



## Letter from the Section Chair

**Kari Larson**

I hope that you enjoy this issue of the Tax Section's *Report*. In addition to updates on our activities over the past several months, this issue includes an informative interview with IRS Chief Counsel William J. Wilkins. Many thanks to our editor, John Bates, who once again has put together an excellent issue.

Our 34th Annual Tax Law Conference is March 5, 2010, at the Ronald Reagan International Trade Building in Washington, D.C., and this year's conference co-chairs are Jennifer Acuña and Steve Sherman. The 22nd Annual Insurance Tax Seminar will be June 3-4, 2010, at the J.W. Marriott in Washington, D.C. Mark Kovey, who has chaired this seminar for many years, has passed the reins to Lori Jones. Thank you, Mark, for the energy and dedication you have brought to organizing this great event, and we look forward to working with Lori. More details regarding these two premiere events are in this *Report*.

The section also has a number of exciting programs planned for the coming months, including the next in our very popular "Women in Tax Law" series, a program on Textron and IRS Announcement 2010-9, and our annual Careers in Tax Law lunch for summer

interns. As in prior years, the section continues to sponsor a student writing competition. Please visit our Web site at [www.fedbar.org/taxlaw\\_section.html](http://www.fedbar.org/taxlaw_section.html), for announcements regarding section programs or to be added to our email distribution list.

I assumed the role of chair in October 2009 after the very capable Bill Elwell led our section through a successful year of conferences and programs. We also welcome Teresa Trissell as chair-elect, Martin Milner as treasurer, and Jimmy Kroger as secretary. I welcome the opportunity to serve as section chair, and I know it will be a great experience to work with so many fine tax attorneys both within the government and the private sector. The section relies on volunteers, and I am impressed by the energy and enthusiasm of our section members who have developed programs, monitored our budget, maintained our web site, and who help guide the section. The FBA staff, and in particular, Adrienne Woolley, have been a tremendous help as well. I am privileged to work with our fine steering committee members as we plan an exciting schedule for 2010.

I look forward to hearing from you,

*Chair continued on page 7*

## SECTION OFFICERS

CHAIR  
KARI M. LARSON  
U.S. DEPARTMENT OF JUSTICE,  
TAX DIVISION

IMMEDIATE PAST CHAIR  
WILLIAM ELWELL

CHAIR ELECT  
TERESA DONDLINGER TRISSELL  
INTERNAL REVENUE SERVICE,  
OFFICE OF CHIEF COUNSEL

TREASURER  
MARTIN MILNER  
MAYER BROWN LLP

SECRETARY  
JAMES KROGER  
U.S. DEPARTMENT OF LABOR

TAX REPORT EDITOR  
JOHN BATES  
IVINS, PHILLIPS & BARKER  
CHARTERED

TAX LAW CONFERENCE CO-CHAIRS  
JENNIFER ACUÑA  
WHITE & CASE LLP

STEPHEN A. SHERMAN  
U.S. DEPARTMENT OF JUSTICE,  
TAX DIVISION

VICE CHAIRS  
STEPHEN SCHAEFFER  
INTERNAL REVENUE SERVICE,  
OFFICE OF CHIEF COUNSEL

CHRISTIAN WOOD  
DELOITTE TAX LLP  
CHAIR, INSURANCE TAX SEMINAR  
LORI J. JONES  
SCRIBNER, HALL & THOMPSON

## ALSO IN THIS ISSUE

Section on Taxation Events .....	2
Insurance Tax Seminar Information .....	3
An Interview with William J. Wilkins, IRS Chief Counsel .....	4

## *Section on Taxation Recent Events*

### Women in Tax Law

The Section on Taxation's fall Women in Tax Law event was held on Oct. 22, 2009, at the IRS Main Building with Clarissa C. Potter, deputy chief counsel (technical) as the featured speaker. Deborah A. Butler, associate chief counsel for procedure and administration, opened the program and made introductions. Potter reflected on her time as acting chief counsel during the start of the financial crisis. The packed room of over 40 people was given an insider's view of the meetings leading up to the Treasury Department's historic takeover of Fannie Mae and Freddie Mac. Potter described drawing inspiration from the story of Frances Perkins, the first female cabinet member and secretary of labor during the Great Depression. Butler facilitated an audience question and answer period, followed by refreshments. The Section on Taxation would like to thank Teresa Dondlinger Trissell and Audra Dineen, both attorneys in the IRS Office of Chief Counsel, for coordinating the program.



