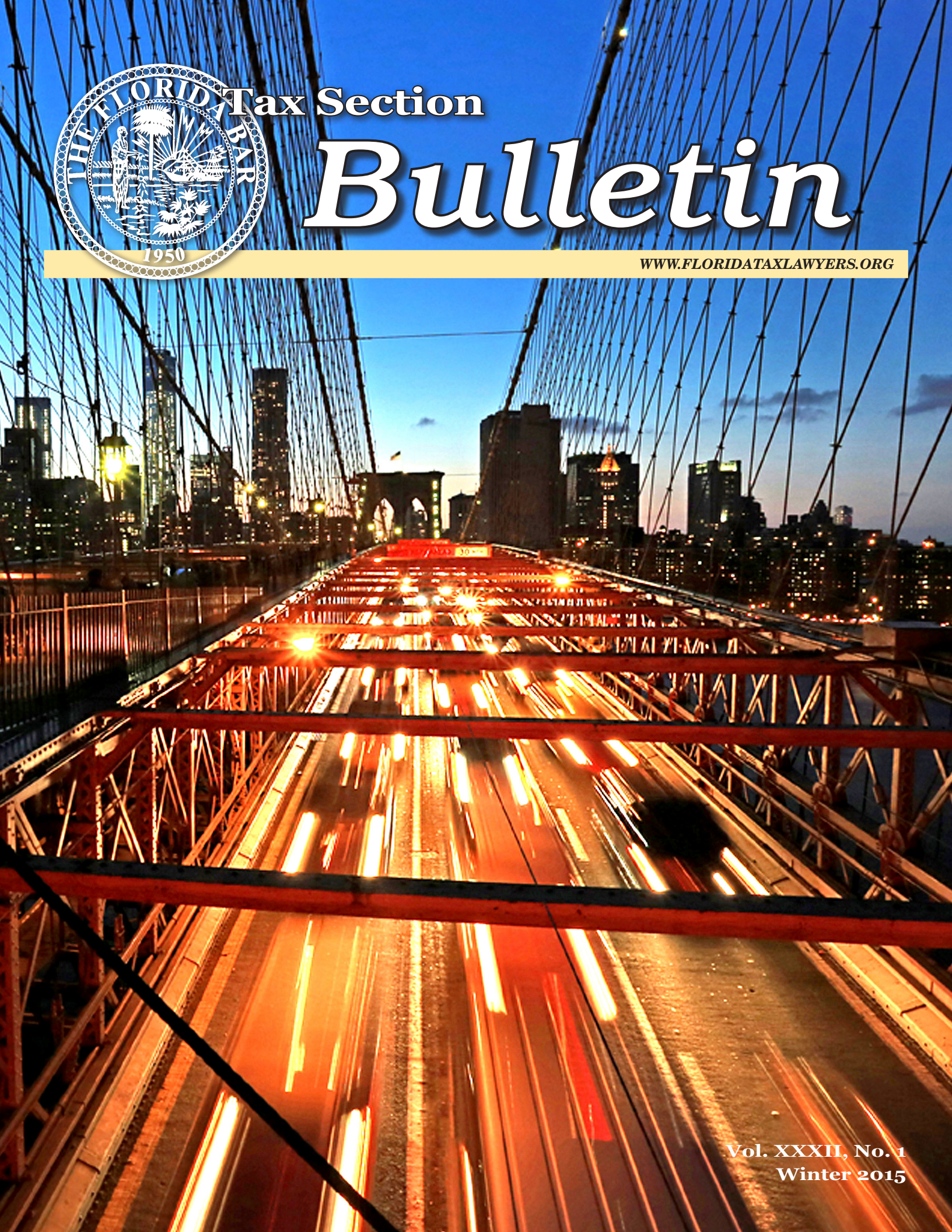

Tax Section Bulletin

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Tax Section Bulletin

THE FLORIDA BAR

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

IN THIS ISSUE:

Cover photo: by Randy Traynor
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SAVE THE DATE!

Tax Section Annual Meeting

Fountainbleau Hotel Miami

May 19-22, 2016

The Florida Bar Tax Section

2015-2016 Meeting Locations and Dates

2016 Directors Meeting

Hawks Cay – Friday, March 3 -6, 2016

Tax 2016 Annual Meeting

Fontainebleau Hotel, Miami Beach – Thursday, May 19 – 22, 2016

Tax 2016 Organizational Meeting

Amelia Island, Fernandina Beach – July 1 – 4, 2016

Chair's Message

By James H. Barrett, Esq.,
Baker & McKenzie, LLP, Miami, FL

The first half of this year has been very productive. Amelia Island was well attended. We had an excellent Ullman Year in Review CLE, plenty of productive meetings and recreational events that included a family movie night, a family 60's dinner, fireworks (with dessert), a beach party and a 5K race.

Our Fall Meeting last October at the Portofino Hotel in Orlando included a CLE that covered a broad range of trust and estate tax planning issues and had over 70 attendees in person and over the web. Congratulations to Mark Brown, Jen Wioncek and Brian Malec for successfully co-chairing this CLE. Our recreational events that were held in conjunction with this meeting at Universal Studios, Orlando, were well received by our members.

For the rest of the year, we have a busy schedule. January 6-8, our International Tax Conference is upcoming. Shawn Wolfe will be chairing the Tax Section's ITC committee. The conference, which is co-sponsored with the FICPA, typically attracts over 400 attendees with a significant number participating via the web. This year, we are expanding the conference to include a third day that will review the basics of international taxation. Also from January 14 - 17, a group of about 17 Tax Section members will be traveling to Havana, Cuba for a series of educational meetings with a broad range of individuals who are Cuban legal, economic, tax and cultural experts. We also will be meeting with Cuban tax officials.

Our other in person CLE's this year will include our "Representing the Physician" conference on January 16 in Fort Lauderdale, the 2016 National Multistate Tax Symposium from February 3-5 in Orlando, the FICPA/Florida Bar Tax Section State Tax Conference from June 8-11 in Orlando and our Annual Wealth Protection Seminar.

Thanks to Micah Fogarty and her team for the hard work that has gone into organizing this year's moot court competition which will be held on St. Pete Beach from February 17-21st.

Dana Apfelbaum and Mitch Goldberg have done a great job of expanding the New Tax Lawyer lunches. In Miami, Datan Dorot is continuing the successful New Tax Lawyer lunches that he chairs in Miami. Attendance has been over 70 for some of those lunches in Miami. Our monthly teleconferences that are organized by Michael O'Leary (in conjunction with Brian Malec and Micah Fogarty) continue to attract over 160 attendees. Also, upcoming is our annual meeting with the Florida Department of Revenue in Tallahassee.

The Winter 2016 directors' meeting will be held in Hawks' Kay in the Florida Keys over the weekend of March 2nd. Our final in person meeting of 2015-2016 will be at the Fontainebleau Hotel, Miami Beach from May 19 - 22. Our CLE on May 20th at the Fontainebleau Hotel will cover a broad range of economic substance issues that impact your practice. Guy Whitesman and Joe Schimmel will be co-chairing that CLE. On Saturday night, May 21st, we will be honoring Bob Hudson, this year's recipient of The Gerald T. Hart Outstanding Tax Attorney of the Year Award.

We are looking to continue to expand opportunities for our members to access Tax Section CLE's and substantive tax articles. We also are looking to increase opportunities for our members to write articles, make substantive presentations, participate in regulations' comments projects and to meet with state and federal tax officials with regard to issues of interest to our members. We hope to start an annual discussion with the IRS in Washington, DC, concerning substantive tax topics that interest our members. Some of these topics will be taken from our regulations' comments projects. We continue to work on four regulations' comments projects. Brian Harris is heading up that effort. Please contact Brian if you would like to assist with one of our projects. The title of the projects can be found in the Tax Section's monthly eblast.

