

# TAX TALK

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

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Volume XVIII Number 1

Fall 2009

## FROM THE CHAIR

By Jessica R. Lubar

“Year of the Tax Section Member”

At the orientation meeting of Section Chairs held by the MSBA this summer, I was struck by MSBA President Thomas C. Cardaro’s statement that this year would be the “Year of the Member.” At first, I was not sure how that statement would change how the Section of Taxation’s Council planned or implemented activities. Ever since I joined the Section Council, the Members of the Section have been the focus of every activity and decision made by the Council. However, the more I thought about it, I realized that designating this year as the Year of the Member focuses the Section to more proactively approach and plan activities based on the needs of our Members.

In determining the primary ways in which we could serve our Members, we have focused on three areas: (1) Economic Issues Facing Members; (2) Accessibility of Events; and (3) Increasing the Availability of Resources.

### *Economic Issues Facing Members*

We plan to address the economic issues that are facing our Members in several ways. First, directly, by either substantially reducing or eliminating the cost of attending Section events. The costs for attending Tax Networking Night in the Fall and The Shulbank Dinner in the Spring will be substantially reduced from last year’s costs. In addition, we will be sponsoring two Joint Section Events this year which will be free for Members of the Section to attend. The events will be co-sponsored with another section of the MSBA and will contain both an educational and a networking component. Second, indirectly, by offering a number of networking opportunities, including

Tax Networking Night, the Shulbank Dinner, and the two Joint Section Events.

### *Accessibility of Events*

The Section Council has always been mindful of the fact that our Members are located all over the state, however, we have been limited in our ability to make sure that activities are accessible across the state, and in some cases, simply down I-95. In addition, the economic situation is limiting the time that Members have to attend events in person. Fortunately, technology now increases our ability to provide access to all of our Members. This year, we intend to further explore the use of teleconferences and videoconferences with our Study Groups. The State and Local Tax Study Group has successfully had a Washington area satellite hook-up at Stein, Sperling, Bennett, De Jong, Driscoll & Greenfeig, P.C. in Rockville for the last couple of years. We hope to replicate this success with other study groups. We also plan to videotape one study group meeting each year and have that posted on the website.

In addition, a common request from Members in the past was that we facilitate volunteering for tax preparation clinics outside of Baltimore. This year, we will be providing information on volunteer and training opportunities with the Maryland CASH campaign throughout the state.

### *Increase Resources*

The Section of Taxation provides many resources for its Members through activities and the website. This year we plan to increase both the number of resources available to

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## FROM THE CHAIR...

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our Members and the accessibility of those resources. The Section's website contains archives of publications that the Section publishes, such as Tax Talk and the Maryland Tax Practitioner's Handbook. The Section plans to add additional educational and informational resources to the website throughout the year. We are also hoping to offer additional programs and activities by increasing the size of our committees.

### *Member Participation and Input*

If you have not already, you should be receiving shortly a survey requesting your input by way of the Section listserve. A copy is also included in this issue of Tax Talk. The goal of the survey is to solicit your input in the Section's activities. We also want to solicit your involvement. The Section Council contains a number of committees through which it accomplishes its activities and programs. The more people that there are on each committee, the more that the committee can accomplish and the more opinions and ideas will be represented. The survey contains a list of all of the current committees of the Section Council. I urge you to not only return your survey but also to join one of our Committees. I can't think of a better way to make this the "Year of the Tax Section Member" than to get more Members involved in the Section's activities and planning.

### *Other Section Programs and Activities*

It is impossible to plan for the 2009/2010 year of the Section of Taxation without reviewing the activities that the Section engages in on an annual basis. I was rather amazed and impressed not only by the number and variety of activities, but also at how many new activities had been established by the Section just during the time in which I had been a member of the Section Council.

Many of the activities that the Section Council continues to participate in and sponsor started before my tenure on the Council began. These core activities have continued to evolve and expand over the years.

### *Continuing Legal Education*

The Section has always had a strong tradition of working with MICPEL in providing continuing legal education targeted to both tax lawyers and non-tax lawyers. Among the many programs offered, the annual Advanced Tax Institute, which is now in its 29th year, has consistently provided top-notch educational programs and attracted nationally rec-

ognized speakers. Over the last few years, the Section has extended its commitment to continuing legal education by offering new opportunities for our members and the general public to learn. For the past two years, the Section co-sponsored with the University of Baltimore Graduate Tax Program a Symposium on State and Local Tax Policy. The Section also last year, for the second time, joined with another section of the MSBA in co-sponsoring a networking and educational event. Both the Symposium and the Joint Section Events also contain a networking component. In order to focus on networking with other attorneys and education, this year the Section plans to co-sponsor two Joint Section Events. The first event will occur in October and will be co-sponsored with the Family Law Section. Please look out for information regarding the Spring event as that information is determined.

