are applicable to a broad range of taxpayers, spanning multiple income and net-worth ranges. As such, tax practitioners and financial planners would be well served by adding them as additional tools to their professional advisory toolboxes.

\begin{center}
\textbf{If they donate their RMD to charity, however, it will totally bypass their tax return. An added bonus to this approach is that monthly Parts B and D Medicare premiums are based on the previous year’s modified AGI. Omitting the RMD from AGI could save thousands of dollars in future years in reduced Medicare premiums.}
\end{center}

\textsuperscript{13} IRC § 219(a).
\textsuperscript{14} IRC § 408(d)(8)(A).
PRO BONO MATTERS

Providing Pro Bono Assistance at the 2019 Fall Tax Meeting

By Susan E. Morgenstern, Taxpayer Advocate Service, Cleveland, OH

“How may I help?” That’s the question posed by the more than two dozen Tax Section lawyers who participated in the Section’s first pro bono clinic at the Fall Tax Meeting in San Francisco last October. Organized by Amy Spivey, of the Justice & Diversity Center of the Bar Association of San Francisco, and now with the University of California, Hastings College of Law LITC, Carolyn Lee, formerly of Morgan, Lewis & Bockius and now with IRS Office of Chief Counsel, Susan Morgenstern of the Taxpayer Advocate Service, and Mandi Matlock, formerly of Texas Rio Grande Legal Aid and now with the Taxpayer Advocate Service, supported by the Tax Section, and generously housed at Greenberg Traurig’s bayview office, the clinic brought together the private bar, low income taxpayer clinics, the Taxpayer Advocate Service (TAS), and IRS counsel to meet with approximately 25 taxpayers.

The clientele included docketed Tax Court petitioners, taxpayers seeking to understand how to file petitions, taxpayers enmeshed in exam, and taxpayers seeking daylight in the collection process. With the assistance of pro bono attorneys and the input of IRS counsel, at least one Tax Court case was fully resolved and at least three were narrowed significantly. Taxpayers and their pro bono attorneys were able to analyze the issues in an examination, and those in collection learned how to assemble and prepare forms and documents necessary to seek collection alternatives. Two bay area Local Taxpayer Advocates also worked with taxpayers and pro bono counsel. Many attendees welcomed TAS’s ability to illuminate taxpayers’ accounts, especially those taxpayers who were facing issues involving multiple years.

For newer attorneys, the clinic offered the opportunity to work in a team with a more experienced attorney. IRS Chief Counsel Michael Desmond also attended the clinic with his local attorneys.

Most thankful were the taxpayers. For them, this was their first opportunity to meet with an experienced tax professional, explain their tax issues, and learn what steps they could take to resolve them. Afterward, Amy Spivey received taxpayer feedback expressing gratitude for this opportunity. In the words of one taxpayer, “I really appreciated [the volunteer’s] help. She was very helpful to me in understanding some concerns I had.”

The Tax Section looks forward to developing similar programs in conjunction with future Tax Meetings.
PRO BONO MATTERS

Evolution of Settlement Days

By Frank DiPietro, Low Income Taxpayer Clinic, Indiana Legal Services, Inc., Bloomington, IN

This article focuses on the continued evolution of Settlement Days by IRS Counsel offices and Low-Income Taxpayer Clinics (LITC). Settlement Days have grown from humble beginnings of notifying pro se petitioners that IRS Counsel was available to discuss their case on a certain day to full-fledged events including IRS Counsel, revenue officers, examination officers, and LITC attorneys. The Taxpayer Advocate in the 2018 report highlighted the growing need for Settlement Days and their positive effects. While success of Settlement Days is sometimes limited, the expansion of the Settlement Days program continues and appears to have the full support of the IRS Commissioner.

Settlement Days, while not a new trend, have occurred more often over the past few years. Settlement Days aim to alleviate pressure from Tax Court and the IRS by designating a particular day for pro se Tax Court petitioners to discuss their cases with IRS Counsel and LITC attorneys. The goal of these events is to facilitate a settlement between taxpayers and the IRS. These settlements eliminate the need for petitioners to appear in court and for IRS Counsel to prepare for trial. However, there are two primary challenges to successful Settlement Days. First, establishing communication with pro se petitioners and obtaining their attendance on Settlement Days is a major hurdle to the success of the program. Second, the effectiveness of the program depends on actually obtaining settlements between pro se petitioners and the IRS during Settlement Day rather than merely notifying them of the court process and procedures of an upcoming trial.

First Hurdle

I first experienced Settlement Days several years ago, while working with IRS Counsel in Minneapolis/St. Paul. Local IRS Chief Counsel approached the two resident LITCs about making their attorneys available on a particular day to meet with pro se petitioners and discuss their cases with them and IRS Counsel. IRS Counsel and LITC attorneys agreed to schedule a Settlement Day two weeks before Calendar Call. The LITC attorneys drafted a general notification letter about Settlement Day, and the IRS mailed the letters to each pro se petitioner in IRS envelopes. The Settlement Day occurred from 9am-5pm at the University of Minnesota Law School. Of the thirty letters mailed, nine pro se petitioners scheduled appointments on Settlement Day. This was a much higher success rate compared to other Settlement Days sponsored by IRS Counsel offices around the country. Nonetheless, the same formula did not work in Minneapolis for the two subsequent Settlement Days, with only one appointment generated from more than sixty letters sent. Poor taxpayer participation such as this dampens enthusiasm for Settlement Days with LITCs and IRS Counsel offices.
LITCs and IRS Counsel have since attempted other methods to increase taxpayer awareness of-and participation in-Settlement Days. Multiple letters would be sent by IRS Counsel and whenever possible, letters directly from the LITCs themselves to pro se petitioners notifying them of the approaching Settlement Day. Settlement Days would sometimes be conducted at a “neutral” site, such as a local library or LITC office. Settlement Days have been conducted at night or on weekends instead of usual business hours to promote attendance. Also, Settlement Day conferences were expanded so that they did not have to be conducted in person but could be conducted through Webex conference software at LITC offices. Lastly, some IRS Counsel offices began going beyond letters by calling pro se petitioners to notify them of the Settlement Day date and to discuss the benefits of participation and availability of LITC attorneys.

Different facets of these approaches have been used recently by IRS Counsel in Baltimore, Atlanta, and Chicago with some success. At the most recent Settlement Day in Chicago, participants were told that approximately 80 pro se petitioners were contacted and 12 appointments were scheduled. The IRS Commissioner and his office have taken notice of the success of these Settlement Day approaches in achieving taxpayer participation. It is expected that other IRS Counsel offices will make similar efforts to improve taxpayer participation at future Settlement Days.

**Second Hurdle**

While pro se petitioners’ attendance is the most significant hurdle in making Settlement Days a success, Settlement Days must also generate settlements. Previous IRS and LITC participants at Settlement Days have seen taxpayers express frustration that if they reach settlement, they may have to wait for computational documents or may still be required to attend calendar call. In addition, Settlement Day participants may bring documents that counsel will only now see for the first time. Therefore, there may not be enough time to allow a determination of their cases to be made prior to the Calendar Call date.

