



Interview with Hon. Ronald L. Buch, U.S. Tax Court

FBA: Your confirmation process, from start to finish, took more than 470 days. Do you think a lengthy, and at-times invasive, confirmation process deters otherwise qualified nominees?

Judge Buch: It is hard for me to say what might motivate or deter others. As I went through the nomination and confirmation process, many people suggested that they would not be willing to go through it. But at the same time, as far as I know those comments were coming from people who hadn't been approached. As much as people might complain about the process, I think that perspective changes when the prospect of being nominated becomes a reality.

FBA: How has your perspective changed as someone who now sits on the other side of the bench?

Judge Buch: I would like to think that my perspective hasn't changed. Most of what I have seen has reaffirmed much of what I saw in practice both representing the IRS and representing taxpayers. One example is discovery. Parties should exchange information voluntarily, and most do that. Formal discovery is often more about petty battles rather than genuinely gathering information. That was my view as a practitioner, and what I have seen thus far has only reaffirmed that view.

FBA: While in private practice, you were known for your deep knowledge and experience in tax practice and procedure issues, especially as they related to TEFRA proceedings. Do judges look to specific peers on the bench for insight into certain areas of the law?

Judge Buch: There is so much great experience on this bench, I genuinely feel like I can turn to anyone for insights. And the process of peer reviewing opinions means that all of the judges have had the opportunity to see all of the cases. If a judge has previously decided a case with a related issue, I am likely to reach out to that judge for insights, but the collegiality among the judges is such that I can approach anyone.

FBA: On that same theme—as a practice and procedure expert, you likely were involved in cases involving many different types of tax issues. How do you think that experience prepared you for the bench?

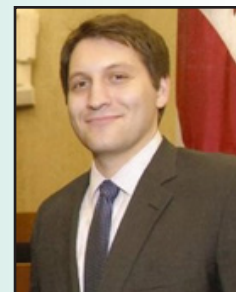
Judge Buch: Early in my career I worked with a group of about 100 lawyers, and about five of us worked on practice and procedure issues. We used to joke that 95 lawyers handled with Volume I of the Code and we handled Volume II. What I always liked about practice and proce-

BUCH continued on page 2

Message from the Chair Andrew Strelka

Greetings from the Chair and happy New Year!

I am happy to report that your section has never been so active and our membership never higher. I want to give my sincere thanks to everyone who has



worked so hard to add value to our members and the federal tax bar. I especially want to thank our outgoing chair Fred Murray for all of his hard work getting us to where we are today.

Thanks to our tireless editors, Alan Williams and Graham Green, and the contributions of Shamik Trivedi and Jeremiah Coder, this edition of *Inside Basis* features interviews with Judge Buch, Judge Lauber, and Judge Nega of the U.S. Tax Court and also reports on some of the section's recent activities. Our Women in Tax Law group recently held an event discussing the evolving trends in our industry, as well as an event centered on recruitment and social media networking. Our Practice &

CHAIR continued on page 2

In This Issue

Interview with Hon. Albert G. Lauber, U.S. Tax Court	3
Interview with Hon. Joseph W. Nega, U.S. Tax Court	5
Section on Taxation Recent Events	6
Georgetown Law & NYU Law Taxation Interview Program	7

Chair continued from page 1

Procedure committee continues to hold monthly conference calls with an array of speakers, including a recent call featuring National Taxpayer Advocate Nina Olson discussing the effects of the recent shutdown. Our Young Tax Lawyers group has kicked off their season with two well-attended events, and our New York Chapter continues to address the professional needs of our Manhattan members.

Looking forward, the section is gearing up for the 2014 Tax Law Conference, to be held on February 28 at the Reagan Center in D.C., featuring speakers from across the public and private sectors including Deputy Commissioner

BUCH continued from page 1

procedure issues is that they arise in nearly every case. As a result, a person focused on practice and procedure issues might not be the point person on any one case, but that person is involved in lots of cases. This means that someone who focuses on practice and procedure sees a very wide variety of issues, and I think that has made my transition to the court easier.

FBA: Your career before joining the court would be the envy of many lawyers. Was it a difficult decision to leave private practice to join the court?

Judge Buch: As I said in my confirmation hearing, I view the Tax Court as the pinnacle of our profession. There are many different places at which a tax lawyer can practice—accounting firms, law firms, IRS, DOJ, in-house at a company, Capitol Hill, and I'm sure there are others. And different lawyers no doubt have different views of what would be the top of the profession: managing partner, Commissioner of Internal Revenue, chief financial officer. For me, the pinnacle was always the Tax Court. It was an easy decision.

