

# TAX TALK

Published by the Section of Taxation of the Maryland State Bar Association, Inc.

• James W. Dawson, Jr., *Chair* •

G. Evans Hubbard, *Editor*

Katrina Kamantauskas-Holder, *Assistant Editor*

Volume XVI Number 2

Summer 2008

## FROM THE CHAIR

By James W. Dawson, Jr.

It is hard to believe that we are now entering the month of June and that another year has passed so quickly. On June 12, I will “pass the gavel” to Caroline Ciralo, the Section’s Chair for next year, and it is with mixed emotions that I am preparing my final notes “From the Chair.”

The Section has had another successful, interesting, and sometimes challenging year. This year we saw not one, but two legislative sessions. We weathered the enactment of a sales and use tax on computer services and the later repeal of the Act before it became effective. We saw an increase in the income tax rates and the sales and use tax rate, but for all intents and purposes, there were not too many significant changes as you will note in the legislative summary included in this issue. One of the major provisions enacted during the Special Session that was modified slightly during the regular session, requires certain corporations to file reports to the Comptroller regarding combined reporting. The Section will continue to work with the Legislature, the Maryland Comptroller’s Office, and the business community in an effort to further streamline the process and make it less burdensome on taxpayers and tax professionals.

Another major piece of legislation passed this year involves the sale or transfer of a controlling interest in a real estate entity. An article in this issue provides an excellent summary of the changes that take effect July 1, 2008 as well as some of the regulatory proposals that remain a concern to the members of the Bar. The Tax Section will continue to work with the Real Property and Business Law Sections to address these concerns with the Department of Assessments and Taxation.

The Section continues to make great strides towards establishing partnerships with the leaders of the Maryland General Assembly, the Comptroller’s Office and other state agencies. The Legislative Committee continues to reach out to these

agencies to provide assistance and recommendations on tax policies and procedures.

The Pro Bono Committee is developing a program that will allow members of the Bar to assist pro se individuals at the U.S. Tax Court calendar calls in Baltimore and the District of Columbia. Guidelines and procedures are being developed and the program should be up and running by the first calendar call this coming fall.

Last month, the Section held its annual Shulbank Memorial Dinner. During the program, Gerald Langbaum, Counsel to the Comptroller, was presented with this year’s Tax Excellence Award and Winifred Borden was presented with the Ronald Shiff Memorial Pro Bono Award. The contributions Jerry has made to the practice of tax law in this State will continue to have an impact for many generations (and I am not just referring to his victory in the SYL case). Through Winnie’s leadership at the MVLS, many individuals have been able to receive quality effective legal representation and tax return preparation services for which they otherwise would not have been able to afford. I would like to personally thank Jerry and Winnie for their contributions and tireless efforts and congratulate them for all they have achieved during their careers and for being this year’s Award recipients. It is with mixed feelings that I also congratulate Jerry and Winnie on their upcoming retirements. While I am very happy for them and their families, their retirements will be a great loss to those of us who have had the opportunity to work closely with them over the years. I wish them continued good health and happiness in their retirements.

Before closing, there is one further item I would like to mention. There is an article in this issue regarding new leg-

*(continued on Page 2)*

## FROM THE CHAIR...

(continued from Page 1)

islation designed to ensure that attorneys are current in their state tax obligations. Since 2003, most professions that require state licensure have been subject to tax compliance verification before a license may be issued or renewed. Tax compliance verification is now applicable to attorneys. As a profession, especially members of the Tax Section, we should remain current in our federal and state tax obligations and lead by example. Both the Comptroller and the Department of Labor, Licensing and Regulations have programs in place to work with individuals and businesses to ensure tax compliance and to assist in helping individuals and businesses get back into compliance. Under the new legislation, attorneys who are not

in compliance will be referred to Bar Counsel who will then be tasked with investigating the matter.

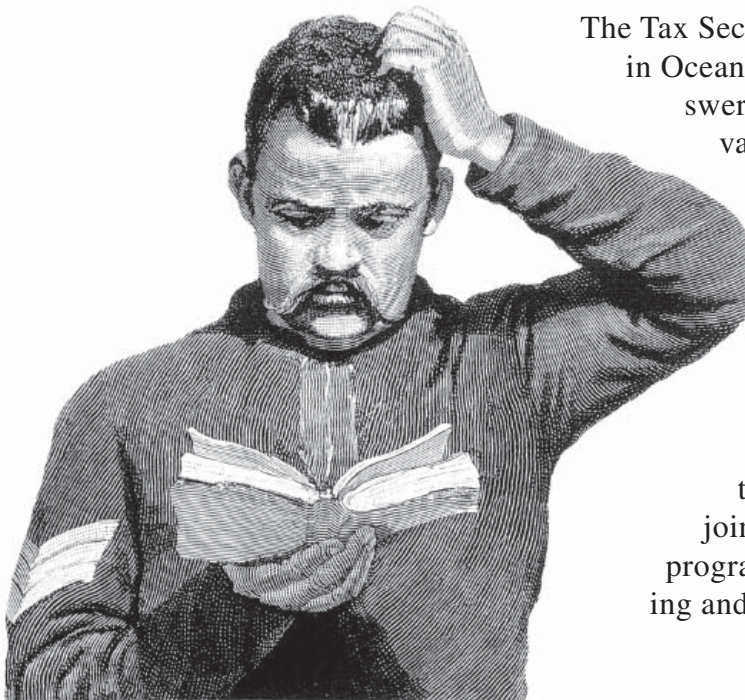
Finally, I would like to thank everyone on the Tax Section Council, the Section membership, other Section Chairs and the leaders and employees of the Maryland State Bar Association for making my year as Chair a wonderful and enriching opportunity. I look forward to supporting Caroline and wish her the best as she begins her term as Section Chair. It has been an honor and a privilege to serve as Chair of the Section and I thank you for this opportunity.