### *Pro Bono*

In years past, the Section has facilitated volunteering with the Earned Income Tax Credit Clinic that was offered by the Maryland Volunteer Lawyers Service ("MVLS"). In fact, the Section was instrumental in first establishing the Clinic. However, MVLS has decided to discontinue its sponsorship of the Clinic. Therefore, the Section will be working closely with the Maryland CASH Campaign and providing members with information with respect to training and volunteer opportunities throughout Maryland.

In addition, the Section runs a U.S. Tax Court Pro Bono Program in which it encourages members of the MSBA to offer pro bono consultation services to unrepresented taxpayers at U.S. Tax Court calendar calls, during settlement negotiations and in final trial preparation. This is a new program that was just launched by the Section last year and for which the Section won the MSBA's Presidential Best Section Project Award - Service to the Public. We are continuing to learn from our experiences with the program and will be providing additional resources to volunteers.

### *Legislation*

One of the services that I think that the Section has excelled at in past years has been providing members with information regarding tax legislation that is considered by the Maryland General Assembly. We plan to expand the Section's legislative role by proactively drafting proposed legislation with respect to tax issues. The goal of drafting legislation

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Visit [www.msba.org/sec\\_comm/sections/taxation](http://www.msba.org/sec_comm/sections/taxation)

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would be to provide technical corrections for existing statutes, fix inconsistencies and enhance administrability of the tax laws.

It is impossible to look at what the Section has managed to accomplish in the past without being impressed by what our volunteer Council has accomplished. It is also impossible to look at those accomplishments without recognizing the leadership that was involved in making them happen. My predecessors as Chair of the Section of Taxation have set the bar

high in terms of fulfilling my duties as Chair. I especially want to recognize and thank our immediate past Chair, Caroline Ciralo for all that she led the Section in accomplishing last year.

I look forward to an exciting year full of activities and the opportunity to get to know more Members. If you have any questions about any of the Section's activities, please visit our website or contact me directly (jrlubar@venable.com).

**H**ave you visited the Tax Section website lately? If you are looking for something to do, check the main page for information on upcoming events, or visit the Study Groups page for schedules for each of the Tax Section Study Groups. If you are looking for a job, visit our new Employment Opportunities page (and if you have a position to offer, we will post it for you!). If you are looking for a government contact, the 2008 Maryland Tax Practitioner's Handbook is now online. And we have added additional resource materials such as the combined reporting regulations, handouts from IRS meetings, even a video! It all starts at [www.msba.org/sec\\_comm/sections/taxation](http://www.msba.org/sec_comm/sections/taxation). Use the tabs at the top and right of the screen to access even more information.



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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.

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# Upcoming Events

*MSBA Tax Section Presents*

## **The 9th Annual Tax Professionals' Networking Night**

Put aside the date – *Wednesday, November 11, 2009*  
for the MSBA Tax Section's  
Ninth Annual Tax Professionals' Networking Night.

This is an excellent networking opportunity for Tax Section members, our accounting colleagues, and state and federal tax officials. Last year we had more than 80 attendees! Expect good food, good drink and good conversation in a collegial atmosphere.

This year's event will be held at the **Diamondback Tavern, 3733 Old Columbia Pike, Ellicott City, MD 21043**. Please stay tuned to the Tax Section website, [http://msba.org/sec\\_comm/sections/taxation/](http://msba.org/sec_comm/sections/taxation/) for additional details, to make reservations, and to purchase tickets

Please consider helping to keep our ticket prices down! If your firm is interested in being a sponsor for \$250.00 to help underwrite the cost of this event, please contact Keith Blair, at [kblair@ubalt.edu](mailto:kblair@ubalt.edu), Chair of the Tax Section Member Service Committee or Jennifer Pratt, [JAPratt@Venable.com](mailto:JAPratt@Venable.com), event organizer.

## **PUT IT ON YOUR CALENDAR**

***29th Annual MICPEL Advanced Tax Institute  
November 2-6, 2009  
Martin's West  
6817 Dogwood Road, Baltimore, MD 21244***

Each day features nationally known authorities  
offering analysis and advice to help you in your practice.

Registration is now open. For additional details please go to:

[http://msba.org/sec\\_comm/sections/taxation/docs/MICPEL\\_ATI\\_fi](http://msba.org/sec_comm/sections/taxation/docs/MICPEL_ATI_fi)

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# IDENTITY THEFT

By Robb A. Longman.