To spur settlements, appropriate time must be given for IRS Counsel and LITC attorneys to assess and review all information while still impressing upon petitioners the urgency of upcoming Tax Court dates. Scheduling Settlement Days about 30-45 days prior to the Tax Court Calendar Call allows adequate communication to take place with all parties and time to allow review of all documentation provided. Furthermore, in the unfortunate event that a settlement does not take place, both IRS Counsel and petitioners’ attorneys have sufficient time to prepare for trial.

However, the goal of settlement days should not be just to arrange settlements but also to avoid litigation and expedite collection. At the most recent Chicago Settlement Day, not only did IRS Counsel and LITC attorneys attend, but members from IRS exams, appeals, collections, and even a revenue officer attended. Computational documents and in some cases payment plans were arranged after a basis of settlement was obtained. This is a model of efficiency for Settlement Days in the future as it allows the IRS to essentially
close a litigation and collection case at one meeting. It also is a tremendous opportunity for petitioners as they are no longer required to attend Calendar Call and they have a finality to their litigation and future collection case.

**Other Developments**

At the 2019 ABA Tax Section Meeting in San Francisco, the ABA Tax Section Pro-Bono Committee sponsored a [Pro-Bono Clinic](#) to represent pro-se petitioners with upcoming trial dates. The Pro Bono Committee hopes to continue to provide attorneys to assist taxpayers at Settlement Days in future meeting cities. Also, effective September 9, 2019, the Tax Court now allows attorneys to represent clients in the form of limited appearances. A limited appearance allows attorneys to limit representation in scope and duration, including automatic termination at the end of the Tax Court session. However, this limited appearance is more valuable to attorneys at Calendar Call rather than Settlement Days. Pro Bono attorneys at Calendar Call will find these limited appearances more useful as those attorneys typically provide advice and counsel during calendar call and do not wish to continue to represent these petitioners beyond the scheduled Tax Court session.

**Best Practices**

The embracing and expansion of Settlement Days by IRS Counsel is a tremendous benefit to pro se petitioners. However, there are many factors that contribute to its success or lack thereof. IRS Counsel needs to be actively encouraging pro se petitioners to take part in Settlement Days. Settlement Days are most effective when scheduled at neutral locations with availability on nights and weekends, at least 30-45 days in advance of Calendar Call to arrange for document review and make necessary IRS personnel available. Participation increases dramatically if contact with petitioners is made prior to Settlement Day. Best practices such as those discussed in this article provide the template of a successful Settlement Day. As Settlement Days have evolved from their humble beginnings, they have become a great tool to provide trust between the IRS and taxpayers while providing an efficient means of resolving cases for Tax Court and the IRS. ■
PRO BONO MATTERS

Recipients of the 2020 Janet Spragens Pro Bono Award: Hardin Matthews, Kelley Miller, and Larry Sannicandro

By Guinevere Moore, Johnson Moore LLP, Chicago, IL

As current chair of the Tax Section's Pro Bono Award Committee, it is my privilege to announce that this year's co-recipients of the Janet R. Spragens Pro Bono Award are Hardin Matthews, Kelley Miller, and Larry Sannicandro.

Hardin Matthews spent an exceptional career embodying the very characteristics this award seeks to acknowledge. His dedication to low-income taxpayers is noteworthy not only for the years of service, but also for the breadth of service. After retiring from Ropes & Gray, where he performed pro bono services for clients over the many years of his career, he dedicated himself to finding ways to help low-income taxpayers. He completed a year-long fellowship with the Access to Justice Program at Greater Boston Legal Services (GBLS) and continued to volunteer after the fellowship dedicating over 3,700 hours of volunteer attorney time in just five years. He goes above and beyond in his service to taxpayers, linking them to other needed resources. In addition to achieving life-changing victories for low-income taxpayers, he is a steady source of legal research and mentorship for other attorneys both at GBLS and Harvard's Low-Income Tax Clinic (LITC). Hardin volunteers for the Volunteer Income Tax Assistance (VITA) program in Chelsea and Revere, Massachusetts. He also led a statewide advocacy project to improve the interactions of low-income taxpayers with the state revenue agency in Massachusetts.

Kelley Miller and Larry Sannicandro were jointly selected to receive the Janet Spragens Pro Bono Award because in designing and implementing the Exonerees' Tax Assistance Network, they created an entirely new form of low-income taxpayer assistance that is nothing short of extraordinary. For years, wrongfully incarcerated individuals who received compensation for their time behind bars were required to pay income taxes on the settlements they received from government organizations responsible for their wrongful incarceration. Congress changed the law in 2015 to exempt exonerees from paying income taxes on civil damages, restitution or other monetary awards received as compensation for their wrongful incarceration. Despite the passage of the Wrongful Conviction Tax Relief Act of 2015, many exonerated individuals remain unaware of their right to a refund of tax paid on their compensation, much less the applicable filing deadlines. Kelley Miller and Larry Sannicandro saw an opportunity to help people who have been significantly disenfranchised and would not otherwise have the ability to claim what is rightfully theirs. The ingenuity and dedication that went into successfully launching this important and unique program deserves recognition. In addition to the meaningful impact of this program, Kelley and Larry have both dedicated significant time, effort, and expertise to advancing the mission of the Tax Section through leadership roles, mentorship and training of new tax lawyers.

The awards were presented during the Plenary Session of the Tax Section’s 2020 Midyear Meeting in Boca Raton, Florida. ATT readers are encouraged to view both recipients' acceptance remarks here.
Young lawyers starting to practice tax in a law firm are, of course, both excited about the job and worried about the many new areas of tax law we will encounter. One of the most important concerns for us is training: we know that we will need assistance as we “learn the ropes” of our new positions, and we are eager for that assistance to help us learn how to be better tax lawyers. There are many different types of training available. It’s worth thinking about those types and how best to take advantage of them.

Most of us have already had some experience in finding guidance during our law school studies. We found professors who inspired us, and we often worked with them as researchers on their scholarship or took every course possible with them as we became better acquainted with their interests and their perspectives. In other words, we found one or two professors who served as mentors to us to whom we could turn for guidance and advice about our careers as tax lawyers. Those professors/mentors are still there and often quite willing to continue to provide guidance and mentorship to students/alumni who have moved on to a tax career. Similar mentor relationships are often possible with partners in the firm, when you work on a project with one or have an office in close proximity and find that you can talk comfortably about tax issues that arise. Colleagues are a great source of guidance and mentorship—particularly senior associates who have already been through the initial learning experience that the new lawyer is facing. They are often very understanding that young lawyers may have questions that seem too basic to ask a senior partner but for which they need some guidance regarding their next steps.

Nonetheless, mentorship doesn't always provide the “in the weeds” training that young lawyers need. So how should a young tax lawyer ensure that she has the right kinds of opportunities for that deep dive into areas of the tax law that will help the lawyer develop technical expertise? The first, and most obvious, source is daily assignments and projects. Experience is often the best teacher in tax law, so researching, writing, and working with colleagues to solve challenging and complex tax puzzles is valuable training. Aside from day-to-day client projects, authoring an article on a specific topic can give a young tax lawyer key insight into a discrete topic. Writing articles also has two other great benefits—the opportunity to get publicity both internally and externally and the potential to make new client connections. Another great way to get in-the-weeds exposure to a specific topic is to attend a CLE session. Most law firms hold in-house CLE sessions that discuss a variety of practical tax topics (e.g., choice of forum for tax litigation, the intricacies of international tax, or ethics for young tax lawyers). Along the same lines, panels, trainings, and webinars (in-person and virtual) can be great sources for rich information and training. Speaking for myself, I always carve out 1 to 2 hours per week to attend such sessions in order to stay informed on current developments. Finally, although most young tax lawyers may think school is a thing of the past, doing an LLM program, or
even just auditing a tax class, to gain more technical knowledge of the Code can be a great way to get more in-depth exposure to challenging technical questions. I still refer to some of my LLM class notes for some of the trickier points of international tax planning that are easily forgotten!