Best wishes and I look forward to seeing you at the Annual MSBA Meeting in Ocean City this month.

### TAX SECTION PRESENTS

# "THE ANSWER IS"

Maryland Bar Convention  
Thursday, June 12, 2008  
8:00 a.m.



The Tax Section Program at the Bar Convention in Ocean City this year is entitled "The Answer Is". It is a jeopardy game involving a variety of tax topics including Business tax issues, Real Estate, Divorce taxation, Estates and Trusts, Procedural issues, Bankruptcy tax issues and State and Local tax issues. The program will take place at 8:00 a.m. on Thursday June 12th. The contestants will be representatives of the Business Law Section, Bankruptcy Section and Family Law Section. Please join us for a continental breakfast and the program. The program should be entertaining and informative.

# MSBA Tax Council Nominees

## Tax Section members:



The Nominating Committee is pleased to announce the following list of nominees for Tax Council positions:

For Chair: Caroline D. Ciraolo, Rosenberg Martin Greenberg LLP (Baltimore, Maryland)

For Vice-Chair: Jessica R. Lubar, Venable LLP (Baltimore, Maryland)

For Secretary/Treasurer: Catherine Mary Rafferty, Law Offices of Catherine Mary Rafferty (Washington, D.C.)

For the term ending 2011:

Todd J. Bornstein - Selzer, Gurvitch, Rabin & Obecnny, Chtd (Bethesda, Maryland)

Brian L. Oliner - Assistant Attorney General for the State of Maryland, with the Maryland Department of Human Resources.

Saul B. Abrams - DLA Piper (Baltimore, Maryland)

Paul G. Marcotte, Jr. - Paley Rothman Goldstein Rosenberg Eig & Cooper, Chtd (Bethesda, Maryland)

Keith Blair - University of Baltimore School of Law, Tax Clinic (Baltimore, Maryland)

To complete the term being vacated by Catherine Mary Rafferty that ends 2009:

Jennifer A. Pratt - Venable, LLP (Baltimore, Maryland)

A vote will be held at the Tax Section's annual meeting, scheduled for Thursday, June 12, 2008 (8:30 a.m.) in Ocean City, MD.

Other nominations for Tax Council officers and members-at-large may be made by not fewer than 15 Tax Section members by written nominations submitted to the Secretary not later than 10 days prior to the annual meeting. If you wish to propose alternative nominees, please submit the nominations to Jessica Lubar (Secretary/Treasurer) at [JRLubar@Venable.com](mailto:JRLubar@Venable.com) no later than Monday, June 2, 2008. Additional eligible nominations will be published on the Tax Section List Serve prior to the annual meeting.

Congratulations to each of the nominees!

# PROPOSED REGULATIONS ON TRANSFERS OF CONTROLLING INTERESTS IN MARYLAND – DO THEY GO TOO FAR?

By Jeffrey A. Markowitz, Esquire &  
Christopher A. Davis, Esquire

New laws recently enacted in Maryland have resulted in a comprehensive reform of the current recordation and transfer tax system, as applied to transfers of stock or membership interests in entities owning real property. The Department of Assessments and Taxation of the State of Maryland (SDAT) has been charged with drafting regulations to administer the new controlling interest statute. However, the proposed regulations recently released by the SDAT raise constitutional and statutory interpretation issues as applied to the current law. Through the proposed regulations, the SDAT has possibly expanded the transfer and recordation tax to companies and transactions beyond the state's constitutional taxing authority, and in effect is jeopardizing the legitimate and constitutional goals of the controlling interest statute.

## Overview of the Controlling Interest Legislation

Effective July 1, 2008, transfer and recordation taxes will be imposed on transfers of "controlling interests" in certain "real property entities." Maryland now joins several other states that have enacted similar provisions after perceived abuses of the tax system allowed valuable commercial real estate buildings to be transferred free of transfer or recordation tax. For the purposes of the new law a "real property entity" is any entity that directly or beneficially owns real property which constitutes at least 80% of the value of its assets and has an aggregate value of at least \$1,000,000. A "controlling interest" is defined as more than 80% of the total value of stock of a corporation, or more than 80% of the total interest in capital and profits of a partnership or limited liability company.

