

National Association of State Bar Tax Sections

29th Annual Meeting

October 24-25, 2008

Holme Roberts & Owen LLP
560 Mission Street, 25th Floor
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Annual Meeting Agenda

Thursday, October 23:

7:00pm Executive Committee Meeting
Election of Officers & dinner meeting [by invitation]

Friday, October 24:

8:15 Introductions & Welcome

Mark F. Sommer, NASBTS President

8:30 Federal & State Tax Issues for Non-Profits and Charities

Moderator: Robert B. Haines, Herold & Haines PA, Warren, N.J.

9:30 Going Green: Conservation Easements

Moderator: G. Michael Yopp, Waller Lansden Dortch & Davis LLP,
Nashville, TN

Paul P. Hanlon, Esq., Montpelier, VT

10:30 Break

10:45 Taxation of Pass-Through Entities Update

D. French Slaughter, III, Deloitte & Touche LLP, Washington, D.C.

11:45 Can't We All Just Talk: ADR, Mediation & Arbitration in Federal, State and
Multistate Tax Cases

Steven P. Young, Holme Roberts & Owen LLP, Salt Lake City, UT

William H. Quealy, Jr., Director, Tax Controversy Services, KPMG LLP,
San Diego, CA

12:45 Luncheon

1:00 Post Luncheon Speaker

Hon. Selvi Stanislous, Executive Director, California Franchise Tax
Board, Sacramento, CA

- 1:30 NASBTS Scholarship award – Mark F. Sommer, Mark A. Engel & Richard W. Tomeo
Presented in honor of William A. Ruth
- 1:45 The Supreme Court: State Tax Update
Moderator: Arthur R. Rosen, McDermott Will & Emery LLP, New York, NY
Brian W. Toman, Reed Smith, San Francisco, CA
- 2:45 Break
- 3:00 Taking Care of Business: Business Meeting & Roundtable Discussion
Election of Executive Committee & Financial Report:
Mark A. Engel, Bricker & Eckler, West Chester, OH
Roundtable Discussion by Attending State Tax Sections & Committees:
Moderator: William B. Prugh, Shughart Thomson & Kilroy, P.C., Kansas City, MO
- 4:30 Report on NCCUSL Drafting & Redrafting Projects - UDITPA
Stephanie Anne Lipinski Galland, Thompson & Coburn LLP, Washington, DC
- 5:00 Liaison Reports from invited tax practitioner groups
Moderator: William B. Prugh, Shughart Thomson & Kilroy, P.C., Kansas City, MO
Reports from other tax groups: IPT, MTC, COST, AICPA, ABA Tax Section, TEI; California Tax Section - Current Developments and Plans
- 5:30 Adjourn
- Dutch Treat Dinner – [details to be announced]

Saturday, October 25:

- 8:00 Federalism at Work: Federal Legislation Affecting State Taxation
Arthur R. Rosen, McDermott Will & Emery LLP, New York, NY
Joe Huddleston, Multistate Tax Commission, Washington, DC
- 9:00 Ethics – Correction of Errors, Treas. Reg. Sec. 9100 Relief
G. Michael Yopp, Waller Lansden Dortch & Davis LLP, Nashville, TN
Mark F. Sommer, Greenebaum Doll & McDonald, PLLC, Louisville, KY
- 10:00 Break
- 10:15 California Dreaming: An Update on State Tax Issues
G. Michelle Ferreira, Holme Roberts & Owen LLP, San Francisco, CA,

11:00 International Tax Issues; Taxing Inbound Transactions and Investments; State
Taxation of Foreign Corporations

John Ryan, McDermott Will & Emery LLP, San Jose, CA

12:00 Adjournment

12:30 – 12:45

Wine Tour leaves hotel (reservation form attached)

Coordinator: Mark A. Engel

NASBTS 29th Annual Conference

Holme Roberts & Owen LLP
San Francisco, CA
October 24-25, 2008

The meeting was brought to order on October 24 by Mark Sommer at 8:25 AM

- Welcome given by Gary Thorup of Holme Roberts & Owen LLP
- Mark Sommer reminded attendees of the purpose of the organization and encouraged participation in sessions.
- Bill Prugh announced that all sessions are CLE-approved for all states represented by attendees.
- A list of attendees is attached.

