ABA Tax Times

AMERICAN BAR ASSOCIATION
Tax Section

An Online Publication of the ABA Tax Section

Summer • Sept. 2021 • Vol. 40 No. 4

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FROM THE CHAIR

Accomplishments to Celebrate in a Difficult Year

By **Joan C. Arnold**, Troutman Pepper, Philadelphia, PA

At times the year of the pandemic seemed interminable.....

And yet, how fast the last twelve months have gone! This time last year I was taking over as the Chair of the Tax Section, stepping in after we had the very first cancellation of our signature May Meeting, knowing that our Fall Meeting would also need to take place remotely. Our intrepid staff of meeting planners, CLE directors, registrars, managers, and other staff took it upon themselves to figure out how best to serve our members while keeping the Section on a reasonable economic footing. With their vision, we pivoted the Fall Meeting to a fully virtual meeting, resulting in attendance that exceeded our typical Fall Meeting by over 500 attendees! The Section had similar success at the virtual Midyear Meeting. Even the May Meeting, always the most heavily attended in person, was a close race to see if we would have more members in person or virtually. We produced the meetings and all the other activities for the Section within the budget we had set long before we knew we'd be all virtual, all year. To the directors and managers and staff who made it happen—you have my eternal thanks.

We have taken these results to heart and are looking seriously at how we should re-imagine our meetings and our member benefits for the future. Much of the benefit from membership in the Section stems from the personal relationships developed through in-person meetings. So we are looking forward to returning to them as soon as possible while also considering how to maintain the outreach to Section members and government officials who cannot otherwise attend in person. We are hoping that technology catches up with our goals soon! You'll hear more about this in the future.

As I came into my year as Chair–elect, I had a very significant goal of creating a welcoming home and support center for women in the tax bar. I envisioned the Section providing more than substantive programming—ideally, something that would assist a woman in professional development while at the same time providing a community to support her and a context in which she could grow. I had the great fortune to be the representative of more senior attorneys on a Young Lawyers panel with Heather Fincher, who shared her views for creating just such an environment. The Women in Tax Forum was born. Heather has had the support of a leadership team comprised of Sarah Ma, Lauren Azubu and Brie Siciliano. They have—in less than two years and in the midst of a pandemic and virtual meetings—created an incredibly vibrant organization that is a high water mark as the Section moves forward with the creation of other affinity groups to increase its diversity and inclusiveness. Thanks so much to the four of you.

As I complete my term, I am extremely pleased to know that Julie Divola steps into the leadership position. It will be a joy to see her accomplishments, and I'll be happy to support her to the best of my abilities.

I hope members will continue to let us know what the Section can do better for you. I encourage you to reach out and get involved in any way you can. It is a rewarding part of a tax career.

I wish you the best as the nation tries to transition back to a more normal life. I especially look forward to seeing as many of you as possible in person in January. ■

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FROM THE CHAIR-ELECT

Walking the JEDI Path

By **Julie Divola**, Pillsury Winthrop Shaw Pittman, San Francisco, CA

It is a privilege and an honor to serve as the next Chair of the Tax Section. For the coming year, I hope that Section leadership can build upon the success of its predecessors while recognizing how important it will be for our organization to remain nimble in these turbulent times. In the wake of the financial and emotional devastation of the past year, it seems more important than ever to recognize and expand the Section's work for its members, the tax community and the public.

As members likely realize, it takes a proverbial village to run the Tax Section. We face the year ahead with the support of an amazing Tax Section staff and a wonderful group of Section Officers, Council Members and Committee Chairs.

If you had asked me about my goals for the Tax Section in January 2020, when I was nominated to be Chair-Elect, I think they would be very similar to my goals today. However, the emphasis on those goals, their priority and my reasons for pursuing them have been informed by the events of the past year.

Justice, Equity, Diversity, and Inclusion

When asked by family and friends what it means to become Chair of the Tax Section, my response has always been the same: It is an opportunity to give back to the organization and community that has given so much and has meant so much to me. Perhaps even more importantly, it provides a means of acting on something I and the Section are truly passionate about—advancing justice, equity, diversity, and inclusion (JEDI) in the Section and in our profession.

Decades ago, when I began attending Tax Section meetings, I felt like an outsider. A wonderful mentor who had been the first woman hired by my firm once mentioned that when she started at the firm, she felt the same way that Alice must have felt after falling down the rabbit hole. My journey was easier by orders of magnitude, thanks to the groundbreaking work of underrepresented people like my mentor. But her description hit a chord with me since both my law firm and the Tax Section meetings seemed surreal to me as a young lawyer. Fast-forward to today and there is a sense of security and belonging because of the many individuals throughout the years who were willing to mentor and sponsor me despite our differences (and, at times, because of them).

As a white woman I cannot fully appreciate the challenges faced in the past—or now—by members of other underrepresented groups. I only know that we all have a voice that needs to be heard to improve the Section, our profession, and, most importantly, our tax system. In the United States, the tax system is a huge

component of our social policy. It affects everyone and can only be fair—and perceived as fair—if it treats all members of our society equally. The Tax Section and our profession is committed to the development of an equitable, efficient and workable tax system. The first and most important step to achieving that goal is to promote justice, equity, diversity, and inclusion in the Tax Section and in our profession.

Tax Section Chairs in recent years have done so much for which we today are grateful to advance the diversity, equity, and inclusion efforts of the Section. Karen Hawkins initiated a project led by Eric Solomon in 2017 that resulted in a thoughtful update to the Section's Diversity & Inclusion Plan (D&I Plan) and creation of the Section's Diversity in the Profession Committee (DIPC). Last year, Joan Arnold was a driving force in establishing the Women in Tax Forum, a safe space for members to gather to celebrate and support the women of the Tax Section. This year, a new officer position of Vice Chair for Membership, Diversity, and Inclusion was created to focus on advancing the membership and the Section's JEDI initiatives. On a personal note, I remain mindful that my nomination as Chair was helped (and certainly not hindered) by the fact that I will be the second woman to serve sequentially as Chair of the Section.

Despite the Section's progress, it's important to acknowledge that we need to do better. Fortunately, Section leadership is fully committed to promoting diversity and a culture of justice, equity, and inclusion. Caroline Ciraolo, inaugural Vice Chair for Membership, Diversity, and Inclusion, and Wells Hall, Section Chair-Elect and Chair of the DIPC, will be leading this effort on behalf of the Section. But this effort requires intentionality in acts both large and small from all of us. Please join me in embracing new members from diverse backgrounds and in helping to weave equity, diversity, and inclusion and, ultimately, justice into the fabric of the Section.

Pro Bono and Public Service

The Section has long been committed to pro bono and public service programs. The complexity of the tax law, combined with the tax system's fundamental role in delivering social benefits, makes such programs critically important. The events of this past year have highlighted the crucial need for such programs.

The pandemic exacerbated the existing structural inequalities in our society. At the same time, the greatest (and sometimes only) economic relief for the most vulnerable members of society has been delivered through the tax system. As an example, research by the Columbia University's Center on Poverty and Social Policy suggests that the recently revised Child Tax Credit is expected to reduce the rate of child poverty by approximately 45 percent. Although this reduction cuts across all racial lines, it particularly benefits children in underrepresented racial and ethnic minority groups.

The Tax Section has played an active role in addressing the needs of low-income taxpayers in an increasingly virtual world through training, direct assistance, and government relations. On the training front, the Section has provided up-to-date programming throughout the pandemic related to the challenges facing low-income taxpayers. We have linked Section members to opportunities to support taxpayers struggling to navigate tax issues with the IRS. We make all the recordings available to the public for free on our website including the sessions from our full Section Meetings, and we will continue to post them as we produce additional material this year.

We have continued our traditional direct service programs by using a virtual format. This included assisting our Armed Forces by providing remote instruction at military bases through our Adopt-A-Base program. We also participated via Zoom in planning and organizing virtual IRS Settlement Days and engaged with the Tax Court in its virtual Calendar Call and remote procedures planning. On August 17, the Tax Section provided

a virtual information session for members interested in helping low-income taxpayers access the advance Child Tax Credit.

The Tax Section has been on the forefront of analyzing policy concerns arising from the early-enacted pandemic CARES Act to the recently enacted advance Child Tax Credit. On September 17, the Tax Section sponsored a webinar to discuss the future of the advance Child Tax Credit. On our Government Submissions page, there are various Section responses to pandemic-related legislation and a more recent submission regarding the rollout of the Child Tax Credit.

These programs and others have flourished under the committed leadership of Sheri Dillon, Vice Chair for Pro Bono and Outreach, and Meg Newman, General Counsel for the Tax Section, as well as the support of the countless Section volunteers committed to these programs. If you are interested in volunteering, please contact Sheri Dillon (sheri.dillon@morganlewis.com) or Meg Newman (megan.newman@americanbar.org). If you are interested in learning more about TAPS or donating, you can do so here.

Government Relations

The Section actively supports the development of an equitable, efficient, and workable tax system. Most reasonable people acknowledge that "Taxes are what we pay for a civilized society" (credited to Oliver Wendall Holmes, Jr.). In addition, how a tax system is designed and implemented reflects our country's values and priorities. The Section plays an important role in providing input to the tax system's development. Each year, the members of the Section submit dozens of comments to the Internal Revenue Service, the Treasury Office of Tax Policy and other government entities. Section members also interact with government officials, including staff at those offices and legislative staff, through periodic meetings.

The past few years have brought about sweeping changes in the tax laws, including the CARES Act and the 2017 Tax Act, which remain an ongoing source of new and important interpretive guidance. New legislative proposals and the Administration's "Green Book" suggest that more tax law changes may be on the horizon. In addition to changes in the tax laws, the last 18 months have heralded unprecedented cultural shifts and evolutions in our thinking that invite us to revisit the ways in which our tax laws are applied. Under the leadership of Kurt Lawson, Vice Chair for Government Relations, comments on the tax laws and their application promise to be a critical aspect of the Section's mission for the year ahead.

Continuing Legal Education

The Section has long been recognized as a provider of exceptional continuing legal education. In the face of unprecedented challenges, the Section pivoted last year and developed virtual meetings that, to the extent possible, replicated the experience of our in-person meetings.

Decisions on whether meetings should be organized as in-person or virtual are made months in advance. The Fall Tax Meeting, scheduled for September 20–24, 2021, will be fully virtual. Despite the success of the virtual meetings, we appreciate that there is no substitute to meeting in person. It's our personal relationships, forged at meetings, that act as the glue for the Section. Although we have not made a final decision on the matter, the current plan is to hold the Midyear Tax Meeting, scheduled for January 27–29, in person in Orlando. Nonetheless, because the digital platform significantly broadened the reach of the meetings, we also plan to incorporate a significant virtual offering for those who cannot join us in Orlando.

The virtual meetings were only made possible by the heroic efforts of Joan Arnold, who prioritized them as Section Chair; Tom Greenaway, Vice Chair for Continuing Legal Education; Melissa Wiley, Vice Chair for

Committee Operations; the Section's Committees under the leadership of the Committee Chairs; and the Section staff. Staff worked tirelessly—and with great attention to detail—to facilitate the smooth running of the virtual meetings. They'll be facing a steep learning curve again as we pivot to a new hybrid platform.

The Section's Leadership Team

The Section has a phenomenal leadership team for 2021–2022. Wells Hall, who has already contributed so much to the Section, is the Chair-Elect. I have already benefited from the wisdom and experience that Wells brings to the position. I am truly grateful to have Wells and Joan Arnold, as Immediate Past Chair, by my side as we face the year ahead.

We have an outstanding group of Vice Chairs who will be continuing: Melissa Wiley returns as Vice Chair for Committee Operations, Sheri Dillon returns as Vice Chair for Pro Bono and Outreach, Tom Greenaway returns as Vice Chair for Continuing Legal Education, and Kurt Lawson returns as Vice Chair for Government Relations. We are also fortunate to welcome an exceptional group of new Vice Chairs: David Wheat as the new Vice Chair for Administration, Roberta Mann as the new Vice Chair for Publications and, as mentioned above, Caroline Ciraolo as the inaugural Vice Chair for Membership, Diversity, and Inclusion.

I am grateful to our outgoing Officers for their important work on behalf of the Section. It is humbling to follow in the footsteps of Joan Arnold, our Immediate Past Chair. She worked with strength and purpose to oversee a successful year for the Section in the most challenging of circumstances. Larry Campagna, outgoing Vice Chair for Administration, did an outstanding job of preserving the Section's finances in the most turbulent of times. Keith Fogg, outgoing Vice Chair of Publications, navigated the smooth transition of *The Tax Lawyer* to its new educational affiliate, Northwestern Pritzker School of Law, and helped raise the Section's already strong publications to a new level. I also want to add a special thanks and acknowledgement to William Lyons who stepped down in May after fourteen years of extraordinary service as Associate Editor-in-Chief of *The Tax Lawyer*. Working with Bill was truly a privilege, and the Section will continue to benefit from his experience since he has agreed to stay involved with *The Tax Lawyer* and in the Section.