## The Proposed SDAT Regulations

On April 25, 2008 the SDAT issued proposed regulations concerning the transfers of controlling interests in real property entities. By law, the SDAT is responsible for adopting regulations to administer and enforce the controlling interest statute. Through the proposed regulations, the SDAT appears to alter the plain meaning of the controlling interest statute such that the statute could be unconstitutional in its application. The proposed regulations present several problems, but two provisions in particular pose serious issues in their enforcement and operation.

## Direct or Beneficial Ownership Requirement

The statute defines a "real property entity" as any entity that directly or beneficially owns a specified percentage of real property. The SDAT has issued proposed regulations

which define "beneficially owned" to include direct ownership, indirect ownership through multiple tiers of entities, or beneficial ownership through a series of trusts or other entities. The expansive definition proposed by the SDAT goes beyond the scope of the traditional legal understudy of beneficially and is likely unconstitutional in its application to out of state companies and transactions.

First and foremost, the concept of beneficial ownership is a well-defined real property concept that is based on rights or privileges of possession and enjoyment of an interest in real property, as distinct from the "legal" or "title" ownership of an interest in real property. If the General Assembly had intended to refer to equity ownership interests in other entities that owned real property, it should have used words such as "direct or indirect ownership," "common control," "affiliated" entities, or similar language.

Second, it is a well established principle of law that a state tax will not pass constitutional muster unless there is a substantial nexus between the state and the person, property, or transaction it seeks to tax. If the SDAT intends to reach transfers of controlling interests in entities that, through a series of ownership interests, own a real property entity, the SDAT will face serious constitutional issues to the extent such upper tier entities are not doing business in the State of Maryland. The new law imposes a transfer tax on the real property entity that suffers a change in control as a result of the sale of a controlling interest, and not the entity that necessarily holds the real property. Thus, by attempting to define a real property entity as one that owns another entity that owns real estate, the SDAT could be finding itself seeking to tax transfers that occur well beyond Maryland's borders, and may have a difficult time satisfying the constitutional requirements of sufficient nexus to the State of Maryland. For example, assume an out of state entity owns a number of assets in many states, including all of the interests in a Delaware LLC that owns eighty percent of the membership interests in a Maryland LLC that owns real property in Maryland. The Delaware LLC is a passive investor in the Maryland LLC. If the out of state entity sells its interest in the Delaware LLC, under the proposed regulations the SDAT would attempt to tax that transfer, and such tax would be imposed on the Delaware LLC. If the out of state entity and the Delaware LLC are not doing business in Maryland, and if the transfer does not take place in Maryland, Maryland would not have the constitutional authority to tax the transfer or the Delaware entity due to a lack of nexus with Maryland.

*(continued on Page 5)*

## Regulations. . .

(continued from page 4)

### The Step Transaction Doctrine

The statute defines the transfer of more than 80% of an interest in a real property entity to be a “controlling interest” subject to tax. This definition raises the possibility that successive transfers of less than 80% may be aggregated so that they form a “controlling interest.” The statute provides a safe harbor against this aggregation, provided that the transfer satisfies one of the following conditions: (1) the transfer is completed over a period of more than 12 months; or (2) the transfer is not made in accordance with a plan of transfer. The plain language of the statute allows the sale of two successive real property interests over a period of greater than 12 months to be exempt from recordation tax, regardless of whether this series of transfers occurs according to a plan of transfer.

The proposed regulations attempt to incorporate a recognized judicial doctrine, the “step transaction doctrine,” into the application of the new statute. The step transaction doctrine was applied to recordation and transfer taxes in Maryland in the 1999 case of *Reed v. Supervisor of Assessments*, where the Court of Appeals set forth the various tests for determining whether a transaction which appears to be a series of separate transactions should be collapsed or amalgamated to form one single transaction for tax purposes. However, by providing detailed rules and definitions, such as the definition of “plan of transfer” in the statute (defined as an intentional

plan or program to transfer the controlling interest in a real property entity) the General Assembly has made it clear that the new statute has its own rules for combining a series of steps in a controlling interest transfer. Specifically, the statute permits the transfer of controlling interests to be exempt from tax, provided they occur outside of a 12 month period, or provided they do not occur in accordance with a plan of transfer. It cannot reasonably be asserted that the legislature ignored the existence of the judicially created step transaction doctrine when the statute was written, and that it is now the SDAT’s task to incorporate this doctrine into its proposed regulations in a manner contrary to the clear statutory language.

### Conclusion

The responsibility of the SDAT, like all state agencies, is to administer and enforce the laws enacted by the legislature. It is a fundamental principle of separation of powers that an executive agency cannot overstep its authority and attempt to perform the functions of the legislative branch. Through these proposed regulations, the SDAT has altered the plain meaning of existing law. If the SDAT believes that the new laws should be interpreted contrary to their plain, unambiguous meaning, the remedy for this problem is to return to the legislature and seek a legislative amendment, and not to attempt to legislate inconsistent with constitutional principles by regulatory action.