## *Introduction*

Identity theft is a growing problem nationwide. Individuals' identities are being stolen and used by others. The results to the victims are devastating. Identity thieves use a stolen personal identity to open credit card accounts, utility accounts and other accounts and can easily ruin a victim's credit history. Identity thieves do not stop there. They may also use a victim's tax-related information, causing them problems with their tax return filings.

Taxpayers need to be aware of three types of identity theft. First, an identity thief may steal the taxpayer's identity and use the victim's social security number on a false tax return. That return will claim a refund. Second, an illegal worker may use the taxpayer's social security number. That results in additional income being reported to the Service. Third, a business may use an individual's social security number and report paying wages to that person even though the person did not work there. The business does this to reduce its taxable income and tax liability. Not only do these three actions cause havoc for both taxpayers and the Service, they cost the government significant lost revenue.

## *Discovering and Reacting to the Theft*

When a taxpayer's identity is stolen and used to file a fraudulent tax return, the taxpayer usually does not find out immediately. It is usually difficult for the taxpayer to even find out at all. When a fraudulent tax return is filed, the thief uses an address other than that of the taxpayer. The Service then updates the taxpayer's account with the new address. All notices sent by the Service then go to the new address, which is usually a false address, and the victim does not receive any of them. The taxpayer typically finds out about this type of fraud after she files her tax return and it is rejected or an expected refund nev-

er arrives. Once that occurs, the taxpayer will have to provide documentation to demonstrate to the Service that she in fact the owner of the social security number stolen. The items that constitute documentation are a copy of a driver's license or passport, a copy of the social security card, and a police report or FTC Affidavit of Identity Theft. By providing that information to the Service, the taxpayer has officially proven that she is who she says she is. The taxpayer's account should then be coded, and this should (hopefully) protect her account in the future.

It is unfortunately frequent that the taxpayer does not receive any notice of the fraud because the Service does not recognize that the abuse has occurred. In some circumstances, a taxpayer may not learn of the fraud until it is too late and collection activity has occurred on the account. When this occurs, it is imperative to respond immediately to the Service in order to protect the funds in jeopardy of being seized.

In some circumstances the Service will notice first that a taxpayer's social security number has been compromised. In those circumstances, it will request the same documentation listed above. If the taxpayer does not provide the information in a timely manner, his social security number will be frozen and he will be issued a taxpayer identification number until the matter is resolved.

When a taxpayer's social security number has been stolen and used for work purposes, the taxpayer will eventually receive a notice that he needs to file a tax return or that his tax return has been changed. The taxpayer must respond accordingly. In these situations, he must prove that he did not have income when it has been reported that income does exist. Usually he can demonstrate this by obtaining information from the employer reporting the wages or by show-

ing that he did not live in or near the location from which the incorrect income was reported.

It is imperative that the taxpayer comply with the Service's requests in this situation to ensure that an assessment is not entered against him and that collection activity does not occur. If collection activity has occurred, the taxpayer should follow regular avenues for disputing the tax assessed. The taxpayer can use the Offer in Compromise Program, ask for Audit Reconsideration, or go through the necessary channels to have the case heard in the United States Tax Court. In this situation, the burden of proving the taxpayer actually received the income will shift to the Service.

## *Service Assistance*

With identity theft problems growing, the Service finally established a unit to specifically handle these issues. The new unit is the IRS Protection Specialized Unit and is reached at the Identity Theft Hotline at 1-800-908-4490. If you are unable to work with the unit, or the unit is not properly handling your client's matter, the next place to turn is the Taxpayer Advocate Service, which can be contacted at 1-877-777-4778. The taxpayer should turn to the advocate's office for assistance if the Service has not properly resolved the matter. The advocate's office will assign the case to a specific individual and will make contact for this matter easier.

Before the Service has knowledge of the identity theft activity, there is nothing that it will do to an individual's account to indicate that it could be targeted. Action will occur only after the account actually is targeted. That does not mean that taxpayers should do nothing on their own. A taxpayer can and should be proactive. She can monitor use of her social security number by ordering a free credit report each

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# MON DIEU! - YOUR CLIENT IS NOW THE BENEFICIARY OF AN OFFSHORE TRUST

## COMPLIANCE REQUIREMENTS FOR US PERSONS INHERITING OFFSHORE TRUST STRUCTURES – COMMON TRAPS AND PITFALLS

By Paul G. Marcotte, Jr.

[Ed. Note: This article is reproduced with the permission of the Maryland Bar Journal, published by the Maryland State Bar Association.]