FBA: What is something unexpected you have encountered so far?

Judge Buch: There are people out there who simply believe the tax laws don't apply to them. Quite honestly, I feel sorry for most of those people because they have been told a lie by someone—through a website, a book, a seminar, etc.—and they believed it. Having been led down this unfortunate path, they often find themselves facing penalties and interest that have been asserted by the IRS. I genuinely believed that most of these people simply need to be heard, and that gently explaining to them that they had been misled would be enough for them to abandon their frivolous arguments. I was wrong. More often than not, the people I have encountered who advance frivolous arguments are not persuaded by ... anything. Judge Gustafson summarized this phenomenon nicely in *Wnuck v. Commissioner*, 136 T.C. 498 (2011). But I remain hopeful that if I continue to listen to people who are making these arguments and explain to

John Dalrymple. The conference will also feature the winners of the Donald C. Alexander Tax Law Writing Competition. Finally, I am pleased to announce that at the close of the conference, the section will be presenting the 2014 Kenneth H. Liles Award to Floyd L. Williams.

This is your section, so please let any of the officers know if you would like to become more involved or if there is any way we can serve you better. Have a safe and happy new year. ☘

them that they have been misled, I will help some of them to stop making frivolous arguments that only hurt themselves in the long run.

FBA: The vast majority of petitions to the court are settled before going to trial. How involved are you in that process?

Judge Buch: Settlements generally yield the best outcome for both sides, and most parties (taxpayers and IRS Counsel) work well at trying to resolve their cases by settlement. Sometimes a case that ought to settle won't because one (or both) of the parties has an unrealistic view of the case. When that happens, I will speak with the parties off the record and give them a preliminary assessment of the case. In one case, I sat down with the parties (in the courtroom but off the record) and helped negotiate an item-by-item settlement. But if either party is unreasonable, this process won't work, and we will have a trial.

FBA: Judging by your biography, it appears you knew early on that you were destined for a career in tax. Did you have any mentors early in your career that cemented that career path?

Judge Buch: What most people don't know is that law was my second career. I began my career in the fashion industry in the buying offices of Saks Fifth Avenue. An odd career progression within Saks led me to tax. So I went to law school wanting to practice in the tax area from day one.

Once in the profession, I had countless mentors. I think you can learn something from all the people with whom you work, whether it be good practices to inculcate or bad practices to avoid. I have had so many good mentors that I don't want to single anyone out because I would necessarily omit others who were also good mentors. ☘

Interview with Hon. Albert G. Lauber, U.S. Tax Court

FBA: Writing is such an important part of being a lawyer. What did you learn about legal writing from your clerkships with the U.S. Court of Appeals for the D.C. Circuit and Supreme Court Justice Harry Blackmun that helped you at the start of your career?

Judge Lauber: Actually, I learned a lot about writing very early in my career—from Dominican nuns who taught me grammar and syntax, Jesuit priests who taught me Latin and Greek, and college professors who helped me write in a simpler and more direct way. For legal writing specifically, I learned the most from the third-year Yale Law student who edited my Law Journal note. We sat side by side for days working on every sentence and eliminating every unnecessary word. By the time I got to my clerkships, I think I was established as a good writer. What I learned from Judge Wilkey was the importance of emphasizing economic reality and common sense when analyzing legal problems. What I learned from Justice Blackmun was the importance of precision and deciding no more than necessary.

FBA: How would you encourage lawyers today to approach legal writing, regardless of where a person is in his or her career trajectory?

Judge Lauber: Lawyers should approach writing as a craft, not as an exercise in self-expression. Good writing—at least good legal writing—is reader-based, not writer-based. You must always be conscious of your audience. Who is your reader? What does he know, and not know? What does your reader need to be told first, and what second, and what third? The Solicitor General's Office is deservedly famous for its briefs, which display two qualities judges appreciate: clarity and candor.

FBA: I've heard you frequently ask parties to participate in a pre-trial conference. What is your expectation in requiring these conferences, and what results have you seen?

Judge Lauber: Prior to each regular trial session, I try to arrange conference calls for cases that appear headed for trial. Given the vagaries of everybody's schedules, such calls are not automatic, but I like to convene as many as I can. The goal is to find out whether the parties are communicating and whether settlement is possible. I conduct the call very informally, and I try to give each side a "reality check." My objective is to help the parties see the strengths and weaknesses of their position as they appear (at least superficially) to me. This often encourages a more realistic assessment and may help stimulate settlement. Generally speaking, I think the results have been positive.

