

**COUNCIL OF TAXATION SECTION  
MINUTES OF REGULAR MEETING**

**October 28, 2010**

A regular meeting of the Council of the State Bar of Michigan Taxation Section was held on October 28, 2010 at 9:00 AM at the offices of Varnum, LLP located at 39500 High Pointe Boulevard, Suite 350, Novi, MI 48375. Gina M. Torielli, Chairperson of the Taxation Section, presided.

**COUNCIL MEMBERS PRESENT**

Gina M. Torielli	Wayne Roberts	Lynn Gandhi
Ronald T. Charlebois	Michael Antovski	Marla Carew
George V. Cassar	Gary Glenn	Daniel Houlf
Paul V. McCord	Gary Remer	

**COUNCIL MEMBERS ABSENT**

Warren Widmayer	Michael Domanski	Marjorie B. Gell
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**COMMITTEE CHAIRPERSONS PRESENT**

Alex Domenicucci	Tom Shaevsky	Chris Ballard
Peter Kulick	Carolee Cameron	Andy Lane

**COMMITTEE CHAIRPERSONS ABSENT**

None

**OTHERS PRESENT**

Eric Skinner	Fred Hoops	Phil Admiraal
Jeff Kirkey		

Council Chairperson, Gina M. Torielli, called the meeting to order at approximately 9:15 AM.

**President's Prerogative for 2010 – 2011**

1. Focus will be on membership growth and outreach. Goal is to stabilize and increase membership and increase involvement in the section by members. The Council reviewed statistics provided by the State Bar Office regarding composition of our membership.

Focus on non-practitioners. We have been strong in obtaining new members, and need to focus on non-practitioners.

2. While most of the section's members are in Wayne, Oakland and Macomb County, 20% are on the west side. Consider use of video links.
3. Many of our section members are also involved in another section, predominately business law, probate and the real property section. This overlap should be utilized to increase involvement. Consider joint programs
4. Only 65% of members have email addresses, and we need to consider non-email venues of communication, including our website
5. I also hope to focus on pro bono tax opportunities; such as low-income law school clinics that have been approached by the IRS to expand their outreach. Paul McCord will oversee establishment of a section liaison to coordinate activities. We will consider liability exposure and ease of facilitation.

### Minutes

The Minutes of the September 16, 2010 meeting of the Council were previously distributed. Upon the motion by Alex Domenicucci, seconded by Marla Carew, the Minutes were unanimously approved and adopted.

### Treasurer's Report

Wayne Roberts provided his report as Treasurer and 2010 – 2011 budget. Our net loss to-date for 2010 is approximately \$231,000 and we are in a deficit spending posture. Section dues constitute two-thirds of our revenue. Thus, to sustain and increase our revenue we need to focus on committee programming which is key to enticing membership.

Based on our priorities, we would like to continue to fund our grant program and other activities. If we cannot increase committee activity and membership, we will need to reevaluate our obligations and spending.

A motion to approve the Treasurer's report was made by Ron T. Charlebois, seconded by Alex Domenicucci and unanimously approved.

A motion to approve the 2010 – 2011 budget was made by George V. Cassar, seconded by Ron T. Charlebois, and unanimously approved.

### Council Activities

1. Continuing Professional Education - After Hours Tax Law Series – George V. Cassar

The Committee is reviewing the upcoming Tax Section series that was distributed. Reviewing ways to increase attendance and improving marketing. Simulcasts have increased. Paul V. McCord will be assisting George in his efforts.

2. Tax Court Luncheon – Gary Glenn.

There will not be a Fall Tax Court Luncheon due to timing (post-Thanksgiving) and the Judge declining. Judge Kiaki will likely be here for the spring luncheon. Generally held on a Tuesday, to be confirmed. These luncheons are a very good tool for enticing students to be active in the Section.

3. 2010 Tax Conference –Gary Remer

After a multi-year commitment, Stout Reissus Ross has declined to continue as a sponsor. In addition, our Fifth/Third contact has left the bank, and has moved to PMC. We have requested PMC take over the Fifth/Third sponsorship at \$5,000. In addition, Cooley Law School will be our second sponsor at \$5,000. We are still looking for a third sponsor. Jeff Kirkey has spoken to current law firm sponsorships of other section conferences to see if there is interest in sponsoring the Tax Section Conference.

Will consider a lower pricing for vendor displays of perhaps \$1,500. We will differentiate between sponsors and vendor displays. The focus of the vendor displays will be on technology providers.

A brief discussion was held regarding the conference speakers. Committee chairs were reminded to send Gary their speakers' information.

4. Directory – Marjorie Gell and George Cassar

George is beginning the transition to assist with the Directory.

