

# Tax Newsletter

April-June 1975



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TAXATION SECTION

TAX NEWSLETTER

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TAX NEWSLETTER

Taxation Section  
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### NEWSLETTER CHAIRMAN'S NOTE

This issue of the Tax Newsletter publishes excerpts from the minutes of the Central Region Internal Revenue Service Bar Liaison Meeting held in Cincinnati, Ohio on October 30-31, 1974. These minutes were prepared by Internal Revenue Service personnel for subsequent use and dissemination to Bar groups.

Representatives from a five state region - Michigan, Ohio, Indiana, Kentucky and West Virginia - attended the meeting. Representatives from Michigan attending the meeting were Jack E. Mitchell of Detroit, on behalf of the Detroit Bar Association, and J. Lee Murphy of Grand Rapids, on behalf of the State Bar of Michigan. Mr. Murphy was elected Chairman of the Liaison Group for 1975, and James A. Scott of the Cleveland Bar was elected Secretary. The 1975 meeting will be held in Cleveland, Ohio.

Internal Revenue Service emphasizes its desire to have questions and problems which are being encountered by practitioners brought to its attention. If any of you are experiencing procedural or technical difficulties of a non-substantive nature, you are invited to contact Jack E. Mitchell, or your local bar liaison representative, or the undersigned, so that the problem can be brought up at this year's meeting to be held in October.

J. Lee Murphy  
Newsletter Chairman

MINUTES OF CENTRAL REGION  
INTERNAL REVENUE SERVICE  
BAR ASSOCIATION LIAISON MEETING

5525M Federal Office Building  
550 Main Street  
Cincinnati, Ohio

October 30 - 31, 1974

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The Central Region Bar Liaison Meeting commenced at 9:00 a.m., October 31, 1974 with opening remarks by Chairman Laramie L. Leatherman (Kentucky Bar), Leon C. Green, Regional Commissioner, and David E. Mills, Regional Counsel. Mr. Leatherman reminded the group that the purpose of the Liaison Program is "to encourage open and frank discussion of matters pertaining to Federal Tax Administration between Internal Revenue Service representatives and representatives of the various bar associations throughout the region." Mr. Green commented that this was his first regional Bar Liaison Meeting and that he wholeheartedly agrees that such meetings afford an excellent opportunity for candid discussions of mutual problems connected with Federal Tax Administration. Mr. Mills remarked that these meetings furnish a tremendous insight into mutual problems and solutions thereto. He gave examples of problems identified in last year's meeting which have been solved.

ACCOUNTS, COLLECTION & TAXPAYER SERVICE (ACTS)

Mr. L. Stanley Baker, Assistant Regional Commissioner, Accounts, Collection & Taxpayer Service, and Mr. Patrick J. Ruttle, Director, Cincinnati Service Center, led the discussion of the following topics:

1. Computer Errors - Computer Examinations and Form Notices - Correcting Problem Situations

Several problem situations were raised which were illustrative of types of problems arising from erroneous computer generated notices. The discussion focused on the techniques to be used in resolving these difficulties as quickly as possible when they arise.

A variety of options are available to Bar members to pursue in resolving problems related to computer generated notices for their clients:

- a. Correspond directly with the Service Center which generated the notice.

- b. Use the toll-free number for your area to discuss the problem with a Taxpayer Service Representative. These representatives have been trained in computer notices and are capable of resolving problems, or directing you to the proper person within IRS.
- c. Walk in or phone the Taxpayer Service Representative in the local office in your area. The suggestion was made that Bar members may well want to get acquainted with the Taxpayer Service Representatives in their respective local IRS offices.

The option is also available for Bar members in the Central Region to call the Taxpayer Service numbers at either of the two Service Centers:

Cincinnati Service Center

513-684-1291

Memphis Service Center

901-365-5514

Toll-free service has not been installed in Service Centers as yet, so it is important to note that the above two numbers would involve calling charges.

In extreme situations - those facetiously referred to as "Horror cases" - Bar members should feel free to call such matters to the attention of their local District Director or to the attention of the Service Center Director. While there is no intent to put IRS Directors in the daily taxpayer service business, it was recognized that some occasions require such attention.