We also are looking for ways to work with other Sections of The Florida Bar. Potential projects for joint CLE presentations are being discussed with the Young Lawyers Division and the General Practice Solo and Small Law Firm Section. Topics that we are considering include presentations addressing basic tax issues concerning voluntary disclosures, FIRPTA, the distinction between employees and independent contractors and entity selection.

Please reach out to me to the extent that you would like to become more involved in Tax Section activities. In particular, please advise me, Brian Malec or Micah Fogerty if you would like to become a member of a substantive committee in our FEDTAX division. Please reach to me or French Brown or Yolanda Jameson if you would like to join a substantive subcommittee in our SALT divisions. To facilitate such participation, we have just started listserves for FEDTAX and SALT practitioners. Information regarding how to join the listserves can be found on the Tax Section website.

Please also reach out to me about other projects that you believe that the Tax Section should undertake during the 2015-2016 year. As I mentioned in the last edition of the Tax Section Bulletin, providing service to our members has been the focus of my 2015 - 2016 year. I hope that we have been successful in that goal. Thanks to everyone for their engagement this year.

Happy Holidays and I look forward to seeing you in the New Year.

Message from the Chair-Elect William R. Lane, Jr.: Dear Tax Section Members: Happy new year!

We have been busy laying the groundwork for a successful 2016-2017 fiscal year for the Florida Bar Tax Section. We will begin the fiscal year, as we traditionally do, with the Tax Section's Organizational Meeting convening at the beautiful Omni Amelia Island Plantation Resort over the 4th of July holiday weekend. The Directors' Committee will meet on Friday afternoon, July 1. Saturday will be largely a day of relaxation, family fun and fellowship. The Chair's Welcome Reception and Family Dinner will be held Saturday evening, July 2nd, followed by the Section's business meetings and family luncheon on Sunday, July 3rd. Dinner will be on your own that evening. On Monday, July 4th, we will enjoy another outstanding Ullman Tax Year in Review CLE program, organized by current Chair-elect designee Joe Schimmel, followed by a family barbeque and fireworks that evening to conclude our meeting. The hotel reservation system is "live" for the Amelia meeting!

Our Fall Meeting will be held October 13-16, 2016 at the Renaissance Vinoy Resort on the waterfront of downtown St. Petersburg. The Directors will meet on Thursday afternoon. On Friday, October 14, we are planning an advanced CLE program tentatively titled "Keeping it in the Family - Advanced Income Tax Planning for Individuals, their Businesses and related Estates and Trusts" followed by a Chair's Reception. The Executive Council and Division meetings will be held on Saturday morning October 15, and after lunch we are planning recreational opportunities including a "museum crawl" featuring the world-class Salvador Dali Museum for those wishing to enjoy a long weekend in a lovely location. Dinner will be on your own that evening.

The Directors and Past Chairs will convene for a Directors' Committee meeting and Past Chairs' CLE program in California's Napa Valley from March 2-5, 2017. For those Directors and Past Chairs who are ACTEC Fellows also, this meeting will immediately precede the ACTEC Annual Meeting commencing March 7, 2017 in Scottsdale, Arizona. You already will be acclimated to the time change! More details to follow.

Our Annual Meeting will be held May 4-7, 2017 at The Breakers in Palm Beach. In addition to another advanced level Tax Section CLE program, we will honor the 2017 Gerald T. Hart Outstanding Tax Attorney of the Year and celebrate the conclusion of another excellent year for the Tax Section.

Please make plans to join us. Best wishes for a healthy and prosperous new year.

Bill

Bob Panoff

In May, Bob Panoff of Miami, a Federal Tax litigator and certified tax attorney, was privileged to attend the United States Tax Court Judicial Conference. The Tax Court Conference was a day and a half CLE program put on by the Chief Judge of the United States Tax Court. Attendees, by invitation of the Chief Judge, consisted of the regular Trial Judges, the Special Trial Judges, the IRS Chief Counsel and a number of Chief Counsel attorneys, and private sector conferees. The Judges of the United States Tax Court are, as a group, bright, caring, down to earth people who share a love of tax law and tax litigation.

The program consisted of CLE from 8:45 AM until 5 PM on Thursday and again a morning CLE on Friday. The topics were presented in a panel discussion format with panelists who had obviously been well prepared. Among the topics were: "Expert Witnesses: Creative Approaches: Pros and Cons", "View from the Appellate Bench", "Tools of Statutory Construction", "And What Weight Do They Have? Agency Determinations and Unpublished Opinions", "Best Practices Before the Tax Court".

There was a formal dinner on Thursday evening which included an entertaining and informative "Conversation with Justice Scalia" at the end of the dinner. A long time friend of Justice Scalia's did a one on one interview with the two of them sitting on a small stage in front of the audience.

Before dinner, Bob had the wonderful opportunity to have a drink with Justice Scalia and speak with him. Justice Scalia is an incredibly quick, charming person. Very down to earth and says what he means and means what he says.

This was the sixth USTC Conference attended by Bob. They have all been very special and informative

Attached is a photo.

Visit from Tax Court Judge Juan F. Vasquez

By Michael A. Lampert, Esq. and William Beard (UF LLM Taxation 2015)

Tax Court Judge Juan F. Vasquez spoke on March 27, 2015 with the students at the University of Florida Levin College of Law Graduate Tax Program. He spoke on the Tax Court generally and on some of his related experiences. He also gave his impression of some current issues and provided practice tips. What follows is a summary of his many comments.

Judge Vasquez stated that the judges of the US Tax Court are "Circuit Judges" because they "ride the circuit" throughout the US. Each judge has jurisdiction throughout the US. The Tax Court has 74 cities where cases are heard by a total of 19 presiding nominated judges.

Each Tax Court Judge has a 15-year term and is appointed by the President. If not reappointed after expiration of the term, they go automatically to Senior status. In Senior status they still hear cases, but have no vote on the en banc decisions of the Tax Court (Tax Court Conference Cases). Also, Tax Court judges are forced to go on Senior status at age 70.

As an Article I Court, it has limited equity powers. The Tax Court has only civil jurisdiction and specifically only that jurisdiction granted to it by Congress.

Approximately 30,000 cases are filed every year in the Tax Court but few go to trial. In fact, 80–90% of the cases that are docketed in the Tax Court ultimately end up settling before trial. (The Judge noted that the timing for this is usually when the pre-trial briefs are due and the start of the trial.) By comparison, there are approximately 400 tax cases filed in the US Court of Claims, approximately 400 tax cases filed in the US District Court and approximately 400 tax cases in Bankruptcy and other courts. (Authors' note: the Judge cited to these numbers, but there is no year associated with them to reflect the accuracy of the numbers)

The smallest case he has seen had an alleged deficiency $100.00. The largest had an alleged one year deficiency of $339 million.

The Judge stated that it is important to know and think about what is the proper court for the taxpayer to bring their action. Tax Court has limited equity powers – since it is an Article I Court, they have only the equity powers granted them by the Congress.

He then noted that:

In 1996, IRC §6404 was added to give the Court the equity power of interest abatement

In 1997, the Court was given the power to make "worker classifications"

In 1998, the Congress gave the Tax Court Collection Jurisdiction over innocent spouse applications and expanded the IRC §6015 innocent spouse exception.

In 2006, the Court was given authority over whistleblower cases.

Judge Vasquez also spoke about the standard for a "Son of Boss" transaction. He noted there must be reasonable cause to avoid the assessment of a penalty in these types of transactions.

He then discussed the five types of opinions that the Tax Court can issue. (Remember that Senior Judges can write opinions but cannot vote in court conference cases.)