5. Michigan Bar Journal Liaison – Paul McCord

The Section brief for December has been prepared, and a solicitation for information, 75 words or less, was made.

6. Michigan Tax Lawyer – Marla Carew

One submission received to date for the Winter 2011 issue. Marla will solicit articles and will send out an updated publication calendar.

7. Internet – Marjorie B. Gell and Daniel Houlf

Dan will liaison with Marjorie on outstanding items, and plans to focus our Internet presence with the Councils priorities. Plans to undertake a review of our relationship with the SBM works vis-a-vie website design and content, etc. Consideration of other proactive connectivity opportunities (Facebook, Twitter, etc.)

8. Federal and State Legislation – Paul McCord

No new federal or state legislation to review. Discussion of ability of Council to engage with the new state administration for taxation items, including tax reform.

*Klooster* is being argued on November 5, 2010.

Ford Motor Credit filed a petition for certiorari at the U.S. Supreme Court on the issue of retroactivity. Dealer lends to customer, sells loan to finance company, included in the finance charge is sales tax. If the loan goes bad, the credit company files request for sales tax refund from state. Question is who is the taxpayer? In *Chrysler/Betten Auto* the Court found that the dealer/finance company are the same person, and is entitled to refund. In response to *Chrysler/Betten Auto*, the state enacted legislation that limited the refund to the dealer is taxpayer. This legislation was retroactive, and denied the refund to the OEM. Issue of constitutional separation of powers. The Court of Appeals held that the issue is procedural not substantive, did not reach the due process issues of retroactive legislation. General Motors believes that the case is procedurally defective. If granted, best case is that they remand back to decide substantive issue, which has not been raised in petition. Discussion of whether the Council should support the petition if granted ensued.

9. Membership Outreach Coordinator – Dan Houlf

Starting with University of Detroit at the beginning of October. In addition, we will have a presence at the Michigan Tax Conference, and provide discounted rates to students at \$100 per day. Have sought sponsorships from leaders in the tax community to defray these students' costs. So far, 105 scholarships have been funded and all slots have been distributed to law students at all the local law schools, as well as Walsh and Oakland University. Please make these students feel welcome; they are all prospective candidates for Section membership.

10. Annual Chairpersons' Dinner – Gary Glenn

Reviewing what this event should be prospectively to maximize attendance and minimize costs. Historically, attended by past chairpersons with a private speaker. Will reach out to other sections and see what they do. Used to be linked with State Bar Annual meeting, but when we tried this last year, there was no noticeable increase in attendance. Perhaps an annual meeting separate from a Chairperson's dinner? Discussion of various ideas, please provide ideas to Gary.

11. Grant Program – Michael Domanski

Mike was absent and sent a report. He is working to update the website regarding our grant program. We plan to have up to \$12,000 in grants to qualifying organizations. Submission deadline for proposals will be March 1, 2011, to allow sufficient time to review the submissions and make recommendations in advance of the April Council meeting. Gina and Dan will be participating on the grant review subcommittee.

Probate and Estate Planning Section Liaison Report – Fred Hoops

The new Chair of the Probate Section is Doug Chalgian. The probate Council has met on September 11, 2010 and October 9, 2010. There are plans to have the annual Probate Institute in Traverse City on May 19 – 21 and on June 17 – 18 in Plymouth. Skip Fox of McGuire Woods is

the national speaker for the Probate Institute, and will be speaking on charitable giving topics, planning the return of the estate tax, and international estate planning topics. Community Foundation of Southeast Michigan has provided sponsorship.

#### State Bar of Michigan Liaison Report – John Hubbard

John Hubbard is the Tax Section's new State Bar Liaison. No report.

#### IRS Area Counsel Liaison Report

Rob passed out the Tax Court deadline for the upcoming season. Given a SE calendar. Contact numbers for the Judges are available at the website. Provided an update on E-filing, for petitions after July 1, and related filings. This is viewed as a positive move for Tax Court and IRS. Certain large documents still required for paper.

Eric indicated that there is a new name for LMSB, now known LB&I – large business and international. The CAP (compliance audit program) will now be a permanent program. There will be an increase in staff for undisclosed tax positions, and increased requirements on audit touches, particularly for mid-sized business, worker classification. The Detroit Office plans to move on schedule, on May 30, 2011. All taxpayer focused areas, but for criminal investigations and data center will be moving. Also indicated that the Detroit office has a new attorney from the Kansas City office, by the name of Evan Caplow. He is originally from Michigan and can be found at Room 1870.

Also, and update on E-filing – trial memo required to be efiled 7 business day before calendar.