Your client, Jean-Paul, just learned that a relative in France (Uncle Pierre) has died leaving him the sole beneficiary of the Gemini Trust. Jean-Paul, although born in France, came to the US as a student, married a US citizen and in time, became a naturalized citizen himself. Pierre established the Gemini Trust years ago in Jersey (one of the Channel Islands) since France does not recognize personal trusts. This structure allowed Pierre to avoid French forced heirship laws which otherwise limited his testamentary freedom. The Gemini Trust also allowed Pierre a means to shield his global wealth held outside of France from excessive taxation there, including the despised *impôt de solidarité sur la fortune*, the French wealth tax.

A private trust company in Jersey serves as trustee. The Gemini Trust owns bank and brokerage accounts in a Swiss bank and some private offshore holding companies each of which owns a prime commercial property in a major European city.

For purposes of this article, a “US person” generally means a citizen or resident alien as defined in § 7701(b)(1)(A) of the Internal Revenue Code (“Code”). As Jean-Paul will soon see, the Code can greatly complicate life for US persons with overseas activities or holdings. In particular, the failure of US persons to comply with various return filing requirements under federal law can produce harsh

monetary penalties and possible criminal sanctions. This article discusses some of the more important of these requirements.

### Foreign Bank Account [FBAR] Reporting

The federal government has been intensifying enforcement efforts regarding US persons with undisclosed foreign accounts. Recent front-page headlines detail the government’s ongoing court battle against a prominent Swiss bank to compel compliance with an Internal Revenue Service (“Service”) summons seeking disclosure of the bank’s US customers. Criminal prosecutions are now underway against some of the account holders.

In addition to the requirement that one indicate on Schedule B of Form 1040 whether one has an interest in a foreign account, there is a separate requirement outside the tax law to report these. The Currency and Foreign Transactions Reporting Act (originally the Bank Secrecy Act), 31 U.S.C. § 5314 and specifically, 31 C.F.R. § 103.24, imposes a requirement that US persons make an annual report separate from their tax return disclosing the existence of foreign accounts. Reporting is required where one has a financial interest or signature authority and the aggregate balance of such accounts at any time during the year exceeds \$10,000.

The purpose behind this reporting requirement is to make it easier for the government to detect and combat various non-tax related criminal activities (e.g., money laundering, drug traffick-

ing, etc.). This report is submitted on Treasury Form TD F 90-22.1 (commonly known as “FBAR”) and is due June 30 of each year with no provision for an extension. This form is now filed with the Service which has been delegated overall enforcement power and ends up in a central database with FinCen (the Financial Crimes Enforcement Network) inside the Treasury Department where multiple law enforcement agencies have access.

The definition of “financial account” includes not only bank deposit accounts, but also brokerage accounts and debit cards. The requirement to disclose accounts applies where one has mere signature authority over an account such as a corporate officer, a trustee or agent under a power of attorney.

As a result of this broad application, multiple persons or entities may be required to report the same account. For example, if a US person is a beneficiary of a trust (i) with an interest in more than 50% of the trust assets or (ii) receives more than 50% of the trust income, that beneficiary has to file an FBAR for any foreign accounts of the trust. The trustee in turn may have a similar requirement if the trustee is a US person or if the trust is domestic. In the above example, Jean-Paul is required to report any accounts held by the Gemini Trust since he is the sole beneficiary.

Penalties for non-compliance with the FBAR requirements are severe. In case of an unintentional failure to file, the penalty is \$10,000 per violation al-

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though a reasonable cause exception applies. If the taxpayer intentionally fails to file, the civil penalty is the greater of \$100,000 or one-half the account balance for each year's violation in addition to any criminal sanction. Multiple years of non-compliance can result in total penalties that can easily consume or exceed the entire account balance.

**Practice Pointer:** When reviewing an estate planning questionnaire for a new client who has recently immigrated to this country, any overseas holdings including interests in foreign trusts or prospective future inheritances from overseas relatives should be reviewed to determine whether FBAR or other reporting is required.

### US Beneficiaries of Foreign Trusts; Impact of Throwback Rules and Compliance Requirements

A trust where no person is considered the owner for income tax purposes (i.e., a non-grantor type trust) is treated as conduit type entity for US tax purposes; the trust or the beneficiary pays tax on any income/gains generated by the trust. The statutory mechanism for allocating this tax burden between the trust and beneficiary is distributable net income or DNI which measures the potential income that can be allocated (and thus taxed) to the beneficiary. This basic statutory framework assumes that the trust is subject to full US income taxation so that if income is not distributed (or required to be distributed) currently to the beneficiaries so that they bear the tax burden on such amounts, then the trust will bear the tax burden. With an offshore trust, however, the trust generally is not subject to US tax so that the Code provides for a special tax regime to account for the potential tax deferral in such circumstances.