1. S cases—where the taxpayer elects under S procedures to have the case heard by a Special trial judge (Usually appointed by the chief judge). Requires under $50,000 for each tax year in dispute or for collections a total outstanding liability of $50,000, including all penalties and interest—meaning that very few collections cases are under the S procedure. Pursuant to Title 26, these cases are not appealable to a higher court and cannot be cited as precedent for any proposition contained within.

2. TCM—Tax Court Memorandum—more common type of cases, generally the law is settled and the memorandum decision is applying the law to the facts (when all facts and circumstances in the tax controversy are stipulated with just an application of the facts and settled law will likely also result in a memorandum decision). These are not published by the Court—but are picked up by outside sources. They should not be cited in the Court as authority—the taxpayer should go to the Tax Court decision in which the matter was originally decided and cite that case. These decisions are not binding on the judges. (Authors' note: of course, like private letter rulings, they are often cited.)

3. TC—Tax Court Decision – these were called "division opinions" by the Judge. These are published opinions and can be cited as precedent. They are officially published by the Court and are binding over all the judges on the Court. These are cases in which there is a novel issue or an interpretation of the statute for the first time. These decisions are not voted on by the court conference but may be reviewed by the chief judge.

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4. Court Conference Cases—these are also labeled as TC and published. The procedure though is different than a normal TC opinion. The proposed opinion is written by the trial judge and then reviewed by all the judges on the Court. The judges can disagree on the interpretation of the law and write a concurrence or dissent. IRC §7460 gives only the chief judge the ability to send a case to conference. This process can end with the trial judge in the position of writing a dissent to the opinion because his or her interpretation of the law is counter to the majority of the conference.

All cases, except S cases, are appealable to one of the 12 circuit courts of appeals. This can provide an opportunity to use splits in the circuits for appeals, and forum selection where there is a difference in the application of the statute and the taxpayer has venue in the preferred circuit.

The question was asked of the Judge, "What is the biggest mistake attorneys make in the Tax Court in front of the judge?" Judge Vasquez stated that it is leading witnesses on direct (because the judge is trying to think about the credibility of the witness), and not allowing the witness to develop his or her own testimony. Lawyers should remember that what they say is not fact—only the witness can give fact testimony and the lawyers can ask questions and argue the law. Lawyers trying to testify can destroy an otherwise great witness because there is no credibility associated with the facts, since the lawyer stated them, not the witness. He added the error of not recognizing that the credibility of the witness has been affected in some way and rehabilitating the witness. The Judge commented that a witness that stands up well on cross would gain credibility. Judge Vasquez makes detailed trial notes contemporaneously with the testimony and a large part of whether he believes what the witness has to say on direct and on cross. He has seen an otherwise unbelievable witness become very credible on cross when challenged on the facts, when the witness stuck to his or her story. That tends to make the Judge think that the testimony is true. The Judge also noted that his law clerks see these notes when preparing draft opinions.

Judge Vasquez continued by noting that when trying a case, lawyers sometimes forget to prove all the elements with facts or stipulations. The only thing the trial judge can base any determination of fact on is evidence admitted into the court or by stipulation. A lawyer should have a plan on how to present the case in the least confusing but most complete way possible. Do not expect the judge to make your case for you.

Remember that briefs are typically due 75 days after trial, and reply briefs 45 days after that. The Court follows deadlines and a day late is late. Do not expect the Court to make an exception for you.

The Judge closed his answer to the biggest mistake question by stating "Learn to cross well. Ask the appropriate questions to make your point cleanly. Well-done cross-examination is key to any lawyer's success."

Judge Vasquez continued by noting that the Tax Court likes parties to agree and stipulate to as many facts as possible beforehand. If you do not cooperate, Tax Court Rule 91(f) allows the Court to force stipulations. As council you never want to have your hand forced, so it is best to work and be civil with the other side, or risk angering the Court.

The Judge insists that the key to success in his court and others is to really know your issue before you get to the court. Once again the Judge stressed that lawyers need to know the elements of the Code and how to meet each element. Do not cut corners. Be sure to touch every aspect of the issues you bring in front of the Court.

Judge Vasquez then talked about the Rawls case (Authors' note: T.C. Memo 2012-340) and the sham transaction doctrine. He suggested that all tax attorneys be familiar with the broadness of the doctrine.

When asked about the Fry-Tech case (Authors' note: Freytag v. Comm'r, 201 U.S. 868 (1991)) addressing Court jurisdiction, Judge Vasquez noted that the Tax Court is an Article I court—meaning that it is a court of record. The Fry-Tech case held that the Court was part of the judicial structure—prior to that it was considered part of the executive branch with authority from the legislature. This was codified in IRC §7441–42. He also noted once again that if a judge for the Tax Court is not reappointed (or turns age 70), he goes to Senior Status. This goes to the judge's tenure and independence.

Finally the Judge left a parting piece of advice on CDP cases—they are limited to the administrative record established at the hearing. This means that you need to get all the information you may need into that record or risk not being able to use it at trial.

On a closing note, the Judge was very kind to come and speak with the graduate tax program. He was friendly and engaging. He left the class with a departing comment that, as a Judge, he is there for the attorneys to give him what he needs to make a ruling. A key point to remember that might seem basic—always remember who your audience is and argue to that audience.

JUNE 11th TRILOGY HEADLINES STATE TAX LITIGATION IN 2015

Gerald J. Donnini II, Esquire[1*]

2015 – The Year of SALT

Normally, a state and local tax ("SALT") practitioner, like myself, lives in a world starving for excitement. While Amazon and sales tax nexus articles lead the national SALT news headlines, the Supreme Court of the United States has not heard a sales tax nexus case since *Quill* in 1992. From a state litigation perspective, a handful of administrative law opinions, a couple of circuit court decisions of significance, and one appellate decision would make for a rambunctious year. A SALT practitioner's world would be turned upside down if the Florida Supreme Court heard, let alone decided, a case every three to five years. Luckily, 2015 has been anything but boring for Florida SALT practitioners. Not only were there three decisions from appellate courts or higher this year, but also the trend in Florida SALT litigation has been heavily favoring taxpayers over state agencies.

PART I – THE JUNE 11 TRILOGY BEGINS

June 11, 2015 will be etched into Florida SALT litigation history forever. On that day, Florida SALT practitioners rejoiced when the Florida Supreme Court announced a long awaited opinion and the 1st DCA also released two important opinions on the very same day.

The first case in the trilogy was *DirecTV v. Department of Revenue*, which dealt with the Florida communication services tax ("CST").[2] Under Florida law, satellite companies, such as DirecTV, are required to charge their customers a state CST of close to 11%.[3] Conversely, if a customer purchases communication services through a cable television provider, the cable company only charges the customer a state CST of just under 7%. Unlike satellite companies, which are exempt by federal law from local level taxes, cable companies may be required to charge local taxes of up to 5.1%.[4] In the aggregate, the satellite and cable companies may charge customers the same amount of tax. However, when looking at the state tax amount only, the **state** tax rate is higher for the satellite companies. Due to the higher state tax rate, the satellite companies filed suit challenging the constitutionality of the CST taxing regime.

In what many state tax commentators have described as a shaky opinion, Judge Lewis delivered the opinion of the 1st DCA.[5] Refund issues and constitutional law interpretations aside, the court began its opinion by concluding that cable and satellite companies are similarly situated. With an applicable basis in which to determine whether a constitutional violation had occurred, the court focused its opinion on Commerce Clause jurisprudence. Ultimately, the court concluded that the CST tax was discriminatory in that the lower state rate favored in-state cable companies. In so doing, the court ran contrary to similar opinions in North Carolina, Kentucky, and Ohio.[6] More importantly, the 1st DCA dealt a crushing blow on June 15, 2015 to the Florida Department of Revenue by ruling for the taxpayers.