The Council Directors for 2021–2022 include Jennifer Alexander, Jennifer Breen, Jaye Calhoun, John Colvin, James Creech, Katherine David, Cathy Fung, Rachel Kleinberg, Summer LePree, Robb Longman, Eileen Marchall, Susan Morgenstern, Vanessa Scott, J. Robert Turnipseed, and Lisa Zarlenga. Christine Speidel will become our new Secretary, and Lany Villalobos will be our new Assistant Secretary. I look forward to working with the Council on the governance of the Section and oversight of the Section's substantive Committees. I want to thank our outgoing Council Directors Diana Erbsen, Mary Foster, George Hani, Anthony Infanti, and Julie Sassenrath for their invaluable contributions to the Section. I also want to extend my gratitude to our Committees and their officers for their many contributions to all the Section's activities.

Julie Sassenrath will become one of our two Section Delegates to the ABA House of Delegates and Armando Gomez will continue in that position. The Section Delegates play a critical role as stewards of the Section's relationship with the ABA. I also want to express my sincerest gratitude to our outgoing Section Delegate, Richard Lipton, for his exceptional contributions to the Section over the years. I take comfort from knowing that the larger ABA, as well as the Section, will continue to benefit from Dick's wisdom and experience as he serves in his new role as a member of the ABA's Board of Governors.

The Section's Staff

It's impossible to write about the success of the Section without acknowledging the critical role played by the Section's administrative staff. Our outstanding staff supports every material element of the Section's

operations, including the Section meetings, government relations, pro bono and public service activities, CLE, and publications. In large part, it is the dedication of the staff and their willingness to go above and beyond that allows the Section to stay on course during these turbulent times. The Section owes deep gratitude to Ty Hansen (Associate Director), Haydee Moore (Director of Meetings), Chris Tank (Director of CLE), Todd Reitzel (Director of Publishing), and Meg Newman (Chief Counsel, with responsibility for Pro Bono, Government Relations and Committee Operations). Please also welcome Genevieve Borello, who recently started as Director of Membership, Marketing, and Diversity.

Naming any individuals is difficult because there are so many others (both staff and members) that have made significant contributions to the Section. Although they cannot all be named individually here, I know members and leadership join me in gratefully acknowledging those contributions. They are truly important to the Section's efforts.

Despite the challenges, the year ahead presents new opportunities. The Tax Section is in good hands with its amazing team, including Joan Arnold as Immediate Past Chair, Wells Hall as Chair-Elect, our Vice Chairs, our Council Directors, our Committees and their officers, our unparalleled staff, and so many others who give so much to the Section. Our experience with virtual meetings will provide a solid foundation for our foray into hybrid offerings once in-person sessions are again possible, allowing us to continue to expand accessibility of our programming to the full membership. The Section can look forward to another exciting year of discussion, commentary, and interchange with government staff—one that may also allow us to resume in-person sessions that permit those chance encounters with old friends or new colleagues that provide so many great Tax Section conversations. In the meantime, please let me know any ideas you may have for adding to those discussions and interchanges. I invite all who can to participate in this year's various meetings and activities and hope to see you there, whether virtually or in person. ■

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PRACTICE POINT

A Primer on Charitable Trusts (Part I)

By **Thomas W. Bassett**, VP, Tax Manager – East Region, Commerce Trust Company, St. Louis, MO

Clients generally have a mix of goals for their wealth—for their lives, for their heirs, and for charity.

Certain vehicles have the ability to help clients achieve combinations of these goals, depending on the client's specific facts. Congress has provided tax incentives in the Internal Revenue Code (the Code) to fund these vehicles during life by providing either charitable income tax deductions, gain deferral, or a combination of each.

First, some terminology. Unfortunately, these trusts are given a very foreboding name by the Code—they are termed "split-interest trusts" under section 4947. That's simply because each of these split-interest trusts has two different classes or sets of beneficiaries—one exclusively charitable and one exclusively non-charitable. They are irrevocable trusts from which payments go to one set of beneficiaries for a specified period of time, with the remainder going to the other set of beneficiaries. The National Association of Charitable Gift Planners and The American Council on Gift Annuities have issued a joint statement on the Biden Administration's FY 2022 Budget Request to Congress arguing against the elimination of the benefits of split-interest gifts.[1]

I. Two Key Types of Split-Interest Trusts

A "charitable remainder trust" (often referred to as a CRT) is a split-interest trust where someone (or multiple someones) have an interest in the trust's property for an initial period of time.[2] After that initial interest terminates, the "remainder" that is in the trust goes to a pre-designated charity (hence the name charitable remainder trust). Generally, the initial beneficiary receives distributions from the trust during the specified initial period of time (see below for more about the taxability of these distributions).

Upon the termination of the initial beneficiaries' interest, the remaining trust corpus is distributed to charity. For example, if a person establishes a trust providing a retained interest to the donor for life and then to the donor's spouse for that person's life, the donor and then the donor's spouse receives a payment stream from the trust assets, with the remainder at the end of the second life going to the designated charity or charities.

Because a CRT can provide a stream of payments to an individual for a term of years (or perhaps their life expectancy), the trust may help with retirement while ensuring some control over charitable beneficiaries of

[1] *See* Joint Statement on Biden Administration's FY 2022 Budget Request to Congress, *available at* CGP/ACGA's joint statement on Biden Administration's FY 2022 Budget Request to Congress (mailchi.mp).

[2] The beneficiary of a CRT need not be an individual—any taxpayer may form a CRT and receive an income interest in return for the contribution.

the estate. The CRT transaction provides a partial tax deduction, based on the amount of the trust corpus that will eventually be transferred to the charitable beneficiaries.[3]

The reverse is also possible. A "charitable lead trust" (or CLT) is an irrevocable split-interest trust where the *charity* has the first interest in the trust's property, followed by non-charitable interests. For example, if you establish a trust where a designated charity has an interest for a fixed term of years, say 15 or 20 years, the CLT can provide that any remaining property at the end of that time will be distributed outright or retained in trust for certain beneficiaries, such as the trust grantor's children and/or grandchildren. A CLT is not a retirement vehicle; instead, it's a method of using interest rates and the charitable term to reduce the value of the taxable gift being made to the remainder beneficiaries.[4]

Each of these split-interest trusts has two different classes or sets of beneficiaries—one exclusively charitable and one exclusively non-charitable. They are irrevocable trusts from which payments go to one set of beneficiaries for a specified period of time, with the remainder going to the other set of beneficiaries.

II. Types of First Interests, Payouts, Other Restrictions, and Filings

Of course, for these to work, there are restrictions on the types of "first interests" that are created.

A. CRTs

A CRT donor may name the donor or someone else to receive the trust's income stream for a term of up to 20 years or for the life or one or more non-charitable beneficiaries. In the example above, that was the life of the donor and then the life of the donor's spouse. The trust document designates one or more charities to receive the remainder of the donated assets at the end of that initial interest period. Those may be public charities or private foundations (though there are reduced income tax benefits and can be investment limitations in the case of a private foundation remainderman). In some cases, the trustee may retain the power to change the charitable beneficiaries during the term of the trust. Both charitable remainder annuity trusts (CRATs) and charitable remainder unitrusts (CRUTs) are permitted. A CRAT will distribute a *fixed annuity amount* each year, and *no further contributions to the trust are permitted*. CRUTs, however, distribute a *fixed percentage of the balance of the trust assets* (as revalued annually), and *additional contributions may be made to the trust*.[5]

The type of assets that may be donated to a CRAT or CRUT is limited to cash, publicly traded securities, real estate, and certain closely held stock (but not S Corp stock) and other complex assets.

The contribution to a CRAT or CRUT results in a tax deduction the amount of which is based on the type of trust, its term, the projected income payments to the initial interest beneficiaries, and IRS interest rates

[3] This is an exception to the standard rule that you don't get a charitable donation for a fractional interest in property.

[4] A final type of split-interest trust not addressed here is a "pooled income fund."

[5] A CRAT will distribute the fixed amount of funds to the beneficiary every year, regardless of the performance of the assets of the trusts, whereas a CRUT's distributions will fluctuate with the value of the account. For a CRAT, there is no "valuation date": valuation is fixed as of the date of the funding of the trust. For a CRUT, the document will provide for a valuation date to be used to determine the unitrust payout. While it is possible to have unusual valuation dates (e.g., the day that the St. Louis Cardinals baseball team plays their home opener each season), a standard such as "the first day of the year" may be advisable to reduce the administrative burden of calculating the annual payment.

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based on assumptions of trust asset growth rates. It is important to note that the amount of the tax deduction is determined up front: it does not change if the value of the assets actually provided to the charity at the "end" (i.e., the termination of the initial interest period) are less than calculated. The CRAT or CRUT income payout to the donor or other beneficiaries must be at least 5% but no more than 50% of the trust assets and may be made monthly, quarterly, semi-annually or annually. The payout rate must be projected to provide the charity at least 10% of the value of the assets initially transferred. For CRATs, the maximum rate cannot exceed a rate that creates less than a 5% probability that the trust will leave nothing to charity. (Due to the pandemic, the section 7520 rate used to value charitable interests in trusts has been exceptionally low. The rate, provided monthly by the IRS, is 1.2% for August 2021, per Rev. Rul. 2021-14.)

A CRT is especially valuable to a donor whose assets consist of highly appreciated properties held long term that would be subject to capital gain taxation on substantial realized gain if sold. The in-kind donation to the trust avoids donor taxation of the gain while potentially providing a significant tax deduction based on the assumed value at the time the charity assumes the remainder interest.

Other types of CRTs include NICRUTs (Net Income Charitable Remainder Trusts), NIMCRUTs (Net Income Makeup Charitable Remainder Trusts), and "flip" versions of these. Part II will deal with these and other instruments.

The trustee will file Form 5227 for the CRT (CRAT or CRUT) using a calendar tax year. The tax return has schedules which track various 'buckets' or 'tranches' of the trust's income & corpus. As distributions are made, those distributions will be taken from the different tranches, in order of "worst to best" as outlined by the Code.

For example, assume that a CRAT has an annual payment to the beneficiary of $100,000. Assume that at the beginning of the year, the CRAT has the following balances:

1. $50,000 of accumulated, undistributed qualified dividend income
2. $600,000 of accumulated, undistributed long-term capital gains (LTCG)
3. $0 tax-exempt interest
4. $350,000 of corpus

Assume that during the year the CRAT earns $10,000 of qualified dividends on its investments, $10,000 of short-term capital gains (STCG), and $20,000 of LTCGs. The CRAT has no expenses (if it did, they would be allocated pro-rata against these items).

The distribution of $100,000 is, taking the tranches of income from "worst to best", (a) first, $60,000 of qualified dividends (i.e., the total amount of the earnings during the year and the accumulated but undistributed dividend income); (b) then, $10,000 of STCGs (again, the total in the trust, since there is only STCG earnings and no STCG accumulation); and (c) finally, $30,000 of LTCGs (out of the total $620,000,

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consisting of $20,000 LTCG earnings and the $600,000 of LTCGs in the trust at the beginning of the year). These are the amounts that will be reported to the beneficiary on a Schedule K-1 from the trust and are taxable on the beneficiary's individual income tax return.

At the close of the year, the CRAT would have the following balances:

1. $0 of accumulated, undistributed qualified dividend income
2. $0 of accumulated, undistributed STCGs
3. $590,000 of accumulated, undistributed LTCGs
4. $0 tax-exempt interest
5. $350,000 of corpus

CRUTs function in a substantially equivalent manner.

Note that both CRATs and CRUTs would also keep track of "post-2012" and "pre-2013" tranches of income, as any amounts that are distributed to a beneficiary from a "pre-2013" tranche is not subject to the section 1400A tax on net investment income.[6]

B. CLATs

A CLAT requires that the designated charities receive an annuity for the term of the initial interest, generally a specified percentage of the initial value of the trust's assets each year (e.g., 5% of the initial fair market value of the trust assets). At the end of the term, the trust terminates and the non-charitable beneficiaries receive whatever assets remain in the trust.

Donors may want to use the grant-or-CLAT strategy in order to generate a significant deduction to offset an usually large gain from a unique event, such as a liquidation, bonus or other one-time receipt of gain.