Of course, “in the weeds” technical training is only part of the equation to success for a young tax lawyer. Real “hands on” training where the young associate has a chance to take full responsibility for a project is also possible and should be encouraged. For example, taking on a pro bono project can be an excellent way for young tax lawyers to gain substantive experience and new skills they might not otherwise be able to do on a billable matter. For example, some pro bono projects may allow young lawyers to draft an appellate brief or even perform an oral argument, roles that are almost always reserved to more senior attorneys for billable client matters. Another good resource could be getting involved with a law school clinic. Clinics routinely handle tax matters for low-income individuals and are often looking for outside volunteers to help staff matters. In that setting, a young lawyer is much more likely to gain hands-on advocacy experience representing an individual before the IRS, or even in a court! Finally, young tax lawyers should take advantage of opportunities for smaller, hands-on projects that help build useful skills. For example, taking on a knowledge management project can help the lawyer learn how to handle certain types of documents, such as opinion letters or Kovel agreements.

Aside from day-to-day client projects, authoring an article can give a young tax lawyer key insight into a discrete topic. Writing articles also has two other great benefits—the opportunity to get publicity both internally and externally and the potential to make new client connections.

Setting aside the technical and hands-on training, both critical components of a young tax lawyer’s skill set, young lawyers must also develop an understanding of the broader context of tax law and how various provisions of the Code fit into the “big picture.” For this “big picture” training, there are a number of possible routes. One highly valuable resource is bar associations and industry groups. For example, the ABA Section of Taxation hosts numerous in-person meetings and webinars throughout the year, giving young lawyers a chance not only to learn about the most exciting and new tax issues out there, but also to network with other attorneys and discuss these issues. These sessions can be worth their weight in gold in terms of staying connected to the broader tax community, forming valuable new connections with other practitioners, and learning about some of the toughest and most important issues in the field.

Those kinds of meetings don’t happen every day, however, which is why a young tax lawyer should take some time each day to read tax news articles and blogs. Tax Notes, Bloomberg, Law360, and other resources send daily email updates of the latest developments in tax law. A good habit is to allocate the first 20-30 minutes of the workday to reading updates in these publications. (Bonus tip—Staying informed on current developments is not only a great way to keep up with the latest tax law changes, it also impresses tax partners!) Similarly, staying abreast of legislative and regulatory updates is useful. The tax publishing services usually publish notices of proposed rulemaking and promulgated final regulations and send email alerts about them. Finally, and certainly not to be forgotten, is speaking with colleagues and peers. The tax community is just that—a community. No one knows everything, but everyone knows something about some part of tax law. Taking the time to network and speak with other lawyers within the firm and outside the firm can serve the dual benefits of staying informed about current events and learning about other lawyers’ practice areas.
There is no one-size-fits-all approach to training for young tax lawyers, because the amount and type of training may vary depending on your career path. There are, however, some basic tidbits that everyone can agree on. In particular, based on an informal survey of young tax lawyers, five things in particular are recommended to maximize skills building: (1) get a broad base of experience and training across different areas of tax; (2) stay organized and catalogue training materials for future reference; (3) be proactive about taking advantage of new training opportunities (billable and non-billable); (4) be prepared for and embrace the steep learning curve (everyone has to go through it); and (5) stay up to date on pertinent legislative and regulatory developments.

Of course, all of this is easier said than done for the young tax lawyer, given that we live in the era of 2,000+ yearly billable hour requirements. So how does the young tax lawyer find time to get the training he or she needs? Three pieces of advice in particular are helpful. First, make time for training! In other words, find ways to balance billable hours and work demands with trainings. This will require patience, advance planning, and (likely) extra hours spent at work. However, using online training tools and other technology (e.g., apps and podcasts) can make this job easier. Second, always focus on the big picture. It is easy to get deep into the weeds on a particular problem fairly quickly. That means it is particularly important to take a step back to figure out the big picture concepts that are in play. Asking frequent questions, reading articles, and attending webinars can all be great ways to get more informed on the big picture. Third, taking time to step back from the daily grind of billable matter after billable matter can do wonders for helping the young tax lawyer focus on longer-term professional growth. Of course, we have to meet our hours. Beyond that, our hours are ours to use as we choose. Taking the time to take on a new pro bono matter, write an article, network with a colleague at another firm, or even start a new mentoring relationship can produce valuable long-term results, with minimal up-front costs.

At the end of the day, a young tax lawyer’s experience and training will happen both “on” and “off” the clock. Going beyond the billable hour and embracing additional ways to gain substantive skills will inevitably produce a more well-rounded, knowledgeable, and satisfied tax lawyer. Each of the above opportunities provides another avenue for young tax lawyers to explore, learn, and grow as a tax professional. When all is said and done, perhaps the most important advice for a young tax lawyer is to keep in mind that the practice of tax law is a marathon, not a sprint! It takes years of practice, dedication, and learning. So why not start today?
YOUNG LAWYERS CORNER

Winners of the 19th Annual Law Student Tax Challenge

The Section is pleased to announce the winners of the 19th Annual Law Student Tax Challenge, a contest designed to give students an opportunity to research, write about, and present their analyses of a real-life tax planning problem. The competition is open to both J.D. and LL.M. law students. Amanda Krugler and Scott Sullivan of the University of Kentucky College of Law were awarded first place in the J.D. Division. Their coach was Jennifer Bird-Pollan. Jennifer Breton and Joshua Runyan of Temple University Beasley School of Law were awarded first place in the LL.M. Division. Their coach was Andrew Weiner. The teams presented oral arguments before a panel of distinguished tax lawyers and tax court judges attending the Section of Taxation 2020 Midyear Tax Meeting in Boca Raton, FL, with the winners honored at an awards ceremony and reception during the meeting.

