

**COUNCIL OF TAXATION SECTION  
MINUTES OF REGULAR MEETING  
March 6, 2008**

A regular meeting of the Council of the State Bar of Michigan Taxation Section was held on March 6, 2008 at 9:00 AM at the offices of Howard & Howard Attorneys, P.C., Bloomfield Hills, Michigan. Jay A. Kennedy, Chairperson of the Taxation Section, presided.

**COUNCIL MEMBERS PRESENT**

Jay A. Kennedy	John O'Hara
Jess A. Bahs	Warren Widmayer
Ronald T. Charlebois	Marjorie Gell
Gina M. Torielli	Wayne Roberts
Aaron H. Sherbin	David Walters
Frederick H. Hoops III	

**COMMITTEE CHAIRPERSONS PRESENT**

Marko Belej, Business Entities  
Michael Domanski, International  
Paul McCord, State & Local  
Jeff Freeman, Practice and Procedure

**COUNCIL MEMBERS ABSENT**

Joan R. Dindoffer  
Lynn M. Gandhi

**COMMITTEE CHAIRPERSONS ABSENT**

Douglas Stein, Estates and Trusts  
Lisa Zimmer, Employee Benefits

**OTHERS PRESENT**

Deb Michaelian, Program Facilitator  
Mary Hiniker, ICLE  
Lorraine New, Probate Section Liaison

Council Chairperson, Jay Kennedy, called the meeting to order at 9:00 AM.

A. **MINUTES.**

The Minutes of the last meeting of the Council had been previously distributed. The Minutes were accepted by unanimous vote, after the motion of Ron Charlebois, as seconded by

Dave Walters.

B. TREASURER'S REPORT AND BUDGET.

Ron Charlebois submitted a Treasurer's report for the period from October 1, 2007 through January 31, 2008. The report indicated cash of \$150,125.76 on hand at the end of period. He said the Section is catching up to where we should be on dues. Lots of expected expenses have not yet come in, but everything seems to be on track. A motion to approve the Treasurer's report was made by Jess Bahs, seconded by Gina Torielli, and unanimously approved.

C. COUNCIL ACTIVITIES.

Jay Kennedy asked for reports and was advised of the following:

1. After Hours Tax Law Series – John O'Hara. John O'Hara and Mary Hiniker were present and made an oral report. The 2007-2008 After Hours Seminars are complete, with attendance in person varying from 25-85, and web cast attendance steadily increasing from 12 to 46. The last seminar had a very high attendance and Mary complimented Doug Stein on an excellent job of doing something new with a perennial topic. Some students attended, and there will be post event web cast viewing. Mary distributed a written report of registrations and attendance for the Series.

ICLE mails the 2008-2009 Series flyer in July, so they would like to have all the topics and speakers lined up by mid-May. Mary and John O'Hara are talking about possible topics, but Council members are encouraged to let them know if they have suggestions. Ideas that have been mentioned include: Circular 230; Tax Traps for Nonprofit Board members; More on the MBT; Revisiting FLPs and FLLCs; and International—Mexico and Canada. Council members agreed that sending a survey to membership regarding topics of interest would be a good idea, and ICLE will pursue that.

2. Continuing Professional Education. Mary Hiniker reported that ICLE held a half day session on the new Michigan Business Tax on February 7, 2008, with 57 attending in-person and 88 watching by web cast.
3. 2008 Tax Conference – Frederick H. Hoops, III. Fred was present and circulated a copy of the draft conference brochure. This will be mailed twice to members and also sent by email and put in the e-journal. Jay reported meeting with the Business Section chairman and extended an invitation to their membership.
4. 2009 Tax Conference – Marjorie Gell. Marjorie was present and made an oral report. The Council discussed the two available dates, April 29<sup>th</sup> and May 21<sup>st</sup>. The former was preferred, as it was further from both the Probate Section's meeting and the Memorial Day holiday. Margie will proceed to book the facility.

5. Tax Court Luncheon – Warren Widmayer. Warren was present and reported that the Tax Court luncheon will be held on June 24th in honor of Judge Diane Krupka. The event will be publicized in the next issue of the *State Bar Journal* and is on the calendar. Joan will contact law schools regarding the available scholarships.

6. Directory – David Walters. David was present and also made a written report. He reported that information from the State Bar is now available, the IRS information has been updated and once the State Treasury information is updated, the new directory will be posted.