A CLAT files both a Form 1041 and a Form 5227. The CLAT claims a charitable deduction on the Form 1041 for the amount distributed to charity during the year and may elect to use part of the next year's charitable distribution in the current year. If it does so, it will need to track the amount of any such "borrowing" and account for it in the following year. This strategy is often beneficial in a year where the CLAT triggers an unusually large capital gain. If the trustee is monitoring the realized gains and can see that the remaining unrealized gains are nominal, there's no real downside from making the election.[7]

[6] Such amounts would be shown on line 14H of the Schedule K-1 as a negative adjustment, used when completing Form 8960.

[7] For example, say the CLAT is paying out $50,000 a year to charity and recognizes a capital gain of $80,000. If the CLAT, on Form 1041, "borrows" $30,000 of year 2's charitable contribution and claims a deduction of $80,000 on the return for year 1, the trust can reduce (or eliminate) the year 1 capital gains tax on that income. That would leave only $20,000 of charitable contribution deduction on the account for year 2, and if the trust recognizes a gain in year 2 of $40,000, it could again "borrow" $20,000 from year 3, again reducing or eliminating the tax for year 2. And so on, until either (a) you've pulled enough forward that you can't pull enough forward from a future year to wipe out the tax, or (b) gains have been low enough in the subsequent years that you're able to "repay" the borrowings and not have any tax due.

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III. Benefits of Use of Split-Interest Trusts

A chief benefit of split-interest trusts is the ability to time when income is taxed while increasing the benefit of the government subsidy of charitable giving.

A. CRTs

A CRT is especially valuable to a donor whose assets consist of highly appreciated properties held long term that would be subject to capital gain taxation on substantial realized gain if sold. The in-kind donation to the trust avoids donor taxation of the gain while potentially providing a significant tax deduction based on the assumed value at the time the charity assumes the remainder interest. The trust's investment income is exempt from tax; and if the trust sells trust assets, that sale is also exempt from tax. Of course, the income beneficiary will be subject to income tax on any income received from the trust during the initial interest period.

B. CLTs

A grantor CLAT can generate a charitable income tax deduction for the present value of the income stream going to the charity. The donor must, however, pay an income tax on all the CLAT's income during the initial interest period (including the amount paid to the charity). Donors may want to use the grantor-CLAT strategy in order to generate a significant deduction to offset an usually large gain from a unique event, such as a liquidation, bonus or other one-time receipt of gain.

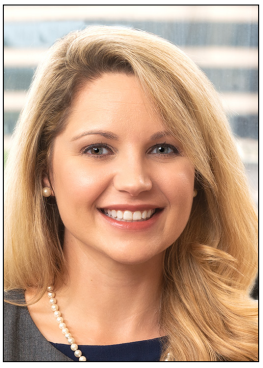
A non-grantor CLAT may be used when an immediate deduction is not a goal and the donor's primary purpose is to transfer assets in a tax-efficient way to beneficiaries. The donor receives a deduction against the value of the assets going to the beneficiaries at the CLAT's end of term. Unlike a grantor CLAT, the trust rather than the donor pays income tax on the CLAT income and the trust receives a charitable deduction for the amounts paid to the charity during the initial interest period. This may be particularly efficient if the donor funds the CLAT with income-producing property on the income of which the donor would otherwise have to pay tax.

IV. Other Factors to Be Considered

Both CRTs and CLTs are subject to the same list of regulations and restrictions which govern private foundations, including prohibitions on self-dealing and an extensive list of prohibited transactions.

Some states have rules which require charitable trusts to register with their Secretary of State's office, even if the trust is not actively soliciting any donations. ■

ABA Tax Times
AMERICAN BAR ASSOCIATION
Tax Section
An Online Publication of the ABA Tax Section
Summer • Sept. 2021 • Vol. 40 No. 4



PRACTICE POINT

The IRS Action on Decision in *TriNet*: An Updated View on the Test for the Statutory Employer

By **Kati Sanford Goodner**, Lewis Thomason, P.C., Knoxville, TN, and **Ursula Ramsey**, University of North Carolina Wilmington

In the United States today, there are 487 professional employer organizations (PEOs) that provide human resources, payroll, and employment tax services to approximately 173,000 small and mid-sized businesses employing nearly four million worksite employees.[1] PEOs are attractive to small and mid-sized businesses, in part, because a PEO-client relationship allows each party to focus on its area of expertise: business owners focus on running their businesses, while PEOs handle the administrative side of things.[2] In addition to the time gained by outsourcing the administrative burdens of payroll processing, human resources administration, and employment tax compliance, PEOs tout cost savings on benefits, workers' compensation, and unemployment insurance as an additional benefit of PEO use. Beyond that, the typical PEO client also gains access to employee benefits that may have been unavailable otherwise based on the client's size. Offering better benefits, in turn, helps PEOs' client companies attract and retain talent, something that is especially important in today's business environment.

The provision of employment tax services by PEOs inevitably has led to interpretation disputes between PEOs and the IRS. One question that continually arises is whether the PEO or the client company is the employer of the client company's employees for federal employment tax purposes. Recently, courts in the Eleventh Circuit, including the Eleventh Circuit appellate court itself, have faced this issue. In November 2020, the Eleventh Circuit issued its opinion in *TriNet Group*,[3] in which it established a new test for determining whether the PEO or the PEO's client had control over the payment of wages and, consequently, qualified as the statutory employer under section 3401(d)(1).[4] In June 2021, the IRS issued an Action on Decision in which it noted its nonacquiescence in the *TriNet* case. This article provides an update on the

[1] Laurie Bassi & Dan McMurrer, The PEO Industry Footprint 2021 1 (2021); *Overview*, NAPEO, https://www.napeo.org/what-is-a-peo/about-the-peo-industry/napeo-white-papers/overview.

[2] The data in the remainder of this paragraph are from Laurie Bassi & Dan McMurrer, The ROI of Using a PEO 1-2 (2019).

[3] *TriNet Group, Inc. v. United States*, 979 F.3d 1311 (2020).

[4] *Id.* at 1319-20, 1322. (Section citations herein are to the Internal Revenue Code of 1986, as amended, unless otherwise noted.) Prior to the Eleventh Circuit's *TriNet* test, the U.S. District Court for the Middle District of Florida had established another test for determining the statutory employer based on control of the bank account from which wages were paid. *Paychex Business Solutions, LLC, v. United States*, No. 8:15-cv-1455-T24-TGW, 2017 WL 2692843 (M.D. Fla. June 22, 2017). In March 2020, the IRS issued an Action on Decision recommending nonacquiescence in *Paychex*. *Paychex Bus. Sols., LLC, v. United States*, 2017 WL 2692843 (M.D. Fla. 2017), *nonacq.*, 2020-12 I.R.B. 521 (Mar. 16, 2020). *See, e.g.*, Ursula Ramsey & Lorraine Lee, *Post TriNet: PEOs and the Statutory Employer*, 171 Tax Notes 309 (Apr. 19, 2021).

status of the current test for the statutory employer in the PEO context after the IRS's issuance of that Action on Decision. It also discusses implications of which attorneys should be aware when advising clients who work with PEOs.

I. The Statutory Employer Under Section 3401(d)(1): A Brief Overview

Because the central issue in the IRS's Action on Decision in *TriNet* is whether the PEO qualifies as the section 3401(d)(1) statutory employer, it is helpful to review those requirements. Responsibility for withholding and paying employment taxes rests with the employer,[5] rendering the determination of the employer of considerable importance. Typically, determining the employer involves identifying the common-law employer by assessing that employer's right to control the employee (the right to control both the methods and the results of their work).[6] Section 3401(d)(1) provides an exception to this rule, as follows: "if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term 'employer' … means the person having control of the payment of such wage." The regulations caution, however, that this definition of a statutory employer "is designed solely to meet special or unusual situations. [The definition is] not intended as a departure from the basic purpose."[7]

Whether a PEO satisfies this special definition of statutory employer is a point of tension between PEOs and the IRS. Using the right-to-control test, the typical PEO client clearly would qualify as the common-law employer of the client company's employees because the PEO client maintains control over their day-to-day work. Nonetheless, an avenue for the PEO to qualify as the employer would be for the PEO to qualify under the exception for having legal control of the payment of wages based on the payroll and employment tax services it provides. Whether the statutory employer exception applies thus depends on what it means to control the payment of wages. On this point, the IRS and PEOs disagree.

II. The IRS's Action on Decision in *TriNet*

In the *TriNet* decision, a PEO called Gevity and its client companies entered into contracts that specified that Gevity, on behalf of each client company, would issue paychecks, process payroll, and file employment taxes.[8] To that end, Gevity filed Forms 941 on behalf of client company employees using its own name and Employer Identification Number and without identifying itself as a PEO. Because Gevity had clients in the food and beverage industry whose employees earned tips, Gevity claimed FICA tip credits under section 45B. From 2004 to 2009, Gevity claimed these FICA tip credits on a fairly large scale on behalf of "274 to 477 client companies per year, totaling more than 1,170 clients over the period at issue."[9] Having determined that Gevity was not the employer of these client company employees, the IRS found that Gevity was not eligible for the credits and issued notices of deficiency covering those years. As successor-in interest to Gevity, TriNet paid more than $10.5 million, was subsequently denied a refund, and filed suit. Both parties moved for summary judgment, which the district court granted in favor of TriNet as the statutory employer under section 3401(d).[10] The IRS appealed that decision to the Eleventh Circuit.

[5] Treas. Reg. § 31.3401(d)(1)(h).
[6] Treas. Reg. § 31.3401(c)(1).
[7] Treas. Reg § 31.3401(d)(1)(h).
[8] *TriNet Group*, 979 F.3d at 1314-1318.
[9] *Id.* at 1316.
[10] *Id.* at 1317.

The central issue in *TriNet* was, of course, whether the PEO was the section 3401(d)(1) statutory employer.[11] The Eleventh Circuit held it was because it controlled the payment of wages and that it was therefore entitled to claim the tax credits.[12] The Eleventh Circuit noted at the outset that either the employer is the common-law employer or the employer is the statutory employer.[13] If the common-law employer does not control the payment of wages, then the statutory employer is deemed the employer and becomes responsible for employment taxes.[14] To determine who has control over the payment of wages, the Eleventh Circuit found illustrative the contract in place between the parties, explaining that determining control meant determining "who is actually responsible for the payment of wages, as informed by the parties' understandings of their arrangement."[15] As is highlighted in the Action on Decision, "[t]he Eleventh Circuit looked to both the language in the PSAs and how the relationship between the parties functioned, 'most importantly the fact that Gevity *generally* issued wage payments before receiving cleared payment from its clients.'"[16]

In its Action on Decision, the IRS took issue with the *TriNet* decision on two fronts. First, the IRS objected to the Eleventh Circuit's legal interpretation. The IRS has maintained a consistent position that section 3401(d)(1) provides only a narrow exception.[17] The IRS considered the Eleventh Circuit's statement of what is essentially a new test for determining which party has control of the payment of wages in the PEO context as going far beyond the intended narrow reach of the exception and compromising a key principle—that "an employer may not simply delegate or contract away its taxing responsibilities."[18]

Second, the IRS objected to both the Eleventh Circuit's analysis and its interpretation of key facts that supported its analysis.[19] An important fact in determining who had control of wage payments for the Eleventh Circuit was that the PEO generally issued payroll payments prior to receiving a payment from the client company: that was considered a strong indicator that the PEO, not the PEO's client, had control of the payment of wages.[20] The IRS, however, characterized the arrangement as a flow-through transaction for the PEO for which it bore no financial risk and supported that view by noting that the PEO did *not* include these payments on its SEC financial statements as revenue because of SEC flow-through rules.[21] To the IRS, a delay in one day in receiving a payment from the client company was not sufficient to make the PEO the statutory employer in control of wage payments.