### **Offshore Banking: Where We Are and Where We're Going**

On Jan. 20, 2010, the Section on Taxation hosted a luncheon panel entitled "Offshore Banking: Where We Are and Where We're Going" in Washington, D.C. The participants on the panel included Frank Cihlar, DOJ Tax, senior counsel for international tax matters; Kevin Downing, DOJ Tax senior litigation counsel, criminal enforcement; Scott Michel, member, Caplin & Drysdale; Laura Prendergast, assistant to deputy commissioner of services and enforcement, IRS; and Rick Raven, deputy chief of criminal investigations, IRS. The panelists discussed the Justice Department's criminal cases against UBS and its bankers and clients; the civil John Doe summons enforcement settlement involving UBS, the Swiss Government, and the United States; the IRS's voluntary disclosure program; and related matters. The government panellists indicated that there are over 14,700 participants in the voluntary disclosure program and that the Justice Department has initiated over

150 criminal investigations. More cases and investigations against U.S. nationals, foreign banks, and foreign professionals are expected in coming months, as participants in the voluntary disclosure program have provided leads on foreign banks and promoters. The panel was well attended and received favorable press coverage.

## *Section on Taxation Upcoming Events*

### **34rd Annual Tax Law Conference**

This year's annual conference will be held at the Ronald Reagan Building and International Trade Center on March 5, 2010. Highlights from the conference will include remarks by William J. Wilkins, chief counsel for the Internal Revenue Service; Thomas Barthold, chief of staff of the Joint Committee on Taxation; and Hon. Francis Allegra, U.S. Court of Federal Claims. Attendees will receive an update on tax legislation from chief tax counsels from the Senate Finance and House Ways and Means Committees.

Concurrent sessions throughout the day will include critical developments in employee benefits and executive compensation, domestic corporate tax,

international tax, tax practice and procedure, partnerships and pass throughs, tax accounting and financial products, as well as the presentation of this year's FBA tax writing competition winners. Following the conference, a reception will be held honoring this year's 2010 Kenneth H. Liles Award winner, Fred T. Goldberg Jr., of Skadden, Arps, Slate, Meagher & Flom, former commissioner of Internal Revenue and assistant secretary for tax policy.

This year's conference is chaired by Jennifer S. Acuña of White & Case LLP and Stephen A. Sherman of the Department of Justice, Tax Division.

*Events continued on page 7*

# Save the Date

## The Federal Bar Association

*in conjunction with*

The Office of Chief Counsel  
Internal Revenue Service  
*present the 22nd Annual*

# Insurance Tax Seminar

**June 3-4, 2010**  
**J.W. Marriott**  
**Washington, D.C.**



## A Dialogue with Government Personnel on Property-Casualty and Life Insurance Tax Issues

Coordinated by Lori J. Jones and Nancy Vozar Knapp

### **Why Attend the Insurance Tax Seminar?**

- It provides a unique forum for a productive exchange of ideas between the IRS and the private sector.
- The seminar features ample opportunity to ask questions of panelists, who are experts on insurance taxation.
- Events include a reception and refreshment breaks designed for more informal dialogue among participants.
- Multiple break-out sessions allow choice among currently hot topics.

### **Who will be attending?**

- IRS personnel from Exam and Appeals as well as personnel from the Department of Justice and the IRS Office of Chief Counsel—including the Chief Counsel as this year's luncheon speaker.
- Attorneys, accountants, and others with an active interest in the federal income taxation of insurance companies and their products.

The **J.W. Marriott** is located at 1331 Pennsylvania Ave., NW, Washington, DC 20004. For reservations, call (202) 393-2000 or (800) 228-9290. *Please mention the **Federal Bar Association Insurance Tax Seminar** to receive the conference rate.*

**More information and registration materials on the seminar will be available in the Spring of 2010.**

Questions? Contact the Federal Bar Association at (571) 481-9100 or [fbabar@fedbar.org](mailto:fbabar@fedbar.org).