## TAX TALK © 2008 MSBA TAX SECTION

Editor, G. Evans Hubbard  
3818 Beech Avenue  
Baltimore, Maryland 21211-2222  
Tel: 410-260-7982  
Fax: 410-947-2968  
ghubbard@comp.state.md.us

Assistant Editor, Katrina Kamantauskas-Holder  
The Holder Law Group  
406 Allegheny Avenue  
Towson, Maryland 21204  
Tel: 410-296-9551  
Fax: 410-296-9554  
katrina.kamantauskas@holderlaw.com

Comments, contributions, and suggestions are greatly appreciated. Please direct them to the Editor.

Items contained in Tax Talk reflect the views of the individuals who prepared them and do not necessarily reflect the opinions of the MSBA Tax Section.

---

# NON-UNIFORMITY IN THE APPLICATION OF RECORDATION AND TRANSFER TAXES

*By Bruce L. Benshoof, Esquire*

Almost every day while I was assistant attorney general to the Clerks of the Circuit Court, I would hear some variation of the question: “Why do the recordation and transfer taxes vary from county to county?” Although there are many reasons for these variations (including simple human error), one of the least understood is that the office which collects one or more of the taxes can vary from county to county – and each of those offices may be advised by different legal counsel.

The state transfer tax is collected by the Clerk in every county. (Tax-Prop. § 13-208(a).) However, since 2001 (and much earlier for Prince George’s County), each county may opt to have the recordation tax collected by its county fiscal office instead of by the Clerk. (Tax-Prop. § 12-109(b).) In addition, to the extent a county has a county transfer tax, such tax may be collected by the Clerk or by the county fiscal office depending on the provisions of the applicable county code. If the recordation tax or county transfer tax is collected by the Clerk, the Clerk must remit a certain percentage to the state general fund (see Courts § 2-213) before forwarding the rest to the county general fund. If the county takes on the responsibility of collecting such taxes for itself, the county gets to keep it all. Currently, the county finance office collects both the recordation tax and county transfer tax in Baltimore, Montgomery, and Prince George’s counties. Also, Carroll, Charles, and Frederick counties have

elect to have their respective county treasurers collect the recordation tax (but do not have a county transfer tax). Although the Clerk still collects the recordation tax, the applicable county fiscal office collects the county transfer tax in Baltimore City and in Harford and Worcester counties.

To the extent the Clerk collects a tax, the Clerk, as an officer of the state government, may turn to the Office of the Attorney General for advice, regardless of whether the tax is pursuant to state law (recordation tax and state transfer tax) or county ordinance (county transfer tax). But if a tax is collected by a county fiscal office, that office must turn to their county attorney for advice. Given the complexities and ambiguities in the recordation and transfer tax statutes, reasonable attorneys acting in good faith may differ in the advice to give their respective clients. As just one example among many, because the legislature has provided no definition for the term “individual” for purposes of Tax-Prop. § 12-108(bb), some tax collectors have been advised that only natural persons acting in their own capacity are “individuals,” while others have been advised that the term includes trustees and personal representatives acting as fiduciaries for natural persons or their estates.

The author was assistant attorney general to the Clerks of the Circuit Courts from June 2004 until April 2007, when he returned to private practice with Ballard Spahr Andrews & Ingersoll, LLP.

---

## NEW LEGISLATION AUTHORIZES COMPTROLLER OF MARYLAND TO REPORT LAWYERS WITH UNPAID TAXES TO ATTORNEY GRIEVANCE COMMISSION

*By Caroline D. Ciruolo, Esquire*

Lawyers with undisputed tax liabilities must make payment arrangements or face investigation by the Attorney Grievance Commission. Since 2003, individuals holding a professional license issued by the State are required to pay all undisputed taxes and unemployment insurance contributions, or make satisfactory payment arrangements, before their license is issued or renewed. See Tax-Gen. § 13-203(c)(5), Md Code Ann. Individuals subject to this provision include, but are not limited to, insurance agents, doctors, pharmacists, social workers, engineers, accountants, cosmetologists, land surveyors, real estate appraisers, commercial watermen and nurses. Up until now, lawyers have avoided this requirement. This loophole will close on June 1, 2008.

Following the 2007 Special Session of the Maryland General Assembly, the Governor signed into law the Tax Reform Act of 2007 (Senate Bill 2). The legislation required the Client Protection Fund (“CPF”) to certify with the Maryland Comptroller that a lawyer had paid his or her tax liabilities before accepting that attorney’s annual assessment. See Bus. Occup. & Prof. § 10-313, Md Code Ann. The effective date of the new requirements was July 1, 2008. The Maryland State Bar Association (“MSBA”) objected to this legislation on the grounds that the Client Protection Fund did not have sufficient employees to perform this task, and should not have

*(continued on Page 7)*

# 2008 MARYLAND LEGISLATIVE SUMMARY

## THE UN-TAX LEGISLATIVE SESSION

By Andrea B. Gillespie & Casey Allen Lothamer

The biggest news of the 2008 Maryland Legislative Session does not concern newly enacted tax bills, but rather the repeal of the sales tax on computer services that was previously enacted during the 2007 Special Session (“Special Session”). This success is due to the combined efforts of multiple organizations and individuals. Members of the Tax Section worked tirelessly to inform our Legislators about complex tax issues that were raised by the law, with Herman B. Rosenthal diligently leading our efforts.