Where a foreign non-grantor type trust does not distribute all of its income (including capital gains which are included in DNI for this purpose) on a current basis, a rather complex and draconian set of rules (the "throwback rules") apply when principal distributions are made in later years. See generally Code §§ 665-668. Without these special rules, a later principal distribution would not be taxable to a US beneficiary since it normally would not carry out prior year DNI under regular US fiduciary tax rules. As a result, that previously earned but undistributed trust income would never be taxed in the US.

In highly simplistic terms, the throwback rules can be thought of as treating part or all of the later principal distribution as being comprised of this previously undistributed DNI (an "accumulation distribution") and such amount is then carried or "thrown" back to the earlier tax years of the beneficiary when such income was originally generated by the trust. A tax computation is then applied to reflect that the tax rates in effect during such years may have been higher than the rates in effect for the year of distribution.

A rather onerous feature of these rules is that the character of the income making up an accumulation distribution such as long-term capital gains is not preserved in the hands of the beneficiary. Further, the tax liability is then subjected to an interest charge to reflect the time value of money from the tax deferral. If the trust has been in existence for a number of years, the combined tax and interest charge can often come close to equaling the entire distribution resulting in confiscatory taxation.

Due to practical difficulties the Service has in obtaining information offshore, the statute presumes that 100% of any distribution will be treated as an accumulation distribution unless the beneficiary has received sufficient information

from the subject trust to show otherwise (beneficiary has burden of proof). See Code § 6048(c)(2). If a beneficiary cannot comply, the Service provides limited administrative relief through a shortcut (default) calculation method whereby only the excess of the current year distribution over the average of the distributions for the prior three years (using 1.25 times those distributions) is deemed to be an accumulation distribution. The interest charge is then computed on the basis of one-half of the total years the trust has been in existence. Distributions from foreign trusts are reported on IRS Form 3520 (Annual Return to Report Transactions with Foreign Trusts). The initial penalty for failure to file this return is 35% of the amount of the distribution(s) with further escalating penalties if non-compliance continues after notice from the Service.

Any attempt to circumvent these rules by structuring any transfer of funds to a US beneficiary as a loan must meet the requirements for a "qualified loan" as otherwise the transaction will be characterized as a distribution. See Code § 643(i).

**Practice Pointer:** The throwback rules apply notwithstanding that the foreign trust may have been formed in a non-tax haven country or for legitimate purposes. The major compliance problem here is obtaining adequate reliable information from overseas trustees to determine the exact throwback liability. It is not uncommon that a foreign trust may have been in existence for many years and trust records are not well maintained or do not exist for all periods or the trustee is secretive or uncooperative. As a consequence, the throwback rules can often present a real compliance nightmare.

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## MON DIEU!...

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In the earlier example, Jean-Paul will need to be concerned with the state of trust records and receiving full and timely cooperation from the trustee.

### US Owners of Certain Foreign Corporations - CFCs and PFICs.

It is becoming increasingly commonplace to find clients who have an ownership interest (direct or indirect) in a privately held offshore corporation which in turn owns real estate investments. These types of interests potentially involve two different anti-deferral tax regimes which can trigger some fairly extensive reporting requirements.

The first set of rules apply to a controlled foreign corporation or CFC which can be generally described as a foreign corporation where one or more US persons own more than 50% of the stock. See Code §§ 951 to 965. A passive foreign investment company or PFIC can be generally described as a foreign corporation which derives 75% or more of its income from mostly passive sources (i.e., dividends, interest or rents from passive rental activities) or has 50% or more average assets which are passive type holdings (e.g., securities, passive rental real estate, etc.). See Code §§ 1291 to 1298. Unlike the definition for a CFC, there is no minimum level of ownership by US persons that can trigger PFIC status. As a result, PFIC status occurs often and unexpectedly.

The CFC and PFIC rules were enacted to discourage US persons from conducting activities or owning certain types of property through a foreign corporation which otherwise would permit deferral of profits from US tax until such funds were in fact repatriated to the US owner in the form of dividends. The anti-deferral regime for a CFC requires that certain types of passive income (so-called Subpart F items as defined in Code §

952 and offshore earnings which are reinvested in US assets) be taxed currently to 10% or more US shareholders as an imputed dividend whether or not actual distributions are made. See Code § 951. In the case of a PFIC, there is no current imputed income, but when a dividend is later made or shares in the entity sold, an interest charge must be added to any regular tax liability to reflect the tax deferral. See Code Section § 1291. Moreover, dividends from a PFIC (and imputed dividends from a CFC) are generally not entitled to the preferential tax rate for qualified dividends (15% in 2009). Further, on any disposition of stock in a CFC or PFIC by 10% or more stockholders, Code § 1248(a) denies the benefit of the preferential tax rates for long-term capital gains to the extent that any gain represents accumulated but undistributed income of the entity. There are certain elections available in case of a PFIC to minimize the effect of some of these rules, but with the price being current income inclusion with the risk of insufficient cash distributions to pay any tax due.