[www.fedbar.org](http://www.fedbar.org)

## *An Interview with William J. Wilkins, IRS Chief Counsel*

Since 2009, William J. Wilkins has served as IRS chief counsel and assistant general counsel at the Treasury Department. Prior to joining the IRS, Wilkins was a partner in the tax practice group of WilmerHale, where he advised clients on tax and business matters, including tax compliance, exempt organization issues, corporate and partnership transactions, investment structures, and federal tax legislation and regulation. Before that, Wilkins served in various positions on the U.S. Senate Committee on Finance, including staff director and chief counsel of the committee. Wilkins received a J.D., *cum laude*, from Harvard Law School and a B.A., *magna cum laude*, from Yale University and has served as chair of the America Bar Association Tax Section.

**FBA:** Early in your career, you served on the tax staff of the Senate Finance Committee. Could you describe your experience working on Capitol Hill?

**WJW:** I had a great experience working at the Senate Finance Committee. Taking a step back, I spent the first four years of my career as a tax associate at King & Spalding in Atlanta. My curiosity about working for the government caused me to join Senate Finance in 1981, when Russell Long, the Democratic senator from Louisiana, was the ranking minority member on the committee. When I arrived, the committee had just started working on the Economic Recovery Tax Act of 1981. Later, we worked on the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984. My most important contribution, however, probably came during the passage of the Tax Reform Act of 1986. Both sides collaborated to achieve consensus-based resolutions, repeatedly resuscitating comprehensive tax reform. The process involved many participants, high drama, many technical issues, and a lot of fun.

As a tax lawyer on the minority staff, I also performed research for and counseled Democratic senators and members of their staffs, a job that honed my ability to communicate tax law to people who are not tax lawyers. After the Democrats took control of the Senate in 1986, I became staff director and chief counsel of the committee, working for Sen. Lloyd Bentsen of Texas, who had become the chairman of the committee. My work as staff director provided me a broad legal perspective, as I super-

vised the committee staff's activities in trade, health, and other policy areas, as well as tax.

**FBA:** What motivated you to accept the White House's nomination for chief counsel?

**WJW:** In the back of my mind, I knew I wanted another government stint before retiring. After President Obama was elected in November 2008, IRS Commissioner Douglas Shulman called and asked me. I knew it was a great job, but I had some reservations as the position has traditionally attracted tax lawyers with heavy litigation experience, which I do not have. After speaking with colleagues in the tax community, however, I became convinced that my broad experience in assessing tax positions in planning and before IRS exams and appeals would be valued and that I would be able to rely on the IRS's deep litigation resources. This has proven accurate, as my litigation responsibilities are largely strategic and require high-level decision making—I haven't been called upon to make a courtroom appearance or answer civil procedure questions. The structure of the IRS facilitates delegation, and I have talented people in positions of responsibility on whom I rely.

My main goal as chief counsel is to contribute my legal expertise to promote fair tax administration and the impartial interpretation of the tax law. I would like to maintain the Office of Chief Counsel's robust guidance process, keeping pace with industry issues, and to continue using litigation to strategically develop the tax law.

**FBA:** You joined the Office of Chief Counsel in 2009 after being in private practice at WilmerHale since 1988. How has your private practice experience affected your approach as chief counsel?

**WJW:** In private practice, I saw the impact that the Office of Chief Counsel has on the administration of our tax laws. The IRS, by communicating its view of the law to the rest of the world, can create certainty in strategically important areas, reducing taxpayer risk and expense. For example, if a group of transactions are beneficial to the economy and should carry little tax risk, the IRS can reduce taxpayer uncertainty by expressing its view, creating a positive outcome. On the other side, the IRS can prevent bad practices from flourishing and limit taxpayers from taking overly aggressive positions. By speaking out, we can curtail a race to the bottom. The tax professional, trade association, and business communities also have roles in bringing issues to the IRS's attention. This can

take the form of responses to formal requests for comments or informal communication.