Moreover, the IRS noted that the Eleventh Circuit failed to apply properly its own test.[22] In the *TriNet* opinion, the Eleventh Circuit explained that approximately seventy-five percent of PEO clients pay via an automated clearing house (ACH).[23] The IRS's non-acquiescence questioned the logic of applying this interpretation evenly to all PEO clients, as the remaining twenty-five percent of clients use wire transfers or

[11] *TriNet Group, Inc. v. United States*, 979 F.3d 1311 (11th Cir. 2020), *nonacq.*, 2021-24 I.R.B., 1 (June 14, 2021) (henceforward, *TriNet nonacq.*)
[12] *TriNet Group, Inc.*, 979 F.3d at 1313.
[13] *Id.* at 1318.
[14] *Id.* at 1320.
[15] *Id.* at 1319-20.
[16] *TriNet nonacq.* at 2.
[17] *Id.* at 3.
[18] *Id.* at 4.
[19] *Id.*
[20] *TriNet Group, Inc.*, 979 F.3d at 1321.
[21] *TriNet nonacq.* at 4, n.6.
[22] *Id.* at 5.
[23] *TriNet Group, Inc.*, 979 F.3d at 1321.

certified checks that, unlike an ACH transfer, have no lag time. At the least, the IRS claimed, the Eleventh Circuit should have differentiated these two scenarios.[24]

In recommending nonacquiescence, the IRS held firm to its interpretation. "The IRS will continue to take the position that an entity is not in control of the payment of wages if the payment of wages is contingent upon, or proximately related to, the entity having received funds from the common law employer."[25] The practical impact of the IRS's nonacquiescence is that the IRS will only follow this case in the Eleventh Circuit and only in cases with the same facts.

III. Implications

Perhaps the biggest takeaway from the IRS's *TriNet* nonacquiescence is the IRS's firm insistence on its understanding of the section 3401(d) statutory employer. Going forward, parties should anticipate that the IRS will continue to maintain this position. Interested parties should follow developments in other circuits to see if they adopt the Eleventh Circuit's looser test or follow the IRS's interpretation.

It is worth reviewing the reason for the IRS position on who qualifies as the statutory employer. The IRS viewed the *TriNet* court's expansion of the section 3401(d) exception as compromising the key principle that "an employer may not simply delegate or contract away its taxing responsibilities."[26] For support, the IRS noted, among other cases, the decision in the 1995 *Garami* case that illustrates the nearly inescapable nature of an employer's taxing responsibilities.[27] In *Garami*, a cleaning company used the services of a PEO (Sunset Staffing Services, referred to in the case as an employee leasing company) to issue payroll and to withhold and remit employment taxes.[28] The PEO remitted employment taxes under its own EIN without differentiating on which client company's behalf a payment was made. When the United States filed a claim for unpaid FICA taxes in a bankruptcy case involving the cleaning company's owner, that owner asserted that it had made the appropriate payments to the PEO. The IRS's position was that the cleaning company's owner/debtor remained responsible for the unpaid FICA taxes, unless the PEO could provide specific proof that it had remitted taxes on behalf of the cleaning company's employees. The court explained that "although [the PEO] contractually agreed to pay the employment taxes of Tidy Maid's cleaners, such an agreement does not relieve the actual employer, Tidy Maid, of the obligation to pay those taxes."[29] The district court noted the apparent unfairness to the owner of the cleaning company and suggested that the owner try to obtain proof of payment from the PEO.[30] Still, "until payment is actually made to the government, the responsibility for such payment rests on the shoulders of the [employer]." Given the strong stand that the IRS has taken in such prior case law, it is understandable that the IRS would be resistant to an erosion of the non-delegable nature of this duty in future cases.

Furthermore, it is worth noting that Florida, included in the Eleventh Circuit's jurisdiction, was the cradle of the PEO industry in the 1970s-80s: today, Florida PEOs process approximately $25 billion per year in payroll.[31] In addition, both Florida and Georgia in the Eleventh Circuit have a high relative PEO presence

[24] *TriNet nonacq.* at 5.
[25] *Id.*
[26] *Id.* at 4.
[27] *United States v. Garami*, 184 B.R. 834 (M.D. Fla. 1995).
[28] *Garami*, 184 B.R. at 835-36.
[29] *Id.* at 838.
[30] *Id.*
[31] Brian Hartz, *Inside Outsourcing: Employment Law Veteran Reflects on Niche Industry's Rise*, Business Observer (Mar. 6, 2020); *The History of the Florida Association of Professional Employer Organizations*, FAPEO.

when controlled for size.[32] The fact that PEOs are highly active in the area means the Eleventh Circuit's looser test could have a major impact within the industry.

Finally, an important first step for attorneys who counsel businesses that are PEO clients is to determine whether the PEO with whom your client works is an IRS-certified PEO (CPEO). A CPEO is a PEO that has applied for and achieved voluntary certification by the IRS as having met the requirements of section 7705—including requirements related to bonding, background checks, reporting, service contracts with clients, and independent financial review. PEO certification status can be verified at the CPEO public listings on the IRS website. That website includes certified PEOs as well as PEOs whose certification the IRS has suspended or revoked. Because section 3511(c) definitively provides that the CPEO is the employer of its client companies' work site employees, clients who work with a CPEO can escape the uncertainty discussed here regarding employer status.[33] Clients of a noncertified PEO need to track court discussions of the test for control of the payment of wages, as any changes adopted broadly by appellate courts would dictate whether the PEO qualifies as the statutory employer for employment tax purposes.

While the IRS will follow *TriNet* within the Eleventh Circuit in cases with the same facts, the IRS has clearly stated its nonacquiescence. It appears likely that the battle of statutory employer interpretations in the PEO context will continue. ■

[32] Laurie Bassi & Dan McMurrer, The PEO Industry Footprint 2021 4 (2021).
[33] § 3511(a)(1).

ABA Tax Times
AMERICAN BAR ASSOCIATION
Tax Section
An Online Publication of the ABA Tax Section
Summer • Sept. 2021 • Vol. 40 No. 4

POLICY POINT

Was the 1895 *Pollock* Case Decided Consistently with Existing Tax Principles?

By **Charles Edward Andrew Lincoln IV**, Ph.D. Candidate, University of Groningen

The foundation of the modern tax system in the United States is based on the 16th Amendment passed in 1909. The amendment was Congress's response to the 1895 Supreme Court decision in *Pollock*,[1] which held that an income tax levied on the U.S. population on "dividends, royalties, and rents" was unconstitutional. *Pollock* is a seminal case in the history of taxation and tax law in the United States. Theoretically, the key question is whether a tax on property is the same as a tax on "dividends, royalties, and rents" *arising from* that property. Understanding the reasoning of this case illuminates the history of taxation and key concepts underlying our tax system. It also has implications for constitutional interpretation. *Pollock* and the definition of a direct and indirect tax on differing kinds of property have recently been debated in the *ABA Tax Times* by Professors Calvin H. Johnson[2] and Erik M. Jenson in the context of considering the constitutionality of a wealth tax.[3]

I. What Was the Court's Justification for the *Pollock* Decision?

Chief Justice Fuller, writing for the Court, provided a succinct explanation.

> First. We adhere to the opinion already announced—that, taxes on real estate being indisputably direct taxes, taxes on the rents or income of real estate are equally direct taxes.
>
> Second. We are of opinion that taxes on personal property, or on the income of personal property, are likewise direct taxes.

[1] *Pollock v. Farmers' Loan & Trust Company*, 157 U.S. 429 (1895), *affirmed on rehearing*, 158 U.S. 601 (1895).

[2] Calvin H. Johnson, *A Sur-Rebuttal to Professor Jensen on the Constitutionality of an Unapportioned Wealth Tax*, 39 ABA Tax Times (Nov. 5, 2019) (contending that "Professor Jensen's counterpoint in this issue, *An Unapportioned Wealth Tax Has Constitutional Problems*, misses the key point that under the Founders' meaning of the Constitution, apportionment was never intended to protect wealth from tax nor be a restraint on any federal tax. Under the Founders' meaning, expressed both by ordinary language and by *Hylton*, if apportionment is not a reasonable administrative measure, apportionment is not required"). Johnson adds that "[a]pportionment of direct tax by population arose in 1783 (not 1787) in a proposal to determine state quotas under requisitions—that is, direct taxes on the states. Under the Articles of Confederation, all national tax was a direct tax because Congress had power to raise tax revenue only by requisitions. The Articles determined states' quotas under a requisition by value of real estate and improvements, but Pennsylvania submitted appraisals that cut their tax to half of Virginia's, which the rest of the states thought was cheating. The 1783 proposal would have determined state wealth by population (counting slaves' contribution to wealth at three-fifths)."

[3] Erik M. Jensen, *An Unapportioned Wealth Tax Has Constitutional Problems*, 39 ABA Tax Times (Nov. 5, 2019) (arguing that "[t]he Court in the 1895 income tax cases, *Pollock v. Farmers' Loan & Trust Co.*, had extended the *Hylton* understanding to include a tax on any property, not just real estate, in the category of direct taxes").

> Third. The tax imposed by sections 27 to 37, inclusive, of the act of 1894, so far as it falls on the income of real estate, and of personal property, being a direct tax, within the meaning of the constitution, and therefore unconstitutional and void, because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid.
>
> The decrees hereinbefore entered in this court will be vacated. The decrees below will be reversed, and the cases remanded, with instructions to grant the relief prayed.[4]

To understand the opinion, of course, it must be clear what a direct tax and indirect tax was in the context of the 1895 decision since those concepts have evolved over time and are different today. Today, direct taxes are those on income paid from the taxpayer directly to the government—e.g., the individual and corporate income taxes. Indirect taxes are those paid indirectly by consumers in a transaction for goods or services—e.g., sales, excise, value-added, and goods and services (GST) taxes where the retailer collects the tax amount and pays it over to the government. At the time of the *Pollock* decision, however, a direct tax was a tax levied directly on property that applied by the rule of apportionment, whereas indirect taxes, such as excise taxes, applied under the rule of uniformity in the same way across all areas of the country.

Commentary on the *Pollock* case the same year the case was decided summarizes that then-existing distinction.

> The clause in the Constitution regarding direct taxes was the result of a compromise between conflicting views, "resting on the doctrine that the right of representation ought to be conceded to every community on which a tax is to be imposed, but crystallizing it in such form as to allay jealousies in respect of the future balance of power; to reconcile conflicting views in respect of the enumeration of slaves; and to remove the objection that, in adjusting a system of representation between the States, regard should be had to their relative wealth, since those who were to be most heavily taxed ought to have a proportionate influence in the government. The compromise, in embracing the power of direct taxation, consisted not simply in including part of the slaves in the enumeration of population, but in providing that as between State and State such taxation should be proportioned to representation."[5]

The key to the *Pollock* case was determining whether the tax was an indirect tax or a direct tax. If the tax were a direct tax, it would have to be apportioned to the states under the constitutional Apportionment Clause. The Supreme Court decided that the tax levied was a direct tax.

II. Was *Pollock* Decided to Protect Monied Interests?

The Supreme Court reached its holding in *Pollock* by equating taxes on the property itself with taxes on income earned from property—i.e., with taxes on "dividends, royalties, and rents." Under that view, owning and living in a property would be equivalent to owning and renting out the property for tax purposes. In the modern U.S. tax system, rents derived from property are a form of taxable income, whereas the benefit from an owner's personal use of that property (i.e., the "imputed income") is not treated as a form of economic gain subject to taxation.

[4] *Id.* at 637.

[5] Francis R. Jones, *Pollock v. Farmers' Loan and Trust Company*, 9 Harv. L. Rev. 198, 200–01 (1895) (quoting from the majority opinion in Pollock).

Since in the *Pollock* case's historical context, those who owned land and other property such as stocks and bonds yielding incomes represented the monied interest, not mere plebian wages earned, the Court's conclusion suggests that the idea of taxing landowners on their income from landholdings was politically untenable. There is no clear statement to that effect, of course, but the notion of settled law regarding the idea that a tax on real estate would have to be apportioned suggests particular concern at the time for the propertied class. In fact, Justice Henry Billings Brown in the dissent wrote that "as it implies that every income tax must be laid according to the rule of apportionment, the decision involves nothing less than the surrender of the taxing power to the moneyed class."[6]

III. Was the Federal Government's Role in Taxation and the Function of the Apportionment Clause Clear to the Early Courts?

Hamilton, of course, argued for a strong federal government. He wanted to create a federal Treasury Department in order to raise federal revenues.[7] With a Treasury Department, the United States government would be able to incur a national debt. Hamilton suggested to President Washington that Congress "adopt" the debts of every individual state through a new national bank. That national debt would create a "credit rating" for the early Republic. This "credit rating" (referred to at the time as simply "credit") would allow the United States to engage in riskier levels and volumes of international trade which, Hamilton believed, would ensure the future prosperity of the United States.

