TAX SECTION

BULLETIN

WWW.FLORIDATAXLAWYERS.ORG

VOL. XXXVII, NO. 2
FALL 2020

Tax Section Bulletin

THE FLORIDA BAR

This newsletter is prepared and published by the Tax Section of The Florida Bar.

D. Michael O'Leary, Tampa
Chair

Harris L. Bonnette, Jr., Jacksonville
Chair-elect

Micah Fogarty, Tampa
Secretary

Gregory A. McLaughlin, Fort Lauderdale
Treasurer

Lisa K. Gallagher, Sarasota
Editor

Janette M. McCurley, St. Petersburg
Immediate Past Chair

Leslie Reithmiller, Tallahassee
Program Administrator

Maliwan Theo, Tallahassee
Desktop Publisher

Statements or expressions of opinion or comments appearing herein are those of the contributors and not of The Florida Bar or Tax Section.

IN THIS ISSUE:

Cover Photo: Marshall, from WORKER permanent exhibition at Sarasota Art Museum, www.sarasotaartmuseum.org. Commercial photographer, Barbara Banks, is a native Sarasotan whose interest in photography was forged in elementary school and later at Sarasota High School, now Sarasota Art Museum. Barbara's business is commercial, editorial, assignment photography, with an emphasis on people: environmental portraits, studio, editorial, fashion. Her work is collected and published locally, regionally and nationally. The Sarasota Art Museum commissioned the SHS alumna to celebrate and memorialize the workers who repurposed the 100-year-old building. She was the ideal creative partner for this project. Barbara Banks' exquisite portrait photographs of the individuals who lent their talents to remake the building celebrate a class of people who often remain invisible. Banks' project, Worker, seeks to make visible the invisible, to put a face to the labor that resulted in the Museum. Worker is permanent exhibition and part of the museum's Memory Project. Banks' studio is located in the Rosemary District in downtown Sarasota. To view samples of the artist's work and schedule a session, visit www.barbarabanks.com Gallery representation: State of the Arts Gallery www.sarasotafineart.com

Chair's Message

By D. Michael O'Leary

Chair, Florida Bar Tax Section 2020-2021

Dear Tax Section Members:

I am pleased to submit this message with our Fall 2020 Tax Section *Bulletin*. Lisa Gallagher is doing a great job as the person in charge of the *Bulletin*, and I am grateful for her hard work. We are always looking for articles for the Bulletin, so if you have a desire to write a tax law article, please contact Lisa.

The Tax Section also publishes a monthly e-Newsletter, coordinated by Ileana Garcia, so keep on the lookout for it in your emails. We are totally revamping our website, so that will soon be an even better resource for information about the Tax Section and its publications.

The Tax Section will continue to provide numerous opportunities to tax lawyers, including, speaking opportunities (in-person and Zoom CLE programs), writing opportunities (including comments to proposed regulations and writing articles for the Tax Section *Bulletin* and the *Florida Bar Journal),* programs that help practitioners keep up with new tax developments, networking, fellowship and more.

The Tax Section has recently announced the creation of its Mental Health and Wellness Initiative (the "MHWI"). The two main goals of the MHWI will be (1) to inform you as to the many wonderful mental health and wellness resources that are already available to you (e.g., the FL Bar Mental Health and Wellness Center - https://www.floridabar.org/member/healthandwellnesscenter/), and (2) to create original resources that are specifically relevant to Tax Section members. Thanks to Marketing & Membership Committee Co-Director Chris Callahan for spearheading this initiative for the Tax Section.

The Tax Section will offer numerous free phone CLE programs, including Zoom CLE programs on November 4, 2020 on Offers in Compromises and on December 9, 2020 on IRS Tech Tools (e-Services and Transcript Delivery). More free Zoom CLE programs will be coming in 2021. Now that these CLEs are recorded on Zoom, prior CLEs are available to you online the Tax Section's YouTube Channel so you can watch or listen to them any time.

The Tax Section will once again collaborate with the FICPA to present the popular International Tax Conference (ITC), which will be held virtually beginning on January 13, 2021 with the ITC Boot Camp and continuing on January 14 and 15. IRS Commissioner Charles P. Rettig will be a keynote speaker at the 2021 ITC, sharing insights into upcoming IRS initiatives. Steve Hadjilogiou is the Tax Section's Chair of the ITC.

Other excellent CLE programs organized by the Tax Section include the 2020 Advanced Wealth Protection Program which was webcast on October 23, 2020 and the Creditor Protection Nuts & Bolts to be held on March 26, 2021. Thanks to Alan Gassman and Leslie Share for putting these programs together.

I am proud to say that the Tax Section has for many years held a very well respected Tax Moot Court competition. This year we are collaborating with Stetson University College of Law to hold the competition virtually from April 1-3, 2021. Many individuals spend a substantial amount of time to make this an excellent event, including Justin Wallace, Brian Howsare and Nate Wadlinger who run the competition. The advantage of holding the competition virtually is that judges do not have to attend in person. If you want to be a judge, please email justin.wallace@hwhlaw.com or call (813) 506-5137.

Due to the pandemic, this year's Fall meeting was held virtually from Tuesday, September 22 to Thursday, September 24, 2020. In addition to the usual division and committee meetings, there was virtual bingo organized by Leslie Reithmiller and virtual trivia organized by Joel Maser and Joe Schimmel, as well as a virtual happy hour. There was also a virtual CLE program on Friday, September 25, which was organized by Cristin Keane and Mark Brown. The CLE program titled "Practical Estate Planning in Uncertain Times" was very well attended.

In 2018, the Tax Section developed a long-range plan to try to make sure the Tax Section maintains its relevancy and provides maximum value to its members. We will continue to refine the long-range plan during this fiscal year.

Our Annual Meeting had originally been scheduled in Miami, but the location has been changed to Tampa at the Westin Tampa Waterside, and is scheduled from Thursday, April 29- Saturday, May 1, 2021. There will also be a CLE program focused on real estate taxation scheduled for Friday, April 30, which is being organized by Chris Callahan and Abrahm Smith. We will honor Cristin

continued, next page

CHAIR'S MESSAGE . . .
from previous page

C. Keane as the 2019-2020 Gerald T. Hart Outstanding Tax Attorney of the Year on the evening of Saturday, May 1 at the Vinoy in St. Petersburg. The Tax Section will honor the 2020-2021 Gerald T. Hart Outstanding Tax Attorney of the Year, Michael Lampert in October 2021 at the Breakers in Palm Beach.

I want to thank all of our sponsors who contribute to the success of the Tax Section and its members. Our sponsors not only provide financial support to the Tax Section, which enables us to provide additional value to our members, but also are available to help our members with services that are needed by clients of Section members. This year's sponsors include our Platinum Sponsor, MPI (Roy Meyers), and Silver Sponsors, Business Valuation Analysts LLC (Tim Bronza), Coral Cables Trust (John Harris), Jones Lowry (Mac Lowry), Kaufman Rossin (Mark Scott), MRW Consulting Group (Luis Rivera), and Alliance Bernstein (Craig Storch).

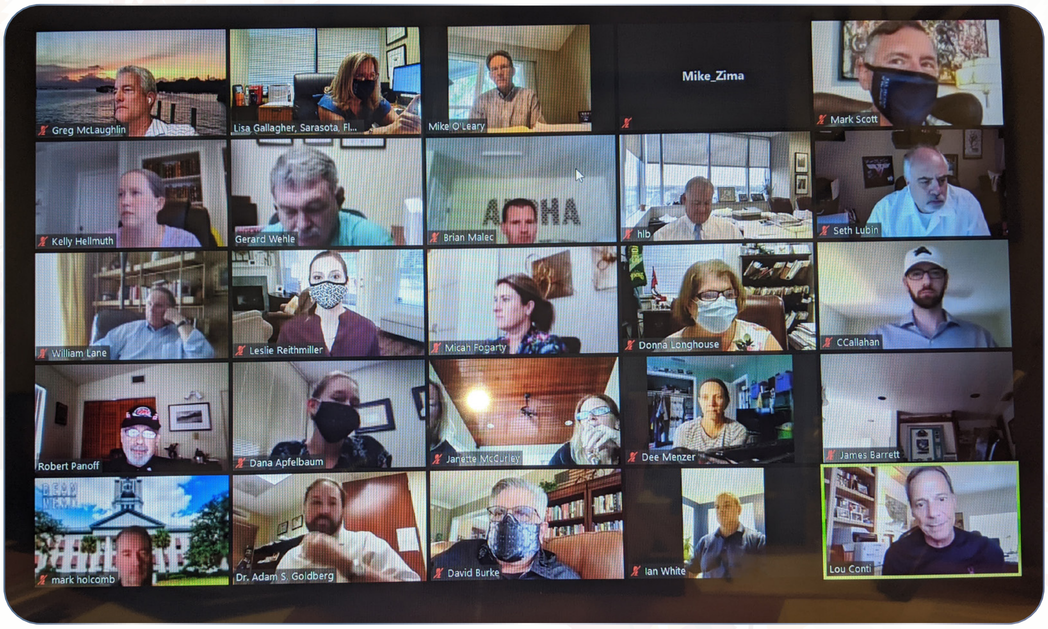
As you can see, we plan to continue the substantive and important work of the Tax Section while having some fun! If you have any ideas that would benefit our members or would like to become more involved the Tax Section, please let me know. I look forward to seeing you at a meeting (maybe virtual but hopefully in person) or otherwise speaking with you.

D. Michael O'Leary, Chair

Florida Tax Section Fall Meeting

Florida Lawyers Helpline
833-FL1-WELL

Florida Tax Fall Meeting *continued*



In the words of Michael Minton to Everyone, Adios!

Offers in Compromise
Involving Transition Taxes under Internal Revenue Code Section 965

By: Charlotte A. Erdmann

The IRS recently released guidance on including transition tax liabilities under IRC Section 965 for settlement under its offer in compromise program. Section 7122 of the Internal Revenue Code authorizes the settlement of Title 26 liabilities, penalties, and interest. Since the transition tax on untaxed foreign earnings is a Title 26 tax, it can be included in a settlement offer.

It is typically required that the tax be assessed to be included in a settlement offer. Due to the unique planning opportunities involving elections under sections 965(h) and 965(i), practitioners must determine if such an election is in a taxpayer's best interest or whether it would be more beneficial to have the tax assessed and included in an offer in compromise if a taxpayer has an inability to pay. Section 965(h) allows a taxpayer to elect to pay its net tax liability in installments over eight years. Section 965(i) allows a shareholder of an S corporation which is a United States Shareholder of a deferred foreign income corporation, to elect to defer the assessment of its net tax liability until a triggering event occurs.

Under the new guidelines of Internal Revenue Manual 5.8.4.23.7 (09-24-2020) "IRC §965 (Transition Tax) Liabilities," if the §965 liability has been assessed and no election was made under IRC §965(h), the tax may be included in the offer. "If the taxpayer made an IRC §965(h) election and the offer is going to be recommended for acceptance, the tax liability may be included in the offer, if acceleration has taken place under IRC §965(h)(3) such that the entire amount of the IRC §965(h) net tax liability is currently due and if the taxpayer had not previously entered into a transfer agreement and assumed another taxpayer's IRC §(965) net tax liability which is now included in the offer." Since the assessment of the tax liability is deferred until a triggering event under §965(i), that future liability is not ripe for settlement until assessed and thus cannot be included in an offer in compromise settlement proposal. For years that include income tax assessments and also include deferred assessment of IRC §965(i) liabilities, the non §965(i) income tax assessments can be included in an offer in compromise, but the §965(i) portion will be excluded.

While the offer in compromise program provides a tremendous opportunity for settling transition taxes under Section 965, one must consider several ancillary issues before submitting an offer. Since an offer in compromise based on doubt as to collectability will only be accepted where a taxpayer does not have the ability to pay the tax (as defined and calculated based on a taxpayer's "reasonable collection potential," IRS collection guidelines and IRM guidance), one must inquire into a taxpayer's financial situation and consider a taxpayer's assets, the equity and liability of those assets, the gross income and expenses of that taxpayer. Included in that inquiry, especially where a taxpayer is seeking to settle Section 965 liability, is the valuation of any businesses, business assets, including any foreign businesses or foreign assets of the taxpayer. One must also consider whether a taxpayer is compliant with their FBARs, FACTA requirements, payroll, return filing requirements, and any estimated payments that may be due. Furthermore, considering that the offer in compromise program only settles Title 26 tax, penalties, and interest, once must consider the timing of the offer in compromise settlement proposal and whether the taxpayer is liable for any FBAR penalties or restitution. Neither FBAR penalties nor restitution can be settled as part of an offer in compromise. For tax years involving civil tax liabilities and criminal restitution, offers can include the civil tax liabilities, but not the restitution-based assessment. If there are restitution assessments, FBAR penalties, or other non-title 26 liabilities, it is usually in the taxpayer's best interest to pay off or otherwise resolve those liabilities through installment payment arrangements before submitting an offer in compromise to settle Title 26 liabilities since the payment of the other liabilities will decrease the taxpayer's available equity in assets and potentially increase a taxpayer's allowable expenses such that a lower settlement amount may be obtained for the taxpayer through the offer in compromise program.