8:30 AM – Federal and State Tax Issues for Non-profits and Charities [60 minutes]

Bob Haines introduced Barbara Rhomberg of Adler & Colvin.

The presentation provided an update of procedural and legal matters of interest to tax-exempt entities. Topics covered included the following:

- New form 990 requirements. Requirements are not yet finalized. One major area of change relates to questions regarding compensation of employees.
- New form 990 EZ. Many more entities will be able to file that instead of the longer form.
- Form 990 N – entities that don't otherwise have to file now have to file an e-post card.
- If an entity fails to meet filing requirements for 3 years, its tax-exempt status is revoked and the entity will need to refile for exempt status.
- New regs for public supported charities. There is a 30% public support bright line test; for 10-30% public support level, determination is based on facts and circumstances.
- Advance ruling period rules changed to provide for an automatic 5-year period.
- Political intervention rules hard to apply; new Rev. Rul. 2007-41 (June 18, 2007) gives numerous examples of permissible and prohibited activities. Includes actions by individuals that can be attributed to the organization.
- Discussed candidate endorsement; lobbying activities (extensive regulations, direct and indirect activities); and educational activities. Good resources: Allianceforjustice.com; good CA information available from the speaker's firm.
- Private foundations more broadly regulated since 1969; program-related investments are permissible.
- Public institution-created non-profits and whether they are subject to restrictions on governmental entities.
- Supporting organizations and trusts created for the benefit of specific charities traditionally held tax-exempt due to close relationship with charities; ABA Tax Exempt Organizations panel in September was very good on this; check for materials on-line.

9:30 AM – Going Green: Conservation Easements [60 minutes]

Mike Yopp and Paul Hanlon introduced Christian Spec, General Attorney for the IRS and Troy M. Van Dongen of Winston & Strawn.

The panel presented a wide-ranging presentation covering the federal and state tax issues associated with conservation easements. Topics covered during the presentation included:

- An initial question is whether there is a charitable purpose and the owner can claim a charitable contribution, or does the donation primarily benefit the owner of the land (i.e., preserve a view on owner's land).
- General requirements for tax benefits related to an easement, and specific provisions of CA, VT and TN.
- Valuation issues: general test is not Fair Market Value, but rather difference between value before creation of easement and value after.
- Percentage limitations apply for income tax purposes; basis needs to be allocated between the property and the easement.
- Estate tax implications – donors don't get a separate deduction but easement does reduce the value of the estate.
- California implications:
 - Income tax - individuals can take a deduction or a credit.
 - Property tax – Prop 13 implications because an easement is an interest in real property; Franchise Tax Board determined the transfer does not trigger Prop 13 valuation adjustment; and, easement itself is not taxable to recipient.
 - Recipient of easement must be a qualified entity.
- Tennessee implications:
 - Can transfer a restriction that is not permanent, but rather lasts for a term of years.
- Vermont implications:
 - Recognizes a reduction in value, but determine where the value went and may determine it remains with the owner.

10:45 – Taxation of Pass-Through Entities Update [60 minutes]

Mark Sommer introduced D. French Slaughter III of Deloitte Tax LLP

The session presented an update on state tax issues related to pass-through entities, including general and limited partnerships, S corporations, and limited liability companies.

- Conformity issues; to what extent to the states follow federal check the box options.
- Entity level taxation of pass-through entities; taxes the entity directly.
- Direct taxation of corporate owners of pass-through entities; does ownership alone trigger tax nexus and liability. Issues of apportionment, individual or entity reporting. Some states have pass-through entities included in unitary group if more than 50% owned.
- Direct taxation of individual owners of pass-through entities. Credit for residents for taxes paid in other states by the entity. Treatment of Ohio, Texas, Michigan taxes as "income taxes".
- States require nonresident withholding on distributions. In the case of tiered entities, most states will disregard the intermediate entities and require just 1 withholding. Composite returns not the best route; may lose credits and often taxed at highest marginal rate.
- Michigan Business Tax issues: mandatory combined picks up pass-through entities.