PART II – THE JUNE 11 TRILOGY CONTINUES

Most tax practitioners are aware of the concept of the statute of limitations ("SOL"). The SOL demands that the state generally has three years in which to assess a taxpayer for past taxes.[7] In addition to the important consequences of its far reaching decision, *Verizon* is of special significance to my firm and me, because we addressed the issue, prior to the case being filed, in the Florida CPA Magazine in 2011. Needless to say, I have been following the case closely since it was filed in late 2011. The crux of *Verizon* is whether a **proposed** assessment is an assessment for SOL purposes.[8]

The simplest way to explain *Verizon* is to use its facts to describe the problem. In *Verizon*, the taxpayer was issued an audit notice (DR-840) in January 2007 from the FL Department of Revenue stating that it would be audited for the previous three years, or January 2004, through December 2006.[9] Consequently, under normal conditions the Florida Department had until January 2008, (January 2004 + 3 years = January 2007, plus 1 year of statute tolling, or pausing, to do the audit = January 2008) to assess tax for the period of January 2004. Through a number of DR-872s, or statute of limitations extensions, Verizon and the Florida Department of Revenue agreed to extend the deadline until March 2011 for the Department to issue an assessment. As it generally does, the Department issued a notice of "proposed" assessment in February 2011, which would not become final for 60 days or until April 2011. If the proposed assessment is an assessment, then the Florida Department of Revenue complied with the law and the

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assessment would adhere to the statutory deadline. If, however, a proposed assessment is not an assessment, unanimous decision by announcing an important tenant of statutory construction that requires taxing statutes to be construed narrowly against the government and in favor of the taxpayer. From there, the court reviewed the Department's argument that the Legislature contemplated both final and non-final assessments. As such, the Department argued a notice of proposed assessment, whether final or non-final, is an assessment as satisfies the statute of limitations requirements. However, the court disagreed.

The Court further disagreed with the Department's other classic argument from *Florida Export Tobacco v. Department of Revenue*.[11] The Department's reading of that case defined the term assessment as some legal obligation or demand for payment. However, the court found a distinction between a "demand for payment" under *Florida Export Tobacco* and a "proposed assessment" in the instant case.[12] In doing so, the court acknowledged that, at the time of a proposed assessment, the taxpayer is under no obligation to pay the taxes that may be due. The Department also argued that Verizon's interpretation would somehow impede taxpayer's appeal rights and that the Department must be given deference, but the court quickly unraveled this argument as well.

The balance of the opinion focused on the court's interpretation of other statutory language that led to the conclusion that a proposed assessment did not satisfy the statute of limitations requirement of an assessment. Specifically, the court determined that section 213.21(1)(b), Florida Statutes, provides a tolling of the statute of limitations during the pendency of a protest until a FINAL assessment is issued.[13] Being that the legislature decided to qualify an assessment with the word "final" the legislature must have meant final assessment in the statute of limitations provisions.

Unlike the *DirecTV* case, the *Verizon* case has a much broader implications. The Florida Department of Revenue often issues its proposed assessment very close to the SOL deadline date, which likely violates the applicable SOL. Also, we have seen many occasions in which the Department even mails the proposed assessment after the SOL date. In either scenario, if the Department of Revenue issues a proposed assessment within 60 days of the SOL deadline, then the Department is the one that is *SOL*.

PART III – JUNE 11 TRILOGY CONCLUDES

Another case that has dominated the state and local tax news over the past few years is the Expedia or online travel company ("OTC") litigation.[14] The OTC cases have involved companies like Expedia and Orbitz who have been battling with the various counties throughout the state while the Florida Department of Revenue lurks in the background. The OTC litigation centers on the taxable base to which the tourist development tax ("TDT" or "bed tax") applies.[15] Essentially the fight centered on whether the tax should be applied to the consideration the hotel receives or if it should be calculated on the higher amount at which the customer pays the OTC for the room.

For clarity, consider the following example. Suppose an OTC has a deal with a hotel to buy a room for $80. Then, it lists the room on its website for $100. Should the TDT be on the $80, the amount the hotel received, or on the $100, the amount the customer pays? The OTCs have taken the position that the $80 is subject to tax and the $20 is a non-taxable booking or facilitation fee.[16]

After losing at trial, on appeal, the Florida Supreme Court shut the door for good on the state and county's ploy to extort excess tax from its taxpayers. In short, the court determined that the amount the hotel received, not the amount the customer paid, was the taxable base.[17] The court looked to the fact that the OTC never actually rented the room because it had a right, but not an obligation, to secure a room for a customer at the reduced rate.

SHOCKINGLY, AN AGENCY'S BELIEF ISN'T ALWAYS RIGHT!

The first half of 2015 has been quite an exhilarating year. The only thing better than having three appellate level or higher court issues in the same year is having the taxpayers win all of them! Highlighted by the June 11th trilogy, taxpayers have largely and resoundingly dominated overly aggressive and litigious state taxing authorities, not to point fingers are at specific agency. The important takeaway is that just because an agency believes something is taxable, it does not make it so. It is also critical to ensure agencies follow the proper procedures, because they often misstep along the way. Hopefully the pro taxpayer trends will continue for the second half of the year and SALT practitioners will have even more celebrating in their lives by 2016.

(Endnotes)

[*] Gerald ("Jerry") J. Donnini II, Esquire is a multi-state sales and use tax attorney and an associate in the law firm Moffa, Gainor, & Sutton, PA, based in Fort Lauderdale, Florida. Mr. Donnini's primary practice areas are Florida sales and use tax and multi-state sales and use tax. Mr. Donnini also practices in the areas of alcohol, cigarette & tobacco

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wholesale tax, Florida motor fuel tax, and Native American taxation. Mr. Donnini earned his LL.M. in Taxation at NYU. JerryDonnini@Floridasalestax.com or phone at 954-642-9390.

1 .*Directv, LLC, and Echostar Satellite, L.L.C., n/k/a Dish Network, LLC v. State of Florida, Department of Revenue*, Case Nos. 1D13-5444, 1D14-0292 (Fla 1st DCA 2015).

2 .Section 202.12(1), Florida Statutes ("F.S.").

3 .Section 202.19(2)(a), F.S.

4 .*Directv, LLC, and Echostar Satellite, L.L.C., n/k/a Dish Network, LLC v. State of Florida, Department of Revenue*, Case Nos. 05-CA-1037, 05-CA-1354 (Fla. Cir. Ct. 2013).

5 .*See DirecTV v. State Department of Revenue*, 632 S.E.2d at 545-46 (N.C. Ct. App. 2006); *DirecTV, Inc. v. Treesh*, 487 F.3d 471 at 475 (6th Cir. 2007); *DirecTV v. Levin*, 941 N.E.2d at 1191 (Ohio 2010).

6 .Section 95.091(3)(a)1.b., F.S.

7 .*Verizon Business Purchasing, LLC v. State of Florida, Department of Revenue*, 164 So.3d 806 (Fla. 1st DCA 2015).

8 .*Id*.

9 .*Id*.

10 .*Florida Export Tobacco Co., Inc. v. Department of Revenue*, 510 So.2d 936 (Fla. 1st DCA 1987).

11 .*See Verizon Business Purchasing,* 164 So.3d 806 at 811 *(Fla. 2015).*

12 .*See* Section 213.12(1)(b), F.S.

13 .*Alachua County, et al., v. Expedia, Inc., et al.*, No. SC13–838 (Fla. 2015).

14 .Section 125.0104, F.S.

15 .*Orange County v. Expedia, Inc.*, Case No. 2006-CA-2104 (Fla. 9th Cir. Ct. 2011).