If a taxpayer is subject to Section 965 transition taxes, a taxpayer's ability to pay the tax and whether a taxpayer could qualify for an offer in compromise should be considered prior to making Section 965(h) and 965(i) elections. If a Section 965(i) election has been made, it can also be considered whether to "trigger" the assessment so that the liability can be included in an offer in compromise. Although usually considered an "after the fact" resolution option, an offer in compromise could be an important planning opportunity under the right set of facts when dealing with Section 965 transition taxes.

About the author:

Charlotte A. Erdmann focuses her practice on tax controversy and litigation. She is the managing owner of Orlando Tax Law. She earned her J.D. degree from Barry University School of Law (2010) and her LL.M. (tax) from the University of Florida (2011).

Endnotes

1 Charlotte A. Erdmann focuses her practice on tax controversy and litigation. She is the founding owner and lead attorney of Orlando Tax Law. She earned her J.D. degree from Barry University School of Law (2010) and her LL.M. (Tax) from the University of Florida (2011).

2 IRC § 7122.

3 IRC § 7122(a). *See* also IRM 5.8.1.9 (12-26-1019) "Liabilities to be Compromised," IRM 5.8.1.9.1 (12-26-2019) "Definition of a Compromised Liability," IRM 5.8.4.17(09-24-2020) "Pending Assessments," IRM 5.8.4.17.1 (09-24-2020) "Pending Assessments – Filed Returns," and IRM 5.8.4.17.2 (09-24-2020) "Pending Assessments – Examination." *But see* IRM 5.8.1.6.2 (02-26-2013) "Docketed Tax Court Cases" allowing for the pre-assessment settlement of liabilities in a docketed Tax Court case and IRM 8.8.1.11.1 (2) (05-05-2017) "Unassessed liability when no other periods with liabilities exist" when offers include taxed due on tax returns that have been filed but not yet assessed.

4 IRC §965(h).

5 IRC §965(i).

6 IRM 5.8.3.23.7(4) (09-24-2020) "IRC §965 (Transition Tax) Liabilities."

7 IRM 5.8.3.23.7(5) (09-24-2020) "IRC §965 (Transition Tax) Liabilities."

8 IRM 5.8.3.23.7(2), (6) (09-24-2020) "IRC §965 (Transition Tax) Liabilities."

9 IRM 5.8.3.23.7(6) (09-24-2020) "IRC §965 (Transition Tax) Liabilities."

10 IRM 5.8.3.23.7(4) (09-24-2020) "IRC §965 (Transition Tax) Liabilities."

11 FBAR penalties are under Title 31 and are thus not within the purview of IRC §7122 which authorizes the compromising of tax, penalties and interest under Title 26. Restitution is also not under Title 26. *See* IRM 5.8.4.24.1 (09-24-2020) "Offers in Compromise Submitted that Include Restitution," and IRM 5.8.4.24.2 (09-24-2020) "Foreign Bank and Financial Reporting (FBAR) Assessments."

12 5.8.4.24.1 (09-24-2020) "Offers in Compromise Submitted that Include Restitution."

IS YOUR EMAIL ADDRESS CURRENT?

Log on to The Florida Bar's website (www.FLORIDABAR.org) and go to the "Member Profile" link under "Member Tools."

Tax Litigation in the Age of COVID-19: Some Early Thoughts

By: Mitchell I. Horowitz

Not surprisingly, the COVID-19 pandemic has forced tax cases in litigation to be handled in significantly different ways from pre-coronavirus times. This article will discuss two areas where these changes are impacting tax litigators: first, the calendar call program for the U.S. Tax Court, specifically consultation day; and second, remote hearings and trials before the Tax Court.

Consultation Day:

The Tax Section has actively participated in the Tax Court's calendar call program for several years. Karen Lapekas has led the volunteers in South Florida; Jami Coleman in Tallahassee; Harris Bonnette in Jacksonville, and the author in the Tampa Bay area. We are very appreciative of the time and efforts contributed by the volunteers who participate in the program, and especially our working relationships with the low-income taxpayer clinics (LITCs). Prior to attending calendar call at the start of a trial session, IRS Counsel has worked with the program to hold a "consultation day," at which pro se petitioners can go to a location where volunteers are available to assist them in getting a resolution of the case. IRS Counsel personnel were available by phone. This was typically a one-time event, about 4 to 6 weeks prior to the start of the trial session, and had success in getting cases resolved. However, there were drawbacks: many petitioners had to travel to a non-central location; the petitioners rarely brought with them the documents needed to enable the volunteers to quickly learn the case; and the event lasted only a few hours.

In light of the pandemic, IRS Counsel came up with the idea of remote consultation day, using Webex as the platform for communication. We recently had the experience of a consultation day in Tampa, and it is a significant improvement over the live version. First, the event actually spanned over a week, rather than being a limited, one-time event. With enough lead time, IRS Counsel was able to send a mailing to all pro se petitioners, with contact information for the local Low Income Taxpayer Clinic (LITC) to coordinate the scheduling of hearings. We then prepared and had executed Form 2848 Power of Attorneys for each petitioner, were able to submit them to Counsel, which allowed the volunteers

continued, next page

LITIGATION. . .
from previous page

to receive the administrative file, pleadings, and other relevant information prior to the actual Webex session. This enabled the volunteer to get up to speed on the case, actually talk with the petitioner about the case, and then have a scheduled call with the docket IRS attorney to attempt to reach a resolution. The general consensus of the volunteers is, other than not getting to meet the petitioners in person, that this was a more efficient and effective way to assist the pro se petitioners, as well as the Court, in helping to get cases resolved and avoiding the need for hearings and trials.

Remote Tax Court Proceedings:

Due to the pandemic, the Tax Court was forced to terminate several trial sessions in the Winter 2020 term, and eventually cancel the entire Spring 2020 calendar nationwide. With over 80 trial sessions and 100 cases per session, a significant backlog was created. With no end to the pandemic in sight, the Tax Court decided to use Zoomgov as the platform to hold remote proceedings, including Wednesday afternoon motion hearings, as well as calendar call and trials.

In Tampa, we recently had the regular trial session start on October 5, 2020, which was presided over by Judge Ronald Buch. The calendar call volunteers were requested to dial into the session about 1 hour early in case any of the pro se petitioners requested assistance. When the calendar call began, Judge Buch afforded any petitioner who requested it to have an opportunity to speak with a volunteer. In that event, the court clerk would set up a breakout room for the petitioner and volunteer to discuss the case. The downside, of course, is that the petitioner had no practical way to share documents concerning the case, so the volunteer had to depend on the petitioner's description of the case. Offline discussions with the IRS attorney assigned to the case were also awkward, either being arranged by the clerk, or by telephone.

Another challenge in this process is that many pro se petitioners do not have computers, and appeared at the calendar call on their phones where they could not be seen, and could not see the proceedings. This made it difficult for the Court to evaluate the appearance of the petitioner, where many non-verbal cues can help in figuring out how best to assist that petitioner.

The Tax Court will be back in Tampa for a small tax case trial session in November, and the author has a case set for trial at that session. Preparing for this trial has also been a challenge, because the petitioner, as well as relatives who are witnesses, do not have a computer, and we will need to talk with all of them by phone. As of this writing, we are still attempting to figure out how the petitioner and family members can participate in the actual trial of the case, look at exhibits, etc.

The Tax Court also made several changes to the Standing Pre-trial Order, of which all practitioners should be aware. Pre-trial memorandums are now due 3 weeks prior to the call of the calendar; stipulations are due two weeks prior to the call of the calendar. If stipulations have not been completed by that time, any exhibit which either party expects to use at trial has to be submitted to the Court.

One modification which is helpful is a procedure for a subpoena *duces tecum* to be issued to a third party witness. Under the Court's prior procedures, a party could issue such a subpoena, but could not compel the witness to provide the requested documents prior to the call of the calendar. This could result in the witness not appearing at all, not bringing all responsive documents, appearing but objecting to the subpoena, or appearing with boxes of responsive records that neither party had ever seen previously. This has been a long-standing problem in Tax Court litigation and the Court has sought options to try and accelerate this process.

Under the new Pre-trial Order, a party which needs to issue a subpoena duces tecum and wants production prior to calendar call has to file a motion for document subpoena hearing no less than 45 days prior to the start of the trial session. The proposed subpoena does not need to be attached to the motion, but the motion should describe the need for the records. The Court will then issue an Order scheduling a hearing at least 2 to 3 weeks prior to the start of the session, along with Notice of Remote Proceeding with instructions to attend via Zoomgov. Those instructions are then used as the place of production on the subpoena form, rather than the physical location of the Tax Court. The Order will require the party serving the subpoena to submit a status report as to compliance with the subpoena at least 1 week prior to the scheduled hearing date. If full compliance has not occurred as of the date of the status report, the Court will hold the hearing even if compliance is subsequently achieved, just in case the witness dials into the hearing.

I just went through this process and was fortunate to have the subpoenaed witnesses provide the requested documents, but not until after the status report was submitted, so we had the hearing with Chief Special Trial Judge Carluzzo. Judge Carluzzo noted that I was the first counsel for petitioner who used the process, and asked for my input on the process. It was a very useful 20 minute hearing, and the IRS Counsel attorney also

continued, next page

LITIGATION. . .
from previous page

had helpful thoughts on the process as well. The Court will no doubt make some revisions to these procedures based on the input we both provided.

Both the IRS Counsel's office and the Tax Court have demonstrated a great deal of flexibility in their response to the pandemic and have tried to keep cases moving through the system using remote procedures, some of which may remain in use even after live, in person proceedings can be used once again.

About the Author:

Mitch Horowitz is a Shareholder with the law firm Buchanan Ingersoll & Rooney P.C. in Tampa, Florida. Mitch has been board certified in tax since 1997, and concentrates his practice on tax controversy matters, including Tax Court litigation. Mitch has also been actively involved in the Tax Court's calendar call program for many years.

COVID 19 and the Florida Criminal Justice System: The Potential Long-Lasting Impact on Florida Department of Revenue Criminal Cases

By: Nadia Malcolm

COVID 19 has had an unprecedented impact on the various Florida Circuits. On March 13, 2020, the Florida Supreme Court issued Administrative Order No. AOSC20-13, intending to vaguely temporarily "suspend grand jury proceedings, jury selection proceedings, and criminal and civil jury trials, and to temporarily suspend procedural requirements and limitations that could hinder efforts to mitigate the effects of COVID-19 on the courts, court participants, and all the people of Florida." The order further goes on the specifically suspend speedy trial rights, a crucial aspect of our criminal justice system, in the midst of this pandemic. This Administrative Order was then followed up by Administrative Order No. AOSC20-15 which went into the "essential" court proceedings that will receive accommodations that follow applicable safety measures. However, most criminal matters, especially those that originate from Department of Revenue Investigations, did not follow under the narrow exceptions. What Florida Criminal Defense and Criminal Tax Defense attorneys thus experienced was continuances, with what felt like no end in sight. And what the criminal justice system as a whole experienced as a result was a series of consequences that will plague our court system for foreseeable future.

Efficiency: Not Just a Convenience

Efficiency in the criminal justice system is a virtue that serves multiple purposes. To the Defendant, it means closure and being able to move on from the limbo that is a pending case, and most importantly, the ability to resume their role as a productive member of society. Amidst the COVID-19 Pandemic, the constant continuances of court dockets, in varying increments depending on the Circuit, has led to Defendants being stuck and uncertain as to their future. Most Defendants have been out of work anyways due to mass layoffs and have been unable to move forward in finding employment because of their pending criminal charges. The lucky individuals who maintained employment could just as easily lose that employment due to their pending charges as well. Crimes originating from the Department of Revenue typically conclude with solutions, pleas, and programs that require the Defendant Taxpayer to reimburse the State of Florida for the amount due on their account, and depending on what that amount is, within the context of a felony charge that could range anywhere from third-degree to first-degree. So not only do taxpayers have to endure the employment-related ramifications of being a participant in the criminal justice system for an unprecedented delay in time, but their ability to resolve their case with minimal to no effect to their criminal record or freedom was greatly impacted as well.

The push for efficiency is not only privy to the Criminal Defense side of the criminal justice system. Delays and continuances have a negative impact on the State of Florida's ability to be a productive participant in the justice system as well. The ability to conduct further investigations, depositions, and have access to division chiefs to propose alternative solutions on a case by case basis was whittled down due to health guidelines and

continued, next page

COVID - 19 . . .
from previous page

office access. Without the ability to enroll Defendants in Pre-Trial Intervention programs, have face time with defense counsel at court dates, and enter pleas, the existing and new caseloads continued to stack for Assistant State Attorneys month after month during the COVID-19 Pandemic. Overloaded, overworked, and left without many resources, Assistant State Attorneys could not deliver creative solutions to defendants based on a reasonable, just case-by-case basis versus a one size fits all solution. Our public servants have high caseloads without a forced backlog placed on them, so one can only imagine the sheer number of cases that were placed on standby as court operations were nothing short of operating on a skeleton level.