- Texas Margin Tax issues: mandatory combined reporting picks up pass-through entities. In both states, person owning 50% or more picks up all income/receipts; minority owner doesn't owe anything. Need to include sharing provisions in documents.
- Series LLCs; one master LLC with several baby LLCs inside it.
- Disregarded entities subject to excise and employment taxes, federal and state.
- Owners subject to FIN 48 reporting will have to include information from pass-through entities.

11:45 – Can't We All Just Talk: ADR, Mediation & Arbitration in Federal, State and Multistate Tax Cases [60 minutes]

Mark Sommer introduced Steven P. Young of Holme Roberts & Owen LLP and William H. Quealy, Jr., of KPMG LLP.

The session provided a summary of options for resolving tax controversies short of litigation.

Mr. Young presented a case study of a mediated case involving 2 states and multiple taxpayers, relating to taxation of gain from sale of ownership interests in joint ventures. The presentation included discussion of the legal issues; procedural issues, and steps that led to resolution of the matter.

Mr. Quealy presented material relating to federal programs to mediate and arbitrate federal tax controversies. Presentation included a summary of the new Fast Track procedures for mediation, and post appeals mediation.

1:00 – Post-Lunch Speaker [45 minutes]

The Hon. Selvi Stanislaus, Executive Director of the CA Franchise Tax Board, provided an update on events, procedures and initiatives at the FTB, as well as information relating to California taxes.

1:45 – The Supreme Court: State Tax Update [60 minutes]

Art Rosen introduced Brian Toman of Reed Smith.

The presentation provided an update on recent decisions of the Supreme Court in the state tax arena, and included a summary of cases pending before the Court.

- *Kentucky v. Davis* (2008), 128 S.Ct. 1801 – Court upheld exemption from state income tax for interest from municipal bonds issued within state, while interest from bonds issued from outside the state were taxable.
- *MeadWestvaco Corp. v. Ill. Dept. of Revenue* (2008), 128 S.Ct. 1498 – Court addressed the unitary business and apportionment issues relating to the sale of a business division or entity.
- *FTB of CA v. Hyatt* (2003), 123 S.Ct. 1683 – Court upheld the right of a taxpayer to sue state attempting to collect on alleged tax liability in state of taxpayer's residence and to decide case under the law of the forum state where the acts giving rise to the action occurred.

3:00 – Taking Care of Business: Business Meeting and Roundtable Discussion

Mark Sommer chaired the annual meeting of the association. [5 minutes] The executive committee recommended the following to the membership:

- The slate of candidates to the executive committee was presented to the membership. Proposed members of the executive committee for 2008-2009 are:
- Mary Benton, Michelle Ferreira (new), and Mark Sommer, William Prugh, Jerome Geis, Martha Wentworth, Terry Polley, Sarah Beard, John Barrie, S. Lucky DeFries, Mark Eidman, Mark Engel, Robert Haines, Paul Hanlon, Kathleen Parker, Arthur Rosen, Harry Rubin, Gary Thorup, Richard Tomeo, William Townsend, and G. Michael Yopp.
- The resignation of Janette Lohman from the Executive Committee should be accepted.
- John Coalson should be moved from an active member of the Executive Committee to emeritus status.
- Propose that if any regular or emeritus member of the executive committee dies, their name will be carried on the letter head with the notation “deceased” for 1 year.

The motion was made, seconded, and passed by acclamation to adopt all of the recommendations.

Officers of the organization for the year 2008-2009 are:

- Chair: Gary Thorup
- Vice Chair: Mary Benton
- Secretary: Jerry Geis
- Treasurer: Terry Polley

Meeting date for annual conference for 2009 is October 30-31, 2009, in Washington, D.C.