2. Service Center "Automatic" Adjustment and Disallowance

The Unallowable Deduction Program, which has been in operation the past three filing periods, utilizes the ordinary processing operations of the Service Center to point out to taxpayers deductions on individual income tax returns that are not allowable under the Code. These deductions are limited as to those that do not involve judgment in determining whether or not they are proper. The taxpayer receives a notice from the Center notifying him of the proposed disallowance of the deduction and the proposed change in tax. If the taxpayer does not agree, the ordinary workings of the statutory audit process are fully utilized.

Bar members were advised that they may pursue such cases for their clients by corresponding directly with the Center which sends the notice, or by calling the number at the enter which is carried on each notice (not at present a toll-free number). The option is also open for such cases to be transferred from the Center to the district office audit operation for the area in

which the taxpayer resides.

### 3. Delinquent Returns - Reasonable Cause

A question arose concerning a situation where a delinquent estate tax return was personally taken to a district office with an explanation for the delinquency and a request was made for an immediate determination as to whether the delinquency penalty would be waived. The district employee advised that the determination could not be made until the return had been audited. This advice was in error. An understanding now exists in the district that immediate determinations can be made when requested.

A further discussion resulted concerning the processing of delinquent returns in general. Delinquent returns may or may not be accompanied with explanations for delinquency. When district personnel secure delinquent returns, a determination is made as to whether or not the delinquency penalty is to be asserted. The Service Center processes the return accordingly. If the delinquent return is submitted directly to the Service Center, it is analyzed to determine whether the penalty should be abated. When reasonable cause for delinquency is not established, a bill for the penalty (plus whatever tax and interest may be due) is sent to the taxpayer. The taxpayer may disagree with the delinquency penalty assessment and choose to present additional information to the District or Service Center concerning the reason for the delinquency. If the additional information justifies a re-determination of reasonable cause, abatement action may be taken by either the District or Service Center. When the explanation for the delinquency remains unacceptable, the taxpayer is not at present time afforded an avenue of appeal. This procedure is being reviewed by the National Office.

### 4. Taxpayer Service Program

Internal Revenue has been endeavoring to make Taxper Service more convenient and accessible. Some of these programs are:

- a. Personalization of correspondence: name and telephone number of initiator appears on personally prepared correspondence.
- b. Toll-free telephone system: such a system has been installed in each district and affords the taxpayer a cost-free means of securing return filing information. In addition, this phone system establishes a contact

point where tax matters may be presented and resolved. The toll-free number is provided in telephone directories (as they are updated); through a stuffer included with Service Center computer generated correspondence; and, with the Income Tax Form packages. These phones are manned by Taxpayer Service Representatives who are able to provide the requested information immediately or on a call back basis. The toll-free numbers are:

#### Michigan

Ann Arbor	665-9741
Detroit	444-5500
Flint	767-8830
Grand Rapids	774-8300
Lansing	394-1550
Mount Clemens	469-4200
Muskegon	726-7971
Pontiac	858-2530

Residents in Area Code 313  
call 800-552-8590

Residents in Area Codes 906,  
616, and 517, call 800-632-8701

#### 5. Tax Administration System

IRS is currently designing a computer system that will bring to bear the best in new computer technology on tax administration operations. This new system, known as the Tax Administration System (TAS), will be first installed at the Cincinnati Service Center. Exact timing of the installation of the new system is not known, but is expected to occur within the next four or five years.

The new system will contain many advantages, but most important, in terms of interest to Bar members, will be the increased number of taxpayer accounts that will be in a "real time" status, i.e., immediately available for access by Taxpayer Service Representatives in IRS offices who are working with taxpayers or their representatives.

The discussion of the foregoing agenda items was thorough and spirited. Interesting problems were raised by Bar representatives William W. Smith, Bart A. Brown, Charles R. Hembree, Kenneth R. Hughes, Chairman Larry L. Leatherman, Robert E. Johnson, Norman A. Sugarman, and James A. Scott. Messrs. Baker and Ruttile and Joe Pitts Vick, Assistant Regional Counsel, General Litigation, responded generally to the questions raised. Mr. Green acknowledged each problem and

stated that he would give his personal attention to resolving problems as quickly as possible. He further commented that he is instructing each District Director in the region, and the Service Center Director, to give special attention to correspondence and other contact from attorneys representing taxpayers.