Moving Forward from Here

What criminal tax attorneys can hopefully expect is a slow reopening of full court operations, however, the impact on jury trials have yet to be seen since the first virtual jury trial has taken place, but no virtual trials have been run through the appeals system to determine their constitutional muster. Affording grace to our colleagues working for the State, while ideally a common practice in general, will be required if we want to see just outcomes emerge from courtrooms for our clients. The backlog of cases provides negotiating opportunities centered around avoiding future continuances, motions, and investigations. Harnessing this opportunity for clients is an added value literally only a pandemic could provide.

As for the State, the backlog and mile-long list of trials clamoring for a delayed speedy trial can result in a more standardized use of the pre-trial Intervention program for defendant taxpayers who are not contesting the tax owed and want a chance to have their case dropped. In circuits where there is a greater level of case prioritization, we will also have the chance to see more abatements of interest and penalties in settlements to coax defendant taxpayers to pay their debt and remove basis for prosecution. We may also see more offers to Nolle Prosequi cases after full and prompt payment of the underlying criminal charge, or at least more of an inclination to consider such a deal.

There are massive constitutional rights ramifications associated with the COVID-19 delays in justice, many of which have yet to be seen. There will be pages and pages of discussion, analysis, and judicial opinion about how the COVID-19 affected the criminal justice system. The Due Process Clause in the Fifth and Fourteenth Amendment, and their Florida counterparts, will come under great scrutiny once case movement fully resumes in our "new normal." First and foremost, the right to a speedy trial has been explicitly suspended by the State of Florida during its COVID-19 safety measures. In addition, with virtual juries becoming a budding concept, one can only wonder if that truly suffices as a "Jury of Your Peers." Referring to the caseload burden on public servants representing the State of Florida, that same burden is also felt more than ever on the Offices of the Public Defender, creating a rise in caseload that begs the question whether the right to competent counsel is being satisfied. Finally, at the sentencing phase, if the health concerns surrounding COVID-19 persist with certain at-risk groups, would placement in a densely populated prison or county jail fall under cruel and unusual punishment? These and other issues will circulate through our county, circuit, and appellate court system for what could be years; not to mention the slightly unnerving precedent that an Administrative Order could suspend or tweak the constitutional rights of the Floridian.

However, as it applies to criminal tax matters, there is a lot of opportunity to use the negatives discussed above for outstanding results for clients and potentially even stronger precedent-setting ability in the appellate courts. While we cannot control the Pandemic, we have every opportunity to control the trends moving forward when it comes to how Florida Department of Revenue investigated criminal charges are treated in court moving forward.

About the Author:

Nadia Malcolm, Esq. is an associate attorney at Orlando Tax Law practicing criminal and civil tax controversy and litigation. She credits her invaluable experience working at the 10th Circuit's Public Defenders Office. In 2014, she graduated Summa Cum Laude with her BBA in Business Marketing from Loyola Marymount University in Los Angeles, CA, close to her hometown of Burbank, CA. Subsequently, in 2017 she graduated with her Juris Doctorate from Emory University School of Law in Atlanta, GA.

Endnotes

1 *In re: COVID-19 Emergency Procedures in the Florida State Courts*, Fla. Admin. Order No. AOSC20-13 (March 13, 2020);

2 *Id.*

3 In re: COVID-19 Essential and Critical Trial Court Proceedings, Fla. Admin. Order No. No. AOSC20-15 (March 17, 2020)

Thank you to our 2020-2021

Tax Section Annual Sponsors

We appreciate your support.

"Meet Your Sponsors"

PLATINUM SPONSOR:

MPI (MANAGEMENT PLANNING INC.)

MPI is a business valuation and advisory firm providing valuations for a variety of tax, financial reporting and other business applications, as well as corporate advisory services to business owners and their representatives. This prestigious national consulting firm was founded in 1939 and specializes in business valuation, forensic accounting, litigation support and corporate advisory work. MPI provides fairness opinions, sell-side and buy-side advisory services through its investment banking affiliate MPI Securities, Inc. MPI conducts every project as if it is going to face the highest level of scrutiny, and its senior professionals have extensive experience presenting and defending work product in front of financial statement auditors, management teams, corporate boards and fiduciaries, the IRS, other government agencies, and in various courts. For more information about MPI, visit the company website or contact Senior Vice President Roy H. Meyers , CFA, ASA at (609) 955-5743 or rmeyers@mpival.com.

SILVER SPONSOR:

ALLIANCE BERNSTEIN

AB is a leading global investment-management and research firm with more than $500 billion in assets under management and a presence in 25 countries, with more than 3,700 employees worldwide. AB serves clients ranging from institutions to individuals and private clients, and offers independent research, portfolio strategy and brokerage-related services tailored to their clients' unique needs. With forward-looking perspective and expertise in equities, fixed-income, alternatives and multi-asset strategies, more than 500 investment professionals collaborate to share ideas and make connections across disciplines, geographies, asset classes and sectors. These collective insights drive innovation and better solutions, helping AB keep its clients AHEAD OF TOMORROW®. For more information, please contact Senior Managing Director Evan Deoul at evan.deoul@bernstein.com or (305) 530-6200.

BUSINESS VALUATION ANALYSTS

Business Valuation Analysts, LLC concentrates its professional services in the valuation of private businesses and business interests for two broad purposes, valuations prepared for federal tax and corporate transactional purposes. BVA focuses its efforts on providing services that best meet the needs of its clients. The company was founded in 2007 and has had successful completion of over 1,500 engagements. BVA's work is routinely accepted by governmental agencies such as the IRS, and preeminent law and accounting firms across the country. The company offers broad industry experience and has assisted hundreds of clients and professional advisors. BVA professionals frequently present and publish on the topic of business valuation. For more information, please contact BVA President and Senior Analyst Timothy K. Bronza at tbronza@bvanalysts.com or (407) 599-2825.

CORAL GABLES TRUST COMPANY

GTC is the largest independent and privately held trust company headquartered in South Florida, with $1.5 billion of assets under management, and a leading provider of Wealth Management, Trust and Financial Planning services throughout the state. Founded in 2004 as a locally owned and operated independent trust company, CGTC services clients with assets ranging from $500,000 to more than $50 million—inclusive of affluent individuals and families, small to medium sized companies, foundations, and pension and endowment funds. Devoted toward putting clients' interest first, CGTC strives to provide conflict-free services, personalized advice, open-architecture (no proprietary products), and asset-based fees. For more information, visit the company website or contact Managing Director John Harris at (305) 443-2544 or jharris@cgtrust.com.

Meet Your Sponsors *continued*

SILVER SPONSOR:

JONES LOWRY

Jones Lowry is an independent life insurance planning firm with 40 years of experience in both domestic and international markets. The firm specializes in designing, implementing and servicing large-block life insurance portfolios and trusts for ultra-high net worth families, business owners, private investors and corporate executives. Due to the complex nature of these plans, the firm works closely with clients' legal, accounting and investment advisors during each step of the planning process. The firm also serves as an independent technical resource to assist advisors with their clients' insurance planning needs. As a Member Firm of M Financial Group, one of the nation's top independent insurance buying cooperatives, Jones Lowry has preferred access to many of the highest-rated insurance companies in the marketplace, and exclusive access to insurance products specially designed for high net worth and international clients. For more information, please contact firm principal Mac Lowry at bml@joneslowry.com or 561-712-9799.

KAUFMAN ROSSIN

Kaufman Rossin is one of the top 100 CPA and advisory firms in the U.S., bringing clients the knowledge to protect themselves from risk, improve business performance and meet compliance requirements. The Florida-based firm has been serving businesses in the U.S. and internationally for 55 years, providing accounting, audit, tax and outsourced services, as well as business, risk and forensic advisory services. Kaufman Rossin has won significant awards, including repeat honors as "Best Accounting Firm to Work For" by Accounting Today. With close to 400 team members, the firm prides itself on offering the resources of a powerhouse, personally delivered. Go beyond the numbers at kaufmanrossin.com . For more information about doing business with Kaufman Rossin, please contact Mark Scott, JD, LL.M., at (305) 857-6768 or mscott@kaufmanrossin.com.

MRW CONSULTING GROUP LLP

MRW Consulting Group ® is owned and managed by Luis O. Rivera and provides comprehensive forensic accounting, consulting and advisory services for law firms, law enforcement, government agencies, businesses and individuals. MRW handles assessment of compliance regarding regulatory matters, criminal and civil tax consultation, expert witness testimony, voluntary tax disclosures, litigation support, fraud investigations, bank secrecy act AML reviews, asset tracing, forfeitures, due diligence and anti-money laundering issues both in the United States and internationally. MRW was founded in 2009 and also provides financial investigative training and advisory services for law enforcement and government entities. The South Florida Legal Guide named MRW one of the Top CPAs and Accounting Professionals in Litigation Support: "MRW's success is, in part, the result of the Firm's philosophy to blend technical expertise to bring practical applications to complex forensic issues by developing "strategies from numbers." MRW is committed to using its experience and expertise to meet the specific needs of its clients within the highest professional and ethical standards. For more information, please contact Luis Rivera at (954) 523-8001 or luis@themrwgroup.com.

BERNSTEIN

Bernstein Private Wealth Management Supports

The Tax Section of the Florida Bar

Craig Storch
Managing Director
701 Brickell Avenue
Suite 2240
Miami, FL 33131
305.530.6200

Evan Deoul
Senior Managing Director
Phillips Point, West Tower
777 South Flagler Drive
Suite 1601
West Palm Beach, FL 33401
561.820.2100

Bernstein.com

© 2020 AllianceBernstein L.P.

MPI, a prestigious national consulting firm founded in 1939, specializes in business valuation, forensic accounting, litigation support and corporate advisory work. MPI also provides fairness opinions and advisory services. MPI's litigation support services assist attorneys involved in marital disputes and other corporate litigation.

Our skills, experience and interdisciplinary expertise will deliver the benefits of our accumulated wealth of knowledge, professional and personal relationships, and industry trust and confidence.

Roy H. Meyers, CFA, ASA
1000 Lenox Drive, 3rd Floor
Lawrenceville, New Jersey 08648
609-955-5743 | rmeyers@mpival.com

To learn how MPI can help you meet your clients' needs, visit **www.mpival.com**.

Boston | Chicago | New York | Orlando | Philadelphia | Princeton | Westport

Solar Energy Tax Incentives

By: Dana M. Apfelbaum, Mark E. Holcomb, and Michael D. Minton

For a number of years, certain Federal, state and local tax incentives have been available to promote, among other things, the importance of renewable energy like solar power. These incentives benefit Florida's business owners and residents who choose to implement solar energy systems on their property. Although this article focuses on opportunities for solar power, similar or comparable incentives are available for other forms of renewable energy, such as wind and biofuels.

Federal Tax Incentives

Code § 48(a) provides for an energy credit, commonly known as the "investment tax credit", equal to thirty percent (30%) of the cost basis of qualifying energy property placed in service during a taxable year, the construction of which begins before January 1, 2022. For these purposes, "energy property" means equipment using solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, but not with regard to heating a swimming pool. Additionally, such property must be depreciable, with an estimated useful life of at least three (3) years. Beginning with any property on which construction of which begins after December 31, 2019, there is a phase-out of this credit. Accordingly, the percentage which applies in 2020 for construction begun prior to January 1, 2021 is 26% and the 2021 construction percentage will be phased down again to 22%, creating an incentive not to wait to convert. There is currently pending in the Senate Finance Committee Senate Bill 3229, which proposes to extend the phase-out and availability of the credit, but it is unclear whether this legislation will be enacted at this time. Lastly, if the energy property is not placed in service before January 1, 2024, the credit is limited to ten percent (10%). The IRS issued guidance providing that investing at least five percent (5%) of the total expected installation cost will constitute "beginning construction." This puts solar energy on par with other renewable energy sources.

Beyond the credit, qualifying depreciable renewable energy property receives an additional benefit from accelerated and bonus depreciation. Code § 168(e)(3)(B)(vi) provides that most solar energy property is five-year property, which qualifies under Code § 168(k) for bonus depreciation. The practical effect of this is enormous as currently one hundred percent (100%) of the cost of qualified energy property (reduced first by fifty percent (50%) of the Investment Tax Credit taken, if applicable) is immediately deductible in the year it is placed in service. This rule applies until the end of 2022, after which the percentage immediately deductible decreases by twenty (20) percentage points annually until completely phased out at the beginning of the 2027 tax year.

Together, the investment tax credit and the depreciation benefits allow a significant portion of the cost of investing in solar energy to be essentially paid for by federal tax incentives.

For example, assume a taxpayer installed a solar energy system in 2020 with a cost basis of $100,000. In 2020, the taxpayer qualifies for the investment tax credit of 20% of that basis of $26,000. The taxpayer also qualifies for bonus depreciation of 100% of the cost, reduced by 50% of the investment tax credit taken, or in this case $87,000.

