

TAX TALK

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• Jeffrey A. Markowitz, Chair •

Catherine Mary Rafferty, Editor

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From the Chair

Spring 2004

Jeffrey A. Markowitz

This is my final message as Chair of the Tax Section. It has been an interesting and productive year for the Section. First, I would like to thank my fellow officers, all the Section Council members and all the volunteers who worked on Tax Section events this year. In the area of continuing legal education, the participation of many Section members in the Maryland Advance Tax Institute, which is one of the better tax CLE events, continues to bring about highly successful programs of educational benefit to our members and our partners at MACPA. Other presentations this year included an excellent panel on the Kraft case largely spearheaded from the efforts of Caroline Ciralo and partnering with attorneys from other sections for a program that was so well-received, attendees actually asked for a follow-up. The Tax Networking Night was again a successful program allowing interaction between ourselves, our accounting colleagues and many state and federal tax officials. The Annual Shulbank Dinner had a wonderful presentation by Karen Syrylo, the lobbyist for the Chamber of Commerce about the tax bills passed by the legislature. It was also our privilege to honor Ted Hirsh and Al Pasternak with this year's Tax Excellence Awards. It is unfortunate that shortly after this dinner our colleague Ron Shiff passed away. Please see my separate comments about Ron contained in this issue of Tax Talk which express my feelings and I am sure the feelings of many of his other colleagues about his passing.

This year we rearranged the Section Council and its committees to try to include covering substantive areas of law. We all recognized that this would largely be an organizational year to try and get these committees up and running and, while some have been more successful than others, I feel we are off to a good start (especially the Tax-Exempt Committee chaired by Jon May) and I hope the Section builds on this progress next year. It was also rewarding to see significant activity as far as commentary on Maryland tax issues actually start to take place on our listserve. Through the change of MSBA policy, we are now automatically putting people on the listserve unless they opt out. I believe this change has resulted in greater exchanges among Section members. Please feel free to use the listserve when you have questions. There are many tax attorneys who follow it and are more than happy to discuss tax issues with their fellow Section members.

Once again, we had wonderful participation in the Earned Income Tax Clinic and I greatly appreciate the pro bono service that members of our Section provide. It is wonderful that each year so many of our Section members take the time out to help those less fortunate through this program.

Finally, our last event of the year is our presentation at the Annual Meeting of the Bar in Ocean City. This year our To Tell the Truth program on various tax schemes and scams promises to be both entertaining and informative and I hope you can attend if at all possible.

I N M E M O R I A M



J . R O N A L D S H I F F

It is with great sadness that I have to write to advise of the passing well before his time of an extraordinary member and past Chair of our Section. Ronald Shiff was a tremendous attorney and human being. Just reading the comments from members of the Tax Section on the listserve indicates how much he was appreciated by his colleagues. Ron was a Member of Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC and the Chair of its Tax Planning Group. I had the privilege of working with Ron on numerous transactions, as well as participating with him in many speaking engagements. He had a wonderful intellectual curiosity on matters of tax law but never to the point where it distorted his priorities with respect to family and life. His pro bono contributions to the Bar are something we should all strive to achieve. It is ironic that on the Tuesday before Ron's heart attack, he stood before many of us at the Shulbank Dinner discussing what a great tax lawyer and person Irv Shulbank was and how unfortunate it was that he had died so young. In a strange way, during that brief discussion of Ron's admiration of Mr. Shulbank, he gave his own eulogy for the same words can now be used to describe him. We should all take this chance to look at how we conduct ourselves as professionals and see what we can do to practice law at a level and with the same integrity that Ron practiced it. At the same time, we should also look at Ron's professionalism and how he treated people with fairness and good humor and how he always put his work, while treating it very importantly, in perspective. There have been many suggestions on how to appropriately honor Ron at the Tax Section level and I am sure as we go forward next year, an appropriate memorial will be established. I think that Ron would feel that the greatest memorial though would be for those who knew him to remember him fondly, to keep his spirit alive, and to hold him up as an example to those who did not have the privilege of knowing him of the best our profession can be.

Jeffrey A. Markowitz

Summary of Maryland 2004 State Tax Legislation

*Evelyn W. Pasquier, Esquire
Piper Rudnick LLP*

Another year and another session that pitted the State's Republican governor against its predominantly Democratic Legislature. With the Governor's slots initiative down the drain and a budget crisis looming for next year, some tax increases were inevitable.