Thereafter followed the roundtable discussion by attending state tax section and committee representatives, moderated by Bill Prugh [95 minutes]. Topics include the following:

MN - Efforts at increasing diversity in terms of gender, age and ethnicity. Changed contents to be more appealing to younger members; actively invite more diverse participation; provide networking opportunities; conducted informal polls over the years to determine what would make the tax committee more attractive; consider time and length of events to make it easier for women with child responsibilities to attend. Scholarship activities and sponsorships.

NY – Tax section has an executive committee that meets monthly to conduct business. Reviews reports submitted, often at request of Treasury, on complex questions.

IL – Mostly state & local tax issues; federal tax is covered by another group.

PA – Is primarily devoted to state & local tax issues. Hard to get members to attend meetings outside Harrisburg. Meet in conjunction with state bar. Dept. of Revenue reps routinely attend and share perspectives. Much federal work is done by Philadelphia and Pittsburgh bar associations, so state gets local issues.

OK – Much effort to establish independent tribunals to hear tax controversies. Also attempting to establish an appeals procedure within the Department between audit and formal review. Organization volunteered to provide support, including testimony, to help in that effort. Is trying to follow the ABA model act.

ME – Section has been inactive for a number of years. Need new leadership and figure out how to get more people involved.

UT – Quite a robust section. Monthly CLE lunch gets 30-80 people. Participate in annual convention with state bar. Get better turn-out when the focus on federal issues; only ~5 state tax attorneys in the state.

CT – Executive committee meets twice a year, newsletter 3 times annually, meets with IRS frequently. Are looking at a deficit of \$1B, so are having a tax amnesty program beginning Nov. 24.

CA - ~3,000 members. Executive committee (13 members) meets 4 times annually to focus on programs for members. 3-4 CLE programs annually. Has an annual meeting in November, 2 ½ days, ~500 participants. IRS, Treasury, FTB and Court of Claims all participate. Section Education Institute every January with 5-7 programs. California Tax Lawyer published 4 times annually. EC is a mix of interests and disciplines. Also 9 subcommittees: Procedure, International law, etc. Also want to be more involved with IRS, so travel to Washington D.C. annually for a meeting with tax officials. May liaison with local county bar associations.

GA – Lots of members, but not a lot of activity. Often joins with other bar sections such as family or real estate law and do joint programs. Also worked with Georgia Society of CPAs. Are trying to develop an independent tax tribunal. Once an assessment is made, either go to state agency for administrative hearings, or to court which is pay to play. Neither has tax expertise. Both Dept. of Revenue and industry wants something independent. Department wants a judicial branch court, which requires a state constitutional amendment. CPAs don't want this, as their members would not be able to appear [There followed a lengthy discussion of options regarding judicial and executive branch courts and how to address concerns about each.].

KY – Tax section meets annually and sporadically. Wants to become more active with members and increase participation. Has a Listserv for communication purposes. Will meet regularly with Dept. of Revenue. Presents CLE programs annually at state bar annual meeting.

OH – Interested in attracting new and diverse members. Summarized semiannual meetings, tax appeal procedures, and involvement in CLE efforts.

MI – 1,400 members. 125 members attend periodic meetings. Provides annual tax conference. Also sponsors “after hours” programs and luncheons for tax court judges. Donate money to low-income legal clinics. Reach out to law schools; pizza and soda sessions with law students. Allow students to attend events for free and solicit articles for *Michigan Tax Lawyer*. It is working, but it is slow.

CO – Sponsor student scholarship in LLM program at Denver law schools (2). Quarterly newsletter and web site; also provide articles for general state bar magazine. Encourage members to participate in pro

bono cases. Would like to sponsor CLE and have money come directly to the section rather than the bar association in general. Does impose membership dues.

VT – Current issue of interest is an independent hearing process; currently is entirely within the department of taxation.

TN – Tax section has representation for all 3 sections of the state. Pro bono project provided wills and estate planning documents, including living wills and powers of attorney, for soldiers departing for Iraq and Afghanistan. Project to update business law statutes to conform to current tax requirements.

KS – Does have independent tribunal for making the record. Has a liaison function with the department of revenue and court of tax appeals. Distributed a letter from ABA pro bono program regarding assistance by state bar tax sections.