In the alternate, but not in addition to the investment tax credit to the extent elected for the same property, a "production tax credit" is available under Code § 45. For 2020, the production tax credit is currently 2.5 cents (a number adjusted annually for inflation) per kilowatt hour of electricity produced from eligible solar systems. In order to qualify, the energy must be sold to an unrelated person during the ten-year period beginning on the date the facility is placed in service. Practically, in order for the taxpayer to consider taking this credit in the alternate to the investment tax credit, they would have to produce electricity on a fairly large scale.

State Tax Incentives

The Florida property tax exemption available for solar energy systems (and other renewable energy source devices – including wind energy and geothermal energy) was expanded effective January 1, 2018. The exclusion is extended to 80% of the assessed value of such systems installed on or after January 1, 2018 for nonresidential properties. Eligible solar energy source devices include portions of the system up to the point of interconnection to an electric utility's distribution grid or transmission lines. These changes to the law are scheduled to expire at the end of 2037. New regulations governing the terms of contracts for the sale or lease of solar energy systems, including numerous required disclosures, became effective July 1, 2017.

Additionally, Florida has a corporate income tax credit for solar energy generation in the amount of $0.01 per each kilowatt-hour of electricity produced. Historically, the legislature has funded the program at $10 mil-

continued, next page

SOLAR ENERGY . .
from previous page

lion per year; however, the program was not funded for the current state fiscal year which began July 1, 2019.

It is important to be mindful of the fact that many of the incentives contained in this article have time limitations making early participation potentially more advantageous due to phase outs or limited availability. Contact your tax advisor to take advantage of these opportunities.

About the authors:

Mark E. Holcomb is a shareholder in Dean Mead's Tallahassee office and advises clients in state and local tax controversy and planning matters. He is a past Chair of the Tax Section and past recipient of the Gerald T. Hart award as Outstanding Tax Attorney of the Year.

Michael D. Minton is a shareholder in Dean Mead's Fort Pierce office and Chair of the firm's Agribusiness and Solar Energy Industry Teams. He represents family businesses with an emphasis on generationally-owned agricultural businesses and assists with their organizational structure, federal income, estate and gift tax planning and business succession planning. Minton offers extensive experience focusing on tax issues related to agribusiness, as well as water resource issues and new innovative uses of land for value-added propositions. He is a past Chair of the Tax Section.

Dana M. Apfelbaum is a shareholder in Dean Mead's Fort Pierce office where she practices in the areas of federal income, estate, and gift tax law and family business succession planning. She represents businesses and business owners in all types of business and tax matters, including choice of entity, mergers and acquisitions, reorganizations, general business matters and succession planning. Apfelbaum is Board Certified by the Florida Bar as an expert in the area of Wills, Trusts and Estates.

The War on Florida's Water: Will [TAX ON] Oil and Water Finally Mix?

By: Amanda Govin

Introduction

Florida constituents are in a position where public opinion on environmental issues is quite high, but the necessity of bottled water in times of crisis is strikingly clear. On one hand, there has been a huge push toward environmental sustainability amongst our grass-root Floridians consisting of beach clean ups, plastic straw bans, and an overall message of health and environmental awareness. On the other, during every hurricane or catastrophe, the first thing to go off the shelves is bottled water (other than toilet paper in the most recent Covid-19 pandemic). Even more pressing today is the downfall in Florida's ability to collect revenue due to businesses closing and stay at home orders. Despite these issues, bottled water is exempt from sales tax here in Florida, and there is no tax on the water's extraction from the Floridian Aquifer, meaning no revenue is collected on its bottling or its sales. Should tax be used to raise revenue and as a disincentive to promote environmental goals, or is the necessity of clean, easily accessible drinking water enough to keep them tax-free?

House Bill 861 and Senate Bill 1112 (the "Bills") were filed in Florida's House and Senate in December 2019 for consideration during the 2020 Regular Legislative Session, which ended March 19th. The bills raced toward novel legislation here in Florida, the goal: to tax bottled water companies for the use of its natural resource, the Floridian Aquifer that feeds our springs. The Bills aimed to amend the already existing Chapter 211, Florida Statutes, to read "Tax on Production of Oil and Gas, Severance of Solid Minerals, *and Extraction of Water for Bottling*," the italicized portion being the addition the Bills proposed.[1] Specifically, the Bills proposed a 12.5 cent per gallon excise tax on water extracted from the Floridian Aquifer by "bottled water operators," among other penalties, restrictions, and fines.[2] Proponents of the Bills say water *is Florida's oil* and should similarly be taxed at its extraction,[3] while critics of the Bills claim that revenue would be much more easily increased through the implementation of a sales tax.[4] While there are a multitude of additional environmental issues that accompany the lobbying of such Bills, this article will only address the tax related considerations.

continued, next page

THE WAR ON FLORIDA'S WATER . .
from previous page

A. What is an Excise Tax?

An excise tax is a percentage of tax that is directly imposed on certain goods. The "fuel tax" on gasoline, the so-called "sin tax" on cigarettes and alcoholic beverages, and the severance tax on extraction of resources such as oil and solid minerals are all excise taxes here in Florida.[5] Nevertheless, Florida does not impose an excise tax on the extraction of water from its natural resource, the Floridian Aquifer.

B. What is a Sales Tax?

A sales tax is a tax on the sale of any tangible good. The amount of sales tax is usually a percentage, applied to the total sales price (as opposed to a specific good in an excise tax), and ultimately paid by the consumer. In Florida, there is a mandatory state wide six percent sales tax on the sale of tangible personal property.[6] In addition to the six percent state tax, each county and school district may approve additional discretionary surtaxes, the highest currently levied is 2.5 percent for a combined sales tax of 8.5 percent.[7]

That being said, Florida has a number of exemptions to its sales tax. Specifically, and to this paper's point, "[t]he sale of drinking water in bottles, cans, or other containers, including water that contains minerals or carbonation in its natural state or water to which minerals have been added at a water treatment facility regulated by the Department of Environmental Protection or the Department of Health, *is exempt*."[8] Meaning the sale of bottled water, no matter where in Florida, generates zero sales tax.

C. Issues with a Direct Excise Tax

The goal of state and local taxation is to have a broad based tax—meaning the tax encompasses and reaches a wide taxpayer audience. However, the Bills proposed further a goal contrary to state and local tax policy. The Bills do not propose to tax *all* water extraction from the Floridian Aquifer, including for irrigation or agriculture, it only proposes to tax *water extracted for bottling* which in its title is a narrow-based tax.

Additionally, Florida currently has an excise tax on extraction of certain natural resources, namely oil. The Bills proponents argue that water *is* Florida's oil—it is Florida's most valuable natural resource. However, critics of the Bills point to the non-renewable nature of oil as explanation for the necessity to tax its extraction, and conversely the renewable nature of the Florida aquifers as argument against its tax.

D. Issues with a Sales Tax

In theory, a sales tax, rather than an excise tax, might seem to be more equitable because the tax is effectually spread across a broader base of taxpayers. The tax burden itself seems to be a relatively small issue when you're talking about *cents* (to the consumer in a sales tax) versus *millions of dollars* (to the company in an excise tax). However, sales taxes are historically regressive, meaning they tax everyone uniformly (as opposed to our Federal income taxes which are progressive). Although a uniform tax sounds fair, those with lower income tend to "consume" more of their current income and assets than higher earners. Therefore, adding a sales tax to bottled water, while it might not affect the average person, proves to disproportionately affect lower economic families who may rely more on bottled water than those with the ability to pay for proper home filtration systems.

E. Other Efforts

Other bills have were also introduced during the 2020 Regular Session to achieve similar goals. Florida Senate Bill 1798 proposed that the consumptive use permits, which are required for water extraction, cost *at least $1 million* to bottled water companies—as opposed to the current range of $100–$200; Florida Senate Bill 1096 proposed that the Department of Environmental Protection monitor the use of consumptive use permits, to ensure the extraction of no more than the allotted gallons per day, along with a daily fee for non-compliance; and Florida Senate Bill 1098, related to Florida Senate Bill 1096, proposed a five cent per gallon fee "on water extracted for the production of bottled water…"

Each of these bills, including Florida House Bill 861 and Florida Senate Bill 1112, have since died in various Legislative committees. However, the continued effort at this legislation is important to note, if only to show that Florida lawmakers are essentially grasping at straws for any opportunity to tax water at its extraction. Nevertheless, in 2018, Florida constituents voted in a constitutional amendment requiring a supermajority vote, specifically a two-third vote, for the imposition of any new tax—making the likelihood of the passage of any tax related bill, let alone the tax on water extraction, quite slim.[9]

Conclusion

The proposal for an excise tax on water extraction by bottlers, like many tax policies in place, was aimed to serve a multitude of purposes. The arguments for such tax seems to be three-fold: to raise revenue for Florida, to have bottled water operators pay their fair share, and to use tax as a disincentive to try to save the Floridian aquifers from depletion. The question is, what type of tax, *if any*, solves all three?

continued, next page

THE WAR ON FLORIDA'S WATER . .
from previous page

About the Author:

Amanda Govin, Esq. is an associate in the Orlando office of Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. Amanda focuses on tax planning issues and works on matters involving all types of business entities, such as LLCs, S and C corporations, and partnerships. In addition, she assists individuals with tax controversy matters and she assists charitable and other not-for-profit organizations. Amanda received her J.D. from Stetson University College of Law and her LL.M. in Taxation from the University of Florida, where she was a Student Editor on the Florida Tax Review.

Endnotes

1 H.B. 861 (Fla. 2020); S.B. 1112 (Fla. 2020),

2 *Id*.

3 Florida historically taxes the extraction of oil under Chapter 211, Florida Statutes. Florida has longstanding oil fields in the Northwest and Southwest regions of the state.

4 Billy Hamilton, *Whiskey's for Drinking, Bottled Water Taxes are for Fighting*, TaxNotes (Mar. 2, 2020).

5 Fla. Stat. § 563.05; Fla. Stat. § 564.06; Fla. Stat. § 565.12; Fla. Stat. § 210.02; Fla. Stat. § 210.30; Fla. Stat. §§ 211.01 *et seq*.

6 Fla. Stat. § 212.05.

7 Fla. Stat. § 212.055; *Discretionary Sales Surtax,* Fla. Dep't of Rev. (last visited Aug. 6, 2020).

8 Fla. Stat. § 212.08(4)(a)1.; *See also* Fla. Admin. Code Ann. r. 12A-1.011 (2011) (emphasis added).

9 Fla. Const. art VII § 19.

10 *See* TIGTA, Ref. No. 2017-30-048, *Additional Controls Are Needed to Help Ensure That Nonresident Alien Individual Property Owners Comply With Tax Laws* (Aug. 23, 2017).

11 *Available at* https://www.irs.gov/businesses/small-businesses-self-employed/irs-lbi-compliance-campaigns-oct-5-2020.

Bankruptcy and Late Filed Tax Debt - Can My Client Discharge Her Tax Debt?

By: Luis Silva

As the pandemic continues to cause financial hardship among ourselves and our clients, it is important to keep in mind that most American of processes, Bankruptcy. In general, Bankruptcy allows a person to reset themselves financially, it discharges the debtor of their debts after a process that nets all the debtor's assets against their liabilities. Of course, there are limitations to who can file for bankruptcy, how often they can file for bankruptcy, and what debts are dischargeable, and which are not. Importantly, a tax debt may only be discharged if a return has been properly filed.

What comprises a properly filed return?

As is to be expected in tax law, there is no clear answer, and what comprises a properly filed return is the subject of a Circuit split. Prior to 2005 the Circuits agreed that a return had to (1) claim to be a return; (2) be executed under penalty of perjury; (3) contain sufficient information to allow for the calculation of a tax; and (4) represent an honest and reasonable attempt to meet the requirements of the tax law.[1] This standard was known as the *Beard* test, and was derived from a tax court case. The Circuit split occurred when in 2005, a relevant portion of the bankruptcy code was amended to include a definition of the term "return." Specifically, additional language was added to Section 11 U.S.C. §523(a), this additional language became known as USC §523(a)(*) or the "flush language", which stated that the term "return" meant "a return that satisfies the requirements of applicable non-bankruptcy law (including applicable filing requirements) . . . but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law."[2]

Is one day late too late?

After the statute was amended, several Circuits took the position that any nonsatisfaction of filing standards would cause tax debt to be non-dischargeable. They came to this conclusion after a plain reading of the statute. Specifically, the 1st, 5th, and 10th Circuits took the position that any returns that were late, even if they were just one day late, did not meet the new definition of a return and therefore any related taxes were not dischargeable.

Should we consider the entirety of the statute, or just read the plain language?

Despite the apparent plain meaning of the added statutory language, other Circuits interpreted the ad-

continued, next page

BANKRUPTCY . . .
from previous page

ditional language as part of the larger statute. These Circuits concluded that since portions of the existing code would be rendered moot by the additional language, it was best to interpret the added language as what most made sense. Therefore, they concluded that the added language only served to exclude returns made pursuant to IRC Section 6020(b).[3] This conclusion seems to be correct, as a House Report stated that the added language served to explicitly state that a return filed on behalf of a taxpayer pursuant to section 6020(b) of the Internal Revenue Code . . . does not constitute filing a return (and the debt cannot be discharged).[4] These Circuits have continued to apply the *Beard* test.