FBA: At one point in your career, you worked in the Solicitor General's Office at the Department of Justice. Do you think the tax system has suffered at all with the SG's Office no longer having a dedicated attorney attending to tax cases?

Judge Lauber: The position of tax assistant to the solicitor general was eliminated, as I understand it, because there was no longer enough tax work to keep a tax specialist busy full-time. This was a consequence of the Supreme Court's shrinking tax docket (the subject of your next question). I don't think the tax system has suffered from the elimination of this position. In the normal course of case assignment, young lawyers in the SG's Office tend to develop a certain degree of specialization, whether in antitrust law, criminal law or (now) tax law. And there is plenty of expertise in the IRS and the Tax Division to backstop the SG's Office. What the SG's Office really brings to the tax litigation process is not technical expertise, but a new set of eyes and a focus on the bigger picture.

FBA: On average, the Supreme Court has granted certiorari about once a term to cases involving federal tax questions. Do you think that tax cases should get more of the Court's attention? What factors might dissuade the Court from a larger caseload of tax issues?

Judge Lauber: As commentators have noted, the Supreme Court's overall docket, compared with several decades ago, has shrunk considerably. I suspect that its tax docket has shrunk by a significantly larger percentage. In days gone by, the Court often granted certiorari in tax cases if it was persuaded that the case was important to the business community or the tax system. That rarely happens now: the Court typically grants certiorari in a tax case only if there is a square conflict among the circuits. Given the limited volume of tax cases and their propensity to settle, circuit conflicts simply do not arise that often. In effect, the result has been that the lower courts, the Treasury Department, and the IRS bear the principal responsibility for interpreting the tax laws that Congress has enacted. I leave to others the assessment whether this is a good or a bad thing.

FBA: You also served as director of Georgetown's graduate tax program. What trends in education have you seen for tax lawyers, and how is that meeting the current needs of legal employers (both public and private)?

Judge Lauber: As everyone knows, there is a great deal of navel-gazing going on about the proper role and future direction of American law schools. I believe, or at least I hope, that the outcome of this process will be greater focus on practice and less emphasis on theory. In that sense, Tax LL.M. programs are models for what upper-class law school education might look like. Currently, the Tax LL.M. degree for many students functions as a fourth year of law school. Perhaps these programs—and similar programs in securities law, ADR, and other areas—may some day be an option for the third year of law school. Several schools now offer joint J.D./LL.M. programs in taxation that can be completed in seven semesters. Why not six semesters?

LAUBER continued from page 3

FBA: In conjunction with the Tax Court, bar organizations and academic clinics have increased opportunities for tax lawyers to participate in representation of pro bono and low-income taxpayers before the court. What improvements has this caused to the system, and what challenges still remain?

Judge Lauber: You are absolutely right about “increased opportunities.” Currently, there are 105 Low Income Taxpayer Clinics (LITCs) representing petitioners in our Court, and 23 cities now have bar-sponsored calendar call programs. About two-thirds of the taxpayers who petition our Court are self-represented. We are getting close to the point where petitioners in all 74 cities in which we conduct trials will be able to consult counsel before trial if they wish. This is a tremendous accomplishment.

The timing of such consultations is critical. Naturally, it is inefficient and stressful for the taxpayer and his or her prospective representative to meet and confer for the first time at the calendar call. The court has recently implemented several changes designed to get out, to *pro se* and S case taxpayers, earlier and more frequent notices about the availability of LITC and other pro bono representation. A high percentage of *pro se* petitioners now receive a notice of availability of a clinical program when they file their petitions. A second notice accompanies the notice of place of trial, issued five months before the calendar call. The court will soon begin sending out a third notice 30 days before the calendar call. See www.ustaxcourt.gov/clinics/clinic_program_changes.pdf. Our hope is that these notices will stimulate earlier and more frequent communications between self-represented taxpayers and those who stand ready to assist them. ☘

FBA CLE Webinar Series

presents

Criminal Law

on

March 5, 2014

<http://www.fedbar.org/Education/Webinars/WEBINAR-Criminal-Law.aspx>

Inside Basis is published by the Section on Taxation of the Federal Bar Association, 1220 North Fillmore Street, Suite 444, Arlington, VA 22201, ISSN No. 1069-1553. © 2014 Federal Bar Association. All rights reserved. The views expressed herein are not necessarily those of the Federal Bar Association. Editors: Graham R. Green and Alan Williams. Managing Editor: Rebecca Do.