16 .Alachua County, et al., No.SC13–838 (Fla. 2015).

New Tax Lawyers Prove the Annual "Sam Ullman Year in Review" Will Be Strong for Years to Come

By: Karen Lapekas

It is a fact worthy of judicial notice: in the minds of countless tax attorneys, Sam Ullman walks on water. The fact was evidenced by the full-house attendance at yet another successful "Ullman Year in Review" at the Tax Section Organization Meeting held in Amelia Island on July 4, 2015. It was further evidenced by Bob Panoff's own exclamation upon Mr. Ullman's sneaking up on him before the start of the Review. Mr. Panoff, deep in conversation with a fellow attendee took no notice of the fact that Mr. Ullman had arrived and was standing right behind him. When Mr. Ullman tapped Mr. Panoff on the shoulder, Mr. Panoff, pleasantly startled, made an exclamation invoking the name of the first man to have allegedly walked on water. Not willing to accept such admiration, Mr. Ullman responded, "That's okay, Bob. My friends just call me Sam."

Courtesy of this year's generous sponsor, Business Valuation Analysts, LLC, no attendee wanted for the finest refreshments or warm soft pretzels with spicy beer mustard. The president of the Tax Section, Jim Barrett, and chair-elect, Bill Lane, kicked off the Review with introductions, announcements, and of course, with recognition of the honor of having the namesake of the Review himself in attendance. This year's Review, either by coincidence or design, was lead primarily by "new" and "young" attorneys. Their participation was a harbinger of the secured future success of the Tax Section.

Gerald Donnini, who literally "wrote the book" on sales and use tax (as the co-author of CCH's Expert Treatise Library: State Sales and Use Tax), discussed three appellate "SALT" cases. The decisions' releases were especially exciting, because not only did the taxpayers prevail, they were released on the same day; a rare and serendipitous event for state and local tax attorneys.

Another state and local tax guru, French Brown, a former attorney with the Florida Department of Revenue, gave an update on Florida's economy. The news was generally good; the personal income growth of Florida residents exceeds the national average, the job market is recovering, and population growth (the primary engine of economic growth in Florida) is expected to continue. For the pessimists, there are the housing market figures, which will enable them to continue expecting a dim economic future for their children. Florida has the third highest foreclosure rate in the country and home ownership rates are the lowest seen since 1989. With news like this, the Tax Section should find comfort in the fact that one of its past presidents, Michael Lampert, is also an emergency-preparedness and survival expert who could present future "How-To" CLEs on building comfortable shelter out of materials found along I-95 or the emergency supplies he keeps stocked in his car's trunk.

James Schmidt, a shareholder at Tampa-based James A. Schmidt, P.A., provided recent developments in federal individual taxation. He highlighted Chief Counsel Advice 201451027 that clarified that, even though a person is jointly and severally liable on a mortgage, he may deduct all of the interest he paid with respect to that mortgage. Also noteworthy was the newly issued Prop. Reg. 1.6050P-1. This proposed regulation removes the rule requiring creditors to file a Form 1099-C Cancellation of Debt when no payment is received for 36 months, regardless of whether the debt was actually discharged. For practitioners who have represented clients who received a Form 1099-C with respect to a debt that was not discharged, the proposed regulation is long overdue.

Star Sansone, of Salter Feiber, P.A. in Gainesville, Florida, was well into her updates on civil tax procedure before the attendees gave up looking for her identical twin. After hearing her staggering academic, professional, and athletic background, who could believe there was only one of her? Of much interest, but not garnering much surprise, were her highlights from the National Taxpayer Advocate Annual Report to Congress. In summary, according to the report, IRS customer service has gone from bad to worse. Unfortunately, this means longer call hold times (or, just being told to call back). Fortunately, the longer hold times do not mean Pyotr Tchaikovsky will be making more revolutions in his grave. The IRS has already discontinued the "Dance of the Sugar Plum Fairies" hold music.

William Smith of Johnston Foster Johnston & Stubbs, P.A. in West Palm Beach presented Selected Tax Developments in Employee Benefits and Deferred Compensation. He began his presentation with one of the "warm fuzzy" (i.e. unanimous) Supreme Court decisions from the 2014 session, Clark v. Rameker, 134 S.Ct. 2242. (The 2013 - 2014 session delivered the highest percentage of unanimous Supreme Court decisions that the Court had seen for at least 60 years.) In Clark, the Supreme Court agreed that funds within an inherited IRA are not "retirement funds" exempt from bankruptcy creditors.

Jordan August from Carlton Fields Jordan Burt's Tampa office provided the S Corporation Update. He went through the most important provisions within the

continued, next page

NEW TAX LAWYERS PROVE THE ANNUAL

from previous page

IRC 1366 regulations that were finalized in July 2014 which relate to an S corporation shareholder's basis in S corporation debt. The final regulations make it clear that an S corporation shareholder does not increase his basis of any of the S corporation's indebtedness merely by guaranteeing (or acting in a similar capacity with respect to) a loan. Rather, if the shareholder makes a payment on bona fide debt of the S corporation for which he has acted as guarantor, then the shareholder may increase his basis of indebtedness to the extent of that payment. Treas. Reg. 1.1366-2(a)(2)(ii)-(iii) and Ex. (4).

Josh Kaplan, a partner in Bilzin Sumberg's Tax Group, focused his Partnership Tax Updates presentation on proposed Section 752 regulations relating to allocation of recourse liabilities. To determine a partner's share of partnership recourse liabilities, the proposed regulations would eliminate the economic risk of loss determination and replace it with a two-prong test: the Payment Obligation Standard and the Net Value Requirement.

Jason Havens, Senior Counsel at Holland & Knight LLP, focused on getting the attendees updated on the new IRS Form 1023-EZ during his Tax Exempt and Non-Profit Entities presentation. In addition to providing guidance on the qualification requirements, he explained that approximately 70% of applying organizations that seek a determination letter on exempt status under Section 501(c)(3) would qualify to use Form 1023-EZ. These small exempt organizations would only have to complete a 3-page application, rather than the 26 page Form 1023 behemoth.

Following Mr. Havens' presentation, attendees had a 15-minute break to go outside and enjoy the perfect beach weather they missed that morning. The break passed quickly and President Barrett drew everyone back to reality by asking everyone to "take their seats." Joe Schimmel, who was already seated, promptly got up and started carrying his chair out of the room. But he did not go far before he returned. Whether it was the thought of missing even one minute of the Ullman Year in Review, the fact that the upholstery would clash with his home décor, or the likely exorbitant charge on his hotel bill that made him change his mind, we will never know.

With everyone back in the room, Dana Apfelbaum of Dean, Mead, Minton & Zwemer, began reviewing this year's federal transfer tax updates. She started by noting that the Obama administration considered the step-up in basis under Section 1014 as "the single biggest loophole in the tax code." This drew everyone's attention, and those that weren't already paying attention were awakened by various grunts and groans elicited across the room. One other attention-grabber was her review of interim guidance the IRS issued to estate and gift tax auditors in January 2015. The guidance instructs these examiners to close a case without providing the taxpayer appeal rights if the taxpayer did not comply with certain information request procedures. This is now an appropriate time to insert a term not yet used in this article (because no discussion of tax is complete without it); failure to be aware of this new procedure is yet another "trap for the unwary."

Breaking the mold and proving that, not only can lawyers do math, they can also be Alaskan bush pilots, catch wild salmon, and win bear-wrestling contests with one arm tied behind her back (I am not certain on this last fact, but after hearing her talk about her hobbies, I would not be surprised!), Abby O'Connor of Holland & Knight's Anchorage, Alaska office, presented "Fun(?) With Basis (and Portability) Planning." Ms. O'Connor presented several different models and calculations to determine whether grandma and grandpa should rely on portability or use a Credit Shelter Trust. Her calculations also indicated whether grandma should instead gift her assets to her children during her lifetime so not only could she minimize the overall tax liabilities, but so that she could also watch the fruits of her life's labor be dissipated before she passes away.