MO – Has been inactive for several years. Formerly active with CPAs and liaison efforts with department of revenue have fallen aside.

4:40 – Report on NCCUSL Drafting and Redrafting Projects – UDITPA

Stephanie Anne Lipinski Galland of the ABA was to report on the efforts to reform and update the Uniform Division of Income for Tax Purposes Act. William Prugh reported in her stead that the issue has become controversial as to the role of the ABA tax section in making any sort of recommendation whether to even it was desirable to change the provision. AICPA did not want to comment or take a position on the project. Group's executive committee met in July to review entire act and re-write provisions where necessary; has been reconstituted as a study committee. MTC is moving on its concerns independently.

5:00 – Liaison reports from other groups

IPT – Cass Vickers provided a report of the activities of the IPT.

AICPA – Kathleen Wright provided a report of issues of interest and asked for the opportunity to work with the legal profession to address those issues.

CA Tax Section – Michelle Ferreira reported the committee desires to be more involved in providing expertise for tax legislative efforts, local and federal.

5:30 – Adjourn for the day.

October 25, 2008

8:00 – Federalism at Work; Federal Legislation Affecting State Taxation [60 minutes]

Art Rosen and Joe Huddleston of the Multistate Tax Commission provided an update on federal legislation directly impacting state taxation, as well as a discussion of federalism in general and whether it is time to change our fundamental structure of government.

- Sales Tax Fairness & Simplification Act (S. 34, H.R. 3396) permits states making their laws uniform to require remote sellers to collect sales or use tax on sales into the state.
- Mobile Workforce State Income Tax Fairness & Simplification Act of 2007 (H.R. 3359) limits the obligation of employers to withhold, and employees to pay tax, in states and localities where the employee resides, and where the employee is physically present and performing duties more than 60 days during a taxable year.
- Telecommuter Tax Fairness Act of 2007 (S. 785, H.R. 1360) invalidates the “convenience of the employer” test for taxing nonresident individuals.
- Internet Tax Freedom Act (P.L. 110-108) extended the moratorium on internet charges.
- Cell Tax Fairness Act (H.R. 5793) establishes a five-year moratorium on new state or local taxes on mobile services and providers.
- Bill to Regulate Certain State & Local Taxation of Electronic Commerce (S. 3670) pre-empts New York’s Amazon law.
- Business Activity Tax Simplification Act of 2007 (S. 1726, H.R. 5267) provides nexus standards for the imposition of business activity taxes.

Issue is whether these laws merely are Congress’ efforts to determine when states can tax activities in interstate commerce, or the laws represent a drift of business efforts to influence states to going over their heads to the national forum.

9:00 – Ethics – Correction of Errors and Treas. Reg. 301.9100 Relief [60 minutes]

Mike Yopp and Mark Sommer provided a presentation regarding ethical issues relating to correcting errors on federal income tax returns. The presentation began with a discussion of the same year rule for unwinding transactions and requirements relating to its use. The presentation then focused on what happens when the tax year closes and the options available under Treas. Reg. 301.9100. The panel also discussed ethical obligations when the practitioner is the person who made the mistake.

10:15 – California Dreaming: An Update on State Tax Issues [45 minutes]

Bill Prugh introduced Michelle Ferreira of Holme, Roberts & Owen LLP, who provided an update of state tax issues from California. Ms. Ferreira provided an overview of the administrative structure in California, together with an update of a number of income and estate tax issues. Items included taxation of trusts, voluntary disclosure and filing compliance agreements, new penalty provisions, and an update of recently-decided cases.

11:00 – International Tax Issues and State Taxation of Foreign Corporations [60 minutes]

Art Rosen introduced John Ryan of McDermott Will & Emery LLP, who discussed various issues relating to international tax and federal and state efforts to tax foreign/international persons and restrictions on those efforts. This included the impact of tax treaties to which the U.S. is a party.

12:00 – The conference adjourned by Bill Prugh.

In 2009, the 30th annual conference will be held in Washington, D.C., on October 30-31.