My private practice experience as a counselor to clients also guides my view of chief counsel attorneys' responsibilities. The IRS as an organization is the client and decision-maker, and the attorneys of the Office of Chief Counsel help our executives achieve their goals, while at the same time acting as guardians of the organization. I therefore encourage our attorneys to provide balanced advice, considering the entire legal, policy, and reputational context surrounding an issue and weighing the competing risks.

**FBA:** Are there any important ways in which the chief counsel's office is different from a law firm?

**WJW:** The structure of the counsel's office is different from that of a law firm. A law firm has a flatter, less hierarchical structure and is organized on a project-by-project basis. The counsel's office, like the rest of the IRS, has clear chains of command and control. A project typically will be assigned within the office's existing structure. This is my first experience at the IRS, so I have tried to do a lot of listening and learning, getting to know the people and structures.

**FBA:** What are your management responsibilities as chief counsel?

**WJW:** I work closely with the commissioner, his front office, and the two deputy commissioners on IRS management and strategy issues. I also work with my two deputies and our associate chief counsel for finance and management on management and personnel issues within the Office of Chief Counsel. Much of what I do involves maintaining open lines of communication with and among our various operating units and senior IRS management. Within the Office of Chief Counsel, I meet with associate chief counsels (the senior subject matter experts), and division counsels at least every two weeks. Those meetings also include one or both of my deputies, Chris Sterner (deputy chief counsel—operations) and Clarissa Potter (deputy chief counsel—technical). I have formal meetings with Commissioner Shulman and his deputies at least every week. In addition, I regularly meet with cross functional teams to manage specific issues, work on guidance projects, and develop litigation strategies. As examples, our office may be called upon to make decisions on whether to advance a theory in a guidance project or case, to break a deadlock between associate offices that take different positions on an issue, or to decide whether to recommend settlement or appeal of a case.

There are also important communications responsi-

bilities with outside organizations. I have regular meetings with Michael Mundaca, acting assistant secretary for tax policy, and Emily McMahon, deputy assistant secretary for tax policy, and others at the Treasury Department Office of Tax Policy. I also meet frequently with officials at the Department of Justice, Tax Division. I also have a direct line of reporting to George Madison, general counsel at the Treasury Department (this is where the second part of my title, assistant general counsel at the treasury department comes in).

Our office also maintains relationships with the tax legislative committees, meeting with congressional staff on legislative issues that impact tax administration, such as tax compliance and closing the tax gap, and providing drafting expertise and resource input. Our office is less involved in general tax policy issues, however, than the Treasury Department Office of Tax Policy.

**FBA:** What is your office's role in providing administrative guidance, such as regulations and rulings?

**WJW:** It is important to distinguish between the different types of guidance. There is guidance published in the *Internal Revenue Bulletin*, which represents the official position of the IRS and Treasury and is drafted by Office of Chief Counsel attorneys with the cooperation of the Treasury Department Office of Tax Policy. Our office and the Office of Tax Policy use a consensus-based decision making process in developing published guidance. By the time published guidance is ready for clearance at the top levels of IRS and Treasury, our team and the Treasury Department Office of Tax Policy's team will have signed off on the substance and content of the guidance.

Given the number of players involved, if we reach a roadblock early in the process or if it appears we will face difficult decisions, I encourage our attorneys to brief me and the other senior officials early on to avoid miscommunication down the road. This generally keeps the process moving.

Guidance that is not published in the *Internal Revenue Bulletin*, such as FSAs, TAMs, PLRs, and GLAMs, does not represent the official position of the IRS. This guidance is the work product of the Office of Chief Counsel and is essential to carrying out our mission to fairly and impartially administer the tax laws. That said, we often seek the input of the Treasury Department Office of Tax Policy on unpublished guidance as well.

A number of considerations factor into whether guidance becomes published. We are more likely to publish guidance on issues of broad application and that are of

*Interview continued on page 6*

*Interview continued from page 5*

interest to many taxpayers. We typically will not issue published guidance if we are comfortable with a particular set of facts but less familiar with industry practice. Timing is another significant constraint. Often an examination team needs our opinion within a short time frame, and there isn't time to provide published guidance. In some of these cases, unpublished guidance ultimately leads to published guidance.

The goal with both published and unpublished guidance is the same. It is to impartially interpret the tax law, seeking an outcome rooted in legal interpretation and fair tax administration.