One of the most significant business tax bills that made it through this year was House Bill 297. This was one of two identical, cross-filed Administration bills designed to close the so-called Delaware Holding Company ("DHC") "loophole," but it underwent such extensive revision as it worked its way through the legislature that the Governor seriously considered pleas for a veto from the business community. Ultimately he rejected those requests, but declined to sign the bill and permitted it to become law without his signature.

House Bill 297, effective for tax years beginning after December 31, 2003, requires corporations to add back to their income, for purposes of calculating their Maryland income, deductions they have taken on their federal returns for interest and intangible expenses (royalties, trade names, patents, copyrights, and the like) paid to related entities. This was essentially the result the Administration wished to achieve, but the amendments to the bill went too far in the Governor's opinion. In his letter to the leaders of the Senate and House of Delegates, Governor Ehrlich expressed concern over the fact that the bill now treats foreign corporations differently from domestic corporations. He was also critical of the very complex "safe harbor" provisions of the law, observing those provisions would result in the frustration of legitimate business transactions. He noted that "the safe harbors are drawn so narrowly that it would prove difficult for many businesses conducting legitimate interest expense transactions to be 'safe' from the 'addback' requirement," and he instructed the Departments of Budget and Management and Business and Economic Development to propose curative amendments to these provisions in the 2005 session. He also suggested that Maryland's safe harbor provision should be revised to be comparable to the broader safe harbor provisions of the analogous statute enacted this year in Virginia, in the hope that Maryland could avoid losing any advantage it might have over Virginia in attracting business.

While House Bill 297 could be viewed as taking something away, Senate Bill 187 gave something back to corporations that have used the DHC mechanism in the past. This was the bill originally cross-filed with House Bill 297. During the session, however, all of the "addback" provisions were deleted, and the bill, as passed, grants a partial amnesty from liability for past DHC tax assessments by requiring the Comptroller to administer a settlement period from July 1 through November 1, 2004. If, on or before November 1, 2004, a corpora-

tion (whether or not it has already been assessed) pays tax claimed due as a result of its use of a DHC to reduce its Maryland taxes for all tax years beginning on or after January 1, 1995 and ending on or before December 31, 2003, there will be no penalty, and interest will be charged on the tax at 6.5% instead of the statutory 13%. The corporation may choose whether to pay the tax on the income of its DHC(s) (as required by the Court of Appeals recent decisions in *Syl* and *Crown Cork & Seal*, 375 Md. 78 (2003)) or the increased tax on its own Maryland income after adding back deductions it has taken for interest and intangible expenses (as required prospectively by House Bill 297).

A corporation that fails to take advantage of this settlement period will be fair game for assessment under the theory of *Syl* and *Crown Cork & Seal* for all past years when it has used the DHC mechanism and, if the assessment is upheld, could be subject to the full 25% penalty and interest at 13%. (Presumably, any corporation that accepted the Comptroller's previous settlement offer and paid the assessed taxes during the Comptroller's original settlement period may claim a refund of tax paid with respect to years prior to January 1, 1995, as well as any penalty paid and interest paid at a rate higher than 6.5%.)

Corporations already hit by the DHC bill dodged another bullet when the Governor vetoed the Higher Education Affordability and Access Act. House Bill 1188 would have limited annual increases on tuition at Maryland colleges and would have *partially* funded the Act by imposing a corporate tax surcharge of 10% of the regular 7% corporate income tax rate for the next three years. The bill left the source of any other funding of the tuition cap up in the air, and the Governor vetoed the bill, describing it as "irresponsible and haphazard" because it created "an unfunded mandate that would siphon over \$250 million from other State agencies over the next three years."

As often happens, there are a few tax provisions buried in Senate Bill 508, the 86-page Budget Reconciliation and Finance Act of 2004 ("BRFA"). BRFA, which was signed into law as Chapter 430, further decouples Maryland estate taxes from the Internal Revenue Code ("IRC") by providing that the unified credit for calculating Maryland estate tax cannot exceed \$1,000,000 and requiring a Maryland estate tax return when that limit is reached even if no federal return is required (see page 70 of the bill as well as the separate article by Richard F. Lindstrom, Esquire, about this provision in this issue of *Tax Talk*). In addition, the bill contains a provision requiring an

(continued on page 4)

Summary of State Tax Legislation . . .

(continued from page 3)

individual who is subject to Maryland State income tax, but not to a county income tax (e.g., a non-resident who has taxable Maryland income), to pay an additional tax at a rate equal to the lowest county income tax rate set by any Maryland county (see page 71 of the bill); it decouples Maryland income tax from the IRC with respect to depreciation of heavy duty SUVs (see page 72 of the bill); and, for the period from July 1, 2004 through June 30, 2006, it cuts in half the credit a vendor may take on its sales and use tax return (see page 73 of the bill).