The proposer of the Apportionment Clause suggested it to resolve a distinctly different issue—a "special and temporary purpose", as Justice Brown described it in his dissent in *Pollock*.[8] As Madison stated in Federalist No. 54 (and *Pollock* reiterates), "The establishment of the same rule for the apportionment of taxes as for regulating the proportion of representatives … was by no means founded on the same principle, for, as to the former, it had reference to the proportion of wealth … while the opposite interests of the states, balancing each other, would produce impartiality in enumeration."[9] The Supreme Court stated in the 1881 *Springer*[10] case (a case decided when chattel slavery no longer existed) that Gouverneur Morris suggested the Clause to resolve a debate about slavery. That debate, of course, brought the primary "property" of the slave-holding states into contention. The *Springer* Court itself was unclear regarding the exact nature of that debate, but it undoubtedly referenced the question of how the slave population would be taken into account for congressional representation. Gouverneur Morris suggested the Apportionment Clause as a "bridge" to solve that debate; but once the debate on slavery had been settled, Gouverneur Morris did not see a purpose for retaining apportionment.[11] Nonetheless, the Constitutional Convention kept the clause. The constitutional drafting thus described does not provide a firm answer as to why the Apportionment Clause was retained and what was encompassed in the "direct taxes" it sought to govern.

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[6] *Pollock v. Farmers' Loan & Trust Company*, 158 U.S. 601 (Justice Brown in dissent). Brown adds a statement that should be of import to today's audience, in light of increasing inequality due to the ability of the wealthy to avoid taxation: he hopes that the Court's decision "may not prove the first step toward the submergence of the liberties of the people in a sordid despotism of wealth." *Id.*

[7] The concepts in this paragraph are well summarized in the John Adams HBO series available at the following link: https://www.youtube.com/watch?v=notJuFGXQ9w.

[8] *Pollock v. Farmers' Loan & Trust Company*, 158 U.S. 601 (Justice Brown in dissent).

[9] *Pollock v. Farmers' Loan & Trust Company*, 157 U.S. 429 (1895) (at paragraph 32 in the Legal Information Institute source).

[10] *Springer v. United States*, 102 U.S. 586, 596 (1880).

[11] Justice Noah Haynes Swayne mentioned the "bridge" discussion at the 1787 Constitutional Convention in the Springer case. "Mr. Morris said that 'he hoped the committee would strike out the whole clause. … He had only meant it as a bridge to assist us over a gulf; having passed the gulf, the bridge may be removed. He thought the principle laid down with so much strictness liable to strong objections.' The gulf was the share of representation claimed by the Southern States on account of their slave population. But the bridge remained. The builder could not remove it, much as he desired to do so. All parties seem thereafter to have avoided the subject." *Id.* at 1197.

Hylton,[12] decided in 1796, is the earliest case dealing with the Apportionment Clause. Notably, Alexander Hamilton argued before the U.S. Supreme Court for approximately three hours. The *Hylton* case considered whether Congress had the authority to levy a tax on carriages, a form of personal property. The question was whether such a tax would be a direct tax that must be apportioned under the Apportionment Clause. The Supreme Court ultimately decided that the tax on carriages, which is a tax on the possession of goods, was *not* a direct tax and did not have to be apportioned even though it was an annual tax paid directly by the person holding and using the carriages. In arriving at its conclusion, however, the Court also restated the old landholdings position that a tax on land would nonetheless be considered a direct tax.

It seems clear from this one case that the Supreme Court did not have a clear conception of what taxation should mean in the new republic or even what role the Supreme Court had to play in developing the tax system. Justice Samuel Chase wrote that the U.S. Supreme Court should consider taxes as they were understood in Great Britain.[13] Because the *Hylton* case was decided a few years before the 1803 Supreme Court development of the concept of judicial review in *Marbury v. Madison* (which determined that the judiciary had the constitutional power to declare a congressional statute unconstitutional), the *Hylton* determination that the tax on carriages was *not* a direct tax requiring apportionment allowed the Court to avoid stating that the tax on carriages was unconstitutional for failing the Apportionment Clause. The case was a steppingstone, however, to the later *Marbury v. Madison* decision since stating that the carriage tax act was valid under the constitution suggests an unequivocal power to be able to say that another act is unconstitutional.

IV. *Pollock* Simply Doesn't Fit with the *Hylton* (and Prior) Precedent

Nonetheless, it seems clear that the 1796 *Hylton* decision that a tax imposed directly on certain property (in this case, carriages) was not a "direct tax" subject to apportionment differs markedly from the decision reached almost a decade later in *Pollock*. The 1895 *Pollock* decision, by treating any tax on income generated by land held by the person ostensibly subject to the tax as equivalent to a direct real estate property tax and therefore a direct tax that would be subject to apportionment does not appear to follow the *Hylton* precedent. Justice White, in dissent in *Pollock*, said as much, noting that the result of the majority "opinion just announced is to overthrow a long and consistent line of decisions, and to deny to the legislative department of the government the possession of a power conceded to it by universal consensus for 100 years."[14] He added later that the decision "affects fundamental principles of the government by denying an essential power of taxation long conceded to exist, and often exerted by congress."[15] The *Pollock* case created a considerable lack of clarity, rather than bringing the definitions of "direct" and "indirect" taxation into greater clarity, since

- The terms themselves seem inconsistently defined and applied;
- The constitutional history is unclear at best while either contradictory itself or irrelevant to taxation since it was meant to deal with other issues; and

[12] *Hylton v. United States*, 3 U.S. (3 Dall.) 171 (1796).
[13] Justice Chase defined a direct tax and indirect tax within the context of how Great Britain understood the terms from which the United States adopted its legal terms for taxation. Justice Chase wrote that "an annual tax on carriages for the conveyance of persons, may be considered as within the power granted to Congress to lay duties. The term duty, is the most comprehensive next to the generical term tax; and practically in Great Britain (whence we take our general ideas of taxes, duties, imposts, excises, customs, etc.) embraces taxes on stamps, tolls for passage, etc. and is not confined to taxes on importation only." *Hylton v. United States*, 3 U.S. 171, 175 (1796).
[14] *Pollock v. Farmers' Loan & Trust Company*, 157 U.S. 429 (1895) (at paragraph 162 in the Legal Information Institute source).
[15] *Id.* (at paragraph 273 in the Legal Information Institute source).

- The case law draws opposite conclusions from similar situations.

Pollock can be viewed as accurately decided only if one accepts the Court's poorly reasoned premise that a tax on *income from any property* for which a tax on the property itself is a direct tax is also a direct tax. Accepting this premise does not seem reasonable considering the contextual definitions at the time, the development of the Apportionment Clause at the convention, and the early *Hylton* case that explicitly considered what was encompassed in those key terms. ■

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An Online Publication of the ABA Tax Section
Summer • Sept. 2021 • Vol. 40 No. 4

AT COURT

Pyramiding Employment Taxes and Government Remedies

By **T. Keith Fogg**, Clinical Professor of Law, Harvard Law School

As employees, we often speak in terms of paying taxes to the IRS. In reality, however, employees actually pay those taxes to their employers who, in turn, pay the taxes over to the IRS. The system of tax collection in the United States relies heavily upon employers who are essentially appointed by statute to act as the agent of the IRS for the collection of both income and employment taxes through a withholding mechanism. The system, built as a result of the World War II influx of taxpayers, makes it easy for employees to pay in a rather painless fashion and provides the government with year-round payment of taxes. Nonetheless, the system is not as transparent as it perhaps should and could be.[1]

The system breaks down when the employer fails to pay over the taxes that it withholds from its employees. In most cases, the failure stems from a business model that has created a cash-flow shortage. Lacking cash to pay all its creditors, many business owners pay the government last because it is frequently the slowest creditor to voice concerns. While most business owners fail to pay the withheld taxes because a cash shortfall leads them to a business decision prioritizing other creditors, some business owners operate with a continuing business model of stiffing the IRS.[2]

This second group of business owners engage in a practice called pyramiding through which they operate for months, or years, on end without paying the withheld taxes. Sometimes they will even close one business and move to another when the IRS creates too much heat in its pursuit of the unpaid taxes. The traditional method for putting pressure on business owners to pay over withheld taxes is for the IRS to pierce the corporate veil and assess a liability against the individuals at the business who are responsible for failing to pay employment taxes. Section 6672 allows the IRS to make these assessments.

For some hardcore pyramiding businesses, even that assessment of personal liability is insufficient to stop the accrual of additional liabilities. Until a change in the law in the early 1980s, the IRS frequently engaged in no-equity seizures to shut down businesses that were pyramiding; however, the change in the statute currently prohibits the IRS from using no-equity seizures to shut down businesses.[3] Following the end of no-equity seizures, the IRS searched for another tool to use to stop pyramiding. Working closely with the Department of Justice (DOJ) Tax Division and after many years of discussing the possibility, the IRS decided that it could bring an injunction action seeking to stop the pyramiding taxpayer from running up additional

[1] *See* T. Keith Fogg, *Transparency in Private Collection of Federal Taxes*, 10 Fla. Tax Rev. 763 (2011).
[2] *See generally* T. Keith Fogg, *In Whom We Trust*, 43 Creighton L. Rev. 357 (2010).
[3] § 6331(f).

liabilities. Doing this through an injunction takes longer and costs more money from the perspective of the time and effort of the Department of Justice trial attorney but can prove an effective method of shutting down a business that continues to ignore the requirement to pay payroll taxes.

In the 2018 May Tax Meeting, the Civil and Criminal Tax Penalties Committee held a panel entitled "Employment Tax Liabilities and IRS Collections." The panelists discussed the various tools that DOJ and IRS have to go after employers who pyramid employment tax liabilities by withholding taxes from employees but then failing to remit those taxes to the government. They also discussed the challenges that the government faces in trying to prosecute one of these cases. A high percentage of injunction cases seem to fit the bill for criminal prosecution, and DOJ does now prosecute people for failing to pay employment taxes—something it almost never did three decades ago. Nonetheless, it can be difficult to know what causes the decision to fall into the injunction box rather than the prosecution box.

The 2019 *Askins & Miller Orthopaedics* case[4] demonstrates some of the challenges the government faces in shutting down a non-compliant business. The business was run by two brothers who had caused the business not to pay its employment taxes (both trust fund and non-trust fund) since 2010. To hide the business's assets, the brothers also created trust and other entity accounts. In many ways, the case reads like a textbook case for a criminal prosecution against the brothers, but here the government chose the civil route. The district court, however, refused to impose an injunction.

> The IRS has tried several collection strategies over the years. It started with an effort to achieve voluntary compliance: IRS representatives have spoken with the Askins brothers "at least 34 times" since December 2010, including 27 in-person meetings. Twice they entered into installment agreements that set up monthly payments to bring Askins & Miller back into compliance, but the company defaulted both times. Two other times, they warned Askins & Miller that continued noncompliance could prompt the government to seek an injunction.
>
> The IRS has employed more aggressive means as well. It served levies on "approximately two dozen entities," but most "responded by indicating that there were no funds available to satisfy the levies." Three entities paid some money, but not nearly enough to satisfy Askins & Miller's debts or to keep pace with its accrual of new liabilities. Additionally, the IRS's ability to collect payments through levies has been hampered by the defendants' attempts to hide Askins & Miller's funds and to keep the balances in Askins & Miller's accounts low. Between 2014 and 2016, the Askins brothers transferred money from Askins & Miller to "RVA Trust," which operates a private hunting club for the brothers, and "RVA Investments," an accounting business associated with their father. The IRS also discovered additional accounts at BankUnited and Stonegate Bank. It did not seek to levy RVA Trust, RVA Investments, or the bank accounts because it discovered them after this case had been referred to the Department of Justice and because the IRS believed that "there is a substantial risk that any new levy would result in [the defendants] opening new undisclosed accounts and moving the money there."[5]

When the IRS finally gave up on its administrative collection efforts and referred the case to the DOJ for the pursuit of an injunction, it met another obstacle. The district court denied the motion without prejudice on finding the declaration conclusory and the proposed injunction "effectively an 'obey-the-law' injunction."

[4] United States v. Askins & Miller Orthopaedics, P.A., 924 F.3d 1348 (11th Cir. 2019).
[5] *Id.* at 1352.

The IRS filed a new declaration with the district court, trying again to convince it to enjoin the taxpayer's actions. The district court again reached the conclusion that the requested injunction served as an order to obey the law. After the second attempt at the district court, the IRS appealed. While the case was pending in the district court, the taxpayer ran up even more liabilities.

To obtain a preliminary injunction under "the traditional factors," the IRS must demonstrate (i) a substantial likelihood of success on the merits, (ii) that it will suffer irreparable injury unless the injunction is issued, (iii) that the threatened injury to the IRS outweighs whatever harm the proposed injunction might cause the defendants, and (iv) that the injunction would not be adverse to the public interest. The district court noted that the parties essentially agreed that the facts of the case met three of the four traditional elements for an injunction case. The court considered that the IRS could obtain a judgment for damages, however, so it did not face irreparable injury. The IRS argued that such a judgment was meaningless in this case because it had already exhausted its administrative efforts with its powerful administrative tools in trying to collect the outstanding debt.