Does this mean that any return, no matter how late makes a tax debt dischargeable?

No, as mentioned in the paragraphs above, the Beard test is often used in determining whether or not a return meets the conditions on Section 523. The Courts will generally rely on the individuals' honest attempt to comply with the law.[5] Most Courts determine what consist of an honest attempt by gauging relative usefulness of the return to the Service (IRS). Simply filing a return for the benefit of a bankruptcy discharge clearly does not rise to the standard of an "honest attempt." [6] Therefore, the general tax adage that says that filing late is better than not filing applies, and the sooner a client files, the better.

Where does the 11th Circuit stand on the Matter?

Luckily for our in-state clients, the 11th Circuit Court of Appeals has taken the latter of the two positions. In a recent case, the Court went even further and seemingly stepped over the *Beard* test, when looking at Massachusetts tax, it simply stated that "a late-filed tax return does not automatically cease having the status of a 'return' merely because it was filed late." [7] The Court simply concludes that Section "523 does not incorporate a mandatory precondition that a tax return must be timely filed to be dischargeable."[8]

Conclusion

The language that created the Circuit split should not be read plainly. In fact, the courts that found that §523(a)(*) mandated a one-day-late rule acted in the same way that Cinderella's step-sisters did when their feet did not fit Cinderella's glass slipper. The courts attempted to force the non-fitting rule into the code with serious consequences. The one-day-late rule unduly punishes the honest debtor, chipping away at the point of bankruptcy; it also contradicts the intent of congress, which only meant to make certain that some returns prepared by tax authorities were properly included in the §523(a) definition of return; and finally it fundamentally changed the code, having it impose harsh penalties on debtors and forcing code sections to contort in unnatural ways to fit together.

About the author:

Luis Silva is an Associate Attorney at Faehner PLLC in Clearwater Florida who focuses on income tax and estate planning as well as in business transactions. He is a J.D., LL.M., President of the Clearwater Bar Association's Young Lawyers Division, and a Board Member of the Pinellas County Estate Planning Council.

Endnotes

1. See generally Beard v. Comm'r of Internal Revenue, 82 T.C. 766.
2. The added language was introduced as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA).
3 That section of the code allows the Service to prepare a return on behalf of a taxpayer.
4 H.R. Rep No. 109-31 pt. 1at 103.
5 In re Justice, 817 F.3d 738, 744 (11th Cir. 2016) (Holding that returns that debtor filed years late did not qualify as returns for §523 purposes, the Court reached this determination utilizing the four-factor test).
6 See In re Hidenland, 164 F. 3d 1029, 1035 (6th Cir. 1999)
7 Mass. Dep't of Rev. v. Shek (In re Shek), 947 F.3d 770, 781 (11th Cir. 2020)
8 Id.

Submit an Article

The Tax Bulletin is published three times a year, Fall, Spring, and Summer. Each publication accepts up to six articles of approximately 500 to 1,000 words each. The Tax Section would like to thank Mitchell Goldberg of Berger Singerman (Fort Lauderdale) and Guy Whitesman of Henderson Franklin (Fort Myers) for serving as the Tax Bulletin's Content Editors. Lisa Gallagher of Fergeson Skipper, P.A. (Sarasota) currently serves as the Publishing Editor. If you have an article you would like to be considered for publication, or questions regarding deadlines, please reach out to Lisa via email: LGallagher@FergesonSkipper.com

How to Interpret 11 U.S.C. § 523(A)(*): Unambiguous or Inharmonious?

By: Robert Meyer

Outside of bankruptcy, ". . . nothing can be said to be certain, except death and taxes."[1] Inside of bankruptcy, nothing is certain about taxes, especially how they are treated in regard to an 11 U.S.C. §523 discharge. This article will preliminarily review the basic constructs of denying discharge to taxpayer debtors in bankruptcy and how there is a slight difference between late filers and timely filers. Then, this article will review how the Bankruptcy Abuse Prevention and Consumer Protection Act's (BAPCPA)[2] now famous hanging paragraph has created a division among the circuits relating to any ability by a late-filing taxpayer having taxes discharged in bankruptcy.

Pre-BAPCPA Taxpayers Who Are Subjected to Potential Denial of Discharge for Tax Debt

Non-priority tax debt is generally dischargeable.[3] In bankruptcy, Congress enacted exceptions to this general allowance of discharge. Essentially, three types of taxpayers need to be concerned: (1) tax protestors or scofflaws; (2) frauds; and (3) procrastinators. None of these exceptions are surprising, especially the first two. Tax protestors simply never file tax returns. Therefore, the consequences of their acts are denial of any tax liability for those tax years.[4]

Tax frauds file returns which are essentially fictional accounts of their income with an intended purpose of paying less than what is owed. The consequence of their fraud, is the denial of any tax liability for those years.[5] Procrastinators, unlike scofflaws or frauds, do not have the requisite intent to deceive. In turn, their discharge for the taxes is altered. In order to be discharged of their tax liabilities, procrastinators need to wait two years from the tax return's filing.[6]

Sometimes, the tardily filing taxpayer was subjected to review for his/her tardiness – were they intending to deceive as opposed to simply being dilatory? From this issue arose the application of the *Beard* Test.[7] The *Beard* Test looks to the following or whether: (1) the document purports to be a return; (2) the document is signed under penalty of perjury; (3) the document contains sufficient data to calculate tax liability; and (4) the document represents an honest and reasonable attempt to satisfy the requirements of the tax law.[8] Any 1040 form satisfies the first three elements. In bankruptcy, the fourth element, through jurisprudence, incorporated an "honest and reasonable attempt" standard. If the debtor's attempts were "honest and reasonable", the debtor would be discharged of the tax debt.

Hence, pre-BAPCPA, the simple rule of thumb for a bankruptcy discharge of a tax debt is a chronological test: If the bankruptcy petition is filed more than three (3) years after tax assessments of a *timely filed return*, the tax should be discharged.[9] The tax assessment date is measured by the date the IRS receives the taxpayer's return. Alternatively, if the bankruptcy petition is filed more than two (2) years after tax assessments of an *untimely filed return*, the tax should be discharged – so long as the delay was honestly and reasonably caused.[10]

Post-BAPCPA Alteration of Late Filed Returns

The above-recited rule has subsequently been altered by BAPCPA.

BAPCPA made statutory revisions to 11 U.S.C. §523(a) by creating a definition of "return" in a hanging paragraph located after 11 U.S.C. §523(a)(19), which courts describe as 523(a)(*). That section reads:

> For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a)[11] of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b)[12] of the Internal Revenue Code of 1986, or a similar State or local law.

By one code (bankruptcy) referencing another code (tax), and many practitioners being knowledgeable about one code and not the other, this clause becomes problematic on many levels. But, walking back and forth between the codes brings some clarity and delivers insight to the inequitable results which may occur.

<u>BAPCPA Late Returns</u>

BAPCPA created a new dichotomy. Because § 523(a)(1) uses the pre-BAPCPA language, while the 532(a)(*), or the hanging paragraph, creates new interpretation and potential modification of § 523(a)(1), draconian rulings have been entered which effectively assert any "late" return represents a tax liability which will not be discharged. This conflict between § 523(a)(1) and § 523(a)(*) has evolved to two interpretations: (1) a strict prohibition of a tardily filed tax return's tax liability from being discharged; or (2) a weighing test to determine whether or not to discharge the tax liability of a tardily filed return.

<u>(1) Strict Prohibition</u>

Three circuits demand no discharge from any return filed after April 15, unless appropriate extension(s) were granted.[13] Hypothetically these rulings conclude that a return filed one minute late will make the debt nondischargeable. These courts assert that a late-filed return fails to meet the hanging paragraph's definition of "return" which describes such as meeting the "requirements of applicable nonbankruptcy law." The First Circuit concluded that timely filing was a " requirement of nonbankruptcy law." If untimely, there was a "no return." This is a valid argument using logical analysis. But, such rulings have their detractors.

(2) The *Beard* Weighing Test

The *Beard* Test governs in the Fourth, Sixth, Seventh, Eighth, Ninth and Eleventh Circuits.[14] Instead of using chronologically rigid time lines, these courts create a test to determine if a tax debt, from an untimely filed return, would be dischargeable.[15] These bankruptcy courts rely on the Tax Court's *Beard* opinion's definition of the term "return." In Bankruptcy, the *Beard* Test usually only reviews the fourth element, or whether or not the filed paper was "honest" and whether or not the delay was "reasonable."

Strict Statutory Construction's Reasoning

The hanging paragraph problem may essentially be a derivative of statutory myopia. Do you read the statute alone? Or, do you interpret the statute as it affects related provisions?

For decades, the United States Supreme Court has determined that bankruptcy is handled by strict statutory construction. In short, the plain meaning of the statutory language can hopefully determine the result through a simple analysis of the text governing the subject matter. Only if the statutory provision is not specific does the United States Supreme Court engage in holistic statutory interpretation.[16] If the court can determine at the outset that the statutory provision is unambiguous on its face, the highest court would ordinarily rule by strict analysis and avoid concepts of equity or similar concerns. But, the "plain meaning" of a statute must read harmoniously with other statutes.

Recently, circuits were falling in line by denying tax discharge on strict statutory construction of a single statute.[17] By adhering to a strict review of the hanging paragraph, these courts determined that § 523(a)(*) cannot be read any differently than its simple meaning: a "return" is only a "return" if it is timely filed. Under this interpretation, a late-filed tax return's liability – filed one day, one hour, one minute, even one moment late – is nondischargeable. These decisions *all* assert that the hanging paragraph is unambiguously written; because, timely filing is obviously what was meant by the term "applicable filing requirements."

Eleventh Circuit's *Shek*[18] Decision

After three circuits (First, Fifth and Tenth) sided in denying the discharge by asserting any late filed return is not a return as defined under § 523(a)(*), the Eleventh commenced its opposite conclusion with this preface: "We do not, however, agree that the phrase 'applicable filing requirements' unambiguously includes filing deadlines."[19] The *Shek* court in the Eleventh Circuit further wrote, "this is the interpretation implicitly adopted by our sister circuits. And it may well be the best reading of the language 'applicable filing requirements' when considered in isolation."[20]

The court looked to another bankruptcy decision, and found that "applicable" was not synonymous with "all."[21] The *Shek* court then concluded that the term meant, ". . . those filing requirements that are 'relevant' or 'appropriate' to the task of defining a 'return'—that is, those that deal with what a return is."[22] This last cited sentence essentially delivers the review to the first three elements of the *Beard* Test.

Understanding that the problem is created by the isolated review of the hanging paragraph, as opposed to the Bankruptcy Code as a whole, the Eleventh Circuit referenced a Justice Antonin Scalia treatise which states, "'[c]ontext is a primary determinant of meaning,' and '[t]he entirety of the document thus provides the context for each of its parts.'"[23] This conclusion answered the contradiction posed by the strict construction application's denial of discharge for a late-filed tax return under § 523(a)(*) which emasculated the allowance of a discharge of a late-filed tax return under § 523(a)(1)(B)(ii).[24] Strict statutory interpretation succumbs to literal interpretation when it delivers irrational, discordant, inharmonious or absurd conclusions.[25]

Even the IRS Agrees to Discharge the Taxes

Before 2020, three circuits had absolutely denied the discharge of taxes for late-filing taxpayers who file bankruptcy. Before the 2020 Eleventh Circuit's *Shek* decision, this was true even though the IRS sided with the allowance of the discharge. Shocking to some, the strict *per se* rule continues not to be followed by the IRS. The Office of the Chief Counsel rejected the One-Day-Late Rule and stated, "[r]ead as a whole, section 523(a) [11 U.S.C. § 523(a)] does not provide that every tax for which a return was filed late is nondischargeable."[26]

Legislation Always Will Have Weak Links

Congress, a collective made of human judgment, can err. Especially, when enacting legislation. And, Congress usually enacts legislation without envisioning all circumstances. Because legislative amendment is a slow process, some courts justify dynamic or nautical rulings. Alternatively, others limit themselves to strict statutory construction and avoid "dynamic"[27] or "nautical"[28] interpretation because they surmise that statutory corrections may only be implemented by Congressional action. One way to avoid this conflict is to address the question of whether or not there is disharmony in the floating paragraph. The Eleventh says there is; and, so it rules for the taxpayer debtor. The First,[29] Fifth[30] and Tenth[31] ignore this concern and rule against the taxpayer bankruptcy debtor.

continued, next page

HOW TO INTERPRET. . .
from previous page

Conclusion

Presently, the United States Supreme Court has denied review. Either the issue will reach the high court or be amended through legislation. Until then, this issue's resolution is guided by a debtor's residential jurisdiction's legal interpretation.