#### Young Lawyer's Section Liaison Report – Phil Admiraal

He has spoken to Maureen McGinnis (YLS chair) regarding possible opportunities to coordinate events that would appeal to members of both sections. One opportunity may be at the YLS annual summit, to be held in May or June of 2011. The Tax Section could present a tax-related topic at the YLS summit. Further ideas will be discussed at the upcoming YLS Committee meeting on November 19, 2010.

#### Program Facilitator Report – Deb Michaelian

Policies and procedures manuals will be sent via email to the Council.

#### COMMITTEE ACTIVITIES

##### Business Entities – Alex Domenicucci

The Committee held a meeting on October 1, 2010. Mark Sutton of Plante & Moran presented on recent developments in business entities and owners. 20 members signed up, and 10 attendees were present. Format was an informal roundtable. The Committee is looking at ways to increase committee involvement in events.

### Employee Benefits – Thomas Shaevsky

The Employee Benefits Committee held a joint meeting with the MACPA on \_\_\_\_\_, at the MSU Continuing Education Center in Troy. Approximately 50 attended, with even representation from the MACPA and the Tax Section. This is the first time they have partnered with the MACPA.

The Committee will present a Webinar on November 4, 2010 on the high tech HIPPA privacy rules. It will be held during the lunch hour, with complimentary pricing.

The Committee plans to have John Haswinkle, Project Manager from the Institute for Health Care Studies to speak at the May conference.

### Estates and Trusts – Chris Ballard

Chris circulated a report. Still awaiting action by Congress on estate taxes. Will have a December or January Committee meeting depending on when Congress takes action. Lorraine New will lead a Committee meeting on Basis Topics for Deaths in the Spring of 2011.

A bill has been introduced in the Michigan Legislature (HB 6197) that would require trust distributions based on formula clauses to be made using the assumption that the estate tax regime in effect in 2009 is still in effect in 2010, and gives the opportunity to have the matter reviewed by the Probate Court if the trustee believes this was not the intent of the decedent. The bill has passed the House and is awaiting action in the Senate Judiciary Committee

Lad Boyle, Professor at the University of South Carolina may present at the Annual Meeting. Working on topics, considering shareholders of S corps, 2010 repeal and state tax treatment.

### Practice and Procedure – Peter Kulick

Absent, no report provided.

### State and Local –Carolee Cameron

The Committee will co-host a lunch with the Administrative Law Section on the Michigan Tax Tribunal, December 10, 2010, in Lansing. Several Judges of the Tribunal have been invited to speak. Topics will cover an overview of the Tribunal and how it works, hot topics and Q&A. Estimating 100 – 150 attendees.

Discussion on the Kmart Disregarded Entity Notice. No update yet from Treasury, Notice has not yet been officially issued.

### International Law – Michael Domanski and Andy Lane

Michael Domanski was absent, but sent a report. He and Andy Lane have scheduled a Committee meeting for December 13, 2010, from 4 – 6 at the Auburn Hills office of

Plante & Moran. Bill Hensen and Denise Greenway lead a panel discussion on recent international tax reform legislation along with Michael and Andy.

## **OLD BUSINESS**

### Judicial Crossroads Update – Ronald T. Charlebois

The Section had been solicited to provide comments regarding tax issues. Our comments were focused on Tax Tribunal reform, need to apply best practices, legal training for tribunal judges, as well as removal of the pay-to-play requirement at the Court of Claims. Our letter well received, the Task Force considered our suggestions, and requested that the Section provide additional materials, which we did, including the Auditor Generals report on the MTT. The Task Force held a hearing on their agenda October 21, 2010 in Lansing. Our attendance was not required. At the hearing, the SBM approved the inclusion of both of the Section's suggestions in their final report. A panel of 50 judges and attorneys unanimously passed the report. This should provide good visibility for the Tax Section. Expect a press release when report comes out.

### Michigan Tax Tribunal Reform proposals – Ronald T. Charlebois

Ron Charlebois and Wayne Roberts reviewed the Section's reform proposal. Ron indicated that the revised proposal was received well by Judge Halm. Ron indicated that the bifurcation of judges as attorneys and non-attorneys for different types of cases has some appeal to the Tax Tribunal. The pre-payment requirement does not appear to have support from Judge Halm. However, Council discussion reaffirmed that this issue needs to be addressed and that Tax Section will continue to support elimination of this pre-payment of the tax requirement (i.e., the requirement to go to the Court of Claims). This proposal is moving slowly.

No other old business

## **NEW BUSINESS**

No new business

There being no further business, upon motion duly made by Gina Torielli, seconded by Marla Carew and unanimously approved, the meeting was adjourned at approximately 11:35 AM.

Respectfully submitted,

Lynn A. Gandhi  
Secretary