Along with the undoing of prior legislation, the other major tax bills enacted during this past session had less to do with taxes than with societal concerns. For instance, the greatest number of tax bills that were introduced during the session were designed to encourage environmentally responsible behavior. A number of these “green” tax bills were passed and enacted. The General Assembly also created a licensing requirement for income tax preparers, thus helping to protect taxpayers from untrained and/or unscrupulous tax preparers. Finally, individuals are now able to transfer ownership in their residence to their domestic partners without incurring transfer and recordation taxes.

Listed below is a synopsis of most of the tax bills that were enacted this year. It is not a complete list. In order to save room, those tax laws only effecting individual counties have been omitted. Also omitted are the Maryland estate and inheritance tax laws. The estate tax law changes pertain to a very specialized area of tax law and are better addressed and explained by members of the Estates and Trust Section.

Please be warned that the following bill synopses are far from complete and a material and important provision of a bill may have been inadvertently omitted or misstated. Therefore, we strongly recommend that practitioners refer to, and rely on, the actual enacted bill.

### Sales and Use Tax

♦ Budget Financing Act: Although few thought that it would happen, the General Assembly rescinded the sales tax on computer services that had been enacted during the Special Session. In an effort to replace some of the lost revenue, commencing for income earned by individuals during 2008, the bill increases the tax rate to 5.5% on income between \$500,001 to \$1,000,000 and to 6.25% on income in excess of \$1,000,000. Effective July 1, 2008. (S.B. 46, Chapter 10).

♦ Solar and Geothermal Tax Incentive and Grant Program: Increased the grant amount for photovoltaic property and provides that the sales and use tax does not apply to solar energy equipment. Effective July 1, 2008. (H.B. 377, Chapter 132 / S.B. 207).

♦ Energy Star Product Exemptions - Boilers: Expanding the Energy Star product sales tax-free weekend in February that begins in 2011 to include boilers that meet the Energy Star efficiency requirements. Effective July 1, 2008. (H.B. 985, Chapter 180 / S.B. 456, Chapter 179).

### Income Tax

♦ Income Tax – Credit for Cellulosic Ethanol Technology Research and Development: Provides for a State income tax credit for cellulosic ethanol technology research and development conducted in the State. The tax credit is equal to 10

*(continued on Page 8)*

### Unpaid Taxes. . .

*(continued from page 6)*

to wait until the Comptroller completed its review before collecting annual assessments. The MSBA worked with Senator Brian Frosh and Delegate Kathleen Dumais to repeal the legislation during the 2008 General Assembly Session. The result is Senate Bill 493, signed on May 13, 2008.

Effective June 1, 2008, Senate Bill 493 repeals the requirement that the CPF certify that lawyers have paid all taxes before accepting annual payments. Instead, by August 31 of each year, the CPF must provide to the Comptroller a list of all lawyers, including names, mailing addresses and social security numbers, who paid the mandatory annual fee to CPF during the previous fiscal year.

If the Comptroller determines that a lawyer has not paid all undisputed taxes and unemployment insurance contributions, and the lawyer does not pay the amounts due or make satisfactory payment arrangements within 60 days after receiving notice of the delinquency from the Comptroller, or within any longer period authorized for good cause by the unit responsible for collection, the Comptroller may refer the matter to the Attorney Grievance Commission pursuant to Maryland Rule 16-731 for potential disciplinary action.

In reviewing the tax clearance provision in Senate Bill 2 for constitutionality and legal sufficiency, the Maryland Attorney General determined that the legislation was aimed at tax enforcement and was not an impermissible regulation of the practice of law violation of the Separation of Powers Doctrine. See Letter of Advice on SB 2, dated November 19, 2007.

---

## Legislative Session. . .

*(continued from page 7)*

percent of the eligible expenses incurred and cannot exceed the recipient's tax liability for that taxable year. The maximum amount available for credits in each year is limited to \$250,000. The credit is available for research and development expenses incurred before January 1, 2017. Effective July 1, 2008. (H.B. 140, Chapter 139)

♦ **Tax Credits for Qualifying Employees with Disabilities - Sunset Extension:** Extends by 1 year the termination provisions and dates of applicability for tax credits for employers that hire qualifying individuals with disabilities. Effective July 1, 2008. (H.B. 280, Chapter 658)

♦ **Corporate Income Tax - Reporting and Study:** A bill requiring very broad corporate income reporting was passed during the 2007 Special Session. In order to reduce the most onerous of the reporting requirements, the 2008 General Assembly passed a bill amending the original bill by reducing the extensive detailed reporting requirements, providing that it sunsets in 2010 and limiting the filing requirements to corporations that are subject to United States Federal Income Tax. Effective July 1, 2008. (H.B. 664, Chapter 178 / S.B. 444, Chapter 177)