As a tribute to David Letterman and departure from the usual sleep-inducing tax law presentation, Ceci Hassan and Daniel Hudson presented the "Top 10 Things You Should Know" for their updates on International taxation: Inbound and Outbound Planning. Consistent with Letterman's format, Ms. Hassan and Mr. Hudson had a surprise guest appearance by the renowned tax attorney, Bob Hudson. Thankfully, Bob was able to attend, because if he had not, many would have never known the answer to their most burning question: "Where in the world did Daniel get such brains and brawn?"

The 2015 Ullman Year in Review, sadly, came to a close. But one could already feel the anticipation for the following year's review! President Jim Barrett dismissed everyone at 1:00 PM sharp. Just in time for the rain shower that lasted the rest of the day.

EXPANSIVE NEW TAX AND REPORTING REQUIREMENTS FOR AMERICANS VENTURING ABROAD

A growing number of Americans share the desire to live and work overseas. Yet without careful planning before and during their time abroad, U.S. citizens and permanent residents risk incurring excessive taxation and a loss of wealth.

Unique Tax Regime for U.S. Persons

Unlike most other countries, and unlike all other developed countries, the U.S. taxes "U.S. persons" on their "worldwide income," regardless of where they live. U.S. persons include American citizens as well as Resident Aliens with permanent status (green card holders) and people currently classified as U.S. residents by voluntarily election or by the number of days per year they spend in the U.S. ("substantial presence").

A U.S. person can also treat a Non-resident Alien (NRA) spouse as a U.S. resident for income tax purposes, so the couple can file a joint income tax return. To do so, the NRA spouse needs to obtain a Social Security number or Taxpayer Identification Number (TIN). Filing jointly may be useful, and may save taxes, depending on the relative income and deductions of the partners. However, it is important to have an experienced tax professional calculate the various options, as it could also be more tax efficient for the U.S. person to file separately, or as Head of Household if there are dependent children.

In addition to a tax liability to the IRS, U.S. persons may face a variety of filing requirements and taxes in the foreign country in which they are working. Countries have different criteria for determining tax liability; unlike the U.S., most base this primarily on residence rather than citizenship. Possible offsets to this potential double taxation include, among other things, tax treaties, foreign tax credits, the foreign earned income exclusion and the moving expense deduction.

U.S. persons wishing to take advantage of the above exclusions must satisfy several key criteria:

- The U.S. taxpayer must have "foreign earned income," defined as income from personal services including salaries, wages, bonuses, professional fees and commissions for work in a foreign country.
- The U.S. person's current "tax home" must be in a foreign country.
- The U.S. person must be either "physically present in a foreign country" for at least 330 full days during any period in 12 consecutive months, or be a "bona fide resident of a foreign country" for an uninterrupted period that includes a complete tax year. Determining "bona fide residency" can be very complex. The decision is based on specific circumstances of the individual, with key factors being length of stay, intent, purpose and nature of the trip.

Taxes on Retirement Accounts

The rules for retirement plans are even more complex**.** No area is more complicated for U.S. expatriates than the inter-governmental taxation of contributions to, earnings within and distributions from pensions and other retirement plans. In general, most tax treaties allow the country of residence to tax a foreign pension or annuity under its domestic laws. However, there are many variations. Navigating the labyrinth national laws and bilateral treaties requires specialized professional advice.

Affordable Care Act Adds New Taxes

The Affordable Care Act of 2010 (ACA) added a further wrinkle to tax calculations for Americans living abroad. To help fund the ACA, the U.S. government embedded a number of overt and what some call 'stealth' taxes, targeting higher wage earners, within the ACA legislation. These taxes apply to all U.S. persons, regardless of where they reside. U.S. persons whose Modified Adjusted Gross Income (MAGI) is over $200,000 (for singles) or $250,000 (if married filing jointly) are subject to a 3.8% Medicare tax on Net Investment Income (NII).

Tax advisors to U.S. persons living abroad have noted that taxes incurred under the NII cannot be offset by the foreign tax credit, because the NII is not technically a "tax." Although ostensibly intended to help fund Medicare, it is imposed by the new section 1411 of the Internal Revenue Code, and thus is deemed by many tax analysts to be an additional income tax on upper income taxpayers. As a result, it seems that Americans working outside the U.S. who are subject to the NII may wind up paying it in full even if foreign taxes exceed the total of U.S. regular tax and NII tax on that income.

In addition to the NII surtax, ACA provided for a 0.9% increase in the Medicare payroll tax by for individuals making more than $200,000 and married couples making more than $250,000. The extent to which this applies to Americans working abroad depends on many factors, including but not limited to whether they work for an American company and whether the U.S. has a totalization agreement with the country in which they

continued, next page

are working. This is yet another area where U.S. persons should be turning to advisors for expert tax advice.

Investing Abroad

U.S. citizens working or living abroad will generally invest as would any other U.S. citizen since there is no difference in the treatment. However, the investment parameters may be very different from those suited for local citizens. Key issues to investigate before embarking on a relationship with a foreign investment provider include:

The type of mutual fund and other pooled investments a U.S. person can own without triggering Passive Foreign Investment Company (PFIC) rules.

The accounting and reporting requirements for a U.S. person's accounts.

Ensuring an advisor has the necessary capabilities and expertise to properly report on a U.S. person's account.

Ever-Increasing Reporting Requirements

It bears noting that the United States has had reporting requirements for non-U.S. assets for decades, what's changed is how the extent and enforcement of such regulations have grown exponentially in recent years.

One of the earliest efforts targeting "foreign" accounts was the Foreign Bank and Financial Accounts (FBAR). Under the mandate of the Bank Secrecy Act of 1970, the Financial Crimes Enforcement Center (FINCEN), a law enforcement agency of the U.S. Treasury, designed this report with the primary goal of identifying possible money laundering. U.S. persons and entities with interests in and/or signing authority over foreign financial accounts must file this form by June 30 for every year in which the market value of their non-U.S. assets totals $10,000 or more. Non-compliance penalties may be extremely high. Civil penalties can go up to the greater of $100,000 or 50% of the account balance, assessed annually for each year of delinquency. In addition, criminal penalties include fines of up to $250,000 and prison terms of up to five years.

In March 2010 President Obama signed into law the "Hiring Incentives to Restore Employment Act" (HIRE Act). Included as part of the HIRE Act is the Foreign Account Tax Compliance Act, or FATCA. Designed to prevent tax evasion by U.S. persons who use foreign accounts and investments, FATCA enables the U.S. government to determine the ownership of foreign accounts and investments belonging to U.S. persons. In doing so, it significantly increases the reporting responsibilities for both financial institutions and individuals associated with non-U.S. assets. Through FATCA, the U.S. government attacks tax evasion on multiple fronts, with significantly greater reporting by individuals, trusts, corporations, partnerships and entities classified as "foreign financial institutions."