About the Author:

Robert C. Meyer, J.D., LL.M. has worked over 35 years in Miami as a bankruptcy attorney. He has lectured extensively on bankruptcy law and has been an adjunct professor of bankruptcy taxation at the University of Miami School of Law. Any questions concerning bankruptcy and taxation issues which are addressed in this article can be made to the author at: meyerrobertc@cs.com

Endnotes:

1. Benjamin Franklin, in a letter to Jean-Baptiste Le Roy, 1789 Derived from, "Things as certain as death and taxes, can be more firmly believ'd." Daniel Defoe, *The Political History of the Devil*, 1726.

2. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) (Pub.L. 109–8, 119 Stat. 23, enacted April 20, 2005)

3. Priority tax debt, in the alternative, is generally nondischargeable. 11 U.S.C. §§ 507(a)(3), (a)(8) (examples are: "trust fund" taxes; taxes incurred within a few years of the bankruptcy filing – neither of which require any bad intent of the debtor).

4. § 523(a)(1)(B)(i)

5. § 523(a)(1)(C)

6. § 523(a)(1)(B)(ii)

7. *Beard v Comm'r of Internal Revenue*, 82 TC 766 (1984)

8. The actual language is: "(1) it must purport to be a return; (2) it must be executed under penalty of perjury; (3) it must contain sufficient data to allow calculation of tax; and (4) it must represent an honest and reasonable attempt to satisfy the requirements of the tax law."

9. *In re Moroney*, 352 F.3d 902 (4th Cir. 2003); *In re Hindenlang*, 164 F.3d 1029 (6th Cir. 1999); *In re Payne*, 431 F.3d 1055 (7th Cir. 2005); *In re Colsen*, 446 F.3d 836 (8th Cir. 2006); *In re Smith*, F.3d (9th Cir. 2016) and *In re Justice*, 812 F.3d 738 (11th Cir. 2016)

10. *Id.*, § 523(a)(1)(B)(ii) and jurisprudential law of this clause with *Beard* Test.

11. That sections reads:

(a) Preparation of return by Secretary
If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

12. That section reads:

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

13. *In re Fahey*, 779 F.3d 1, 4 (1st Cir. 2015); *In re Mallo*, 774 F.3d 1313 (10th Cir. 2014); and *In re McCoy*, 666 F.3d 924, 932 (5th Cir. 2012)

14. 11 U.S.C. §§ 523(a)(1) and (8)

15. Form 4868

16. "Statutory construction, however, is a holistic endeavor. A position that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme-because the same terminology is used elsewhere in a context that makes its meaning clear..." Justice Scalia, *United Sav. v Timbers of Inwood Forest*, 484 U.S. 365, 371 (1988)

17. *Dewsnup v Timm*, 502 U.S. 410 (1992, *Norwest Bank Worthing v Ahlers*, 485 U.S. 197 (1988), United Savings Assn v Timbers of Inwood Forest, 484 I/S/ 365 (1988), *Patterson v Shumate*, 112 S. Ct. 2242 (1992), *Union Bank v Wolas*, 502 U.S. 151 (1991), *Toibb v Radloff*, 501 U.S. 167 (1991), *Pennsylvania DPW v Davenport*, 495 U.S. 552 (1990) and *United States v Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989)

18. *Mass. Dep't of Rev. v. Shek (In re Shek)*, 947 F.3d 770, 773 (11th Cir. 2020) appealed from *Shek v. Mass. Dep't of Rev*. (*In re Shek*), 578 B.R. 918, 921 (Bankr. M.D. Fla. 2017) appealed from Shek v. Mass. Dep't of Rev. (In re Shek), 578 B.R. 918, 919 (Bankr. M.D. Fla. 2017)

19. *Mass. Dep't of Rev. v. Shek* (*In re Shek*), 947 F.3d 770, 775 (11th Cir. 2020)

20. *Shek* 947 F.3d at 776

21. *Shek* 947 F.3d at 776, citing *Ransom v. FIA Card Servs*., N.A., 562 U.S. 61, 69-70 (2011) (citing Webster's Third New International Dictionary 105 (2002); New Oxford American Dictionary 74 (2d ed. 2005); 1 Oxford English Dictionary 575 (2d ed. 1989)).

22. *Shek* 947 F.3d at 776, citing *Fahey*, 779 F.3d at 5

23. *Shek* 947 F.3d at 777, citing Antonin Scalia & Bryan Garner, *Reading Law*: *The Interpretation of Legal Texts ("Reading Law"*) 167 (2012)

24. This was one reason other courts would not apply strict construction. See *Maitland v. New Jersey, Div. Of Taxation (In re Maitland)*, 531 B.R. 516, (Bankr. N.J. 2015); *Johnson v. United States* (*In re Johnson*) , No. 14-CIV-80812, 2015 U.S. Dist. LEXIS 178488, at *28, 117. A.F.T.R.2d (RIA) 1418 (D.S.D. Fla. Feb. 5, 2015) In fact *Maitalnd* writes, ""If §523(a)(l)(B)(ii) is read so that it applies only to those few souls that the I.R.S. deems worthy of helping to file their tax returns, then the provision has undeniably been rendered insignificant." *Maitland* at 521(citing, *TRW Inv. v. Andrews*, 534 U.S. 19, 122 S. Ct. 441, 151 L. Ed. 2d 339 (2001)

25. Criminal restitution discharge in Chapter 13 created a war of interpretation. *Pennsylvania Dept. Of Public Welfare Davenport*, 495 U.S. 552 (1990)

26. Office of Chief Counsel Notice 2010-16 at 2, and see SBSE 05-0613-054 (June 28, 2013) citing Notice 2010-16 with approval.

27. Dynamic statutory interpretation looks into three factors: (1) statutory text; (b) original legislative expectations; and (3) subsequent evolution of the statute. William N. Eckridge, Jr., *Dynamic Statutory Interpretation*, 135 U. PA. L. Rev. 1479, 1483 (1987)

28. "Congress builds a ship and charts its initial course, but the ship's ports-of-call, safe harbors, and ultimate destination may be a product of the ship's captain, the weather, and other factors not identified at the time the ship sets sail." T. Alexander Aleinkoff, *Updating Statutory Interpretation*, 87 MICH. L. REV. 20, 21 (1987)

29. *In re Fahey,* 779 F.3d 1, 6 (1st Cir. 2015).

30. *In re McCoy*, 666 F.3d 924, 932 (5th Cir. 2012)

31. *In re Mallo*, 774 F.3d 1313, 1318 (10th Cir. 2014).

Charitable Case Law Update 2019/2020

By: Dr. Adam Scott Goldberg

Covid-19 forced many attorneys out of the courthouses since Spring of 2020. Regardless, both before and after the start of this epidemic, there have been many legal matters decided by the state and federal courts, as well as by the Internal Revenue Service regarding the law of exempt organizations. This article will offer a summary of eleven of the more interesting and amusing decisions published in the last eighteen months, which have a bearing on tax exempt or not for profit entities.

One of the more local cases, Sibley v. In Re: Estate of Sibley 273 So.3d 1062 (2019), comes from Miami-Dade County. This case revolved around whether or not a Florida based charitable foundation was in existence at the time of the decedent's death. In this case, the decedent had created a charitable foundation during his lifetime. His estate plan sent a residuary amount to his foundation if the foundation was in existence at the time of his passing. The estate plan further stated that if the foundation was not in existence, then the residuary was to be sent to a well-established local charity for psychological rehabilitation. At the time of the decedent's death, the foundation was not in good standing with the Florida Division of Corporations, as it had been administratively dissolved three months earlier. Seven months after the decedent died, the foundation's corporate status was reinstated. The decedent's fiduciary argued that Florida statutes state that an administratively dissolved corporation continues its corporate existence. The Third DCA agreed with the fiduciary's argument but added that the corporation existed solely to wind up and liquidate its business affairs at the time of the decedent's death. Therefore, the foundation was found not to be in existence at the time of decedent's death and the residuary assets would go to the local charity.

The case of Campbell v. Commissioner of Internal Revenue (TC Memo 2020-41) involved a scheme by a couple to inflate charitable deductions for their Form 1040. The couple's longtime CPA told them about a charitable program in which fifty individuals were allowed to purchase 3,400 various eyeglass frames for \$50,000, hold on to them for at least one year, and then donate the frames to a vision-related charity and claim a charitable write-off at a so-called appraised market value of \$225,000. The couple did this and, not surprisingly, the IRS selected their 2008 income tax return for audit. The couple properly attached IRS Form 8283 and a written appraisal to their 1040. The Tax Court determined the appraisal was not a qualified appraisal and did not strictly comply with the proper regulations. Therefore, the court voided their entire charitable deduction. The actual appraisal was found not to be specific enough as the appraisal merely referenced frames varying in price from \$37 to \$80, without listing actual values for each individual frame. Note that in this case the Court did not address whether the couple had the requisite donative intent.

For a taxpayer victory, see the case of Alvin Keels v. Commissioner of Internal Revenue (TC-Memo 2020-25). In this case, the taxpayer raised funds for a jazz music-based charity through PayPal for an online raffle. When setting up the PayPal account, the taxpayer used his social security number as opposed to the employer identification number of the charity. By law, third-party payment networks, such as PayPal, must send Form 1099-K to payees who have more than 200 transactions and were paid more than \$20,000 during the year. Therefore, PayPal sent the taxpayer and the IRS a 1099-K reporting \$167,223 in payments to that account for the calendar year 2014. The taxpayer did not include the payments as income on his 1040 and was audited. The Tax Court ruled that the PayPal money belonged to the charity and was not income to the taxpayer. The court was satisfied that the PayPal account was primarily for the benefit of the charity as the taxpayer was able to prove that a charity-based event occurred, money for that event was properly accounted for and that none of the funds collected by the PayPal account benefitted the taxpayer himself directly or indirectly.

A very recent private letter ruling reviewed the topic of scholarship grant procedures from private foundations (PLR 202038011 (issued 9/18/2020)). In this matter, the taxpayer was a private foundation that operated a scholarship program for young women going to college in a given geographical area. The program would provide funding for qualified students to pay for tuition, books and supplies, along with room and board. The scholarships would be renewable annually for up to four years. The foundation was concerned that a federal excise tax might apply to these grants if the IRS felt the payments were taxable expenditures. A taxable expenditure is any amount a private foundation pays as a grant to individuals for study, travel, or similar purposes. However, I.R.C. Section 4945(g) allows for certain grants, provided the following four requirements are met:

1. The foundation awards the grant on a nondiscriminatory basis;

2. The IRS approved the procedure in advance;

CHARITABLE CASE LAW. . .
from previous page

3. The grant is a scholarship in line with I.R.C. 117(a); and

4. The grant is for an educational organization that qualifies under I.R.C. Section 170(b)(1)(A)(ii).

In this case, the private foundation proposed the following six requirements for scholarship qualification - the applicant must:

1. Have attended and completed all four years of high school in a certain geographical location;

2. Have a specific SAT or ACT score;

3. Have an un-weighted grade point average of at least 3.5;

4. Plan to pursue a bachelors degree;

5. Be eligible for Federal Pell Grants to verify financial need; and

6. Apply for the scholarship by filling out an application, including a personal statement, official transcripts and at least one letter of recommendation.

A candidate who meets the above criteria would then be considered by a selection committee consisting of all women, at least one of which was knowledgeable in the field of education and at least one of which was local to the geographical area. The results of the committee would be announced publicly, and the foundation would require follow-up due diligence from all scholarship recipients. The IRS determined that these conditions satisfied the conditions of I.R.C. Section 4945(g) and allowed the private foundation to proceed with the scholarship program.

Many readers may recall the amusing case of Patell v. Commissioner of Internal Revenue (138 T.C. No. 23 (2012)) where the taxpayers were denied a charitable deduction for allowing the local fire departments to train while intentionally burning down a house they no longer wanted. For a similar taxpayer making a similar losing argument, consider Mann v. United States (364 F. Supp 3d 553, 2019). In this case, a married couple in Maryland wanted to demolish a recently purchased home to make way for a bigger and more modern home. The couple obtained an appraisal on the old house of $675,000, and a separate appraisal of $24,200 for the furnishings inside the old house. The couple then contacted a local IRS recognized charity that helped disadvantaged individuals gain workforce training in the construction industry. The couple donated the house and the furnishings to the charity with the understanding that the charity would haul away what they could sell or use and apply its human resources to demolish the house. The couple took a deduction for the house and the furnishings on their 2011 income tax return. The IRS denied the entire deduction. The taxpayers paid the tax deficiency and sought a refund through court action. The Court ruled against the taxpayers on the basis that house was never severed from the property and therefore the donation was a mere partial interest in real property, which did not qualify for any of the few exceptions to the rule that partial interests are not deductible. In addition, the Court felt the taxpayers appraisals were misleading in how they valued assets that were essentially destroyed and that a proper appraisal would have included the resale value of the specific building materials that could be salvaged or resold.