The discussion concluded with a comment by Mr. Lester Ponder, one of two representatives from the American Bar Association, that it would be worthwhile if a representative from the Memphis Service Center were present next year. Mr. Green stated that the Director of the Memphis Service Center had been invited to come this year, but was unable to attend due to a prior commitment. Mr. Green assured that he would personally ask the Memphis Director to attend next year's meeting.

#### AUDIT

Mr. Donald Bergherm, Assistant Regional Commissioner, Audit, addressed the group on the following:

1. Employee Plans and Exempt Organizations (EP/EO)

The Employee Retirement Income Security Act of 1974 became law on September 2, 1974. The Secretary of Labor and the Secretary of the Treasury have joint responsibilities for administration and enforcement of the new law. The law established the position of Assistant Commissioner (EP/EO) within IRS. A new EP/EO Division will begin operations about the first of December, 1974.

Mr. Bergherm presented organizational charts which showed the structure of the new organization (see Attachment A). The newly designated Assistant Commissioner (EP/EO) is Alvin Lurie. The designated Deputy Assistant Commissioner is Theodore Rademaker. "Key" districts will be organized. Central Region will have three Key Districts - Cincinnati, Cleveland and Detroit. Indianapolis and Louisville will be associate districts under the Cincinnati Key District. Parkersburg will be an associate district under the Cleveland Key District. Personnel in associate district will be under the supervision of the Key District.

Mr. Leon Green pointed out that there will be no reduction in the number of people engaged in EP/EO activities; in fact, there will likely be increases. Since this division will have new functions and responsibilities, some of the qualified people in current positions will have expanded duties.

All District EP/EO determinations will be subject to review at some point above the group level. Mr. Kenneth Hughes of the Cincinnati Bar expressed concern with the direction that this review process might take. Mr. Green responded that the review process should promote greater uniformity. The agent who works on the determination will no longer have the final

authority concerning that determination. The scope and duties of the review section have not yet been defined; therefore, little is known at the present time.

In general, EP/EO will be responsible for:

- a. Determining whether the related trust is tax exempt.
- b. Determining deductibility of contributions to a plan.
- c. Determining taxability of a beneficiary of an employee's trust.
- d. Determining taxability of employee annuities.
- e. Administering the new funding standards created by the Act (including excise tax for underfunding).
- f. Enrollment of actuaries.
- g. The primary administrative responsibility for the participation, vesting and funding provisions of the new law, unless the qualification of a plan for tax purposes is not sought.
- h. Determining whether an organization is tax exempt.
- i. Determining taxes on unrelated business income.
- j. Administering the provisions of the Code relating to private foundations.

The discussion of EP/EO concluded with a question from Mr. Norman Sugarman, representative of the American Bar Association, who asked what would happen to technical advice procedures. Mr. Green responded that this matter is currently under study by IRS.

## 2. Increased Issuances of Summonses

Mr. Larry Leatherman stated that, from the reported cases and also from discussions with other attorneys, it appears that the IRS Audit Division is becoming more active in issuing summonses. He inquired whether there has been any trend in this direction. Mr. Bergherm responded that there was no special activity on the part of IRS in this area.

## 3. Expediting Issuance of Statutory Notices

Mr. Lester Ponder asked what could be done to expedite the issuance of the statutory notice. He knew of no method to expedite its issuance when the taxpayer wished to do so. Mr. Bergherm replied that IRS tries to resolve issues at the lowest possible level. Toward this end, the Service maintains a two level system of appeals - the District Conference Staff and the Appellate Division. When the taxpayer requests that the statu-

tory notice be expedited, IRS will try to issue it at an early level.

Jack E. Mitchell, Detroit Bar, and Mr. Ponder raised an additional problem which occurs when the statutory notice is mailed to an incorrect address. Mr. Bergherm stated that IRS makes every effort to obtain the correct address. In the event a practitioner suspects that the taxpayer's address is incorrectly listed on the IRS records, it would be helpful if he would advise the District Director accordingly.