On appeal, the Eleventh Circuit reversed the district court decision, holding that the government had proved its case for imposing an injunction. Mootness regularly upends injunction cases as business owners hop from one business entity to another to stay ahead of the IRS collection efforts. Here, the appellate court first slapped away the taxpayers' attempted mootness argument.

> Given the undisputed facts before us, we do not believe that the defendants can satisfy their "heavy" and "formidable" burden of making it "absolutely clear" that their behavior will not recur.[6]

Next, the appellate court addressed the district court's main concern that the injunction was simply an obey-the-law order.

> Finally, the proposed injunction goes well beyond merely requiring compliance with the employment tax laws. In fact, it lists numerous concrete actions for the defendants to take — to name only a few, segregating their funds, informing the IRS of any new business ventures, and filing various periodic affidavits — well beyond what a simple "obey-the-law" injunction would look like. In short, this case does not raise the sort of fair notice concerns that Rule 65(d) is designed to address.[7]

The fact that the IRS appealed the case to circuit court shows how important it views the injunction remedy and how concerned it was with letting the district court precedent stand. Winning on appeal provided a boost to the IRS in seeking injunctions in similar circumstances, leading to its most recent victory in *Potoroka Concrete*.[8] There, the IRS won an injunction case the easy way: the defendants failed to contest the injunction request.

The concrete business in the case had failed to pay its employment taxes for more than three years. The IRS had already obtained an assessment against the owner under section 6672. In the absence of a contest, it was successful in obtaining the injunction language it sought. That language is instructive. First, it obtained a judgment against the business and the individual for the unpaid taxes. Obtaining the judgment keeps

[6] *Id.* at 1357.
[7] *Id.* at 1362.
[8] United States v. Potoroka Concrete LLC, 127 AFTR2d 2021-826 (E.D. Mich. 2021).

the statute of limitations on collection open much longer and gives the IRS more collection options. Next, the injunction included a litany of actions the business and individual were ordered to perform, including withholding and paying over the proper amount from any paycheck issued, timely depositing the taxes, doing the same for any entity the business or individual controls, delivering affidavits to the Revenue Officer of compliance, timely filing of employment tax returns, and not paying other creditors until after the taxes are paid. The court required the delivery of the order to all employees so that the employees would know of the company's past failures and future responsibilities.[9] The court also retained jurisdiction to monitor future compliance and provided detailed instructions regarding IRS actions in the event of a default and the court's responses, including holding the responsible officer in contempt of court.

The *Potoroka* case shows that the IRS will continue to aggressively seek to stop pyramiding companies if it has the resources to put together injunction cases. Because the taxpayer did not contest the injunction, the *Potoroka* case does not provide insight into areas of problems the IRS may face in these cases. Even though it now has the injunction, $200,000 of unpaid taxes remain in this case.

Making sure that employers collecting taxes on behalf of the IRS fulfill their responsibilities requires constant vigilance by the IRS. The withholding system is great when it works, but many decades of experience show that some employers will not fulfill their responsibilities without aggressive oversight. ■

[9] It is worth noting here that if the company withholds from an employee, the employee is not liable to the IRS if the company fails to pay over the withheld taxes. This treatment is consistent with the general theory that in the collection of taxes the employer serves as the agent of the IRS and not the employee.

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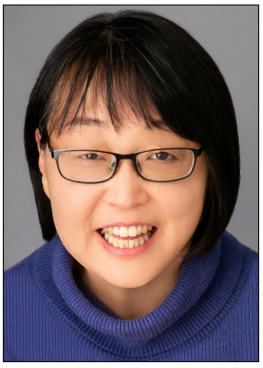

PRO BONO MATTERS

Rinse, Wash, and Repeat: The Cyclic Nature of Attorney (Pro Bono) Work

By **Gina Ahn**, Community Economic Development Services, Low Income Taxpayer Clinic, Los Angeles, CA

Have you ever wondered about the cyclic nature of our work as attorneys? I once asked a friend who defends corporations in employment law, "Why do you have repeat clients? Don't they learn from the first time an employee sues them?" His response was simple, "Sure they learn. But employees are creative and they think of new ways to sue deep pockets."

I've wondered about the cyclic nature of public interest tax work, as well. We often have repeat clients at our low-income taxpayer clinic (LITC). Even if we help one Uber driver who didn't realize his "side hustle" was a business that owed estimated quarterly taxes *before* April 15, there is always another "fill-in-the-blank" befuddled independent contractor walking into the clinic doors. The education begins again, with the newly minted business owner, who did not know they owned a business.

A beach full of starfish: is it worth it?

It can be disheartening but I find a modern Aesop's fable helpful. It's called *The Starfish Story*. It's a story often quoted by the founder of the operating foundation at which I once worked to remind the staff that what we were doing was meaningful and not to get "compassion fatigue." Apparently, it's a favorite story among foundations because there's even a foundation using the concept as its name. Below is the story as adapted by that foundation.

> A young girl was walking along a beach upon which thousands of starfish had been washed up during a terrible storm. When she came to each starfish, she would pick it up, and throw it back into the ocean. People watched her with amusement.
>
> She had been doing this for some time when a man approached her and said, "Little girl, why are you doing this? Look at this beach! You can't save all these starfish. You can't begin to make a difference!"
>
> The girl seemed crushed, suddenly deflated. But after a few moments, she bent down, picked up another starfish, and hurled it as far as she could into the ocean. Then she looked up at the man and replied, "Well, I made a difference for that one!"

Taxpayers as struggling starfish is an adept analogy. Further, the capacity of attorneys as tax practitioners not to be intimidated by conclusory IRS letters demanding repayment can truly help those struggling starfish. I have to admit, though, that I had a prejudice that was corrected as I prepared this Pro Bono Matters article for ATT. I had always thought that Big Law Pro Bono departments would only like to do

impact litigation cases. Why would tax attorneys that structure multi-million-dollar deals want to help little starfish taxpayers, when there is an entire beach filled with struggling starfish? Would they think it was a waste of their litigation skills and large firm resources?

When I asked JoAnne Mulder Nagjee, of counsel at the Chicago Kirkland and Ellis office, what criteria (personal and firm-wide) was used to take on pro bono tax cases, I was pleasantly surprised at her response.

> Personally, I am happy to work on most tax controversy matters involving low-income, individual taxpayers, without regard to the underlying substantive issue. Frozen refunds and increases in tax liabilities due to the loss of the earned income tax credit or other exemptions frequently mean the loss of critical funds for these clients. When you help these low-income clients reach a favorable resolution of their tax disputes, you often are removing a huge source of stress from their lives and meaningfully improving their financial (and often emotional) well-being. While impact litigation or cases that present novel legal issues can be exciting and are always of interest, it also is immensely satisfying to make a meaningful impact on the life of just one individual or family.

Taxpayers are not inanimate starfish that can be thrown back

Dear reader, Socratic training is well ingrained in you. I can already hear the protests because they are echoing in my mind as well. Yes. I, too, was once a 1L student. I understand that starfish don't have free will and I am not a giant that can solve a taxpayer's problem with a flick of the wrist. The analogy does fail when taken too literally, but it does help encapsulate the concept well. I do concede that even though there may be a beach full of starfish taxpayers, one cannot simply start saving starfish taxpayers randomly. So then, how exactly does one go about this in a thoughtful manner?

You would be surprised how often cross-over tax issues arise in other classic legal aid arenas. Even if your local legal aid does not house a tax clinic, offering your services to the domestic violence or immigration unit can be quite helpful.

Let's not reinvent the wheel. Your firm's Pro Bono Department (if you have one) is always a good place to begin. Perhaps your firm already has an existing relationship with a legal aid clinic in town, and it would be easy to simply volunteer at a place pre-approved by your firm. Great! You would be surprised how often crossover tax issues arise in other classic legal aid arenas. Even if your local legal aid does not house a tax clinic, offering your services to the domestic violence or immigration unit can be quite helpful.

I spoke with staff attorney, Sharon Paik, from the Legal Aid Foundation of Los Angeles, a former LITC attorney, to ask what issues she saw at LAFLA. She responded, "You'd be surprised how often tax issues creep up. Because of my background, it's easier for me to issue-spot." She has seen everything from potential tax preparer misconduct, innocent spouse cases, and the need to file amended returns to CSED (collection statute expiration date) tax issues. I asked how immigration could be a tax issue? She answered that "sometimes when they apply for immigration relief, they have to prove good-faith marriage. But it's surprising to see how often the husbands have filed tax returns as single." My jaw dropped. I could easily see how an immigration practitioner would think "full stop; end of story; there's nothing you can do about it since he already filed the return." As we tax practitioners know, however, there are several options to correct the record or argue it was an invalid return. Clearly, you do not have to go to an LITC to find opportunities to volunteer to do tax work. Your local legal aid may well need your services. If you are in the Los Angeles

area, consider contacting LAFLA's Pro Bono department to volunteer your tax expertise—even if it's not in their existing "scope of services."

Helping a cause you believe in

If you don't have a firm Pro Bono department, I recommend starting with your heart. After all, this is extra time in addition to all your other life obligations. It makes sense to volunteer for an organization or a cause that is meaningful to you personally.

Don't let the fact that your favorite charity or cause in which you are interested does not have a tax clinic deter you from inquiring about ways you might be able to help their clients solve related tax problems.

As an Asian American, I felt burdened and disturbed by the recent media images of hate crimes against Asian grandmas who were flung on sidewalks. While I don't want to discourage charitable cash contributions to these causes, I do want to encourage each member of the tax bar to dig deeper into your personal causes to see whether there is an exempt organization behind the cause that could potentially benefit from your tax expertise. For example, www.standagainsthatred.org is a multi-lingual site committed to documenting Asian hate crimes. When you dig deeper, you will see it is a project of Asian Americans Advancing Justice (AAAJ). After exploring their website, I saw that one of the legal services they offer is SAFE (Survivor And Family Empowerment), working with victims of domestic violence. I called the Advancing Justice - Los Angeles office and spoke with staff attorney Patricia Park to see whether she saw any crossover tax issues at SAFE. What a pleasant surprise to find out that she herself was a former VITA (Volunteer Income Tax Assistance) volunteer! She highlighted several tax issues domestic violence survivors face. For example, abusers may receive and keep stimulus checks or the single-year Advance Child Tax Credit under the American Rescue Plan Act for themselves, even though the wife and children have long ago left the abuser. She often sees that the abuser may have incurred considerable tax debts or liabilities from self-employment earnings, and the now-separated spouse starts to receive letters addressed to her for the first time demanding thousands of dollars in repayment. Again, don't let the fact that your favorite charity or cause in which you are interested does not have a tax clinic deter you from inquiring about ways you might be able to help their clients solve related tax problems.

Perhaps you feel passionate about equal access to solar electricity. I am learning that not all volunteer tax work falls into the "controversy" universe. For example, Milbank's New York office tax partner Drew Batkin worked with Lawyer's Alliance for New York and their firm's Energy and Finance counsel to help an exempt organization understand the special tax benefits and financing of green energy so that a project could move forward. This permitted their low-income housing project to get access to the private sector's green energy expertise (normally a luxury low-income housing cannot afford). The private sector company could structure the tax credits in a way that they did not go to waste for the exempt organization that did not pay income taxes and had no use for tax credits otherwise. A win-win situation in every respect.

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The moral of this starfish tale? Consider causes that are dear to your heart, find a place that serves those causes, and volunteer to help with any tax-related aspects. ■

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YOUNG LAWYERS CORNER

Spotlight on Brandon King


Brandon King

Editor's Note: This issue's Young Lawyers Corner spotlights Tax Section member Brandon King, an "On the Rise – Top 40 Young Lawyers" Award recipient.

ATT: Congratulations to you, Brandon, as a 2021 honoree! Can you tell us what led you to become interested in tax law?

BK: I had a business minor in undergrad, so I had taken classes in accounting, finance, and business law. Those exposed me to some tax concepts before law school, but I did not get back into tax law until I took Income Tax 1 during my 2L year. Learning about the basic concepts of gross income and deductions reignited my interest in the area. With the help of my terrific tax professor Leandra Lederman, I redirected my law school pursuits to tax internships, volunteer programs, and other tax-related activities. I found and still find the intellectual rigors of tax law to be exciting.

ATT: What led you from that to becoming involved in the Tax Section?

BK: I was not involved with the Tax Section until I came to Georgetown for my Tax LL.M. I attended my first ABA Tax meeting the fall of 2015 and quickly found it to be a great way to network with tax practitioners. When I started learning about other opportunities to get involved, in particular with the Law Student Tax Challenge, I started doing more and more!