Sometimes a charity can take things too far. Consider the case of Korean-American Senior Mutual Assn. v. Commissioner of Internal Revenue, (TC Memo 2020-129). A New York-based charity that was approved by the IRS in 1998 was a membership-based organization for people ages 55 to 90. The three exempt purposes of the organization were (1) to assist senior citizens with their general welfare (2) to assist members' families upon the death of a member, and (3) to provide organized activities for member senior citizens to enhance their free time and friendship. One program the charity developed was a financial assistance program for the families of those members who passed away. When a member died, the charity made a payment directly to the funeral home to help with burial services. The amount of the benefit was based upon the number of years the decedent was a dues paying member of the charity. The benefit was not based upon the member's family's ability to pay. The IRS audited the organization and determined that this one program caused the entire organization to be non-compliant as members were receiving a private benefit. The charity argued that because the charity was open to anyone ages 55 to 90 for membership, it served a public purpose. The court did not agree with the charity's arguments and authorized the IRS to revoke the exempt status of the organization as a matter of law, not as a matter of fact.

Many sections of the tax code specifically define the term corporation. 26 U.S.C. Section 6621, which deals with interest paid on refunds from the IRS, is not one of them. As the term corporation is not defined, a number of challenges have been brought under this code section. A recent case asked whether or not a not for profit corporation, as recognized on the state level in West Virginia, was a corporation on the federal level for purposes of code section 6621. In the case of Charleston Area Medical Center vs. United States, No. 18-2226, (Fed. Cir. October 17, 2019) the legal question was does the word, corporation, as it appears in 26 U.S.C. Section 6621(a)(1) include

continued, next page

CHARITABLE CASE LAW. . .
from previous page

nonprofit entities that are incorporated under state law. There are two options under this statute whereby the refund is going to a corporation or to any other taxpayer. This case involved a not for profit medical center where student employees received payment for services rendered. It was determined that federal income taxes were improperly withheld for these student employees. When the refunds were issued, the interest paid by the IRS was the corporate refund rate of only two percent. The medical center challenged this IRS decision seeking an additional $1,900,000 in interest for its student employees, which would have represented the three percent interest rate by statute for any other taxpayer. The court was not swayed by the medical center's argument that a not for profit entity should not be treated the same as a for-profit corporation and ruled that the definition of corporation would include not for profit entities. For another recent case with similar facts and a similar result see Wichita Ctr. for Graduate Med. Educ., Inc. v. United States, 917 F.3d 1221 (10th Cir. 2019).

Cases involving taxpayers using religion to avoid paying income taxes are common and plentiful. A new addition to the mountain of case law on this topic can be found in Oliveri v. Commissioner. (T.C. Memo 2019-57). In this case the taxpayer became active in the Catholic Church after 26 years in the Air Force. The taxpayer took classes and became a certified teacher and trainer within the Church. On the taxpayers 2012 income tax return, he took almost $40,000 in charitable contributions as deductions under I.R.C. Section 170. Some of these funds were spent on aircraft rentals, meals, tolls, gasoline, and lodging. The taxpayer claimed these expenses as charitable grants, evangelization communications and Christian outreach. The IRS argued that most of these expenses were at least partially personal in nature. The IRS also argued that these amounts were merely un-reimbursed expenses and not contributions to or for the benefit of the Church. The taxpayer was unable to prove that many of his activities were specifically authorized or organized by the Church. The court ruled against the taxpayer for all of the alleged tax deductions.

In the Estate of Dieringer v Commissioner (917 F3d 1135, 2019), an Oregon widow died with 14 children and a proper estate plan. The primary beneficiary of her estate plan was a private family foundation. The bulk of the trust assets were real estate holdings consisting of commercial and residential properties and the corporation that managed the properties which had voting and non-voting shares. The Form 706 for the estate claimed a charitable deduction of almost $19,000,000 and no estate tax liability. After the decedent's death, but before final distributions were made, three of the decedent's children were involved in numerous transactions regarding the properties and the company that managed the properties. These transactions depressed the value of what the Foundation was to actually receive. The taxpayers argued that it was market conditions and economic forces, not their actions, that depressed the values port-mortem. In this case, the Court affirmed the Tax Court's 2016 holding that an estate's charitable deduction was based on the value of property actually received by the charity, and not the property's dateofdeath value. In winning the case, the IRS was able to collect more than $4,000,000 in estate taxes plus another $825,000 in accuracy related penalties before interest.

Conservation easements have been a constant irritant to the IRS. In June of 2020, the IRS started to offer settlements in most of the pending cases involving conservation easements. The subject of conservation easements is a current target of the IRS and there is even bi-partisan support in Congress for new laws clamping down on abusive syndicated conservation easement donations. There has been much recent case law in this area. One such case is Coal Property Holdings, LLC v. Commissioner (153 T.C. No.7, 2019). In this case, the court denied a conservation easement because the donee organization could receive a share of the sales proceeds if the easement were ever terminated by judicial extinguishment. This potential reversion ran afoul of the rule that conservation easements must be protected in perpetuity (See I.R.C. Section 170(h)(5)(A). Another such case that is receiving more publicity is Pine Mountain Preserve, LLP v. Commissioner (151 T.C. 247, 2018). The appeal of this case had oral arguments at the 11th Judicial Circuit on August 25, 2020. The case involves a limited liability partnership in Alabama that donated land to a qualified charitable organization in 2005, 2006 and 2007 and then sought a charitable contribution totaling $33,000,000. The easement was for a permanent restriction on any new residential or commercial development of the donated land, but allowed the taxpayer to carve out some unspecified land within the easement for the taxpayer to move existing structures within the easement area. The alleged purpose of the easement was to protect the ridgelines that provide scenic vistas. An appraisal was provided with the tax return each year. The IRS denied the deduction for all three years. The court ruled that the retained rights of the taxpayer, although not substantial and subject to a number of conditions, had a beneficial effect to the surrounding properties owned by the taxpayer, and would likely allow the taxpayer to profit. Therefore, the amount of the charitable deduction was significantly reduced. As the Tax Court had trouble deciding this case based on conflicting decisions of the 4th and 5th federal circuit courts, the court opinion noted that the decision would likely be appealed to the 11th Circuit Court of Appeals.

CHARITABLE CASE LAW. . .
from previous page

Conservation easements, especially syndicated conservation easements, are just one of the many issues we expect to see litigated and legislated about in the coming months. The IRS Exempt Organization unit has stated in writing that other areas of concern for 2020/2021 are (1) Hospital organizations with unrelated business income (UBI) where expenses materially exceed gross income; (2) IRC 501(c)(7) entities which focus on investment and nonmember income by tax-exempt pleasure, social and recreation clubs; (3) IRC Section 4947(a)(1) Non-Exempt Charitable Trusts organizations that under-report income or over-report charitable contributions; (4) Previous for-profit: organizations formerly operated as for-profit entities prior to their conversion to IRC Section 501(c)(3) organizations; and (5) Organizations that show indicators of potential private benefit or inurement to individuals or private entities by way of private foundation loans to disqualified persons. The IRS has also stated, on multiple occasions, that the Form 1023-EZ is likely to be modified sometime during calendar year 2021 to reflect a more stringent process approval process. Look for these topics to be covered in a future charitable case law update.

About the author:

Dr. Adam Scott Goldberg LLM, EdD, practices as a tax and estate attorney with the Law Offices of Revis, Hervas & Goldberg P.A. in Weston, Florida. Dr. Goldberg is the Co-Chair of the Tax Exempt Subcommittee of the Tax Section and teaches as an adjunct law professor at Nova Southeastern University School of Law and the University of Miami School of Law.

Paying Rent to Your Own Corporation: An Age-Old Question Revisited

By: Paul J. D' Alessandro, Jr.

Practitioners have long dealt with the question of whether an individual must pay rent for the use of property that is owned through a closely held corporation. A recent Tax Court case reaffirms that from the IRS's perspective, the answer, at least in the cross-border setting, is a resounding yes.[1]

The taxpayer in the present case is a British Virgin Islands company, Accipitor Trading Ltd. ("Accipitor"). U.S. individuals owned the company through a tiered Liechtenstein foundation structure. As many U.S. international tax practitioners may already know, in Lichtenstein this type of arrangement is known as a "Stiftung" and is generally viewed by the IRS as a trust.[2] Accipitor owned real estate in California which the individuals lived in under a verbal lease agreement during the twenty years at issue. The same individual taxpayers (one of whom is now deceased) are also presently involved in litigation with the IRS over $120 million in FBAR penalties.[3]

Because Accipitor did not file any U.S. income tax returns for the years at issue, the IRS prepared substitute returns showing almost $4.4 million in gross rental income from 1998 to 2017. In general, U.S. source rental income of a foreign corporation is taxed in one of two ways. First, a withholding tax regime applies to fixed or determinable annual or periodical ("FDAP") income, which includes rental income that is not "effectively connected" with a U.S. trade or business (so-called effectively connected income, or "ECI"). Under the withholding regime, the gross amount of rental income paid to a foreign corporation is subject to a 30% withholding tax. Under the second method of taxation (the "ECI regime"), if the rental income is effectively connected to a U.S. trade or business, the net amount of taxable rental income (after taking into account available deductions) is subject to U.S. federal income tax at the same rates that apply to U.S. taxpayers (currently, a flat 21% for corporations).[4] The foreign corporation must also file a U.S. federal income tax return via IRS Form 1120-F to report the income and, importantly, to receive the benefit of any deductions.[5]

Additionally, the question of whether rental activity constitutes a "trade or business" for U.S. federal tax purposes is a question of fact that must be determined on a case-by-case basis. To eliminate this uncertainty, a foreign taxpayer can affirmatively elect to treat the U.S. rental activities as a trade or business and thereby be subject to tax under the ECI regime by making what is known as a "net election."[6] A foreign taxpayer makes

continued, next page

PAYING RENT . . .
from previous page

a net election by filing a statement with the taxpayer's U.S. federal income tax return for the year in which the election is being made.[7]

In the *Accipitor* case, the IRS assessed close to $2 million in taxes and penalties on Accipitor's imputed rental income. Accipitor filed a petition in the Tax Court late last year arguing, among other things, that the fair rental value of the real estate is less than what the IRS determined.

This is not the first time that the Tax Court has dealt with the personal use of corporate-owned property in the cross-border context. In a 2012 case, *G.D. Parker, Inc.*,[8] the Tax Court analyzed a situation involving U.S. real estate owned through a two-tier corporate structure (i.e., a foreign corporation that owns a U.S. corporate subsidiary that owns real estate). The owner of the foreign corporation and his family members would use the properties from time to time for their own personal use. The Tax Court found that no rent had been paid to the U.S. company and concluded that the rent-free use of the properties was a constructive distribution from the U.S. subsidiary to its corporate parent, and ultimately to the non-U.S. individual shareholder.[9]

The foregoing illustrates the dangers of not respecting the form of a holding structure, particularly when it comes to foreign ownership of U.S. residential real estate. This is not only an income tax issue, but also an estate tax issue. Foreign corporations are often used by foreign individuals as "blockers" against U.S. estate tax; however, the appropriate corporate formalities must be observed in order for the blocker to serve its intended purpose.

The *Accipitor* case also sheds light on a couple of U.S. international tax issues concerning the ownership of U.S. real estate. By not entering into a formal lease agreement and not filing tax returns, the taxpayer left it in the hands of the IRS to determine the value of the rental payments. Additionally, the taxpayer was subject to tax on the gross rental payments at a flat 30% rate under the withholding regime. Alternatively, had Accipitor filed an income tax return, it could have elected to be taxed on a net basis under the ECI regime. Net basis taxation under the ECI regime is often beneficial in this setting as it allows the taxpayer to benefit from available deductions such as depreciation, taxes and maintenance costs associated with the property (not to mention it results in a lower federal tax rate of 21% in the case of a corporation).

Tax noncompliance related to foreign ownership of U.S. real estate is an area that continues to gain momentum. In an August 2017 report, the Treasury Inspector General for Tax Administration ("TIGTA") pointed out the inefficiencies in policing U.S. tax compliance related to rental income from foreign-owned U.S. real estate.[10] This March, the IRS also announced a new compliance campaign focusing on rental income earned by nonresident alien individuals. Details about this new campaign were reposted on the IRS website in October.[11]

The recent issues being litigated in the Tax Court, coupled with the IRS's compliance campaign, would indicate that this is not an issue that is likely to drop off the radar anytime soon. Practitioners and clients would be wise to review any real estate holding structures in the cross-border setting and determine if all is in order from a compliance and administration standpoint.

About the author:

Paul J. D'Alessandro, Jr. is an attorney in Miami, Florida with the law firm of Bilzin Sumberg Baena Price & Axelrod LLP. Paul advises high net worth clients and global families on a variety of international tax and estate planning issues. Representing individuals predominantly from Latin America and Europe, he provides customized, tax-efficient solutions to address clients' needs. Paul's experience includes advising on inbound and outbound tax planning matters, foreign trusts, pre-immigration planning, expatriation, and the acquisition and disposition of U.S. real property holdings

Endnotes:

1 For those interested in reading the petition to the Tax Court, the citation is Accipitor Trading Ltd. v. Commissioner, No. 18842-19.