7. Michigan Bar Journal Liaison – John O’Hara. John posted an announcement for the 2008 grant program and for the summer conference in the Section Briefs column of the next Bar Journal. He will post announcements every month, so committee chairs should let him know of their events as soon as possible. John will report to the Council on the date of the next tax-themed issue, which is in 2009.

8. Michigan Tax Lawyer – Lynn Gandhi. Lynn was not in attendance and sent a written report. The publication date for the next issue, Spring 2008, is May 15, 2008, and it is due to the publisher on May 1, 2008. Articles, including committee reports, columns, and announcements, are due by April 17, 2008. Committees assigned for articles were Estate & Gift and SALT. The articles will be: SALT – “Be Wary of Settling State Tax Disputes With the Michigan Dept. of Treasury,” Samuel J. McKim III and Joanne B. Faycurry, Miller Canfield Paddock and Stone (Lynn has draft); and “Michigan’s Short Statute of Limitations for Refund Claims Based on Constitutional Challenges: Harming the Perception of Michigan’s Tax System,” Drew M. Taylor, PWC (a draft being reviewed by PWC). Lynn still needs: a student article (M. Gell to follow up); committee reports; the Chairperson’s letter; columns; and description of Section matters, such as the spring Tax Court luncheon and anything else the Council wanted to include. The current issue is going out this week. Jay noted that Council wants to publish three issues per year.

9. Internet – David Walters. David was present and made an oral report. Internet issues seem to be on track, except for some access issues he is addressing. The Council discussed the need to address the moribund “employment opportunities” area. Council recommended linking this area to the existing State Bar web classifieds. Jay noted the “articles of interest” section looked stale. The 2006 tax-themed *State Bar Journal* articles should be added and the 2001 articles removed. There should also be a cross reference link to the *Michigan Tax Lawyer* section.

10. Federal and State Legislation and Public Policy Liaison – Wayne Roberts. Wayne was present and made an oral report regarding the federal AMT patch legislation, the State services tax repeal, and new Revenue Administrative Bulletins regarding final year SBT filings.

11. Membership Outreach Coordinator – Joan Dindoffer. Joan was unable to attend, but submitted a written report. A Meet and Greet reception was held at Wayne State University Law School on January 17, 2008 at noon for approximately 25 law students. Jay Kennedy, Jess Bahs, Ron Charlebois, and Joan Dindoffer attended on behalf of the Section. Cost was \$260.45. A Meet and Greet reception was held at Ave Maria School of Law on February 14, 2008 at noon

for approximately 35 law students. Gina Torielli, Warren Widmayer, Nicole Appleberry, and Joan Dindoffer attended on behalf of the Section. Cost was \$140.00. Both programs were enthusiastically received by the students and Student Membership applications were distributed.

A Meet and Greet is being planned at the Cooley Auburn Hills campus on June 5th, immediately after the Tax Council meeting which will be held there.

Contact has been made with John Dabbs, Chair of the Law Student Section of the SBAM regarding a joint program with the Tax Section, the Law Student Section and possibly the Young Lawyers Section. They are in the preliminary stages of planning a golf outing and are looking for sponsors at \$500-1,000 each. Joan asked if the Tax Section be interested in being one of the sponsors of such an event at this level. If not, she will pursue an alternative more focused on the Tax Section, Law Student Section, and Young Lawyers without multiple sponsors. Council was not very interested in sponsoring a golf outing, but Jay will look into the Young Lawyers' Summit sponsorship opportunities.

12. Annual Meeting/Past Chairperson's Dinner – Warren Widmayer. Warren was present and made an oral report. The event will be held on September 25<sup>th</sup> at the Meadowbrook Country Club. The facility has been reserved. Warren asked for ideas regarding a speaker. Several suggestions were made and the speaker will be selected at the next Council meeting.

13. Grant Program Joan Dindoffer. Joan submitted a written report. Applications are now being accepted for the 2008 Grant Program, with a deadline of April 1, 2008. A notice has been placed in the Bar Journal and on the Section website. Letters were sent to all of last year's applicants advising them of the deadline for this year's program. No applications have been received to date. The Grant Committee, consisting of Jay Kennedy, Jess Bahs and Joan Dindoffer, will review the applications and make recommendations to the Council for approval at the Council's April 17th meeting. Grant recipients will be acknowledged at the Tax Conference in May.

#### D. COMMITTEE ACTIVITIES.

Jay A. Kennedy then asked for reports and was advised of the following:

1. Business Entities – Marko Belej. Marko was present and made an oral report. The committee met on February 6<sup>th</sup>, with Mike Indenbaum speaking on disregarded entities and corporate transactions. Attendance was good despite poor weather, and the new Cooley facility allowed for people to participate from Lansing and Grand Rapids.