The other awardees from this year’s competition include:

**J.D. Division**

1st Place:
Amanda Krugler and Scott Sullivan
University of Kentucky College of Law

2nd Place (tie):
Matthew Foran and Harry Gao
Seton Hall Law School
Brian Krastev and Matthew Marcellino
Syracuse University College of Law

Best Written Submission:
Ryan Hartnett and Mitchell Renfrew
Western New England University School of Law

Semi-Finalists:
Anita Alanko and Jennifer Galstad
Catholic University of America, Columbus School of Law
Mark Watterson and Taylor Monroe
UNT Dallas College of Law
Ryan Hartnett and Mitchell Renfrew
Western New England University School of Law

**LL.M. DIVISION**

1st Place:
Jennifer Breton and Joshua Runyan
Temple University Beasley School of Law

2nd Place:
Kathleen Arsenault and Douglas Schmidt
University of Denver Sturm College of Law

Best Written:
Kathleen Arsenault and Douglas Schmidt
University of Denver Sturm College of Law

Finalists:
Arash Zainaleain and Zhiyao Li
Boston University School of Law
Justin Rayome and Cai Xu
Georgetown University Law Center

Watch the winning J.D. and LL.M. students deliver their presentations to a judging panel of tax law experts.
An alternative to traditional moot court competitions, the Law Student Tax Challenge (LSTC) is organized by the Section’s Young Lawyers Form. The LSTC asks two-person teams of students to solve a complex business problem that might arise in everyday tax practice. Teams are initially evaluated on two criteria: a memorandum to a senior partner and a letter to a client explaining the result. Based on the written work product, six teams from the J.D. Division and four teams from the LL.M. Division receive a free trip to the Section's Midyear Meeting, where each team presents its submission before a panel of judges consisting of the country's top tax practitioners and government officials, including tax court judges. The competition is a great way for law students to showcase their knowledge in a real-world setting and gain valuable exposure to the tax law community. For more information about the LSTC, go to https://www.americanbar.org/groups/taxation/awards/law_student_tax_challenge/.
The Incompetent Authority: Questions and Answers

By Andy Howlett, Miller & Chevalier, Washington, DC; Guinevere Moore, Johnson Moore LLP, Chicago, IL; and Andrew Strelka, Latham & Watkins LLP, Washington, DC

The Incompetent Authority: Questions and Answers, provides some useful responses to your questions about the mysteries of the tax profession, including tax career, business of tax, tax ethics, and other burning tax questions. If we don’t know the answer, we know who to ask. And we hope to offer the answer with a touch of humor. Of course, the standard disclaimer applies: this column does not dispense individualized tax advice, but merely presents the considered views of the writers about tax topics of general interest to the readers.

Andy Howlett is a member at the law firm of Miller & Chevalier in Washington D.C. He focuses his practice on tax planning and helps his clients understand and plan for the federal tax consequences of a wide range of transaction. He is married with two children, all of which made sense from a tax perspective at the time.

Guinevere Moore is a tax controversy and litigation partner with Johnson Moore LLP in Chicago. She’s worked at big shops (both accounting and law firms) but has found true tax bliss at her four lawyer firm. She is married with four children, all of whom are still young enough to want to spend time with her. Her favorite section of the Internal Revenue Code is § 7430. Obviously.

Andrew Strelka is counsel at Latham & Watkins LLP. He has worked for the IRS, the D.C. U.S. Attorney’s Office, the Department of Justice Tax Division, and the White House Counsel’s Office, and can therefore speak authoritatively on the varying definitions of what constitutes “business casual attire” in D.C.

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Dear Incompetent Authority:

I am a third-year associate. More and more I find myself disagreeing with the judgment calls the partner I work for makes. Some of the disagreements are about strategy. Some are about what I consider to be our duty to keep our client informed. The client isn’t “my” client, and the partner has a lot more experience than I do. Should I just keep my mouth shut?

– The Third Rail

Dear The Third Rail:

Take a deep breath. This is a situation comes up a lot.
First, some perspective. Generally, if you’re a lawyer working for a firm, and the firm represents the client, the client IS your client because you are an attorney of the firm. Even though the partner manages the client relationship, you are part of that relationship. You not only owe that client fealty to all of the applicable bar rules but also, in the case of certain tax representations, to the rules of Circular 230 as well. That means, among other things, you personally owe the client competent representation and are required to keep him or her reasonably informed about the status of the representation. These duties may be discharged through the partner, but they nonetheless apply to you as well. Take a hard look at ABA Model Rule 2.1, which provides that “a lawyer shall exercise independent professional judgment and render candid advice.” This rule is not limited to supervising attorneys.

Now, every firm has a different culture, but some principles of the associate-partner relationship are basically universal. If you think that a partner is making a mistake about some aspect of a representation that represents either an error in judgment or potentially a failure to keep the client properly informed, consider the following approach. First, take some time to think it through, and verbalize why you think the partner is in error. Fully analyze the applicable facts and relevant law as you perform this self-assessment. Acknowledge that in many cases “the tie goes to the runner” and it may be wise to defer to the experienced partner in cases where the answer is unclear.

If, after performing this exercise, you still think that the partner is clearly wrong, the time has come to sit down with him or her. Explain your views in a concise and deferential manner and be prepared to support your position if challenged. Always remember the age-old piece of wisdom: never come to your boss with a problem without already having thought of the solution.

At this point, the partner will either accept your position or not. If the partner rejects your position, and you are completely sure he or she is incorrect and you think that there is a potential violation of your bar’s rules or of Circular 230 (if applicable), then you’ve probably reached the point where you need to talk to someone else at your firm about what to do next. Most firms have a firm counsel who serves in this role. In other cases, you may want to talk to firm management directly. Re-read ABA Model Rule 5.2, Responsibilities of a Subordinate Lawyer, and the comments. If the question is a close one, you may follow the direction of the partner.1 If it isn’t close, then you are responsible for your own action or inaction.2 You should also re-read Rule 10.33 in Circular 230, which sets forth important best practices for tax advisors to follow. In all cases, you should be guided by the principles set forth in your bar’s rules and proceed in a way that—to the extent consistent with those rules and any other requirements of law—minimizes any harm to the firm-client relationship.

*           *           *

**Dear Incompetent Authority,**

I am considering leaving a government job to go to private practice. I have heard it can take a long time to build up business. I am worried about the amount of time it will take me to build up business and also whether I’ll be able to bill the hours I need to bill. The firms I

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1 ABA Model Rule 5.2 (b), “A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer’s reasonable resolution of an arguable question of professional duty.”
2 ABA Model Rule 5.2 (a), “A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.”
Dear Hopefully Private:

These are healthy concerns, and the risk of a faceplant can be substantially reduced with due diligence research, assertive communication and discussion of expectations. First, though, let’s make sure we’re clear on the starting point. While outliers do occur, most law firms will not be hiring you for your day 1 (or even day 365) rainmaking abilities. You will likely be hired for your hard-to-get government experience and insider perspective. Those attributes should give you a good start to building a practice one day. Further, if you are looking to “switch sides” into the DC market, you are in luck. Most larger firms in the nation’s capital are well aware of the unique challenges facing lateral government hires and have supportive training and mentoring ready to go. To prepare, take a hard look at ABA Model Rule 1.11, Special Conflicts of Interest for Former and Current Government Officers and Employees. How will these rules impact your ability to work on existing business in the firm you are thinking of joining? How will they impact your ability to generate your own business? Regardless of where you are looking to make the jump, the following points may also be helpful.

- **Due Diligence:** Consider reaching out to attorneys from your government office who have made the jump before. What was surprising or challenging for them? Additionally, review attorney bios at target firms to get a sense of how many former government attorneys work there. Are there any practice-area concentrations of former government attorneys? What is the composition of your practice area?

- **Tunnel Vision:** Many government laterals get blindsided by the holistic nature of private practice. Government attorneys can build up substantial expertise in specific areas while remaining largely ignorant of adjacent issues—or issues regulated by different agencies or jurisdictions (e.g., federal versus state law). Consider studying an *industry* as opposed to merely your current practice area. Read relevant trade publications and try to get a sense for the market and current challenges. Review materials from recent ABA meetings: what topics did the panels cover? Who spoke and what did they say?