♦ **Business and Economic Development - Biotechnology Investment Incentive Act:** An investor in a Maryland Biotechnology company may not claim a biotechnology investment tax credit if it, after making the investment, owns or controls more than 25 percent of the equity interests in the qualified Maryland biotechnology company. Thirty days prior to its investment, the investor must file an application with the State evidencing that it is current in the payment of all tax obligations to the State and not in default under the terms of any contract with, indebtedness to, or grant from the State. The investor must also file proof of the investment within 10 days following the investment. The tax credit is equal to 50 percent of the investor's investment in a qualified Maryland biotechnology company, not to exceed \$250,000. (H.B. 723, Chapter 518)

♦ **College Savings Plans of Maryland:** The College Savings Plan of Maryland Board is authorized to establish a Maryland Broker-Dealer College Investment Plan. The purpose of this plan is to expand the Maryland law by allowing taxpayers to deduct contributions to a college savings plan distributed by brokers and dealers. Applicable to all taxable years beginning January 1, 2008. (H.B. 1534, Chapter 548)

♦ **BRAC Community Enhancement Act:** Provides certain property tax incentives in areas designated as BRAC Revitalization and Incentive Zones by the Secretary of Busi-

ness and Economic Development. These benefits include State support of up to 100 percent of the increase in the State property tax of any qualifying property and 50 percent of the local property tax for any increase in the local tax revenues collected on the increased value of qualifying property. Effective October 1, 2008. In addition, the BRAC Community Enhancement Act authorizes a payment in lieu of taxes (PI-LOT) agreement for privately developed facilities in federal military reservations, also known as "federal enclave property." Effective June 1, 2008. These financial incentives are to begin in fiscal year 2010 and are limited to \$5 million per year. (S.B. 206, Chapter 338)

♦ **Tax Credit for Employer Established Work-Based Learning Programs for Students:** Authorizes a tax credit for employers equal to 15 percent of the wages paid to secondary or postsecondary students between the ages of 16 and 23 years who participate in an approved work-based learning program. The total credit claimed per student cannot exceed \$1,500 for all tax years and a maximum of 1,000 students annually may be approved for participation in the program. Effective July 1, 2008 and is applicable to all taxable years beginning after December 31, 2008. (S.B. 297, Chapter 571)

♦ **Income tax Credit-Bio-Heating Oil:** Creates a State income tax credit for individuals or corporations who purchase heating oil containing at least 5 percent biodiesel for space or water heating. The amount of the credit is equal to 3 cents per gallon purchased, not to exceed the lesser of \$500 or the tax liability in that year. The tax credit is applicable for taxable years beginning after December 31, 2007 and is available through taxable years ending before January 1, 2013. Effective July 1, 2008. (S.B. 565, Chapter 140)

### **Recordation and Transfer Taxes**

♦ **Recordation and Transfer Taxes - Exemptions - Domestic Partners:** Exempting from recordation and transfer taxes, deeds transferring property between current and former domestic partners. To be eligible for this exemption, individuals must share a residence and provide evidence of a committed relationship, such as: (i) a document naming the partner as the other's health care power of attorney, or durable power of attorney; (ii) joint bank accounts; (iii) life insurance beneficiary designation; and (iv) joint insurance policy. Effective July 1, 2008. (S.B. 597, Chapter 599 / H.B. 746).

♦ **Agricultural Land Transfer Tax - Surcharge:** Imposes a 25% surcharge, in addition to the Agricultural Land Transfer Tax for land transfers subject to the Agricultural transfer tax,

*(continued on Page 9)*

## Legislative Session. . .

(continued from page 8)

except for transfers to children or grandchildren of 2 acres or less. Most of the proceeds will be contributed to the Maryland Agricultural Land Preservation Foundation. Effective July 1, 2008. (S.B. 662, Chapter 610)

♦ **Homeowners' Tax Fairness in Eminent Domain Proceedings Act:** Authorizing Baltimore City and the counties to exempt from recordation tax, residential property that is purchased by a displaced homeowner to replace property taken through eminent domain proceedings. Effective July 1, 2008. (H.B. 1159, Chapter 534)

### Real Property

♦ **Homestead Property Tax Credit Eligibility:** During the Special Session, a bill was passed requiring that in order to be eligible for the Homestead Property Tax Credit, residential homeowners must provide their social security number to the State Department of Assessment and Taxation, so that the SDAT can confirm that the homeowners are only receiving the credit on one property, their residence. During this past session, bills were introduced to repeal this requirement. All failed.

♦ **Property Tax Assessments Appeals:** Reduces the time period by which the Maryland Tax Court must hear and determine a residential property tax assessment appeal from 120 days to 90 days, unless a party requests an extension. Effective July 1, 2008. (S.B. 465, Chapter 584 / H.B. 896).

♦ **Tax Sales:** This bill provides additional protections to homeowners in jeopardy of losing their property through tax sales because of unpaid real estate taxes. The protections include, but are not limited to: (i) additional notice requirements; (ii) allowing the taxing authority to have more discretion to withhold property from a tax sale; and (iii) capping attorney's fees and title search fees. Effective date of enactment. (H.B. 1211, Chapter 334 / S.B. 854, Chapter 333).