ATT: How has your involvement with the Tax Section helped you in your career?

BK: I have been fortunate to meet dozens of fantastic colleagues through the Tax Section over the years. Some have been mentors, and some have become my friends. In both cases, I have gained valuable networking opportunities, which have helped me get a much better feel for what it means to practice tax law. It has also helped me become a young leader in the Tax Section. I wouldn't have been able to hone my networking and leadership skills without the support and involvement of others in the Section.

ATT: Would you encourage other young lawyers to get involved with the Tax Section?

BK: I think young lawyers underestimate the benefits that bar associations can bring to a career. Between terrific networking opportunities, opportunities to get involved in cutting edge speaking and writing projects, and the possibility of landing a new position, bar associations provide tremendous career benefits.

The Tax Section is certainly no different. For those who are just starting out and want to figure out where to work and what to do in tax, the Tax Section's membership is incredibly helpful and supportive. For those who want to build their profiles and gain valuable leadership and networking skills, there are many ways to do so through the Section.

ATT: What would be the two most important words of advice you might have for other young lawyers?

BK: Take risks and put yourself out there! Taking risks is how you can meaningfully advance your career. I have been involved in Tax Section projects for several years now, and although I don't receive any billable credit, I know the benefits of working on these projects will pay dividends. Sometimes it is challenging to balance the demands of my day-to-day practice with such activities, but taking the plunge and getting involved in such work has been worth it many times over. Putting yourself out there means first and foremost, just showing up! I always tell younger lawyers and law students that the best way to get involved in the Section is to show up at a meeting and introduce yourself to one person. That single conversation can lead to so many other projects and opportunities that you could not even imagine.

ATT: Do you have any additional advice for new Section members?

BK: Try out different things. Unless you know exactly what area and type of tax law you want to practice when you first get involved (I certainly didn't), go to different committees' panels, business meetings, and networking events. Get to know more people and introduce yourself. I think everyone can find a home somewhere in the Section; it just takes some work to figure out where it is.

ATT: Have you had a mentor or sponsor who helped guide and support you?

BK: I have been fortunate to have so many great mentors and sponsors supporting my career over the years. In particular, I would like to give shoutouts to Caroline Ciraolo and Robert Russell. They have provided valuable mentorship and guidance since I was at Georgetown. Both have given me honest and frank advice about practicing tax law and what it means to practice tax in a large firm setting.

ATT: So at this point, what would you say is your favorite thing about tax?

BK: The never-ending sea of puzzles! No two days in my practice are the same. I am always anxious and excited to work on new issues, and there are plenty of them!

ATT: Besides your tax reading (which we know we all do a good bit of), what books are you reading for work or fun?

BK: A book I first read last year and am reading again is Inclusify: The Power of Uniqueness and Belonging by Dr. Stefanie K. Johnson. She does an in-depth analysis of what works and does not work for meaningfully advancing inclusion, diversity, and belonging in professional organizations, such as law firms. I find her thoughts and advice to be very practical. It is in part because of her book that I have made DEI work a critical component of my work as a practitioner.

ATT: Thanks, Brandon, for taking the time to talk with us. It has been a pleasure learning something about your introduction and involvement in tax practice. ■

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YOUNG LAWYERS CORNER

Save the Date: 21st Annual Law Student Tax Challenge (2021-2022)

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

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

IMPORTANT DATES

Problem Release Date: September 7, 2021, released by 5pm ET

Submission Deadline: November 8, 2021, by or before 5pm ET

Notification of Semifinalists and Finalists: December 16, 2021

Virtual Semifinal and Final Oral Defense Rounds: January 12-13, 2022

2022 Midyear Tax Meeting, Orlando, FL: January 27-29, 2022

NOTE:

Due to continued concerns expressed by students and faculty, and for the safety of all, the LSTC Committee has opted to move the competition to a virtual format, and will NOT hold an in-person competition this year. Semi-Finalists and Finalists will compete virtually for their Oral Rounds via Zoom on January 12-13, 2022. The Section will still fully support students who wish to attend the in-person Midyear Tax Meeting in Orlando. The Section will additionally cover the semi-finalist and finalists' travel expenses travel expenses as well as the meeting registration of their coach. ■

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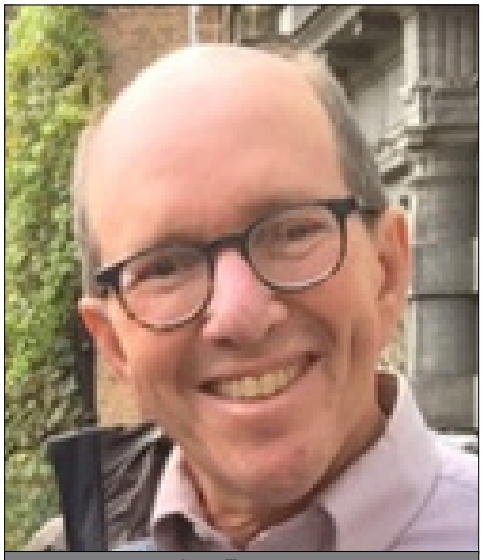
IN REMEMBRANCE

In Memory of Jonathan B. Forman

By **Roberta Mann**, University of Oregon School of Law and **Donald Bogan**, University of Oklahoma College of Law


Jon Forman

It is with great sorrow that the *ABA Tax Times* notes the August 16, 2021 death of Professor Jonathan Barry Forman. Jon began his teaching career at the University of Oklahoma (OU) in 1985. He taught numerous tax law classes at OU, as well as Elder Law, and Employee Benefits Law (ERISA). At the time of his death, Jon held the Kenneth E. McAfee Centennial Chair in Law. He was a fellow and a regent of the American College of Tax Counsel, the American College of Employee Benefits Counsel, and the TIAA Institute. Jon was a constant and valued presence at the ABA Tax Section meetings. He served as the Chair of the Committee on Tax Policy and Simplification from 2013 to 2015. A pension law expert, Jon was also active with the Committee on Employee Benefits, serving as Assistant Vice Chair, Employee Benefits Legislation and Litigation Subcommittee. He made countless presentations at Section meetings. Many of us will also remember him from adventures we shared outside of those meetings. Jon was always up for an adventure, whether it be an avant-garde ballet, a visit to a museum, a hike, or an air-boat ride in a Florida swamp. As one colleague wrote, "Jon had a wide-ranging and penetrating intellect, wrapped in a wonderfully low-key demeanor and a well-balanced sense of humor. It was always a pleasure to visit with him on any topic." Another colleague noted that "Jon was truly a great teacher, scholar, and colleague, but also an amazing friend, husband, father, and grandfather."

Jon was also a great collaborator, important to the success of both academic and Section projects. A colleague indicated that Jon "was always kind, gracious, and genuinely interested in others' views and projects. His most distinctive characteristic in my experience was his willingness to gather like-minded folks at larger meetings to get together separately and become friends." Roberta notes that Jon frequently wrote with co-authors, and she was fortunate to benefit from his generosity in that regard. Another co-author wrote, "Jon Forman opened doors and pushed me to pursue opportunities I never would have otherwise considered. He was as relentless in supporting my career as he was in finishing our research."

Jon combined his love of tax with his love of travel. He taught the basic income tax class at University of San Diego for several summers. He taught Elder Law at Oxford, UK. He spent several weeks in Sydney, Australia as an ATAX fellow at the University of New South Wales. He was a visiting professor in Japan and France, as well as Utah and Colorado. He served as the professor of practice at the Office of Chief Counsel at the IRS. He gave presentations all around the world, including Germany, Poland, and Sweden. To be sure, he also enjoyed traveling for leisure with his wife, Lani, including cruising on the Danube River. As a concession to the pandemic, he had recently purchased a fully outfitted "Peace Van" for luxurious camping throughout the U.S.

Jon often escaped the summer heat of Oklahoma by mounting his motorcycle and traveling to one or more of the nation's National Parks. During this second summer of the pandemic, Jon was on a solo motorcycle trip in the Colorado Rocky Mountains when he suffered a sudden dissection of his aorta while on a break from the road to let a summer storm pass. A passerby stopped and helped a rescue squad get Jon to the hospital where, after several weeks and multiple surgeries, he seemed to have recovered. Jon's family was with him in Colorado, planning to take him home to Norman, Oklahoma in that new Peace Van when Jon unexpectedly succumbed to a massive brain hemorrhage.

Born May 19, 1952, Jon Forman grew up outside of Cleveland, Ohio. He graduated from Northwestern University in 1973, earned a Master's degree in Psychology from the University of Iowa in 1975, a Juris Doctorate from the University of Michigan in 1978, and a Master's in economics from the George Washington University in 1983. He began his professional career as a law clerk for Judge Robert J. Yock of the U.S. Court of Claims in Washington, D.C. He served as trial counsel in the Tax Division of the U.S. Justice Department from 1979-1983 and then served as tax counsel to U.S. Senator Daniel Patrick Moynihan from 1983-1984. Jon spent the academic year 2009-2010 as Professor in Residence with the Internal Revenue Service Office of Chief Counsel.

Jon's prolific scholarship is notable. He authored an important book, Making America Work (published in 2006 by the Urban Institute Press), at least 20 well-respected law review articles, and more than 300 other publications. He testified before the U.S. Senate, U.S. House of Representatives, the U.S. Department of Labor, and the Oklahoma Legislature.

His commitment to pro bono work and those who need help understanding the tax system was exemplary. For many years, Jon and his students offered tax assistance to Norman residents through the Volunteer Income Tax Assistance program at the Norman public library. He will be fondly remembered for his passion for justice and fair administration of the law by all his students, law school friends, and professional colleagues throughout the country.

Jon is survived by his beloved wife, Lani Malysa; two children, Carmen and Neil; daughter-in-law Amy; and granddaughter, Margaret; as well as his sister and her spouse, Elaine and Jay Schwartz. Donations can be made in Jon's memory to Food and Shelter in Norman, Oklahoma or to the TAPS program. ■

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The Incompetent Authority: Questions and Answers

By **Andy Howlett**, Miller & Chevalier, Washington, DC and **Guinevere Moore**, Moore Tax Law Group, LLC, Chicago, IL

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 the Managing Member of Moore Tax Law Group, LLC in Chicago. She's worked at big shops (both accounting and law firms) but has found true tax bliss at her small 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.

* * *

Dear Incompetent Authority:

> *Starting in July I began receiving monthly payments from the IRS made directly into my checking account. I think that these payments are part of the new child tax credit. How long will I receive them, and is there a chance that I'll have to pay them back?*
>
> *– Rolling In It*

Dear Rolling In It:

Short answer: Not clear, maybe, we'll see.

Slightly longer answer: The section 24 Child Tax Credit (CTC) has been part of the Tax Code since the 1990s, but the American Rescue Plan (ARP) signed into law by President Biden in March super-charges it. First and foremost, the ARP dramatically expands both the amount and the eligibility for the CTC. Thanks to the new law, the amount of the credit is now $3,000 per qualifying child (even more—$3,600—in the case of a child who is under six). The revised credit is also now available for 17-year-olds and at higher income levels, with phaseouts beginning at $150,000 in the case of joint returns and surviving spouses. These numbers apply for the 2021 tax year only—more on that in a second.

So you wonder why you are getting money now? The ARP added new section 7527A to the Code. Boy, is it complex! In a nutshell, section 7527A directs the IRS to "establish a program for making periodic payments

to taxpayers, which in the aggregate during any calendar year, equal the annual advance amount determined with respect to such taxpayer for such calendar year." We read on to find that the annual *advance* amount of the CTC is essentially 50 percent of what the taxpayer's full CTC would be based on certain characteristics (age and number of kids, income, marital status) determined as of the *previous* taxable year. The IRS did as it was bid, and checks started rolling out in July.

Because the payments are to be estimated based on prior tax year information, there is a chance that they are overstated. Indeed, new section 24(j) provides that any "excess" advance payments will be treated as an increase in tax in 2021. There is, however, a safe harbor that will limit (and in some cases, eliminate) the amount that taxpayers in certain income ranges will have to "pay back": the safe harbor applies in cases where the excess was a result of having a child who qualified in 2020 but did not qualify in 2021.

So it's really hard to say if you'll have to pay any of that money back, Rolling In It, just from your initial query. Much depends on how your 2021 tax situation compares to 2020. Did you have any more kids? Did any of your children turn 18 this year? (We must note that whether they actually move out upon turning 18 is, sadly, irrelevant.) What about your income? Did something unusual such as large lottery winnings put you into the phaseout range? These are, as they say, the questions that must be asked.