Interview with Hon. Joseph W. Nega, U.S. Tax Court

FBA: It's rare to see someone in any profession to remain with the same organization for their entire career, but up until your appointment, you spent nearly 30 years with the Joint Committee on Taxation (JCT). What lessons did you take away from your experience, with regard to how Congress operates?

Judge Nega: It is not as rare as you might think. There are about half a dozen other current JCT staffers with that much experience. There are many other long-term staffers who, I feel, are essential to the legislative function. One lesson I've taken with me is the importance of the committees to the legislative process. The use of committees allows expertise at both the staff and the Member level to be developed and retained. Many commentators do not appreciate how important that expertise is in shaping the legislative product and maintaining its high quality, particularly in the tax area.

FBA: Do you have a different perspective of the law, as someone who was once charged with helping to create it, to now as someone helping to adjudicate it?

Judge Nega: It is undeniable that one's experiences shape one's perspective. I hope my experiences give me a broad perspective, but there isn't just one correct perspective. Fortunately, the Tax Court benefits from a wealth of valid and important perspectives. In addition to persons with legislative experience, there are litigators with both government and private sector experience, former tax administrators, persons with academic experience and a former state court judge. It really is a privilege to work with the other Tax Court judges.

FBA: Many of your new colleagues have experience working on Capitol Hill—some more than others. Have you relied on them for guidance more than other judges?

Judge Nega: No, I am still learning best practices and every judge has an important perspective. Each judge has been welcoming and supportive. It is comforting, though, having existing friendships with some of the other Tax Court judges. To move from the staff of the Joint Committee on Taxation, which is a very collegial organization, to another collegial organization is a great blessing.

FBA: What has surprised you most in joining the court?

Judge Nega: The staff at the Tax Court has very much impressed me. I knew about the high-quality law clerks because I have worked with so many former Tax Court clerks on Capitol Hill, but the rest of the professional staff was unknown to me. The dedicated public service performed by the Tax Court family really does not get the accolades that it deserves.

FBA: In many ways, the Tax Court, like the Joint Committee on Taxation, is an arbiter of facts and a neutral scorekeeper. Is it accurate to say that your background at JCT, working with parties with competing interests, prepared you to take on the role of a Tax Court judge? Why or why not?

Judge Nega: At the risk of oversimplifying, both my former and my current job are about identifying the important issues and applying the best solution. So in that regard, I hope I have a good skill-set for the bench. That being said, my old job did not involve stare decisis, the Tax Court Rules, or the Federal Rules of Evidence to any significant degree. I wanted new challenges and the Tax Court certainly fits that bill for me.

FBA: Is there a single attribute or quality you hope to see in a practitioner appearing before you? Is there one that you loathe?

Judge Nega: I really appreciate practitioners (both for petitioners and for the IRS) who work to resolve issues amongst themselves. As a judge, I will work to resolve issues. The system works best when everyone shares the goal of an efficient judiciary. ☘

Section on Taxation Recent Events

Women in Tax Law

by Jaclyn Goldberg and Marissa Rensen



The FBA's Section on Taxation hosted a panel program and networking reception on November 14, 2013, as part of its Women in Tax Law series, entitled "Women in Tax Law: Trends in Tax Law." The panel was held at Baker Hostetler's D.C. office. The panel focused on recent trends in hiring, the roles of attorneys in the wake of the economic downturn and sequestration, changes in client expectations and appetite for litigation, and the hot areas of substantive tax law. Panelists included Ellen McElroy, a partner at Pepper Hamilton LLP; Ann Reid, Chief at the Department of Justice (Tax Division); and Drita Tonuzi, Associate Chief Counsel (P&A), IRS Office of Chief Counsel.

The FBA's Section on Taxation and the recruiting firm Garrison & Sisson also co-hosted a networking reception on August 1, 2013, as part of its Women in Tax Law series. The event was held at the University Club in Washington, D.C. Nancy Palermo and Barbara Steele of Garrison & Sisson spoke about the current state of legal hiring, strategies for getting interviews, how to effectively use social networking tools such as LinkedIn, and working with recruiters.

Young Tax Lawyer Events

by Kent P. Stackhouse

The Young Tax Lawyers Group rounded out 2013 by hosting two networking events. First, we hosted a kick-off event for the 2013-14 fiscal year in Penn Quarter in late October. We then hosted a holiday networking event near Farragut Square in early December. Both events were successful and brought together a well-rounded group of both public and private sector tax lawyers as well as several students from local law schools. We are looking forward to hosting at least one tax-related substantive panel early in 2014 as well as additional networking events throughout the spring and summer.