#### 4. Disregarding Powers of Attorney

Mr. Ponder stated that he knew of several instances where revenue agents were disregarding powers of attorney. He felt that this occurred primarily with new agents. Mr. Bergherm responded that IRS has issued careful instructions to examiners about their responsibilities. Where a recognized representative has unreasonably delayed or hindered an examination by failing to furnish, after repeated requests, nonprivileged information, the IRS may by-pass the representative and contact the taxpayer directly.

#### 5. Inconsistent Audit Re Same Issue, Different Taxpayers

Robert Johnson, Chairman of the Indiana Bar Tax Section, expressed concern about revenue agents examining groups of taxpayers with a common issue and coming up with different treatment. The two instances cited were: (1) back pay of certain legislators in Indiana, and (2) grants-in-aid to university students. Mr. Bergherm stated that IRS strives for and encourages uniformity. Although technical advice procedures and the review process have significantly promoted this uniformity, additional measures are under study.

#### 6. Audit Programs

##### a. General vs. Special

Mr. Bergherm stated that IRS special programs, such as Narcotics Traffickers Project, Strike Force, and Joint Compliance Program, are not being deemphasized, but rather the general program is being expanded. The general program includes such areas as Income Tax, Employment Tax, Excise Tax, Estate and Gift Tax, Exempt Organizations, Pension Trust, International Enforcement, Engineering, Coordinated Examination, Review, Return Preparers, and Taxpayer Compliance Measurement Program.

b. Classification of Returns

Several years ago, returns were selected for examination by examiners who looked at each return. Subsequently, an ausit selection list was developed by which returns to be examined were identified based on certain predetermined criteria. Approximately 20% of the returns identified were selected for examination.

In 1963, the Taxpayer Compliance Measurement Program (TCMP) research project was initiated. Under this system, returns which were selected by random sampling, were given a thorough examination. TCMP results were analyzed and used to produce a system called Discriminate Function, or DIF. Under this system the computer scores returns based on numeric values, plus or minus, assigned to various line items on the return. Those returns with the highest scores have the greatest potential for a tax change.

After returns are identified by DIF, they are still subject to manual classification. For every three returns that are looked at, the Service strives to get two into the examination stream.

The selection process is administered by a Returns Program Manager within each district. He orders returns for classification based on the current examination plan. This examination plan is changed each year, and covers a wide spectrum of returns.

Mr. Green stated that TCMP has enabled the Service to direct its resources to categories of returns involving the greatest gap between tax paid and tax due.

APPELLATE

Edgar H. Hughson, Acting Assistant Regional Commissioner, Appellate, Addressed the group on Team Approach in Certain Large Multiple Issue Cases (Multiple Conferees).

1. The Appellate Division has been concerned about the length of time between the receipt and disposal of large complex cases and large work units with a number of related cases. The team approach - assignment of two or more conferees to a case - has been used as one method to reduce the time required to reach a decision in these cases.

This method was initiated in October of 1972 on a national basis. Since that time the Central Region has used the team approach in approximately 20 work units (groups of cases). The Chief of the Appellate branch office or the Assistant Chief reviews the case files before assignment to determine whether the team approach would be the best method to use in handling a large or multiple case work unit. Some of the criteria taken into consideration are: the number of cases involved in the work unit; the complexity of the issues involved; and whether the issues can be handled by more than one conferee because they require expertise in a subject to a team audit is not controlling. A coordinator, either formally or informally, is given overall responsibility for the case.

The regional office has monitored the handling of team approach cases. Generally, the conferees feel that this method has resulted in an earlier disposal of the case than if the case had been assigned to one conferee. In one instance, one of the Appellate conferees assigned to the team approach case became ill and could not attend the conference. The other conferee was able to hold the conference because he was familiar with the issue involved.

2. Mr. Alan Vogeler, representing the Ohio Bar, expressed concern with the use of the team approach. He felt that an attorney would not have to persuade two conferees of the merits of the taxpayer's position instead of just one. Mr. Green responded that the decision to use the team approach rests with the Chief of the Appellate branch office concerned. He stated that the program had worked well and that it will be continued in the future. Marvin L. Martin, Chief Appellate Branch Office, Cincinnati, stated that his office had not uses the team approach to any great extent, but he firmly believes that in principle it works out very well, especially in cases involving unrelated issues in specific areas of specialty, e.g., pension trusts, depreciation, and corporate deduction. Les Ponder expressed the view that he has no objection to multiple conferees in certain type cases because it gives him "two shots" at a settlement.