And what about the future? If Congress does nothing—some would say that's usually a good bet—then the CTC goes back to "normal" for 2022 (which itself reflects an expansion that was part of the Consolidated Appropriations Act of 2018, with credits maxing out at $2,000 per kid). But expect large pressure to keep the expanded CTC going. The Biden administration has identified making the expanded CTC permanent as a major priority in its *Green Book* (now, sadly available to the general public only as a black and white PDF, so much for "Building Back Better"). In the fine print is a directive for the Treasury and IRS to "develop strategies to minimize the amount of advance CTC payments that is paid to individuals who are ultimately not eligible for the credit [which] will include additional statutory recommendations, regulatory changes, data collection, and data matching."

Incompetent Authority has plenty of kids and thus, like you, enjoys getting "free" money. Moreover, it's a lot easier on our nanny and our bookie if we can get payments monthly rather than when we file our return in, er, April. We say keep that kid money flowing!

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.*

ABA Tax Times
AMERICAN BAR ASSOCIATION
Tax Section
An Online Publication of the ABA Tax Section
Summer • Sept. 2021 • Vol. 40 No. 4

TAX Bits

Under the Bus

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

(To the tune of *Moonglow* by Eddie De Lange, Will Hudson and Irving Mills as first recorded by Joe Venuti and His Orchestra (1933) and later by Ethel Waters (1934), Benny Goodman Quartet (1965) and Tony Bennett & k. d. Lang (2010).)

It could be my ex-wife,
With *malice au jus*,
Who brought IRS here.
She'd throw me under the bus.

Or was it my partner?
No love between us.
He knows all my secrets.
He'd throw me under the bus.

Why am I shaking in my pants?
Agents like these two don't show up on a chance.

Perhaps 'twas my neighbor!
That jealous old cuss
Would whistle-blow on me.
He'd throw me under the bus.

(Reprise)

Remember this warning
If any you must.
Tax fraud is no free ride
You'll end up under the bus.

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Tax Section
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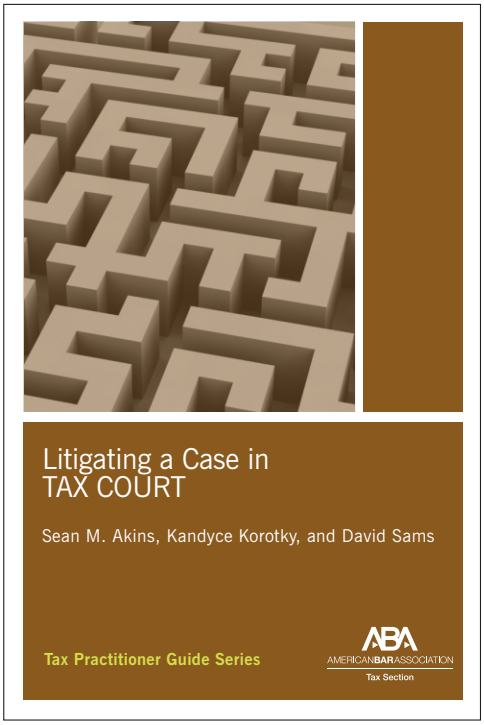
IN THE STACKS

Tax Section Publishes *Litigating a Case in Tax Court*



This summer, the ABA Tax Section published *Litigating a Case in Tax Court*, a new book designed to cover every aspect of a United States Tax Court case. Derived from a chapter in the popular *Effectively Representing Your Client Before the IRS*, the new book offers detailed guidance and tips on the Tax Court process in an easy-to-read and easy-to-use compact paper format with an online portal for accessing many sample documents that practitioners can use.

"Litigating a Case in the Tax Court" has been a chapter in *Effectively Representing Your Client Before the IRS* for several editions, and has recently been updated by Sean M. Akins, Kandyce Korotky, and David Sams. Purchasers of the new 8th edition of *Effectively Representing* will already have the new book's content. The new book is designed for attorneys, accountants, and enrolled agents representing clients before the U.S. Tax Court without access to the much larger *Effectively Representing*. It will also be very helpful to those professionals taking the U.S. Tax Court written examination.

"My coauthors and I are excited to make the chapter available as a standalone book," said Sean Akins. "The book provides a discussion of some of the key features of litigating a case before the United States Tax Court, as well as some of the seminal cases related to procedural matters. Equally as important, it offers practice tips and an identification of traps for the unwary that have been learned by the authors over time. We hope that this will be a helpful and welcome resource to those representing taxpayers in the Tax Court."

"This book offers an excellent practical guide to handling a Tax Court case from start to finish," noted Keith Fogg, 2018–2021 Vice Chair, Publications. "The sample pleadings provide a great resource for motions and other matters that arise infrequently. With the material in a single volume, it becomes easy to carry to Tax Court or easy to read. We hope this is a welcome addition to the library of those involved in representing taxpayers in controversies before the IRS."

Litigating a Case in Tax Court is available for purchase in the ABA Store. Purchasers will be provided access to a routinely updated website that provides many sample pleadings and related documents. ■

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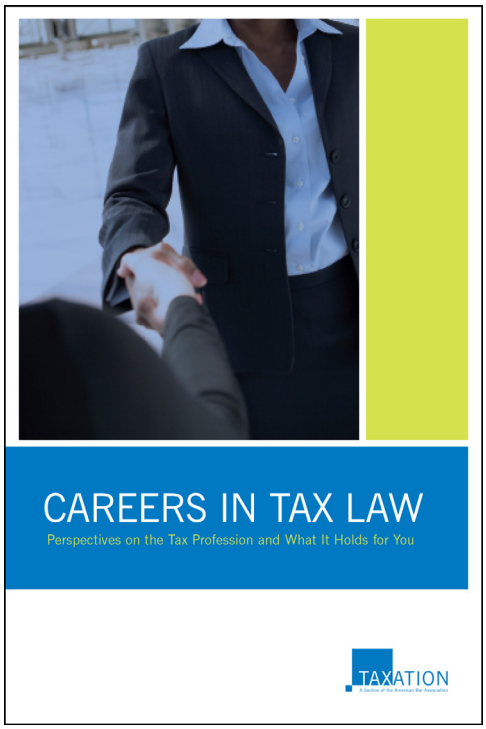
IN THE STACKS

Careers in Tax Law Call for Contributors

The editors of the upcoming edition of *Careers in Tax Law* seek contributors to round out this updated guide for those considering or beginning a career in tax law. Twelve years after the successful first edition, the Tax Section will publish an updated collection of career snapshots to help guide those considering the profession into the next decade.

If you can write a snapshot or reflection on your career, please contact Robb Longman at rlongman@lvglawfirm.com or 240-324-7705 immediately. The editors are finalizing the contributor list soon. ■



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SECTION NEWS & ANNOUNCEMENTS

2021 Philadelphia Tax Conference to Be Held November 8–9

This year's Philadelphia Tax Conference will be held on November 8–9 at the Union League of Philadelphia, a fully vaccinated property conveniently located in the heart of Center City. The meeting is currently planned to be in person only. For safety reasons, no on-site registrations or badge sharing will be allowed.

Per Union League policy, all attendees must be fully vaccinated against COVID-19. Guests may be asked to produce their vaccination card or other verification of vaccination status while on site. The Union League also has a dress code; full COVID-19 policies and procedures for all registrants are available.

The preliminary agenda is available, and registration is open.

The Tax Section is monitoring COVID-19 cases and will make a final decision by early October if a shift to virtual-only is necessary. If the meeting shifts to a virtual-only format, registrants for the in-person meeting will have the option to transfer registration to the virtual event and receive a refund for the difference in fees, or they may cancel and receive a full refund. ■

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SECTION NEWS & ANNOUNCEMENTS

Tax Section Offers Ginsburg Tribute Video

The ABA Tax Section is pleased to offer the recording of "A Tribute to Justice Ruth Bader Ginsburg and Professor Marty Ginsburg," first presented at the Virtual 2020 Fall Tax Meeting, for educational purposes.

The 21-minute video recounts the story behind *Moritz v. Commissioner* depicted in the film "On the Basis of Sex", as recounted in Marty Ginsburg's 2006 Distinguished Service Award acceptance speech. The tribute draws on portions of that speech interwoven with video clips from the film.

Viewings must be done via a secure web URL and, thus, require a broadband connection.

Viewings are restricted to educational purposes only and may not involve admission fees or other viewing fees.

If you would like to show this video for educational purposes, please contact taxweb@americanbar.org with:

1. your name,
2. your position,
3. the name of your group/class,
4. the number of expected viewers, and
5. the date(s) of viewing.

We can then provide you with access to the video. ■

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Government Submissions Boxscore

Government submissions are a key component of the Section's government relations activities. Since May 29, 2021, 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/.

TO	DATE	CODE SECTION	TITLE	COMMITTEE	CONTACT
Department of Treasury & Internal Revenue Service	6/25/2021	Section 1061	Comments on Legislation to Repeal Code Section 1061	Various	Jennifer Sabin, Eric Sloan, and Pamela Lawrence Endreny
Department of Treasury & Internal Revenue Service	6/4/2021	n/a	Comments on the Administration of the Advance Child Tax Credit	Corporate Tax	Scott Levine

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. ■

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Stay LinkedIn to the Tax Section

Calling all LinkedIn friends! We've created a new public Section company page that will allow for our posts and messaging to reach beyond our friend list and help others learn more about what the Section does and what membership offers.

Be sure to like our new page at https://www.linkedin.com/company/american-bar-association-tax-section/ now. We will shortly be transitioning away from posting on our older page. And please be sure to like our posts and reshare relevant news and posts with your networks!

Virtual 2021 May Tax Meeting Materials Now Available

TAXIQ
Thoughtful Insights. Useful Analysis.

Materials from our Virtual 2021 May Tax Meeting are now available on the TaxIQ homepage. Materials include cutting-edge committee program materials, and contains analysis of the latest federal tax policy, initiatives, regulations, legislative forecasts, and planning ideas developed by the country's leading tax attorneys and government officials.

The Tax Lawyer—Summer 2021 Issue Now Available

The Tax Lawyer

The Summer 2021 issue of *The Tax Lawyer,* the nation's premier, peer-reviewed tax law journal, is now available. *The Tax Lawyer* is published quarterly as a service to members of the Tax Section.

Summer 2021 Issue (Click here to read or download the complete issue.)

Article

Vorris J. Blankenship, *The SECURE Act: Retirement Plan Distributions After the Death of a Beneficiary*

State and Local Tax

James Alm and Jay A. Soled, *Tax Amnesties, Recidivism, and the Need for Reform*

Recent Developments

Bruce A. McGovern, Cassady V. ("Cass") Brewer, and James M. Delaney, *Recent Developments in Federal Income Taxation: The Year 2020*

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The Practical Tax Lawyer—September 2021 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.

Chris Rajotte, *Guiding Clients Through Eggshell Audits*

Stephen M. Breitstone and Jerome M. Hesch, *Aligning Interests in the Sale of a Business: Financial and Income Tax Traps Estate Planners Need to Know (Part 2)*

Eman Cuyler, *The Top Five Procedural Surprises in U.S. Tax Court Litigation*

Robert F. Reilly, *Tax Counsel Considerations in the Acquisition of a Tax Loss Target Company*

Jerald David August, Ronald A. Levitt, and Stephen R. Looney, *Demystifying the 20 Percent Deduction For Qualified Business Income under Section 199a (Part 2)*

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 20 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. ■

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SECTION EVENTS & PROMOTIONS

Section Meeting & CLE Calendar

ABA Tax Section meetings and webinars 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.

Recent Webinars

Final Regulations and the Current Landscape Under Section 1031: A Panel Discussion with a Practical Approach

Tax Policy for a World of Mobile Income

Taxing Profit in a Global Economy

Final Section 162(f) Regulations on Fines, Penalties and Other Amounts Have Broad Application

State Tax and Economic Policy Responses to the Ongoing COVID Pandemic

Getting Facts from Third Parties: FOIA and Other Avenues **[Free]**

Getting Facts in the Administrative Record in Collection Due Process **[Free]**

Getting Facts Into a Remote Proceeding Tax Court Case **[Free]**

The Final and Proposed Section 245A Regulations

Coming in from the Cold - Risks and Rewards of the Revised IRS Voluntary Disclosure Practice

The Tax System and Social Policy

The Role of Tax Research in Tax Administration, Tax Policy, and Setting Other Government Priorities

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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

Due to on-going COVID-19 pandemic we are offering various opportunities to sponsor upcoming virtual and hybrid meetings. For additional information, please visit https://www.americanbar.org/groups/taxation/sponsorship.html or contact our Sponsorship Team at taxmem@americanbar.org or at 202/662-8680.

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