♦ **Solar Collector Systems - Restriction on Use and Solar Easement:** Relaxing "unreasonable" land use restrictions (i.e. any covenant, restriction, or condition contained in a deed, contract or Condo Bylaws or rules) to make it easier to install solar, collector systems. Effective October 1, 2008 (H.B. 117, Chapter 138).

### Miscellaneous

♦ **Taxes - Attorney Licensing:** Repeals the requirement that the Client Protection Fund ("Fund") first verify that a lawyer has paid or entered into a payment plan that is satisfactory to the Comptroller, before accepting the lawyer's annual fee, and replaces it with the requirement that the Fund assist the Comptroller in collecting unpaid taxes by providing the Comptroller with a list of each lawyer's name, mailing address and tax identification number. Should the Comptroller determine that a listed lawyer has not paid or made satisfactory payment arrangements for all undisputed taxes or unemployment insurance, the Comptroller may refer the matter to Bar Counsel. Effective June 1, 2008. (S.B. 493, Chapter 410).

♦ **Maryland Individual Tax Preparers Act:** Requires that prior to preparing personal income taxes in Maryland, a paid preparer must be either, or employed by either, a CPA, an attorney, an enrolled agent, or registered with the State Board of Individual Tax Preparers

("Board"). To register with the Board, the preparer must be at least 18, of good character, have a high school diploma or equivalent and pass a competency exam no less stringent than the Individuals section of the IRS Enrolled Agent exam. Tax preparers with 15 years past tax preparation experience may receive a waiver from the exam. Tax preparers have 2 years after June 1, 2008 (effective date) to meet these requirements. Effective June 1, 2008. (S.B. 817, Chapter 623 / H.B. 1447).



The Taxation Section  
of the Maryland State Bar Association  
presented

The Annual  
Irving Shulbank Memorial Dinner

May 13, 2008

The Belvedere  
Baltimore, Maryland

**Welcoming Remarks**

James W. Dawson, Jr., Esquire  
Chair, Taxation Section Council

**The 2008 Tax Excellence Award**  
presented to Gerald Langbaum, Esquire  
by James W. Dawson, Jr., Esquire

**History of the Irving Shulbank Memorial Dinner**

Marc P. Blum, Esquire

**Introduction of Keynote Speaker**  
by James W. Dawson, Jr., Esquire

**The J. Ronald Shiff Memorial  
Pro Bono Award**

presented to Winifred C. Borden  
by Todd Bornstein, Esquire

**Keynote Speech**  
The Honorable Sheldon S. Cohen, Esquire, CPA  
Director, Farr, Miller & Washington, LLC  
Former Internal Revenue Service Commissioner

**Remembering Irving Shulbank**

Irving Shulbank, a past Chairman of the Taxation Section Council of the Maryland State Bar Association, lectured and authored numerous articles in the field of tax law during his 18 years as a partner at Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC. He was a Certified Public Accountant and graduated from the University of Maryland School of Law.

After his passing in 1974, the Taxation Section of the Maryland State Bar Association established The Irving Shulbank Memorial Dinner as an annual meeting in memory of Mr. Shulbank.

**The Honorable Sheldon S. Cohen**

Mr. Cohen, a Certified Public Accountant and tax attorney with over 50 years of experience, is a Director with the investment counsel firm of Farr, Miller & Washington, LLC. He provides the firm with legal and tax guidance and assists with business development. A former Commissioner of the Internal Revenue Service and former partner of the law firm Morgan Lewis & Bockius LLP, Mr. Cohen frequently lectures and writes on tax topics. Among other honors he has received, Euromoney ranked Mr. Cohen as one of the leading tax lawyers in the world.

Mr. Cohen earned his undergraduate degree with honors and his law degree with highest honors (graduating first in his class) from The George Washington University. He actively participates in numerous civic associations, formerly serving as Chairman of the Board of Trustees at George Washington University and as chairman of the American Jewish Historical Society. He currently serves as treasurer of The Supreme Court Historical Society.

## The J. Ronald Shiff Memorial Pro Bono Award

J. Ronald Shiff, a Member of Gordon, Feinblatt, Rothman, Hoffberger and Hollander, LLC in Baltimore, died suddenly in May 2004 at the age of 45. Mr. Shiff, a former Chair of the Taxation Section and a member of the Taxation Section Council, authored many articles on tax law. He frequently spoke on tax topics and served as an adjunct professor at the University of Baltimore.

During his tenure on the Taxation Section Council, Mr. Shiff worked tirelessly to strengthen the Section's pro bono activities. Under his leadership as Chair, the Section established the Earned Income Tax Credit Clinic. During his years in practice, Mr. Shiff provided countless hours of pro bono legal work for individuals and many non-profit organizations.

To commemorate Mr. Shiff's memory, in 2006, the Taxation Section established The J. Ronald Shiff Memorial Pro Bono Award to be awarded annually to recognize the efforts and dedication of one or more individuals or law firms who have provided meritorious pro bono services in the field of taxation, with special consideration given to those who have represented low-income taxpayers or organizations which serve low-income taxpayers.