2. Employee Benefits – Lisa Zimmer. Lisa was not present, but she submitted a written report. The next meeting of the Employee Benefits Committee is scheduled for Thursday, March 13, 2008, at the Novi Sheraton from 2:00 pm - 4:30 pm. The topic is "The Future is Now: Exploring the Final 403(b) Regulations; Coordinating Guidance Under 457(f) and 409A." The speakers will be George Whitfield of Warner Norcross & Judd LLP, Kelli Smith, Senior Revenue Agent with the IRS. Also speaking via telephone from Washington D.C. are Robert Architect, Senior Tax Law Specialist with the IRS and Cheryl Press, Senior Attorney

with the IRS. For the May 28, 2008, Annual Tax Conference, Helen Morrison, Attorney Advisor, Office of Benefits Tax Counsel of the U.S. Department of Treasury will speak to the Committee on IRC Section 409A and the Final Regulations.

3. Estates & Trusts – Douglas Stein. Doug was not present, but he submitted a written report. The Estates & Trusts committee met on February 27, 2008 at the local offices of UHY. The topic was “Valuation Issues in Estate Planning,” where they discussed how to value S corporations and how to “tax effect” an S corporation in the 6th Circuit. Eight people attended and the discussion was very lively.

4. Practice and Procedure - Jeffrey Freeman. Jeff was present and he made an oral report. The committee has a meeting planned in March using the ICLE web cast technology. The topic will be “Resolving Your Tax Controversy through the IRS Appeals Office. The speaker is the Manager of the Appeals Office covering Michigan.

The committee’s annual conference program will discuss return preparer liability with Paul McKinney and Eric Nemeth speaking.

5. State and Local – Paul V. McCord. Paul was present and he also submitted a written report. On February 5<sup>th</sup>, the committee met at Dykema's Bloomfield Hills offices. Attendees also participated remotely from Dykema's Grand Rapids and Lansing offices. The speaker was Michael Lomehler who spoke on appraisal issues that lawyers should be aware of. On February 7<sup>th</sup>, committee members participated in a 3 hour ICLE presentation on the MBT. The committee's next meeting is scheduled for March 20 at the Inn at St. John's. Glenn White from the Michigan Department of Treasury will address members’ questions regarding the MBT.

The committee has set its speakers for the May 28th Tax Conference. Wayne Roberts from Dykema will give an update on important Michigan cases, legislation and guidance. Jordan Goodman of Horwood, Marcus and Burke, Chicago, will discuss the *MeadVastco* case and related multi-state issues.

6. International Committee – Michael Domanski. Mike was present and gave an oral report. The committee held a meeting the day after the international tax themed After Hours seminar on January 29<sup>th</sup>. Six people attended. Mike is exploring opportunities for joint programming with the International Law section and with law schools.

#### E. PROBATE AND ESTATE PLANNING SECTION LIAISON REPORT.

Lorraine New was present for a portion of the meeting and filed a written report on recent activities of the Probate and Estate Planning Section. The Probate Section meets monthly on Saturday mornings in Lansing; the next two meetings will be March 15 and April 19. A major focus of the meetings this year has been preparation and review of a Michigan Uniform Trust Code. Almost all of the code has been presented and approved by the Council, and “clean-up work” remains with the intent to finish this project this spring. Subcommittees continue to consider the issues of Michigan Durable Power of Attorney Act and Specialization of Probate and Estate Planning practitioners. The latest issue of the Probate Journal was sent out electronically. It is available through the section link at the State Bar website.

The Probate section has also been participating along with members of the Taxation Section in the review of language to amend the Michigan Business Tax to remove the tax burden on family entities.

F. STATE BAR OF MICHIGAN LIAISON REPORT.

Lambro Niforos was unable to attend and sent no written report.

G. IRS AREA COUNSEL LIAISON REPORT.

Eric Skinner and Rob Heitmeyer were not present as IRS Liaison. Rob sent a written report describing the two upcoming Tax Court calendars in Detroit.

H. PROGRAM FACILITATOR REPORT – DEBORAH L. MICHAELIAN.

Deb indicated that she had nothing to report at the present time, except to encourage members to register for the tax conference and for speakers to get their materials in as soon as possible.