**FBA:** What kind of considerations go into a decision by your office to litigate a case?

**WJW:** The IRS has successfully used litigation as a strategic tool to develop case law. Litigation is the appropriate means of achieving certain goals, and we must be selective and think systemically about how a case will affect greater tax law. This sometimes means the IRS will designate a case for litigation and choose not to settle a case because we would like to get a court's opinion on the issue. If a case has policy implications, it is inappropriate for us to focus exclusively on winning the case without taking the policy and tax administration into consideration.

As an example, under former chief counsels B. John Williams Jr. and Donald Korb, the IRS successfully addressed marketed tax shelters and listed transactions through litigation. That litigation made strategic sense: there existed multiple cases raising similar issues, and many taxpayers and representatives believed they had viable positions. The IRS disagreed and believed the gap could not be bridged without trial outcomes and getting the circuit courts to speak. The case law created the atmosphere and precedent needed to resolve the tax shelter issues. Once there was a critical mass of circuit court opinions, a structure for resolving the pipeline of cases emerged.

Nonetheless, we litigate many small cases in the U.S. Tax Court that do not have policy implications. Our ability to resolve docketed cases without litigation varies with each particular case.

**FBA:** Can you describe the relationship between the IRS Chief Counsel's Office and the Department of Justice, Tax Division?

**WJW:** The Office of Chief Counsel represents the IRS commissioner in the U.S. Tax Court, and the Department of Justice, Tax Division represents the commissioner in

every other court. That said, we consult closely with the DOJ on virtually every systemically important case and appeal. Also, in recent years we have successfully implemented a program teaming chief counsel attorneys with DOJ attorneys to combine their respective technical and trial skills, whether in tax court or in courts where the Justice attorneys appear for the commissioner.

**FBA:** There appear to be less tax cases being litigated now than in the past. Have you noticed this trend, and, if so, how do you explain it?

**WJW:** I'm not sure whether or not less tax cases are being litigated now than in the past. Our office attempts to avoid unnecessary litigation. Very few cases are pulled out of appeals and designated for litigation. There may be economic pressure on taxpayers to settle large, expensive, document-intensive, expert-intensive cases, but these cost considerations are not unique to tax litigation. The bottom line is that many big cases still get litigated.

Anecdotally, at least, it appears that more small cases are being resolved in IRS appeals than in the past. We are trying to learn why that is—we hope that efforts to improve the presentation of case files to appeals are helping accomplish increased case resolution. The system isn't designed for every disputed case to be litigated, and the appeals office provides valuable alternative dispute resolution options.

We are seeing fewer tax shelter cases among publicly-traded corporations and less tax shelters being promoted by brand-name accounting and law firms. We are nonetheless still seeing shelters being marketed to smaller businesses and professionals, and we are following the same strategies with respect to these shelters as we did with the larger shelter cases. The IRS is litigating these cases, obtaining positive outcomes at the trial level, and following through on appeals. If we see the promotion of a particular scheme or true tax evasion, we may recommend an injunction and criminal prosecution.

**FBA:** What effect, if any, do you expect the codification of the economic substance doctrine will have on tax controversies?

**WJW:** I don't expect the effect will be dramatic, because the codification proposals do not seek to expand the application of judicial doctrines beyond their current scope. It may affect transactional behavior and the type of advice tax professionals provide. Advisors will be able to point to a specific law describing an economic substance requirement and this could dampen some aggressive activity. More importantly, it will promote uniformity among

the circuit courts.

**FBA:** What advice can you offer young tax professionals who would like to work for the IRS?

**WJW:** The Office of Chief Counsel hires lawyers right out of law school through its honors program. Many of these honors hires participate in the IRS summer program between their second and third law school years. Our national office looks for people with technical expertise and strong writing skills. The division counsel offices that serve the Large & Mid-Size Business and Small Business/Self-Employed divisions, which litigate on behalf of all

IRS divisions, look for candidates with litigation experience or the potential to develop litigation and trial skills. The Web site [www.jobs.irs.gov](http://www.jobs.irs.gov) has an "Attorneys" section under the "Careers" tab with a good summary of employment opportunities.