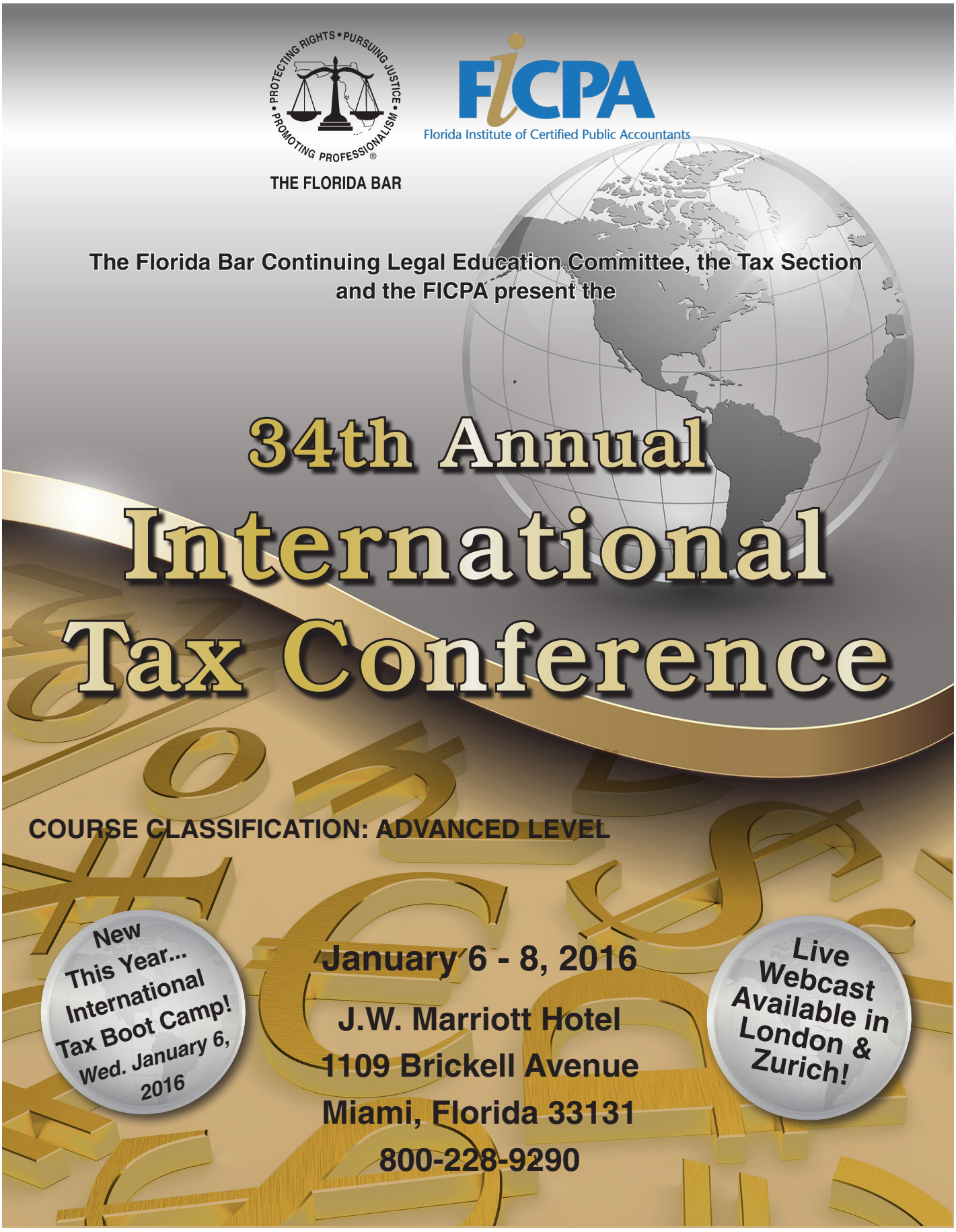
For tax years beginning after 2010, U S. taxpayers are required to report foreign financial accounts and assets, including foreign investment funds, on the new FATCA form 8938. Specifically, U.S. persons with at least $50,000 at yearend or $75,000 any time during the year in certain foreign financial assets must report details annually on the form. The thresholds are doubled if married and are higher for U.S. persons living outside the U.S. Penalties under FATCA could be severe: up to $50,000 for non-reporting, plus 40% on understated taxes, and possible criminal and/or fraud penalties of up to 75% of the value of the undisclosed assets. Additionally, U.S. persons will face increased verification, due diligence and, increasingly, refusal to open or maintain financial accounts, on the part of both foreign and domestic financial institutions with which they do business.

There are a number of other reports which may apply to U.S. persons with financial connections outside the U.S. While many of these forms are not new, enforcement and the amount of detail has been greatly expanded. These include Form 3520 and 3520A for foreign trusts, Forms 5471, 5472 and 926 for foreign corporations and Forms 8865, 8858 and 8621 for foreign entities such as partnerships. For instance, FATCA expanded the reporting requirements for Form 8621 to include disclosing ownership in a PFIC, even if there is no taxable activity.

Conclusion

In aggressively pursuing undeclared offshore accounts, the U.S. government has even extended to pursuing advisors who have helped U.S. clients evade taxes by structuring their investments abroad and to financial institutions in other countries. In early 2013, for instance, Wegelin & Co., Switzerland's oldest bank, pleaded guilty to aiding U.S. persons in hiding more than $1.2 billion offshore. The storied Swiss bank subsequently closed its doors. Since then, under the protection of the Swiss government, Swiss banks are cooperating with the U.S. government in releasing information about its U.S. clients.

The world is becoming a smaller place. With technological advances and the evolution of the global economy, businesses, families and people from the U.S. have left American shores to live and work across developed and emerging markets. Over time, this trend of money on the move will continue to grow, as will government scrutiny of international transactions and foreign investments. In this environment, Americans living and/or investing abroad will need expert advice in planning, executing and reporting financial activities.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New! International Tax Boot Camp Course No. 2095R

Looking for a beginner level summary of international inbound and outbound taxation? We are pleased to announce the International Tax Boot Camp, which will take place on Wednesday, January 6, 2016. The International Tax Boot Camp will also provide an introduction to the topics that will be discussed during our two-day International Tax Conference.

9 a.m. – 5 p.m. - International Tax Boot Camp - JW Marriott Miami
The International Tax Boot Camp will provide young CPAs and attorneys a beginner level summary of international inbound and outbound taxation (Separate Registration Fee)
Topics to be covered in the International Tax Boot Camp include:

CLE Credit:
General: 7.0 hours
Certification Credit
Tax: 7.0 hours

Inbound Tax:
• Residence of Individuals and Entities • Entity Classification • Source of Income Rules • Gross Basis and Net Basis Taxation of US Source Income
• Foreign Investment in Real Property Tax Act ("FIRPTA") • Effectively Connected Income • Pre-Immigration Planning
Outbound Tax:
• Taxation of Worldwide Income • Subpart F • Passive Foreign Investment Company Taxation • Foreign Tax Credits • Code Sections 367 • Inversions • Expatriation • Offshore Voluntary Disclosure

International Tax Conference *Course No. 1950R*

THURSDAY, JANUARY 7, 2016

7:30 a.m. – 8:45 a.m.
Registration and Continental Breakfast

8:45 a.m. – 9:00 a.m.
Welcome and Introductions
Lawrence J. Chastang, CPA
Chairman - Global Advisory Services | CliftonLarsonAllen LLP | Orlando and Shawn P. Wolf, Esq.
Attorney and Shareholder | Packman, Neuwahl & Rosenberg, PA Coral Gables

9:00 a.m. – 9:50 a.m.
Current Developments in International Taxation – Outbound Update
Larry R. Kemm, Esq., Partner | Harrison Kemm, P.A. | Tampa
Review current U.S. developments in outbound international taxation and provide an overview of significant statutory, regulatory, administrative, and judicial authorities that occurred during 2015.

9:50 a.m. – 10:40 a.m.
The PFIC Regime: Scalpel or Sledgehammer?
Seth J. Entin, Esq., Shareholder | Greenberg Traurig, PA | Miami
In the international tax arena, the PFIC rules are among the most notorious in their complexity and harshness. Unfortunately, these rules are often overbroad and can cause adverse consequences even in seemingly innocent scenarios. This presentation will go through many of these traps and provide suggestions for avoiding them.