#### REGIONAL COUNSEL

David E. Mills, Regional Counsel, responded to the following items raised by members of the Bar:

##### 1. Counsel Participation in Intelligence Investigations

Bart Brown, Cincinnati Bar, Thomas Chambers, representing West Virginia Bar, and others voiced concern regarding current policies of Regional Counsel and the Intelligence Division in

processing tax cases having criminal aspects. Mr. Brown stated that in the past Counsel's office had not participated in the development of criminal cases and he questioned the propriety of Counsel's participation in Intelligence investigations. Mr. Mills replied that his office had been very active in providing pre-referral advice to the Intelligence Division concerning legal and evidentiary problems that arise during the course of the investigation. Moreover, the Intelligence Division is encouraged to contact Counsel for "pre-referral" advice, thereby resolving legal and evidentiary questions as early as possible. As an analogy, he asked what practitioner tells his client "Don't bother me until we go to court." Regional Counsel attorneys assist in criminal tax investigations because IRS is interested in obtaining the highest degree of accuracy possible.

Gerald W. Fuller, Assistant Regional Counsel, Criminal Tax, commented that Counsel's participation in the pre-referral stage of the case (prior to referral to Regional Counsel for legal review) sometimes results in the early closing of a case which is advantageous to the taxpayer. In other instances Counsel may well advise the special agent or group manager precisely what additional evidence is necessary to make a case legally sufficient. Mr. Mills pointed out that Counsel's participation in Intelligence cases speeds up the process of determining whether or not the criminal standard of prosecution will be met. It also directly responds to prior complaints on the part of the Bar as to protracted Intelligence investigations.

Charles Hembree, representing the Kentucky Bar, expressed the view that something is basically wrong about Regional Counsel attorneys participating in the investigation of a criminal case prior to its referral to Counsel's office for legal review. Mr. Mills replied that when the case is finally referred to his office, it receives its first full legal review. Without exception, the rigid standard of prosecution is applied objectively prior to forwarding any case to the Department of Justice with a recommendation that the case be tried. This standard contains two basic elements: (1) The evidence must establish that the taxpayer is guilty beyond a reasonable doubt of the violation charged, and (2) There must be a reasonable probability of conviction.

Mr. Brown asked why conferences with ARC-Intelligence have been dropped. Mr. Mills answered that this procedure was adopted to avoid duplication and to speed up processing of criminal cases. Mr. Fuller pointed out that the group manager reviews the case prior to submitting it to the Regional Counsel who in turn holds a conference with the taxpayer or his representative and conducts a thorough legal review. While a formal conference with the Chief of Intelligence at district level is

not precluded, it is not offered unless specifically requested by the taxpayer or his representative, or if the Chief believes it will be in the best interest of the Service to hold such a conference.

## 2. Direct Contact With Taxpayer By Counsel

Kenneth Hughes, Cincinnati Bar, asked for clarification of Regional Counsel's policy regarding direct contact with taxpayers in both civil and criminal cases. Eugene Corbin, Assistant Regional Counsel, Tax Court Litigation, stated that wherever the file reflects that a taxpayer is represented by an attorney, Counsel's office does not contact the taxpayer without first fully coordinating the matter with his representative. Clarence E. Barnes, Staff Assistant to Regional Counsel, remarked that in some instances taxpayers contact Counsel's office directly, unbeknownst to their attorneys. In effect, some taxpayers like to check on how their attorney is handling their case. In such occurrences, Counsel advises the taxpayer immediately that as long as he is represented by an attorney, IRS will not discuss any aspect of his case with him without his counsel's presence or expressed permission. Further, attorneys in Counsel's office do not "rate" the taxpayer's attorney or otherwise comment on his handling of the case.

## 3. New Tax Court Rules

Eugene M. Corbin, Assistant Regional Counsel, Tax Court Litigation, stated that as yet the New Tax Court Rules (January 1, 1974) have not materially affected litigation of Tax Court cases. Most cases are being handled procedurally as before. Mr. Mills stated that Judge Theodore Tannenwald recently remarked that Tax Court judges are ruling very cautiously under the new rules, but generally their rulings on procedural points are the same. Les Ponder commented that only about a dozen procedural rulings have been published thus far by the Tax Court and that most of them have involved summary judgments. As to discovery, the consensus was that Tax Court cases are being litigated much the same as before and that neither the Bar nor IRS has used discovery procedures under the new rules to any great extent. Both sides are cooperating in orderly presentations of cases before the Tax Court.