- **Find Friendlies:** If you have commenced discussions with a firm, consider asking to speak to someone who transitioned from the government in the last five years. Ask the firm’s recruiting staff for information on transitioning former government attorneys into the firm. Will you have an official mentor? Perhaps ask if you can have a mentor from your practice area and one that is a recent government lateral if not the same person.

- **Expectations:** “How can I leverage my experience to help this practice area?” If you don’t know specific answers to that question, ask attorneys in the practice group.

- **The Haircut:** Unless you’re coming in as an equity partner for your subject matter expertise, understand that larger law firms generally view attorneys by class year. And in an effort to promote fairness, firms generally attempt to apply the same review standards equally by class. In other words, where you sit in the school cafeteria on day 1 may matter a tremendous
amount. In this regard, it is not uncommon to start government laterals down a class year or two to allow them time to grow. Indeed, if partnership is a goal in your near future, you may need several years of law firm experience to point to first. If the firm intends to give your class-standing a haircut, get the details. Is it permanent? Is it common—if not, why you? How will the haircut impact your compensation arrangement? How will it impact progression timing?

• **Challenges:** Understand that there will be unforeseen challenges. However, never forget that you are armed with an enviable amount of specialized expertise and your concerns about building a practice and billing hours are concerns shared by nearly everyone else at any law firm.

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**Want to see your questions about the mysteries of the tax profession, including tax career, business of tax, tax ethics, and other burning tax questions answered by The Incompetent Authority? Readers may submit questions anonymously for a future The Incompetent Authority column through our Submission Portal.**

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**Dear Incompetent Authority,**

*My firm won’t pay for ABA meetings unless the attorney requesting to go is a speaker. The meetings are expensive for a junior attorney. Is it really worth it? Let’s be honest, I would be paying a lot of money out of my own pocket for the registration and travel costs, in addition to taking the time away from billing.*

— Saving My Pennies for Student Loans

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**Dear Saving My Pennies for Student Loans,**

The answer to this question is the same as the answer to almost every legal question. It depends.

The Incompetent Authority has found attendance at ABA meetings not only to be worth it, but valuable. ABA meetings are expensive, in that the pure cost for CLE is higher than many other options, including online options that are readily available. But ABA meetings offer what online CLE never can: access to a network of the top practitioners in the country, access to government officials at the highest level who help administer the laws we are advising our clients how to follow, access to the judges and opportunity to hear from the judges who will decide your clients’ cases, and in-person, top-quality programming that offers a diversity of opinion and presenters. The ABA meetings cost more because there is a higher cost of having an in-person meeting, but there is also a much more significant benefit.

Here are just some of the ways we have benefited from attending ABA meetings in person:

• Invited to present on panels in areas that have generated future business;

• Invited to participate in comment projects that have generated future business;
• Met and worked closely with Tax Court and District Court judges to prepare and present CLE panels on topics;
• Published articles in ABA publications;
• Formed friendships that have turned into referral relationships; and
• “Borrowed” each other’s conference rooms around the country.

As with most things in life, you will get out of the ABA what you put into it. Some of us have been actively involved in the ABA for many, many years and looking back to the beginning, it is easy to see why a young lawyer may feel like paying for the meetings isn’t worth it. We urge you to look at your future self and reconsider in light of this: it takes years to plant the seeds that later turn into generating business. If you show up and participate in a comment project, volunteer to put materials together for a panel, or even just volunteer to bring your laptop and run the slide deck, you may be next in line to be asked to participate on a panel. If you do volunteer your time and talents to the ABA, you will soon be adding those accolades to your firm bio. And the next thing you know, you may be able to come to the ABA meetings for free. The John S. Nolan Fellowship provides young lawyers who are actively involved in the ABA Tax Section waived Meeting registration fees and assistance with travel costs.

Being an active member of the ABA Tax Section can provide many meaningful opportunities for you to distinguish yourself and to make connections that can last a lifetime.
PEOPLE IN TAX PODCAST

Alex Parker
In S02E08, James Creech and Alex Parker discuss learning to become a trade news journalist, notable news stories, using social media to supplement broaden perspectives, and advice on how to become a trade news journalist. Listen here.

Roberta Mann
In S02E09, James Creech and Roberta Mann discuss identifying students with interest in tax law, improving tax policy, getting involved in the Tax Section, and the Law Student Tax Challenge. Listen here.

William Schmidt
In S02E10, James Creech and William Schmidt discuss helping the public navigate tax law, the challenges of low-income tax clinic work, and advice to starting a career in tax law and social justice. Listen here.

Caroline Ciraolo
In S02E11, James Creech and Caroline Ciraolo discuss working at a tax controversies law firm, involvement in the Tax Section, and the Department of Justice Swiss Bank Program. Listen here.
In S02E12, they discuss nationwide coordination of tax issues by the DOJ Tax Division, working in government, mentoring, and work-life balance. Listen here.

Eric Solomon
In S02E13, James Creech and Eric Solomon discuss identifying tax law as a career, work for the IRS and the Treasury Department, and the government’s handling of the 2008 financial crisis. Listen here.
In S02E14, they discuss managing the Treasury Department’s Office of Tax Policy, the ABA Tax Section’s important role in the tax system, and the need for the Tax Section to evolve to address future needs. Listen here.
Beverly Winstead

In S02E15, James Creech and Beverly Winstead discuss cross-cultural lawyering, economic empowerment, the importance of mentoring, and getting involved in the ABA Tax Section. [Listen here](#).

Travis Thompson

In S02E16, James Creech and Travis Thompson discuss getting into tax through a summer associate position, expanding a career through attending Tax Meetings and organizing panels, and the advent of the use of artificial intelligence in tax enforcement and practice. [Listen here](#).
Mister Tax Collector

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

(To tune of, “Fascinating Rhythm,” by George and Ira Gershwin, as sung by Ella Fitzgerald, or Sarah Vaughn or Fred Astaire and Adelle Astaire accompanied by Cliff Edwards on the piano.)

Intro
Have trouble thinking, I’m starting to panic.
My brain is losing command.
Feel like I’m sinking, a human Titanic.
A coward praying for land.
This can’t be happen’ning, How can it? How can it?
But then, you might understand.
Why I’m not coping with it.
Afraid of opening it.
The letter held in my hand.

Verses
Mister Tax Collector
You’ve got me really scared
Mister Tax Collector
I’m in a flurry.
When I received your letter
I was unprepared
Can you do nothing better
Than cause me worry?

Bridge
Each year I file my taxes on time.
(Never late, I’m never late)
Feeling like I’ve committed some crime
I wonder,

If I have finagled?
How will you know?
Can you be inveigled?
Or will you jail me?

I thought that self-assessment meant
I’m on my own.
Mister Tax Collector
Won’t you please leave me alone?

Reprise
Mister Tax Collector
I feel abused.
Why have I been selected
Out of the millions?
Why’d you even bother?
Now I’m confused.
I’d heard the Feds would rather
Hunt those with billions?