I. OLD BUSINESS.

1. ICLE Collaboration on Education Programs. Mary Hiniker reported the State and Local and Practice and Procedure committees are scheduled to do web cast meetings on March 20<sup>th</sup>. Gina Torielli has recorded a prototype for the first "10 Tips" segment, dealing with tax issues every nonprofit director should know about. There are plans to record three more later in March (two on nonprofit issues and one on tax treatment of conservancy easements). The prototype will be distributed to Council for sponsorship consideration when it is complete.

2. E-Journal Updates, Section E-Newsletter. John O'Hara and Deb Michaelian reported they have the newsletter template from the Business Law Section's e-newsletter. The State Bar has offered to format a newsletter for the Section at a cost of \$150 each. John and Deb are collaborating on a recommendation on how to get the newsletter compiled. Deb recommends she format the newsletter, rather than using the State Bar to do so.

John mentioned the Section should get its important dates onto the State Bar's E-Journal calendar section, too. Council agreed to include bigger events, but not every committee meeting.

3. Section Positions on RAB's and Pending Legislation. Jay reported speaking with George Gregory who suggested gathering policies from the New York Bar's Taxation Section and other Bar Sections who take positions on legislative and administrative matters. Jay is in the process of gathering this information. He expects the committee to have a new policy statement for Council to consider at its June meeting.

4. Joint Task Force on FLP/MBT Issues. Lynn Gandhi provided a written Report on Joint Taxation Council and Probate Section Task Force on Technical Correction to

MBT for passive investment income. The participants of the task force have all reviewed the white paper prepared by Miller Canfield on behalf of a multi-client matter to exempt from the MBT passive investment income of individuals (the white paper had been submitted to the Taxation Council). The effort is supported by State Representative Bieda. The Probate section has engaged their lobbyist, Becky Bechler, to assist them on their participation in this effort, although the wishes of the Probate section appear to be larger than just relief to individuals, and would also like to extend relief to LLC's that are now investment vehicles but may have held operating assets previously. A call arranged by B. Bechler was held with Scott Schrager and Dale Vettel of Treasury, with representatives from the Probate Section to discuss the language of S.B. 1054 and S.B. 1038, both of which have passed the Senate floor. Treasury concurred with the intent of the relief but is uncomfortable with the wish to delete the word "personal" as characterizing the type of investment income that would qualify for relief. The Probate Section indicated that the use of the word "personal" is inapposite to the Michigan LLC Act requirement that LLC's have a "business purpose" in order to be valid, and they are concerned that the IRS could challenge an investment vehicle in the form of an LLC which is used for estate planning purposes if the MBT language stands as currently drafted. Treasury indicated that they would attempt to draft alternative language, and would circulate via B. Bechler to the parties on the call.

5. Update on Patenting of Tax Strategies. Jay reported that a battle appears to be forming between tax and patent attorneys over permitting patents for tax strategies. A new tax patent has been issued since Jay's last report. The IRS has proposed rules making use of a patented strategy a reportable transaction. The ABA's Taxation Section has not taken a position on the matter, but appears to focus on proper training for patent office personnel. Jay also reported that the Supreme Court may be asked to take a case on the validity of business process patents in general, which may also end tax strategy patents. Legislation is pending to end these patents and hearings have been held.
6. E-Newsletter. Jay inquired about the status of this. Deb is currently tied up with annual tax conference activities, but she has samples of the Business Section's newsletter and will make a recommendation as soon as she is able.

#### J. NEW BUSINESS.

1. Scanning of Old Tax Section Minutes. Jess Bahs reported that all available Council meeting minutes have been scanned onto disks and the paper records will be shredded. He distributed disks, which are searchable (except for a few handwritten records), containing minutes from 1993 to 2004.
2. Michigan Tax Conference. Jay asked Council if the Taxation Section should sponsor the 2008 conference with MICPA and State Treasury. Council agreed. There is some sentiment that the Section should have a bigger role in the conference, with an increase in visibility and more equal sponsorship credit.

3. Ratification of Officers' Action. Jay reported that former chairman Chuck Lax's mother passed away recently and asked Council to ratify the officers' decision to send a modest charitable donation from the Section in her honor. Motion by Aaron Sherbin, seconded by Warren Widmeyer, to ratify the memorial gift of \$100 was unanimously approved.

There being no further business, upon motion by Gina Torielli, seconded by Ron Charlebois and unanimous approved, the meeting was adjourned at approximately 10:50 AM.

Respectfully submitted,

Gina M. Torielli  
Secretary