Reporting of such interests is usually made annually on IRS Forms 5471 (for a CFC) and 8621 (PFIC); other forms may also be required. As an example of the steep penalty structure in case of non-compliance, the failure to file Form 5471 attracts an initial \$10,000 penalty and the subsequent failure to file after notice from the Service generates an additional \$10,000 penalty per month up to \$50,000. A reasonable cause exception applies. Note that these penalties are imposed even though no income tax liability may be due with the filing.

Code § 958(a)(2) provides that shares in a foreign corporation held by a foreign trust are deemed held proportionally by the beneficiaries. Thus, in the example discussed above, each of the holding companies will be treated as CFC in

relation to Jean-Paul since the Gemini Trust's 100% ownership of each company will be attributed to him. This situation will trigger an annual Form 5471 filing requirement for each entity. Alternatively, if the Gemini Trust had a non-controlling interest that could otherwise escape classification as a CFC, then the entity might still be classified as a PFIC if the underlying rental property is passively managed.

**Practice Pointer:** If a client is a US person and beneficiary of an offshore trust that has one or more privately held foreign corporations as holdings or specialized investment vehicles such as foreign mutual funds, it is prudent to inquire as to the nature of such holdings and identity of any other owners to determine whether these additional reporting obligations apply.

### Service Offers Short Window for Offshore Voluntary Disclosure

On March 23, 2009, the Service announced an offshore voluntary disclosure initiative which is effective for six months. This program is designed to encourage non-compliant taxpayers to come forward and make full disclosure of offshore accounts and entities (including trusts) with the potential reward of avoiding criminal prosecution. The Service will collect back taxes, interest and the accuracy or delinquency penalty for the preceding six years with no reasonable cause exception applicable. The Service will also impose a 20% penalty based on the highest balance or value in an offshore account or entity during the prior six years in lieu of all other penalties. The penalty is reduced to 5% if all taxes have been paid with respect to the account or entity and the taxpayer did not open or establish the account or entity and no activity

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transpired while the taxpayer was in control. This reduced level of penalty is especially attractive in situations where an innocent taxpayer such as Jean-Paul recently inherited one of these structures.

### Preview of Coming Attractions

As discussed above, the whole area involving international tax compliance and offshore trusts/accounts is receiving increased attention by several branches of government. Once the Service's offshore voluntary disclosure initiative expires, it can be expected that the Service will show no mercy going forward in pursuing taxpayers with these types of undisclosed holdings.

Congress and the Administration may well enhance the Service's arsenal. At this writing, there is pending legislation known as the Stop Tax Haven Abuse Act (S.B. 506 and H.R. 1265) which would among other changes expand the reporting requirements

for FBARs to include all accounts in a jurisdiction that the Treasury determines to be a tax haven regardless of the balance on hand during the year. The President in early May announced his own package of international tax proposals which includes: (i) increasing the level of penalties for violations of the FBAR and foreign trust reporting requirements; (ii) creating a rebuttable presumption that any failure to file the FBAR is willful where the account balance is more than \$200,000; and (iii) extending the statute of limitations.

In summary, the special tax regimes and compliance rules in this area are exceedingly complex and burdensome, with civil penalties for non-compliance often at punitive levels. Not much distinction is made as to hardcore tax dodgers who intentionally exploit the offshore world versus honest taxpayers like Jean-Paul who have the misfortune of inheriting one of these structures. In Jean-Paul's case, an exit strategy may be in order

for him to try to bail out of this structure and reduce the ongoing compliance headaches. In the meantime, wish him *bonne chance* (good luck).

*Mr. Marcotte is a partner in the Bethesda law firm Paley Rothman and is a member of the firm's Tax Department (Co-Chair) as well as its Estate Planning and Estate/Trust Administration Departments. He can be reached at [pmarcotte@paleyrothman.com](mailto:pmarcotte@paleyrothman.com).*

## IDENTITY THEFT...

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year and checking for unauthorized activity. While a taxpayer cannot always prevent her identity from being stolen or used in an unauthorized manner, she can work with the Service to resolve the resulting tax problem.