I thought that self-assessment meant
No third-degree.
Mister Tax Collector
Why are you picking on me?
DIVERSITY & INCLUSION

Diversity and Inclusion: An Overview of the ABA’s CLE Policy and the Section’s Plan and Committee

By Lany L. Villalobos, Dechert LLP, Philadelphia, PA

On November 6, 2019, the American Bar Association (ABA) Section of Taxation (the Section) announced its new Diversity and Inclusion Scholarships to encourage diversity and inclusion at Section tax meetings. The first group of scholarship recipients were invited to attend the 2020 Midyear Meeting in Boca Raton, Florida: Arsalan Malik and Rene Morency. The Diversity and Inclusion Scholarships form a part of the Section’s broader diversity and inclusion efforts.

Section members often inquire about the origins of the ABA Diversity and Inclusion CLE Policy, the Diversity and Inclusion Plan of the Section and the role of the Diversity Committee of the Section. This article summarizes how the ABA Diversity and Inclusion CLE Policy came to be implemented by the Section, the Section’s adoption of its own Diversity and Inclusion Plan and the role of the Diversity Committee within the Section.

Goal III of the ABA

The mission of the ABA is to serve equally its members, the profession and the public by defending liberty and delivering justice as the national representative of the legal profession. To fulfill these responsibilities, the ABA set forth the following four goals: (1) serving its members, known as Goal I; (2) improving the profession, known as Goal II; (3) eliminating bias and enhancing diversity, known as Goal III; and (4) advancing the rule of law, known as Goal IV.

The ABA’s diversity and inclusion efforts are encompassed by Goal III, which was adopted by the ABA House of Delegates in 2008. Goal III of the ABA consists of two objectives: (1) promoting the full and equal participation in the ABA, the legal profession, and the justice system by all persons and (2) eliminating bias in the legal profession and the justice system.

1 Call for Applications: Diversity and Inclusion Scholarships to 2020 Midyear Tax Meeting, ABA Section of Taxation (Nov. 6, 2019).
2 ABA Mission and Goals, ABA.
3 Id.
4 The ABA House of Delegates is the policy-making body of the ABA. See ABA House of Delegates, ABA.
5 Goal III, ABA.
ABA Diversity and Inclusion CLE Policy

Members of the Section, and the ABA broadly, had a heightened awareness of diversity after the ABA implemented the Diversity and Inclusion CLE Policy (the D&I CLE Policy), effective as of March 1, 2017. The D&I CLE Policy provides that any ABA CLE program with three or more panelists (including the moderator) must have at least one member from a diverse group; a CLE program with five to eight panelists (including the moderator) must have at least two members from a diverse group; and a CLE program with nine or more panelists (including the moderator) must have at least three members from a diverse group. Failure to adhere to the D&I CLE Policy results in the ABA not sponsoring, co-sponsoring or seeking CLE accreditation for any group.

Approved in June 2016, the D&I CLE Policy is the result of diversity and inclusion initiatives at the ABA level. The ABA adopted the D&I CLE Policy in furtherance of Goal III, which, in turn, is how the policy came to be implemented within the Section. In order to maintain CLE accreditation for programs presented at any Section meeting, organizers must certify their compliance with the D&I CLE Policy.

Diversity and Inclusion Plan of the Section

The Section’s own diversity and inclusion efforts, however, pre-date the D&I CLE Policy. The Section adopted a diversity plan in May 2001 “to assist and encourage the members and leaders of the Section to ensure full and equal participation for lawyers of color, women lawyers, younger lawyers, lawyers with disabilities, and lawyers from diverse ethnic backgrounds.”

All members of the Section, regardless of whether a member identifies as diverse, are encouraged not only to attend a lunch or CLE program but also to participate as a speaker on a Diversity Committee panel.

In May 2014, the Council of the Section appointed a task force to evaluate the Section’s progress in fulfilling Goal III of the ABA and to make recommendations for concrete steps the Section could take to further Goal III of the ABA. In response, the task force prepared the Diversity and Inclusion Plan of the Section, which was approved in May 2015 and subsequently updated in May 2018.

Pursuant to its current Diversity and Inclusion Plan, the Section strives to encourage full and equal participation in the Section by lawyers and law students with diverse backgrounds and perspectives, including individuals of color, women, members of the LGBTQ+ community, Native Americans, individuals of diverse national and religious background, individuals of diverse ethnic and cultural heritages, individuals with disabilities, military veterans, and individuals of diverse ages and professional experiences. The Diversity and Inclusion Plan of the Section focuses on the following key

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6 ABA Diversity & Inclusion CLE Policy, ABA.
7 The D&I CLE Policy defines the term “diversity” to mean race, ethnicity, gender, sexual orientation, gender identity, and disability. See id.
8 Other efforts by the ABA to further its objectives under Goal III include the creation of the Center for Diversity and Inclusion in the Profession, which was established in 2018 and is comprised of various ABA entities, including the Diversity and Inclusion Center, the Commission on Disability Rights, the Commission on Sexual Orientation and Gender Identity and the Commission on Women in the Profession. See About Us, Diversity and Inclusion Center, ABA.
9 ABA Section of Taxation, Diversity and Inclusion Plan, June 2018, ABA.
10 Id.
11 Id.
12 Id.
Diversity Committee of the Section

Unlike the Diversity in the Profession Committee, the Diversity Committee operates at the committee level of the Section. The goals of the Diversity Committee are twofold. The first is to provide opportunities for lawyers of color, women lawyers, LGBT lawyers, young lawyers, lawyers with disabilities and lawyers from diverse backgrounds to become actively involved in the Section and in leadership positions both within the Diversity Committee and within the Section. The second is to present programs on diverse areas of tax. At each Section meeting the Diversity Committee hosts a lunch and sponsors various CLE programs to carry out these goals. In the past, Diversity Committee CLE programs have addressed opportunity zone credits, the earned income tax credit, retirement policy, renewable energy tax equity partnerships and collection alternatives for small businesses. All members of the Section, regardless of whether a member identifies as diverse, are encouraged not only to attend a lunch or CLE program but also to participate as a speaker on a Diversity Committee panel.

Conclusion

In its Diversity and Inclusion Plan, the Section acknowledges that diversity in the membership of the Section brings a variety of unique and valuable skills and perspectives to the Section and its members. But as Professors Alice Abreu and Richard Greenstein note in their research discussing the lack of diversity within the tax bar:

[A] more diverse tax bar would lead to a tax law that reflects the needs of a diverse population. Members of the tax bar not only provide scholarly commentary on tax policy but they serve in the professional organizations to which policy makers look to provide comments on legislative and regulatory proposals as well as on the staffs of the congressional committees that craft tax legislation. They also serve as lawyers for the [Internal Revenue Service], the Tax Division of the Justice Department, and for the many state and local taxing authorities that interpret the tax law and determine enforcement and litigation priorities.15

Increasing diversity in the profession requires a conscious and deliberate effort by all of us, not just by those directly involved in developing and implementing diversity and inclusion policies.

13 Id.
14 Id.
DIVERSITY & INCLUSION

Call for Applications: Diversity and Inclusion Scholarships to 2020 May Tax Meeting

The Tax Section is now accepting applications for the Diversity and Inclusion Scholarships, designed to encourage members of diverse backgrounds or with a recognized commitment to diversity and inclusion to attend and participate in the 2020 May Tax Meeting, in Washington, DC on April 30 – May 2, 2020.