## 4. Decentralization Of Criminal Tax Responsibility

Larry Leatherman, Group Chairman, inquired as to the status of decentralization of Criminal Tax activities in the Central Region and whether the formal Criminal Tax conference with Regional Counsel is held at the branch or the regional office. Mr. Mills stated that the conference is held at the

branch office provided the case is being fully handled by that office; e.g., if a Criminal Tax case is being handled by the Louisville branch office, the formal conference will be offered by the Assistant Regional Counsel at Louisville. He commented that the Louisville office is perhaps the most decentralized of all in the Central Region and that Indianapolis and Cleveland are also handling most of their Criminal Tax cases. A great number of Detroit criminal cases are still being processed by the Cincinnati regional office due to physical and manpower problems at Detroit.

There was considerable discussion as to the objectivity of Regional Counsel's review of a Criminal Tax case in those instances where the Regional Counsel attorney had previously participated in the Intelligence Division's investigation of the same case. Messrs. Brown, Hughes, and Hembree opined that complete objectivity is not possible where Counsel renders advice during the investigation by Intelligence. Mr. Leatherman commented that the pre-referral program surely results in Counsel becoming "too identified with the case." Mr. Mills reiterated that all criminal tax cases receive their first complete legal review by Counsel's office. The standard of prosecution is not subjective and the attorney must be fully satisfied that it has been met before prosecution is recommended to the Department of Justice. While Counsel may give legal advice regarding issues and additional evidence to group managers and special agents during the pre-referral stages of a case, Counsel's review is completely objective. He also pointed out that the attorney giving the pre-referral advice is not necessarily the same attorney who conducts the final review. In those instances where the attorney is the same, the standard of prosecution is fully applied, i.e., is the taxpayer guilty beyond a reasonable doubt and can we prove it in court?

Mr. Green commented that, in his opinion, IRS is entitled to have the advice of its attorney at any stage of a case, whether civil or criminal. Mr. Mills remarked that most agents think that their case is a "100%", whereas Counsel's review frequently reveals that it is only a 35-40% case because only that amount of the evidence is admissible. The discussion was concluded with Mr. Ponder's observation that objectivity and advocacy in his view are not necessarily mutually exclusive. He sees no difficulty in an attorney being an advocate, but still managing to retain his objectivity when reviewing a case for legal sufficiency.

## SPECIAL TOPICS

### 1. Pension Reform Act

The consensus was that this subject had been adequately covered during the earlier presentation by Don Bergherm, ARC-Audit.

## 2. Freedom of Information Act

Mr. Ronald Heinlen, of the Cincinnati Bar, inquired as to what procedures have been developed by IRS to make copies of determination and ruling letters available to practitioners. Mr. Mills stated that this area of the law is of prime concern to the Chief Counsel's Office and that the matter is currently being studied. The position of IRS as to making such information available will of necessity conform to court decisions. Mr. Green remarked that there will likely be changes, but at the present it is not known what they will be. Before rulings can be made public, the taxpayer will have to authorize disclosure. A waiver of confidentiality has not yet been devised. Contrary to the concern of some, there is no moratorium on rulings.

Mr. Heinlen asked what procedures must be followed to obtain copies of rulings to other taxpayers. Mr. Green said the procedures for this have not been finalized as yet, but in due time all practitioners will be duly advised as to the prerequisites involved. Mr. Mills remarked that with certain exceptions, private rulings will likely be made available upon request; however, in all probability technical rulings will not be revealed. The consensus was that this entire matter is in the developmental stage and is so uncertain that it would make an excellent agenda item for the 1975 meeting.

The 1974 Central Region Bar Liaison Meeting was concluded with an enthusiastic round of applause and expressed appreciation on the part of everyone for the outstanding work of Chairman Larry L. Leatherman. The meeting was adjourned with the comment of many that they are looking forward to attending the 1975 meeting at Cleveland.

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# Tax Newsletter

## TAXATION SECTION

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