10:40 a.m. – 11:00 a.m.
Break

11:00 a.m. – 11:50 a.m.
Foreign Tax Credit Planning – What Every International Tax Practitioner Should Know
Jeffrey L. Rubinger, Esq., Partner | Bilzin Sumberg | Miami
Discussion focuses on foreign tax credit issues and planning opportunities that every international tax practitioner should be aware of. Learn more with indepth dialog on what constitutes a creditable foreign tax; the relevance of the "check the box" rules in foreign tax credit planning; special sourcing rules; foreign tax credit splitting events; and the impact of U.S. income tax treaties.

11:50 a.m. – 1:20 p.m.
Lunch Presentation: Current Developments and Trends in International Taxation
Lee Sheppard Contributing Editor | Tax Notes | Washington, D.C.

1:20 p.m. – 3:00 p.m.
Pack Your Bags, We're Moving: Pre-Immigration Planning for Foreigners Moving to the U.S. from Argentina, Colombia, or Brazil
Hal J. Webb, Esq., Partner | Cantor & Webb, PA | Miami
and Ana Cláudia Akie Utumi, PhD, CFP®, TEP
Head of Tax Area | TozziniFreire Advogados | Sao Paulo, Brazil
and Valeria Paula D'Alessandro
Associate | Marval O'farrell & Mairal | Buenos Aires, Argentina
and Adrián Rodríguez Partner | Lewin & Wills | Bogota, Colombia
When a foreign person is planning to move to the U.S., the U.S. tax advisors tend to focus primarily on the U.S. tax implications and related planning strategies. Sometimes, the tax and non-tax issues in the foreigner's home country are just as important as the U.S. issues. This session will cover some pre-immigration issues and planning strategies from a U.S. perspective, but it will primarily focus on the issues involved in the foreigner's home country. In particular, this session will feature a case study analyzing the similarities and differences encountered by people moving to the U.S. from Argentina, Brazil, and Colombia.

3:00 p.m. – 3:20 p.m.
Break

3:20 p.m. – 4:10 p.m.
Exceptions, Exclusions, Exchanges, and Exhilaration – Planning with U.S. Transfer Tax Treaties
Leslie A. Share, Esq.,Shareholder | Packman, Neuwahl & Rosenberg, PA | Coral Gables
The purpose of this presentation is to review and consider the potential planning opportunities provided by U.S. estate, gift, and generation skipping transfer tax treaties. These bilateral government agreements offer certain asset structuring and other benefits to qualified individuals and their estates which are otherwise unavailable under the regularly applicable U.S. tax law rules. Also discussed are the treaty exchange of information provisions and their possible repercussions in client situations. Discussion will focus upon how such planning should be approached and handled from both a technical and practical standpoint.

Schedule of Events

THURSDAY, JANUARY 7, 2016

4:10 p.m. – 5:00 p.m.
Tax-Free Spinoffs in the International Context
James H. Barrett, Esq., Partner | Baker & McKenzie, LLP | Miami and Steven Hadjilogiou, Esq., Partner | Baker & McKenzie, LLP | Miami
Code Section 355 Spin-offs and Divisive Type D Reorganizations are complex and highly scrutinized transactions. These transactions in the international context provide even more complexity. Closely held and public US multinational corporations have been increasingly utilizing spin-offs to accomplish their business goals. The panelists will discuss the U.S. and foreign tax ramifications of international spin-offs and creative solutions to issues encountered in international spinoffs. The discussion will include an overview of the taxation of closely held and public US multinationals that are engaging in corporate reorganizations.

FRIDAY, JANUARY 8, 2016

8:00 a.m. – 8:30 a.m.
Continental Breakfast

8:30 a.m. – 9:20 a.m.
Current Developments in International Taxation – Inbound Update Including Global Compliance and
Controversy Developments
William M. Sharp, Esq., Shareholder | Sharp Partners, PA, Tampa, San Francisco, Washington, D.C. and Zurich Switzerland
The presentation will highlight and provide practitioner comments related to two general areas: inbound U.S. statutory, regulatory, administrative and judicial developments, including selected foreign law developments; and U.S. and global tax compliance developments, encompassing a review of IRS/DOJ initiatives and selected foreign country voluntary disclosure programs.

9:20 a.m. – 10:10 a.m.
All the Extra U.S. Tax Issues about Advising Foreign Clients on U.S. Real Estate Investments, but
Were Afraid to Ask
Robert F. Hudson Jr, Esq., Partner | Baker & McKenzie, LLP | Miami and
Robert H. Moore, Esq., Partner | Baker & McKenzie, LLP | Miami
This presentation will focus on how NRAs should own U.S., real property interests ("USRPIs") – considering both FIRPTA and FIRPTA withholding tax and Section 1446 withholding tax issues; whether a lease should be entered between the UBO and the USRPI owning entity; how to own valuable artworks, furniture and other tangible personal properties associated with the USRPIs; Florida sales tax issues that could arise (e.g., on short term leases vs. long-term leases) and other ancillary issues of USRPI ownership by NRAs.

10:10 a.m. – 10:30 a.m.
Break

10:30 a.m. – 11:20 a.m.
Transfer Pricing for Small and Medium Sized Businesses
H. Edward Morris Jr., CPA/ABV, ASA, Director and National Transfer Pricing Leader | CliftonLarsonAllen LLP, Chicago, IL
This presentation is for executive suite level individuals and will provide participants in non-technical language the basic concepts of transfer pricing; why it is important for small and medium size businesses to understand the basics of transfer pricing; business risks of not paying attention to transfer pricing; and documentation requirements, including after the fact when being audited by IRS and/or one or more foreign tax authorities.

11:20 a.m. – 12:10 p.m.
Panel on Miscellaneous Civil and Criminal Procedural Issues
Robert E. Panoff, Esq - Panel Moderator Tax Litigator | Robert E. Panoff, PA | Miami
and Invited IRS and Law Enforcement Experts
This panel continues its tradition of providing up-to-the-minute information regarding civil and criminal international tax procedural issues affecting tax practitioners and their clients. Greater emphasis will be placed on taxpayers within the jurisdiction of the IRS's Small Business/Self Employed Division, but the panel also will discuss issues affecting taxpayers within the Large Business and International Division.

12:10 p.m. – 1:30 p.m.
Lunch Presentation: TBD

1:30 p.m. – 2:20 p.m.
Canadians Investing in U.S. Real Estate
Jack Bernstein, Esq., Partner | Aird & Berlis LLP | Toronto
This presentation will discuss Canadians acquiring rental properties, participating in development and purchasing personal residencesand businesses.

2:20 p.m. – 2:35 p.m.
Break

2:35 – 3:25 p.m.
The Brave New World of Tax Transparency: Exchange of Information, Transparency of Entities, and
New Demands on Taxpayers and Tax Intermediaries
Bruce Zagaris, Esq., Partner | Berliner, Corcoran & Rowe, LLP | Washington, D.C.
The presentation will discuss the initiatives of the U.S. governments and foreign governments (especially tax authorities) to develop enhanced tax transparency and international tax enforcement cooperation and the new demands on taxpayers and tax intermediaries.

3:25 – 4:15 p.m.
Tips to Take Home
David A. Cumberland, CPA, CGMA - Tax Manager | Kerkering, Barberio & Company | Sarasota
and Renea M. Glendinning, CPA, Shareholder | Kerkering, Barberio & Company | Sarasota
This presentation will provide practical tips for the international tax practitioner regarding various inbound tax issues. The discussion will include how to avoid making common errors in completing applications for ITINs (Form W-7), withholding under FIRPTA (Forms 8288-B, 8288 and 8288-A), and nonresident income tax reporting (Form 1040NR).

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