This year's recipient is Winifred C. Borden. The Executive Director of Maryland Volunteer Lawyers Service since 1981, Mrs. Borden is the first non-lawyer to serve in that capacity. As a result of her leadership, the number of individuals helped increased almost eight-fold and the staff has increased 50%. Several MVLS special projects have won awards from the Pro Bono Resource Center.

Mrs. Borden was the first administrator for the law firm of Tydings & Rosenberg and was the founding Director of the Women's Management Development Institute at Goucher College. She has been selected twice as one of Maryland's Top 100 Women.

Mrs. Borden received an A.B. in Political Science from Goucher College and an M.Ed. from the University of Maryland. She served as Trustee of Goucher College from 1990-2004 and currently serves as a member of the Port Discovery Board of Directors.

### Past Recipients

- 2006 Michael A. Canet
- 2007 Alan J. Van Luven
- 2008 Winifred C. Borden

## Tax Excellence Award

Beginning in 2002, the Taxation Section of the Maryland State Bar Association annually presents The Tax Excellence Award to an attorney, law school professor, public official or member of the judiciary who exemplifies professional, academic, or public service excellence, integrity, compassion, and commitment in the areas of practicing, teaching, or developing tax law or tax policy.

This year's recipient is Gerald Langbaum. Mr. Langbaum was born in Brooklyn, New York in 1946 and moved with his family to Baltimore in 1957. After graduating from Baltimore City College, Loyola College (with a B.S. in Accounting) and the University of Maryland School of Law, he was admitted to the Maryland Bar in 1969 and began 5 years of private practice. In January, 1975, he joined the Office of the Attorney General of Maryland, representing the State Comptroller, at that time Louis L. Goldstein. In November, 1978, he was named the first Principal Counsel to the Comptroller. He has continued his representation of the Comptroller as Principal Counsel (now Division Director) ever since.

Mr. Langbaum has argued more than 70 cases in the Maryland appellate courts. Notable successes include *Blumenthal v. Clerk of the Court* (upholding local recordation taxes), *Xerox v. Comptroller* (upholding, for the first time in Maryland, the unitary business principle in state corporation income taxation) and *Comptroller v. SYL* (establishing Maryland's right to tax Delaware holding companies, based on the Maryland nexus of the operating parent). In 2006, he received a Career Exceptional Service Award from Attorney General J. Joseph Curran, Jr.

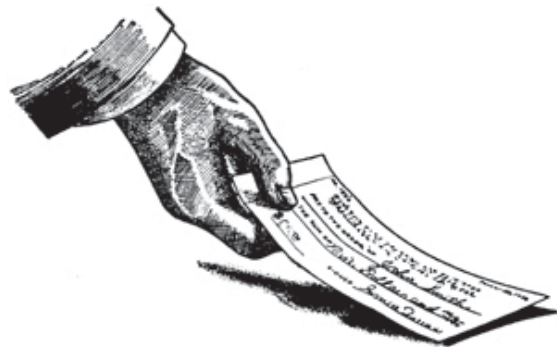
### Past Recipients

- 2002 The Honorable L. Paige Marvel
- 2003 Stephen M. Cordi
- 2004 Theodore W. Hirsh and  
N. Alfred Pasternak
- 2005 J. Ronald Shiff (posthumously)
- 2006 Evelyn W. Pasquier
- 2007 Robert A. Rombro
- 2008 Gerald Langbaum

# Thank You!

The Section thanks the following firms for their generous donations to help underwrite this dinner:

DLA Piper  
Gordon, Feinblatt, Rothman, Hoffberger, & Hollander, LLC  
Levy, Mann, Caplan, Hermann & Polashuk, LLP  
Miles & Stockbridge P.C.  
Ober | Kaler  
Rosenberg | Martin | Greenberg, LLP  
Selzer Gurvitch Rabin & Obecny  
Shapiro Sher Guinot & Sandler, P.A.  
Stein, Sperling, Bennett, De Jong, Driscoll & Greenfeig, P.C.  
Venable LLP  
Whiteford, Taylor & Preston LLP



## Taxation Section Council 2007-2008

James W. Dawson, Jr., Chair  
Caroline D. Ciruolo, Vice Chair  
Jessica R. Lubar, Secretary/Treasurer  
Bryan W. Young, Immediate Past Chair  
Elissa F. Borges, Past Chair  
Andrea B. Gillespie, Past Chair  
Jeffrey A. Markowitz, Past Chair  
Alan D. Borinsky  
Todd Bornstein  
Fred Brown  
David S. De Jong  
Steven Gevarter

G. Evans Hubbard  
Katrina Kamantauskas-Holder  
Chaya Kundra  
Casey Lothamer  
Brian L. Oliner  
David J. Polashuk  
Catherine Mary Rafferty  
Herman B. Rosenthal  
W. Randolph Shump

Joseph Mezzanotte, B&F Liaison  
Timothy Sheridan, BOG Liaison