# MSBA Mid-Year Meeting

Majestic Colonial Resort

Punta Cana,

Dominican Republic

Feb 20-27 & Feb 21-28, 2010



For more information, go to:

<http://msba.org/calendar/flyers/MSBAPuntaCana.pdf>

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# TAX STUDY GROUPS

## *Employee Benefits Study Group*

Tax Section members are invited to attend bi-monthly meetings of the Employee Benefits Study Group. The Study Group generally meets on the second Tuesday of January, March, May, July, September, and November. Each meeting is a roundtable discussion of timely employee benefits topics. Lunch is served.

**LOCATION:** Whiteford, Taylor & Preston (19<sup>th</sup> Floor)  
Seven St. Paul Street  
Baltimore, MD 21202

**TIME:** 12 Noon

**DATES:** November 10, 2009                      May 11, 2010                      November 9, 2010  
January 12, 2010                      July 13, 2010  
March 9, 2010                      September 14, 2010

**CONTACT:** Katrina C. Kamantauskas-Holder, Esquire  
Holder Law Group LLC  
P.O. Box 10509  
Towson, Maryland 21285-0509  
Telephone: 410-296-9551  
katrina.kamantauskas@holderlaw.com

**DUES:** \$75 for MSBA Tax Section members for the calendar year

**MAIL LIST:** Meeting announcements and topics are e-mailed shortly before each meeting. If you would like to be added to the e-mail list, contact [katrina.kamantauskas@holderlaw.com](mailto:katrina.kamantauskas@holderlaw.com).



## *Tax Controversy Study Group*

The Tax Controversy Study Group meets monthly. Each meeting has a guest speaker on a specific topic with an opportunity for Q&A and discussion.

**LOCATION:** Rosenberg, Martin, Greenberg, LLP  
25 South Charles Street, Suite 2115  
Baltimore, MD 21201

**TIME:** 9:00 a.m.

**DATES:** October 7, 2009                      February 11, 2010  
November 12, 2009                      March 11, 2010  
December 10, 2009                      April 8, 2010

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January 14, 2010

May 13, 2010

**CONTACT:** David J. Polashuk, Esquire  
Levy, Mann, Caplan, Hermann & Polashuk, LLP  
400 Redland Court Suite 110  
Owings Mills, MD 21117  
Telephone: 410-998-2000

**MAIL LIST:** Meeting announcements and topics are e-mailed shortly before each meeting. If you would like to be added to the e-mail list, contact David J. Polashuk at [dpolashuk@lmcplaw.com](mailto:dpolashuk@lmcplaw.com).



***Tax Exempt Study Group***

**LOCATION:** Maryland Association of Nonprofit Organizations  
190 West Ostend Street  
Baltimore, MD 21230

**TIME:** 8:30 a.m.

**DATES:** November 12, 2009  
Future dates to be posted on Taxation Section website

**CONTACT:** Jonathan May, Esquire  
Whiteford, Taylor & Preston, LLP  
Parkside Building  
10500 Little Patuxent Parkway, Suite 750  
Columbia, MD 21044-3585  
Telephone: 410-347-8700

**MAIL LIST:** Meeting announcements and topics are e-mailed shortly before each meeting. If you would like to be added to the e-mail list, contact Jonathan May at [JMay@wtplaw.com](mailto:JMay@wtplaw.com).



***Transactional Tax Study Group***

**LOCATION:** Whiteford, Taylor & Preston, LLP  
7 Saint Paul Street, Suite 1300  
Baltimore, MD 21202-1626

**TIME:** 12 Noon

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**DATES:** October 14, 2009  
November 11, 2009  
December 9, 2009  
Future dates to be posted on Taxation Section website

**CONTACT:** Jonathan May, Esquire  
Whiteford, Taylor & Preston, LLP  
Parkside Building  
10500 Little Patuxent Parkway, Suite 750  
Columbia, MD 21044-3585  
Telephone: 410-347-8700

**MAIL LIST:** Meeting announcements and topics are e-mailed shortly before each meeting. If you would like to be added to the e-mail list, contact Jonathan May at [JMay@wtplaw.com](mailto:JMay@wtplaw.com).



***Estate and Gift Tax Study Group***

The Study Group generally meets on the third Thursday of each month. The 2009-2010 meeting dates are listed below. The topic and speaker information will be provided at a later date.

**LOCATION:** The first two meetings will be held in the Bank of America, Tower 1, 4th Floor, 100 South Charles Street, Baltimore, Maryland 21202. The location of all other meetings will be announced at a later date. Please bring your photo identification as security requires this for admission. A light lunch will be served at all the meetings.