Discussion Group on Developments in Tax Practice and Procedure

by Stuart Bassin, Christine Lane, and Starling Marshall

The FBA Section on Taxation sponsors a monthly discussion group on recent developments in the world of tax practice and procedure. The discussion group typically meets via conference call for one hour on the last Monday of each month to discuss recent court decisions, changes in IRS procedures, and to hear presentations by prominent government officials. Typically, there are two to three topics addressed in each meeting. During recent months, the group has heard presentations on the implications of the Supreme Court decision in *Windsor* (same sex marriage) case in other areas of tax law led by leading practitioners, the views of IRS National Taxpayer Advocate Nina Olson on the effects of the government shutdown on tax administration, and what civil tax lawyers need to know about the criminal tax investigation process led by another prominent practitioner. Topics change monthly and are chosen to focus upon the most interesting recent developments in the tax law.

The next meeting of the discussion group is scheduled for Monday, January 27, 2014 at 1 pm EST. Individuals with questions and those interested in making a presentation at a future discussion group meeting are welcome to contact one of the moderators. Please feel free to contact Stuart Bassin at (202) 861-1736 or sbassin@bakerlaw.com, Christine Lane at (202) 637-6984 or christine.lane@hoganlovells.com, or Starling Marshall at smarshall@american.edu.

Georgetown Law & NYU Law Taxation Interview Program

Is your employer looking to hire tax practitioners completing their Tax LL.M. degrees at two of the nation's top graduate tax programs? If so, please consider sharing the below information regarding the Taxation Interview Program with your recruiting or human resources departments.

Georgetown University Law Center is again partnering with New York University School of Law to sponsor the nation's premier recruitment program for graduate tax students, the Taxation Interview Program (TIP). TIP enables private and public sector employers to interview, on one day (March 7, 2014) and in one place (Embassy Suites Hotel here in Washington, D.C.), current LL.M. in Taxation students from Georgetown Law and NYU Law. Employers can pre-screen candidates for interviews, and they can also participate in TIP through a resume collection option. For further information about TIP, please visit the TIP website (www.law.georgetown.edu/graduate/TIP). Employer registration will remain open through January 29, 2014.

FBA Beyond the Beltway

by Brian Power

The section continues its efforts to expand in the New York area. During 2013, we held several substantive tax events. Attorneys Brian Power of Mayer Brown, and Elizabeth McGee of Shearman & Sterling, presented CLEs on recent developments in tax controversy. In addition, we held a panel discussion on the OECD BEPS Action plan that featured a number of in-house tax practitioners discussing how the OECD's recent releases would affect their industries. Lastly, we planned a number of social networking events to bring together tax lawyers from a variety of backgrounds. We plan to continue our efforts to develop the section's New York presence in 2014, and will likely hold a number of events of interest to tax lawyers. If you or your colleagues in the New York area are interested in participating in these events, please let us know.

SECTION ON TAXATION LEADERSHIP

CHAIR

Andrew C. Strelka
U.S. Department of Justice, Tax Division

IMMEDIATE PAST CHAIR

Fred F. Murray
Grant Thornton LLP

CHAIR ELECT

Todd B. Reinstein
Pepper Hamilton LLP

TREASURER

Lori J. Jones
Scribner, Hall & Thompson LLP

SECRETARY

S. Starling Marshall
U.S. Department of Justice, Tax Division

Inside Basis EDITORS

Graham R. Green
IRS Office of Chief Counsel

Alan Williams
IRS Office of Chief Counsel

2014 TAX LAW CONFERENCE CHAIRS

William D. Alexander
IRS Office of Chief Counsel

Ryan J. Kelly
IRS Office of Chief Counsel

26TH ANNUAL INSURANCE TAX SEMINAR

A DIALOGUE WITH GOVERNMENT PERSONNEL ON INSURANCE COMPANY AND PRODUCT TAX ISSUES



PRESENTED BY
FEDERAL BAR ASSOCIATION
SECTION ON TAXATION

IN CONJUNCTION WITH
OFFICE OF CHIEF COUNSEL,
INTERNAL REVENUE SERVICE

SAVE THE DATE:
MAY 29-30, 2014



Inside Basis

Federal Bar Association
Section on Taxation
1220 North Fillmore Street, Suite 444
Arlington, VA 22201