Otherwise, I recommend networking and meeting with people who work for the Office of Chief Counsel and getting involved in various tax bar activities.

---

### *Events continued from page 2*

The conference would not have been possible without the generous support of our sponsors; the elite sponsors include Baker & Hostetler; Bingham McCutchen LLP; Buchanan Ingersoll & Rooney PC; Caplin & Drysdale Chartered; Crowell & Moring LLP; Dewey and LeBoeuf LLP; KPMG LLP; Mayer Brown LLP; Miller & Chevalier Chartered; Morrison & Foerster LLP; Paul Hastings; Skadden, Arps, Slate, Meagher & Flom; and White & Case LLP. The Section on Taxation would like to thank these sponsors for their continued support.

#### **Insurance Tax Seminar**

The 22nd Annual Insurance Tax Seminar will be held this year on June 3-4, 2010, at the J.W. Marriott Hotel in Washington, D.C. The seminar is the leading conference directed at professionals specializing in insurance taxation matters, and is the only one to be attended by many Internal Revenue Service professionals as well as professionals from the private sector. It was started and continues as a joint undertaking of the Internal Revenue Service and the FBA Section on Taxation to foster a dialogue between

IRS professionals (examination agents, appeals officers, and attorneys responsible for interpreting the specialized laws and regulations that apply to the taxation of insurance companies and their products) and their counterparts at national and international insurance companies and their legal, actuarial and accounting consultants.

The 2010 seminar will feature 17 separate sessions covering the most significant and timely tax topics, as well as a discussion of evolving tax, regulatory, and financial reform issues arising as a result of the current financial crisis. Our luncheon speaker will be the current chief counsel of the Internal Revenue Service, William J. Wilkins. Additional panels will discuss timely insurance taxation issues such as evolving rules on reporting uncertain tax positions, international reporting and withholding issues (such as FBAR), OECD developments, tax reserve issues, and product issues. Also included are several primers which provide an overview of the rules relating to life/nonlife consolidation and audit procedures as well as the standing updates from the Insurance Branch of the Internal Revenue Service and on audit and appeals issues arising in life, health, and property/casualty insurance.

---

### *Chair continued from page 1*

our members, about your ideas or suggestions to improve the section and fulfill our mission: to promote the education and professional growth and development of our members; to contribute to the formation of federal tax policy through section events; to promote high standards of professional and ethical conduct in the practice of federal tax law; and to provide opportunities for interaction between tax practitioners in public service and the private

sector. If you would like to become more involved in the section, or have ideas for a program, or just want to let us know how we are doing, please feel free to contact me. Thank you for your continued support of the FBA and of the Section on Taxation.

---

# REPORT

**Federal Bar Association  
1220 N. Fillmore Street  
Suite 444  
Arlington, VA 22201**

**WE ACKNOWLEDGE THE CONTRIBUTIONS OF OUR SPONSORS IN MAKING THE  
2010 TAX LAW CONFERENCE A SUCCESS:**

**ELITE SPONSORS**

**Baker & Hostetler  
Buchanan Ingersoll & Rooney PC  
Caplin & Drysdale Chartered  
Crowell & Moring LLP  
Dewey and LeBoeuf LP  
KPMG LLP  
Mayer Brown LLP  
Miller & Chevalier Chartered  
Morrison & Foerster LLP  
Paul Hastings  
Skadden, Arps, Slate, Meagher & Flom LLP  
White & Case LLP**

**SPONSORS**

**Baker & McKenzie LLP  
Deloitte & Touche LLP  
Goodwin Proctor LLP  
Grant Thornton LLP  
Ivins, Phillips & Barker Chartered  
Matheson Ormsby Prentice  
McDermott Will & Emery LLP  
PricewaterhouseCoopers LLP  
Step toe & Johnson LLP**

The *Report* is published semiannually by the Section of Taxation of the Federal Bar Association, 1220 North Fillmore Street, Suite 444, Arlington, VA 22201, ISSN No. 1069-1553. © 2010 Federal Bar Association. All rights reserved. The views expressed herein are not necessarily those of the FBA. Editor: John Bates. Managing Editor: Sarah Perlman.