2 See AM 2009-012 (October 7, 2009). See also Estate of Swan v. Commissioner, 24 T.C. 829 (1955), aff'd in part, rev'd in part, 247 F.2d 144 (2d Cir. 1957).

3 U.S. v. Francis Burga and Francis Burga as the Administrator of the Estate of Margelus Burga, No. 19-cv-03246 (N.D. Calif.)

4 An additional tax known as the "branch profits tax" may also apply to the foreign corporation, but a discussion of that tax is beyond the scope of this article.

5 Code § 882(c); Treas. Reg. § 1.882-4. All section (or "§") references are to the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury regulations thereunder ("Treas. Reg."), unless otherwise specified. This article considers U.S. federal tax issues only.

6 See Code §§ 871(d) and 882(d).

7 See Treas. Reg. § 1.871-10(d)(1)(ii).

8 TC Memo 2012-327.

9 For a more comprehensive discussion of the G.D. Parker case, see William H. Newton III, Personal Use of Florida Residential Realty by a Nonresident Alien Shareholder of a Foreign Corporate-Related Structure, FLA. B.J., May 2014, at 42.

10 See TIGTA, Ref. No. 2017-30-048, Additional Controls Are Needed to Help Ensure That Nonresident Alien Individual Property Owners Comply With Tax Laws (Aug. 23, 2017).

11 Available at https://www.irs.gov/businesses/small-businesses-self-employed/irs-lbi-compliance-campaigns-oct-5-2020.

"Accidental Italians" and the U.S.-Italy Estate Tax Treaty Exemption

By Fabio Giallanza

Introduction

As known, the U.S. gross estate of a nonresident is normally afforded an exemption of only $60,000. In the absence of planning, this small exemption can create a significant tax liability even when a U.S. gross estate has a fairly limited value. In many cases, we encounter that nonresidents, particularly from Latin America, acquire assets in South Florida, very often real estate, as a means to protect their capital from geopolitical and economic risk in their home country. South Florida practitioners know of several planning techniques that, when timely adopted, can result in eliminating altogether the application of the estate tax to a nonresidents' U.S. situs. But when no such planning is done, the U.S.-Italy Estate Tax Treaty may offer an unexpected relief. Article IV of the 1955 "Convention Between the United States of America and the Italian Republic for The Avoidance of Double Taxation and The Prevention of Fiscal Evasion with Respect to Taxes on Estates and Inheritances" (the "Treaty") provides a reciprocal specific exemption from the estate tax of one contracting state to decedents who, at the time of their death, were _nationals of_ or domiciled in the other contracting state. The availability of an exemption on the basis of nationality translates into an extra possibility to escape, or at least reduce, the harsh effects of the U.S. estate tax as it is applied to nonresidents. Because of the historical Italian immigration to Latin America and Italy's laws on nationality, this possibility, albeit narrow in scope, should be one that tax practitioners, particularly in South Florida should be mindful of.

II. The Exemption Allowed under the Treaty

The Treaty is one of the older treaties among the 16 entered into by the United States. In addition to the situs rules set forth at Article III, the Treaty provides in Article IV that each contracting state shall allow a specific exemption in the case of death of a decedent who was not a national or domiciliary of such state, but was a national of or domiciliary in the other contracting state. Further, in calculating the rate and amount of tax the contracting state of which the decedent was not a national or domiciliary shall not take into account the decedent's property situated outside such state.

The specific exemption allowed under Article IV shall be allowable under the laws of the contracting state in an amount "not less than the proportion thereof which the value of the property subjected to its tax bears to the value of the property which would have been subjected to its tax if the decedent had been domiciled in that State" . Courts and later the legislator have clarified that the specific exemption referenced in the Treaty is the "unified tax credit" applicable to decedents who were domiciliary of the United States and set forth in IRC § 2010(c). Thus, the estate of an Italian citizen decedent leaving a worldwide estate valued below the unified credit would essentially incur no U.S. estate tax liability by virtue of a claim of Treaty benefits. If instead, the value of worldwide estate of the Italian decedent exceeds the unified credit, the U.S. estate tax liability would be reduced by allowing an exemption calculated through the following formula:

It is important to note that Article IV does not require that the estate pay tax in the country of nationality of domicile as a condition for the higher Treaty exemption. Thus, the estate of a decedent who was a national, but not a domiciliary, of Italy can still make a valid claim for benefits under the Treaty even if no estate tax was ever remitted to Italy. The Treaty exemption is therefore a much broader form of relief than, for example, a credit allowed under an income tax treaty.

III. Nationality as a Gateway to Treaty Benefits

The Treaty premises the application of benefits on both domicile _or_ nationality. This trait is common to other U.S. Estate Tax treaties of the 1950s, see for example, the treaties with Australia, Greece and Switzerland. This approach seems to have been abandoned in more modern treaties, including the 1979 treaty with the United Kingdom and the 1980 treaty with France. When faced with an "unplanned" estate, tax practitioners accustomed to analyzing estate tax issues through the lens of domicile may overlook the possibility of relief provided under the U.S. Treaty if the decedent, while domiciled elsewhere, held Italian nationality.

The Treaty indicates that whether a decedent was at the time of death a national of a contracting state is to be determined according to the laws of such contracting state. The Italian citizenship law (legge n. 91, 5 febbraio 1992, Nuove Norme sulla Cittadinanza, the "Citizenship Law") establishes citizenship by descent (*jure sanguinis*) as a key principle.

The Citizenship Law establishes that it is a citizen by birth "the child of a father or mother [who are] citizens". Italian citizenship can also be granted by decree of the President of the Italian Republic "to foreign individuals

continued, next page

"ACCIDENTAL ITALIANS" . . .
from previous page

whose father or mother, or whose direct ancestors up to the second degree [i.e. grandparents] were citizens by birth". Further, the Citizenship Law expressly allows dual citizenship, i.e. acquiring citizenship of another country will not result in relinquishing Italian citizenship. In the case of decedents who were children of Italian citizens, citizenship by birth is an automatic result. Thus, the estate of a decedent who has never obtained an Italian passport or exercised his Italian civil rights, such as voting, can potentially make a claim for relief under the Treaty.

Aside from the considerations above, the Citizenship Law and its regulations establish a somewhat intricate framework to determine whether an individual has actually acquired, or retained, his or her Italian citizenship and the assistance of competent Italian counsel will be required in most cases to properly corroborate a Treaty claim. Sometimes, however, the determination may be more straightforward, such as if the decedent was in possession of a valid Italian passport and a copy can be provided by the decedent's family members.

Florida is home to approximately 38,000 Italian citizens. Further, the mass emigration of Italians to such countries as Argentina, Brazil, Chile and Venezuela resulted in conspicuous numbers of Italian citizens throughout Latin America. To put things into perspective, in 2019 there were 977,417 Italian citizens registered with the Italian consulates in Argentina, totaling more than the inhabitants of Turin, Italy's fourth largest city. Florida-based real estate, small businesses, trading and bank accounts are very popular holdings among wealthy or upper middle-class individuals seeking refuge from the economic uncertainties of Latin American countries. Therefore, when confronted with the estate of a nonresident decedent, South Florida tax practitioners should verify, as part of their intake, whether the decedent was a citizen of Italy or of any of the other countries which has a similar estate tax treaty in place with the United States. While the Treaty is by no means a substitute for a properly designed estate plan, it can offer a practical tool to reduce the burden of the U.S. Estate Tax as it is applied to the estate of a nonresident decedent.

IV. Conclusion

In addition to domicile, the Treaty allows a specific exemption on the basis of nationality, in addition to the traditional domicile standard. This can provide a second chance to reduce the burden of the U.S. estate tax as it is applied to the estates of nonresident decedents who held property in the United States, with potentially very favorable results for decedents whose U.S. gross estate is below the amount of the unified credit. The *jure sanguinis* principle of granting citizenship under Italian Law may create unexpected relief opportunities even when the decedent had not obtained an Italian passport or exercised his civil rights as an Italian citizen. When intaking an estate, questions aimed at establishing citizenship of the decedent should focus also on the citizenship of the decedent's parents, and the collaboration of Italian counsel may be necessary, to avoid missing out on potential tax savings offered by the "nationality gateway" to Treaty benefits.

About the Author:

Fabio Giallanza is an attorney at Salcedo Attorneys at Law P.A. in Miami, Florida. A graduate of the Shepard Broad College of Law at Nova Southeastern University, he also holds a law degree from Università degli Studi di Roma Tre in Rome, Italy and he has recently completed the LLM Program in Taxation at the University of Miami. His focus includes assisting international clients in corporate and commercial transactions, along with personal investments in the U.S.

CORAL GABLES TRUST
CORAL GABLES TRUST STANDS APART
Firmly Committed to Putting Our Clients' Interests First

TAX AND RETIREMENT PLANNING | TRUST AND ESTATE PLANNING
FINANCIAL PLANNING | DIRECTED AND SPECIAL NEEDS TRUSTS
INVESTMENT MANAGEMENT

Headquartered in South Florida and proudly owned by employees, prominent Directors and community leaders.

Senior wealth management and trust service professionals personally serve and care about YOU and YOUR CLIENT. A senior advisory team provides thoughtful, customized, flexible and prompt decisions you can depend on.

Your referrals have made CGTC the fastest growing firm in South Florida with Assets Under Management over $1.5 billion. We appreciate YOU!

AT CORAL GABLES TRUST COMPANY, *IT'S ALL ABOUT YOU!*

CORAL GABLES | FORT LAUDERDALE | BOCA RATON | WEST PALM BEACH
JOHN HARRIS, Managing Director & Chief Wealth Advisor
D: 305.443.2544 | jharris@cgtrust.com
WWW.CGTRUST.COM

255 Alhambra Circle, Suite 333, Coral Gables, FL 33134. 786.497.1212. ©Coral Gables Trust Company 2020.
All Rights Reserved. Investment and related products are: Not insured by the FDIC, the United States Government or any Governamental agency or by Coral Gables Trust Company or any of its affiliates. Not obligations of the Trust Company or guaranteed by the Trust Company, Subject to investment risk and may lose value.

2020-2021
Tax Section Directors' Committee

Educational Programs Division
Thomas Crews Treece, Chicago
Michael J. Wilson, Sarasota

Section Administration Division
Michael Bruno, Miami
Charlotte Erdmann, Orlando

State Tax Division
H. French Brown IV, Tallahassee
Jeanette Moffa, Fort Lauderdale

Federal Tax Division
Donna Longhouse, Tampa
Justin Wallace, Tampa

International Tax Division
Jennifer Wioncek, Miami
Alfredo Tamayo, Miami

Long Range Planning Committee
Shawn Wolf, Miami
Mark Scott, Coconut Grove

Legislation & Regulations Committee
Abrahm Smith, Miami
Brian Malec, Orlando

Marketing & Membership Committee
Dana Apfelbaum, Fort Pierce
Christopher Callahan, Miami

New Tax Lawyers Committee
Collin Clark, Tampa
Melodie Menzer, Tampa

Sponsorship Committee
Andrew Comiter, Palm Beach Gardens
James A. Schmidt, Tampa

Directors at Large
Mark R. Brown, West Palm Beach
Steven Hadjilogiou, Miami
Steve Hogan, Tallahassee
Andrew Huber, Palm Beach
Karen Lapekas, Miami
Gerard "J.J." Wehle, Tampa

TAX SECTION
of the Florida Bar

Executive Officers

Chair - D. Michael O'Leary, Tampa
Chair Elect - Harris L. Bonnette, Jr., Jacksonville
Treasurer - Gregory McLaughlin, Fort Lauderdale
Secretary - Micah Fogarty, Tampa

TAX SECTION of The Florida Bar

FICPA Florida Institute of Certified Public Accountants

REGISTRATION NOW OPEN!

6TH ANNUAL

INTERNATIONAL TAX BOOT CAMP

JANUARY 13, 2021
COURSE 4321

39TH ANNUAL

INTERNATIONAL TAX CONFERENCE

JANUARY 14-15, 2021
COURSE 4130

With Special Guest
Charles P. Rettig, Commissioner of the IRS

Virtual Webcasts + 90-Day OnDemand Access
REGISTER AT TFB.INREACHCE.COM

The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

PRSRT-STD
U.S. POSTAGE
PAID
TALLAHASSEE, FL
Permit No. 43

Catch Up on Past CLEs!
Courses Available 24/7 On Demand:

Best at the Beach: Sophisticated and Innovative Tax and Estate Planning After Tax Reform (Course 3541)

Advanced Asset Protection Workshop (Course 3198)

Cyber Security, Artificial Intelligence, and Blockchain for Professional Service Firms (Course 3613)

Legislative History of IRC 199A (Course 3614)

Choice of Entity Post-TCJA (Course 2927)

Creditor Protection Nuts & Bolts (Course 2928)

2020 Creditor Protection Nuts & Bolts and Estate Planning Under the SECURE Act (Course 3832)

Visit TFB.INREACHCE.COM to view all available, on-demand CLEs for purchase