

Chair-Elect's Message



RICHARD B.
COMITER

I am extremely honored to have the opportunity to serve as the Chair of The Florida Bar Tax Section for its 2003-2004 fiscal year. I intend to work closely with our current Chair, Rick Josepher, to insure a seamless transition from Rick's "Let's Get Universal" theme to my goals and aspirations as the future leader of the Tax Section.

Over the past few years, the Tax Section has focused on the controversial issue of ancillary business. Tax Section members such as Don Tescher, Sam Ullman and Marvin Gutter have played an intricate role in spearheading the change in The Florida Bar's position as it relates to attorneys being permitted to provide ancillary services to their clients. In this regard, the Florida Supreme Court has recently adopted Rule 4-5.7, which provides Florida lawyers with the right to participate in ancillary business activities to enhance the scope of the services they can provide their clients. However, if the nonlegal ancillary services are provided by a nonlegal entity with which the lawyer is affiliated or the lawyer reasonably should know that the recipient of the nonlegal ancillary services might believe that such services are protected by the lawyer-client privilege, the lawyer must make reasonable efforts, preferably in writing, to avoid misunderstandings on the part of the recipient of the services about the protection of the lawyer-client privilege.

I believe the Tax Section's leadership role with respect to this issue is consistent with its duty to educate Section members on current developments, trends and changes in the practice of tax law. This obligation would include not only advising membership of the ancillary service opportunities available to them, but also the licensing and educational requirements necessary for a tax lawyer to participate in such ancil-

lary businesses. In that regard, informative presentations have been made at our past two Organizational Meetings at Amelia Island pertaining to the procedural requirements for an attorney to be involved in ancillary business activities and receive fees and commissions for providing such services. Further, the CLE program at the Spring 2003 Annual Meeting in Orlando will continue Rick's Universal Theme not by only educating lawyers on ancillary business opportunities and licensing requirements, but also by providing them with technical expertise in the applicable ancillary business.

One of my goals as Chair will be to take a step back and focus on the ethical duties and responsibilities owed by tax lawyers engaging in ancillary business activities to their clients. We must not be perceived by the public as anything other than lawyers providing nonlegal ancillary services in a non-lawyer capacity and not as money managers or insurance brokers soliciting business. However, in providing such services, Rule 4-5.7 requires lawyers to make it clear to their clients that (i) they are providing non-legal services which are distinct from legal services, and (ii) the lawyer-client privilege is not available to them in connection with the providing of such services. My concern is the impact of making such statements to your clients in your role as their trusted advisor. The key issue to me is how an attorney can ethically draw a black line distinction between the role of a trusted fiduciary who provides legal services to that of a provider of non-legal services (albeit somewhat related to the providing of legal services by a tax lawyer) under a payment arrangement in which the attorney is often compensated in a manner which clients are not accustomed.

My next goal will be to provide CLE programs which can assist tax lawyers in their practices. CLE seminars and workshops at our meetings will focus on tax opinion letter writing, drafting techniques, document assembly and current developments. These programs will hopefully provide experienced tax lawyers with alternative approaches

and methodologies, while at the same time, provide training and practice aids to young tax lawyers to make them the best tax lawyers they can be to their clients. Hopefully, these programs will provide the members of the Tax Section with the type of value which will encourage them to become more involved in Tax Section activities and attend our Section meetings. In that regard, the July 2003 Organizational Meeting will once again be held in Amelia Island, the October 2003 Fall Meeting will be in either Tampa or Orlando, and the Spring Meeting will be in Palm Beach. Due to the ever increasing demand for two and three bedroom oceanfront villas, Amelia Island Plantation has agreed to permit members to make early reservations for a limited number of such villas for the July 2003 meeting. Accordingly, I strongly encourage members desiring such room accommodations to make their Amelia reservations now.

My next goal is to continue the ever expanding partnership of the Tax Section and its sponsors. Toward that goal, Lou Conti and I attended a sponsor liaison committee meeting at Amelia Island. The Tax Section is encouraging sponsors to be year-long partners with a mutual goal of developing beneficial relationships between our members and the sponsors. My feeling is that if the members attend, the sponsors will come and provide their financial support, which is a critical subsidy to our meetings. My goal is to raise sufficient sponsorship revenue to subsidize the attendance at our meetings of young lawyers, newly certified tax lawyers, and Department of Revenue and IRS personnel.

With the help of Joe Schimmel and Professor Steve Willis from the University of Florida, the Tax Section has a cybertax website page on the Internet. The Tax Section should work with the Counsel of Sections to encourage The Florida Bar to lend its financial support to a joint effort to maintain and update websites for all of the Sections of The Florida Bar. In this regard, the Tax Section should align itself with other Sections to achieve common goals.

I believe that the best tax lawyers

are the ones who have the most knowledge and expertise. Thus, I strongly support and will continue the Tax Section's efforts to restructure the certification process to encourage more federal and state tax lawyers to obtain a sufficient level of expertise to become Board Certified. Moreover, the certification exam should be geared more to evaluating whether tax lawyers are qualified to render tax advice to clients in their area of expertise rather than to their knowledge of particular substantive areas of the tax law.

I also believe that the Tax Section should continue to comment on changes and developments in the

federal tax law and related state laws. I will strongly encourage projects concerning the same. In this regard, I will encourage the creation of Task Forces to review new uniform laws promulgated by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). I am currently a member of the Task Force Committee organized by the Tax Section to review the new uniform limited partnership act approved by NCCUSL. I believe my participation on prior Tax Section Task Forces such as the drafting committee for the Revised Uniform Partnership Act and the Limited Liability Company Act has significantly

enhanced my ability to provide legal services to my clients.

I strongly encourage the participation of membership of the Tax Section in such activities.

As the year goes on, I encourage Section members to contact me to discuss their role in the Tax Section during my administration. Rest assured, I am committed to making sure that your involvement in the Section will reap rewards far exceeding your time and effort. I very much look forward to working with each and every one of you.

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