The Section awarded the first two Diversity and Inclusion Scholarships for the Midyear Tax Meeting in Boca Raton, Florida in January 2020. Recipients enjoyed the benefits of attending a number of tax related CLE panels, and the opportunity to network with other professionals from throughout the country. They also attended the Plenary Session Luncheon with guest speaker Michael Desmond, Chief Counsel of the IRS.

The Section embraces diversity and inclusion in every aspect of its activities, including its meetings. The new scholarships defray the cost of meeting attendance, including waiver of the registration fee, up to three nights stay at the host hotel, airfare, and attendance at the Plenary Session Luncheon. Applicants must meet eligibility requirements, including Section membership and understanding of the Section’s Diversity and Inclusion Plan.

Scholarship recipients will be required to fulfill several duties during and after the May Tax Meeting, including attendance at certain panels and events, and subsequent reports to the Section’s Diversity and Inclusion Scholarship Selection Committee.

Full eligibility requirements, selection criteria, and recipient duties can be found along with the scholarship application.

Applications and questions should be directed to the Section’s counsel, Meg Newman, at taxlserve@americanbar.org. Applications are due by 5pm ET on March 27, 2020. ■
SECTION NEWS & ANNOUNCEMENTS

Report of the Nominating Committee:
2020-2021 Nominees

In accordance with Sections 4.2, 6.1, and 6.3 of the Section of Taxation Bylaws, the following nominations have been submitted by the Nominating Committee for terms beginning at the conclusion of the 2020 Annual Meeting in August. Under the Section Bylaws, the current Chair-Elect, Joan C. Arnold of Philadelphia, PA, becomes Chair of the Section at the close of the ABA Annual Meeting.

**Chair-Elect:**
Julie A. Divola, San Francisco, CA

**Vice Chairs:**
(For a one-year term)
Larry A. Campagna, Houston, TX (Administration)
Melissa L. Wiley, Washington, DC (Committee Operations)
Thomas D. Greenaway, Boston, MA (CLE)
Kurt L.P. Lawson, Washington, DC (Government Relations)
Sheri A. Dillon, Washington, DC (Pro Bono and Outreach)
T. Keith Fogg, Jamaica Plain, MA (Publications)

**Secretary:**
(For a one-year term)
Robb A. Longman, Bethesda, MD

**Assistant Secretary:**
(For a one-year term)
Christine S. Speidel, Villanova, PA

**Council Directors:**
(For a three-year term)
Cathy Fung, Washington, DC
Jennifer E. Breen, Washington, DC
Summer A. LePree, Miami, FL
James O. Creech, San Francisco, CA
Jennifer H. Alexander, Washington, DC
SECTION NEWS & ANNOUNCEMENTS

Government Submissions Boxscore

Government submissions are a key component of the Section’s government relations activities. Since October 10, 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/.

<table>
<thead>
<tr>
<th>TO</th>
<th>DATE</th>
<th>CODE SECTION</th>
<th>TITLE</th>
<th>COMMITTEE</th>
<th>CONTACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal Revenue Service,</td>
<td>2/19/2020</td>
<td>168(k)</td>
<td>Proposed Regulations under Section 168(k)</td>
<td>Corporate Tax, Affiliated and Related Corporations</td>
<td>William Pauls, Nicole Field, Bryan P. Collins</td>
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<td>Department of Treasury</td>
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<td>Internal Revenue Service,</td>
<td>2/11/2020</td>
<td>n/a</td>
<td>Proposed Regulations addressing the Classification of Cloud Transactions and Transactions Involving Digital Content</td>
<td>Foreign Activities of U.S. Taxpayers</td>
<td>Rachel Kleinberg</td>
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<td>Department of Treasury</td>
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<tr>
<td>Internal Revenue Service,</td>
<td>1/29/2020</td>
<td>337(d)</td>
<td>Proposed Regulations Under Section 337(d) Regarding Partnership Transactions Involving Equity Interests of a Partner</td>
<td>Partnerships &amp; LLCs</td>
<td>Natasha Khemani</td>
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<td>69-184</td>
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<tr>
<td>Internal Revenue Service,</td>
<td>12/3/2019</td>
<td>Form 1065</td>
<td>Draft 2019 Form 1065 and Schedule K-1</td>
<td>Partnerships and LLCs, Real Estate</td>
<td>Grace Kim, Ossie Borosh, Beverly Katz</td>
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<td>Department of Treasury</td>
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<td>and Schedule</td>
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<tr>
<td>Internal Revenue Service,</td>
<td>11/12/2019</td>
<td>382(h)</td>
<td>Proposed Regulations Under Section 382(h)</td>
<td>Corporate Tax, Affiliated and Related Corporations</td>
<td>Jonathan Forrest</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

Coming Soon and Available for Pre-Order: New Edition of *Multijurisdictional Admission to Practice Requirements for State and Local Tax Lawyers*

A project of the State and Local Taxes Committee and now in its second edition, the *Guide to Multijurisdictional Admission to Practice Requirements for State and Local Tax Lawyers* synthesizes the admission to practice requirements faced by state and local tax lawyers representing clients in informal and formal administrative matters and in litigation in each state, the District of Columbia, and key municipalities. It is designed for state and local tax lawyers who engage in multijurisdictional practice, as well as for businesses and individuals who need to engage counsel for state and local tax matters that transcend jurisdictional boundaries. It is available in the webstore as a free download for Tax Section members and is also available for purchase in print.

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**TaxIQ: 2020 Midyear Tax Meeting Materials Available**

Original materials from the 2020 Midyear Tax Meeting are now available on TaxIQ. TaxIQ offers online access to the latest committee program materials presented at Tax Section Meetings.

In March 2019, 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.

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**The Tax Lawyer—Winter 2020 Issue Available Now**

The Winter 2020 issue of *The Tax Lawyer*, the nation's premier, peer-reviewed tax law journal, is available now. *The Tax Lawyer* is published quarterly as a service to members of the Tax Section.

Winter 2020 Issue (Click here to read or download the complete issue.)

**Articles**

Stephanie Hunter McMahon, [Classifying Tax Guidance According to End Users](#)

State and Local Tax

Jeffrey A. Cooper, Red States, Blue States: Lessons from the State Death Tax Credit and the “SALT” Deduction

In Memoriam

In Memoriam: K. Martin Worthy, by N. Jerold Cohen

The Practical Tax Lawyer—March 2020 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.

Ted David, Love the IRS

Jerald David August, Tax Controversies and Litigation Under the New Centralized Partnership Audit Rules: Are You and Your Clients Ready? (Part 1)

John M. Cunningham, Tax and Legal Practice Under Section 199a (With Client Questionnaire And Issues Checklist)

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

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.
IN THE STACKS

Call for Book Reviews

ATT welcomes the submission of book and article reviews on tax topics that might be of interest to our members, including the following new titles:


Reviews should be no more than 2,000 words in length, though on rare occasions longer submissions will be accepted on consultation with the editor. Reviews should provide a concise introduction to the item's primary themes and a critical analysis of its significance that considers strengths, weaknesses, and relevance to the field.