**TIME:** 12:30 p.m. to 1:45 p.m.

**DATES:** October 15, 2009                      February 18, 2010  
November 12, 2009                      March 25, 2010  
December 17, 2009                      April 22, 2010  
January 21, 2010                          May 20, 2010

**CONTACT:** If you are interested in joining the study group, please contact:

Lisa A. Stern, Esquire, Co-Chair  
Robert A. Rombro, PA  
22 Light Street, Suite 402  
Baltimore, Maryland 21202

Victoria L. Grace, Esquire, Co-Chair  
Wase, Wase and Grace, LLC  
The Creighton Center  
1400 Front Street, #202  
Lutherville, Maryland 21093



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## **STATE TAX STUDY GROUP**

### **2009-2010 MEETING AGENDA**

<b><u>DATE</u></b>	<b><u>SPEAKER</u></b>	<b><u>TOPIC</u></b>
<i>August 18, 2009</i>	Linda Tanton Brian Oliner Sharonne Bonardi	Maryland's 2009 Tax Amnesty
<i>September 15, 2009</i>	Robert Zouck Jack Hearn	Maryland Tax Court Robert Zouck's mariner's perspective
<i>October 20, 2009</i>	Stuart Cordish	Recordation and Transfer Tax Issues
<i>November 17, 2009</i>	Debora Gorman Charles D. Zephir	Hearings and Appeals in Comptroller's Office; Current Cases
<i>December 15, 2009</i>	Brian L. Oliner	Recent and pending litigation; a pre-Maryland General Assembly prognosis
<i>January 19, 2010</i>	William K. Hammond David M. Lyon Jeffrey Comen	Update of cases and recent/pending legislation involving the State Department of Assessments and Taxation
<i>February 23, 2010</i>	Ed Muth Michael W. Griffin	Administrative developments at the State Department of Assessments and Taxation; recent cases and leg- islation regarding personal property tax
<i>March 16, 2010</i>	Jonathan Krasnoff	Maryland's Workplace Fraud Act of 2009
<i>April 20, 2010</i>	Wallace Eddleman	An analysis of the last session of the Maryland General Assembly; Income Tax Developments
<i>May 18, 2010</i>	Sharonne Bonardi	Perspective on her first year as Director of the Compliance Divi- sion of the Maryland Comptroller; pending and enacted Maryland legislation.

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# Section of Taxation Member Survey

Member input and involvement is important to the success of the Section and helps shape Section activities.

Please take a few minutes to answer the questions below and return the survey to:

Jessica R. Lubar, Esq.  
Venable LLP  
750 E. Pratt St., Suite 900  
Baltimore, MD 21202  
[jrlubar@venable.com](mailto:jrlubar@venable.com)

1. **What services or programs would you like the Section to offer?** \_\_\_\_\_
2. **What types of documents, information and links would you find useful for the Section to provide on its website?**  
\_\_\_\_\_
3. **What issue or subject would you like to see offered in a CLE program or as a session at ATI?** \_\_\_\_\_
4. **What problems or issues have you encountered in the Maryland tax laws that you think should be corrected by way of a technical correction (i.e., inconsistent provisions, provisions that have not been updated based on other law changes, etc...)?** \_\_\_\_\_
5. **Is there any provision that is not currently in the Maryland tax laws that would be helpful to have to promote ease of administration and application of the tax laws?** \_\_\_\_\_

Please let me know if you are interested in participating on any of the following committees:

1. Legal Education Committee – responsible for: (1) proposing and coordinating tax CLE with MICPEL; (2) planning and organizing the educational component of the Section’s Annual Meeting; and (3) communicating and maintaining a relationship with the local law schools
2. Member Services Committee – responsible for Tax Networking Night, Shulbank Dinner, and other Member Services activities
3. Communications Committee – responsible for (1) the Section’s publications, including Tax Talk and the Practitioner Handbook; (2) maintaining and updating the website; and (3) communicating with members via the listserv
4. Special Programs Committee – responsible for planning and organizing the Symposium and Joint Section Meetings
5. Pro Bono Committee – responsible for (1) coordinating the Section’s U.S. Tax Court Program, and volunteer involvement with the Maryland CASH Campaign; and (2) updating any pro bono tax resource materials
6. State Legislation and Regulatory Proposals Committee – responsible for (1) monitoring and responding to, if necessary, tax legislation introduced in the General Assembly; (2) reviewing and responding to regulatory proposals; and (3) drafting proposed tax legislation
7. Substantive Law Committees – The Section Council established the following substantive law committees: (1) Tax Controversy, (2) State and Local Taxes, (3) Employee Benefits, (4) Estate and Gift Tax, (5) Business/Transactions, and (6) Tax Exempt Organizations. In the past the exclusive role of the committee has been to coordinate a study group, however, increasing the membership of the committees would enable the committees to also serve as the subject matter expert in each committee’s particular area and work with the other committees in developing CLE and drafting and responding to legislation, among other things.