If you are interested in submitting a review of any of these titles or in discussing other ideas for ATT, contact Supervising Editor, Linda M. Beale at lbeale@wayne.edu.
SECTION EVENTS & PROMOTIONS

Ginsburg Tribute at May Meeting Plenary Session

The 2020 May Tax Meeting's plenary session and section luncheon will feature a tribute to former Tax Section member Martin Ginsburg and U.S. Supreme Court Justice Ruth Bader Ginsburg. The tribute was inspired by the 2018 movie *On the Basis of Sex*, which depicts the couple's successful representation of the petitioner in a tax case involving an unmarried man's expenses to care for his dependent mother. See *Charles E. Moritz v. Commissioner of Internal Revenue*, 469 F.2d 466 (10th Cir. 1972) (overturning the Tax Court's decision upholding the statute to find in favor of the petitioner-appellant based on invidious discrimination).

*Moritz v. Commissioner* was the first time any provision in the Internal Revenue Code was overturned as unconstitutional, and it spurred Ruth Bader Ginsburg’s career advocating for gender equality. Justice Ginsburg has accepted an invitation to attend and speak at the tribute.

Martin Ginsburg was a tax lawyer who was a member of the bar in New York and in the District of Columbia. He worked in multiple law firms and taught law at New York University, Columbia University, and Georgetown University. He was a long-time member of the Tax Section and received its Distinguished Service Award (DSA) in 2006. He was also a fellow of the American College of Tax Counsel and of the American Bar Foundation. Ginsburg died in 2010.

The May tribute will include selections from Ginsburg’s DSA acceptance remarks and clips from *On the Basis of Sex*. The Ginsburgs’ son James Ginsburg will also participate in the tribute.

The plenary session and section luncheon will be held Saturday, May 2, at 12:00 noon, as part of the 2020 May Tax Meeting in Washington, DC. Registration for the meeting is open, at [https://www.americanbar.org/groups/taxation/events_cle/20may_resources/](https://www.americanbar.org/groups/taxation/events_cle/20may_resources/).
Taxpayer Rights, Human Rights: Issues for Developing Countries

Sept 30 to Oct 01, 2020 | Pretoria, South Africa

Convenor | Center for Taxpayer Rights
Host | African Tax Institute, University of Pretoria
Technical Advisor | International Bureau of Fiscal Documentation

Panel topics include:
• Taxpayer rights as human rights;
• Taxation as a means to achieving Sustainable Development Goals (SDGs) in Africa and other developing countries;
• Independent administrative appeals and the promotion of integrity and fairness in the tax system;
• The role of legal privilege in the protection of taxpayer rights;
• Strengthening the rule of law and the protection of taxpayer rights in international tax disputes;
• Digitalization of tax administration and the implications for protection of taxpayer and human rights;
• Barriers to access to justice and their impact on achieving Sustainable Development Goals.

Early Registration opens 15 February 2020
Visit us at taxpayer-rights.org/international-conference for full agenda
For more information, contact us at info@taxpayer-rights.org.
SECTION EVENTS & PROMOTIONS

Tax Section Adjusts Dates for 2021 May Meeting and 2024 Fall Meeting

The Tax Section recently changed the dates for two upcoming meetings. The 2021 May Tax Meeting will now be held May 13-15 at the Marriott Marquis Washington DC, and the 2024 Fall Tax Meeting will now be September 26-28 at the Marriott Marquis New York. Locations of both those meetings remain unchanged.

The Section also recently booked dates and venues for the 2022 and 2023 Midyear and Fall meetings.

Full updated details for all Tax Meetings may be found on the Section’s Upcoming Meetings Calendar.

2020 IRS Nationwide Tax Forums

Registration for the 2020 IRS Nationwide Tax Forums opens March 1, 2020. Designed for tax professionals, the IRS Nationwide Tax Forums offer three full days of seminars with the latest word from IRS leadership and experts in the fields of tax law, compliance and ethics. For more information, visit https://www.irs.gov/tax-professionals/irs-nationwide-tax-forum-information.

<table>
<thead>
<tr>
<th>DATE</th>
<th>CITY</th>
<th>HOTEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 14 – 16, 2020</td>
<td>Dallas, TX</td>
<td>Gaylord Texan</td>
</tr>
<tr>
<td>July 28 – 30, 2020</td>
<td>New Orleans, LA</td>
<td>Hyatt Regency New Orleans</td>
</tr>
<tr>
<td>August 4 – 6, 2020</td>
<td>Atlanta, GA</td>
<td>Atlanta Marriott Marquis</td>
</tr>
<tr>
<td>August 18 -20, 2020</td>
<td>National Harbor, MD (D.C.)</td>
<td>Gaylord National Harbor</td>
</tr>
<tr>
<td>August 25 - 27, 2020</td>
<td>San Diego, CA</td>
<td>Town and Country Resort</td>
</tr>
<tr>
<td>September 15– 17, 2020</td>
<td>Orlando, FL</td>
<td>Hyatt Regency Orlando</td>
</tr>
</tbody>
</table>
SECTION EVENTS & PROMOTIONS

Section Meeting & CLE Calendar

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

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

ABA Section of Taxation CLE Products

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

A Rainbow of Start-Ups – A Rainbow of Tax Strategies: How the Type of Start-Up Affects Its Optimum Tax Structure

Ethical Issues When Advising Cross-Border Clients

Protecting Your Clients' Information: Data-Ethical and Practical Considerations

The Tax Court’s New Limited Appearance Procedure: Procedural, Ethical, and Practical Considerations

Boilerplate Tax Distribution Provisions Can Get You Into Hot Water

GILTI, FDII, and Consolidated Groups: An Introduction

Section 163(j) Proposed Regulations and S Corporations

A Whole New World: The 2017 Tax Act, Tax Advice, and Lawyer Ethics

The Rise of Injunction and Disgorgement Actions under Section 7402 of the Internal Revenue Code

Broken Hearts & Higher Taxes - Divorce Under the 2017 Tax Act

Tax Advice in the Age of the 24-Hour News Cycle

Affiliated and Related Corporations and Proposed 163(j)

Post-Tax Reform Planning for Cross-Border Investments by Private Funds
SECTION EVENTS & PROMOTIONS

Sponsorship Opportunities

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ABA Section of Taxation Sponsorship Provides Invaluable Returns.

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

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

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

Sponsorship Opportunities are now available for the following meetings:

<table>
<thead>
<tr>
<th>Date Range</th>
<th>Event Name</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 30-May 2, 2020</td>
<td>2020 MAY TAX MEETING</td>
<td>Marriott Marquis DC <em>NEW HOTEL</em></td>
</tr>
<tr>
<td>September 24-26, 2020</td>
<td>2020 FALL TAX MEETING</td>
<td>NY Marriott Marquis – New York, NY</td>
</tr>
</tbody>
</table>

For additional information on the above conferences or any of our other conferences, please visit https://www.americanbar.org/groups/taxation/sponsorship.html or contact our Sponsorship Team at taxmem@americanbar.org or at 202/662-8670.
Thank You To Our 2020 Midyear Tax Meeting Sponsors

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— Kym Anderson, CPA, CVA, CGMA, Director, Jones & Company

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