There was not much other action on taxes from a legislature that was bogged down for most of the session by the slots issues. Some of the notable actions – and non-actions – include the following:

· House Bill 679 (Chapter 76): Extends the Historic Heritage Structure Rehabilitation Tax Credit, which had been due to expire on June 30, 2004, but with changes. Anyone who is interested in this provision should look at the bill.

· Senate Bill 69 (Chapter 23): Changes the deadline for income tax withholding returns, effective January 1, 2005, from the last day of the month to the 15th day of the month following the calendar quarter when the tax was withheld.

· House Bill 1 (Not Passed): The “controlling interest” recordation tax legislation, which would have imposed recordation and transfer tax on the sale of a controlling interest in an

entity whose primary asset is real property, once again passed the House easily (as it did in both 2002 and 2003), but, even though it was introduced this year as the “Public School Construction Assistance Act of 2004,” it withered and died in the Senate Budget and Taxation Committee. It’s a good bet that this will be back again next year.

· Senate Bill 379 (Never made it out of Committee): This bill, which was reminiscent of the controlling interest bill, would not have imposed a tax, but would have required entities that own certain interests in Maryland real property to report to SDAT the consideration paid for transfers of controlling interests.

· House Bill 220 (Killed by the Senate B&T Committee): The Comptroller’s attempt to override *Comptroller v. Clyde’s of Chevy Chase, Inc.*, 377 Md. 471 (2003), on the definition of “in connection with entertainment” for admission and amusement tax purposes, made it through the House, but received an unfavorable report from Senate Budget and Taxation.

The chart that follows this article briefly summarizes all of the tax bills that passed the General Assembly and were either signed into law or vetoed by the Governor, plus a few bills that did not make it through the legislature. The full text of each of these bills is available on the General Assembly’s website: <http://mlis.state.md.us>.

**Please join us at the
Taxation Section Meeting at the
2004 ANNUAL MEETING
MARYLAND STATE BAR ASSOCIATION, INC.**

Clarion Resort Fontainebleau Hotel
Ocean City, Maryland

Friday, June 18, 2004
11:00 am – 1:00 pm
Banquet Hall #2-A

To Tell The Truth: Top 5 Tax Scams

This program will discuss what they are and why they don’t work. It will also address how to deal with the difficult client.

Program Chairs: Jessica R. Lubar, Esq. and Chaya Kundra, Esq.

Speakers: Jessica R. Lubar, Esq., Miles & Stockbridge, P.C.; Chaya Kundra, Esq., The Law Offices of Chaya Kundra, P.C.; Caroline D. Ciraolo, Esq., Rosenberg, Martin, Funk, Greenberg, LLP and David J. Polashuk, Esq., Levy, Mann and Polashuk, LLP

MARYLAND TAX LEGISLATION 2004 GENERAL ASSEMBLY SESSION

Bill #	Comm.	Summary Description	Status	Signed/Vetoed
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BUDGET BILLS

SB 508	B&T	Budget Reconciliation and Financing Act of 2004 (“BRFA”): Tax provisions include (1) the further decoupling of MD estate taxes from the IRC by providing that regardless of increase in the federal unified credit, the unified credit for calculating MD estate tax can’t exceed \$1,000,000 and requiring a Maryland return even if no federal return is required; (2) a constitutionally questionable provision requiring an individual who is subject to MD state income tax but not to a county income tax (e.g., a non-resident who has taxable MD income) to pay a tax at a rate equal to the lowest county income tax rate set by any MD county; (3) a provision that further decouples MD income tax from the IRC in calculating expense under IRC §179 and the limitations under IRC §280F with respect to heavy duty SUVs; (4) reducing the credit a vendor may take on its sales and use tax return for the period from 7/1/04 through 6/30/06 from 1.2% to .6% of the first \$6,000 of sales tax reported and from .9% to .45% of the balance.	Enrolled	Ch. 430 5/26/04
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DEATH TAXES

SB 860	B&T	Including former stepchildren and former stepparents in the exception under inheritance tax for property that passes from decedent to certain relatives; changing an exemption to include spouses and lineal descendants of a child of decedent. <i>Eff. for decedents dying on or after 7/1/04.</i>	Returned Passed	Ch. 145 4/27/04
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INCOME TAXES

(a) Corporate Income Tax

SB 187	B&T	Originally, the Governor’s “loophole” bill on DHCs. As finally passed, all of the DHC add-back provisions have been deleted (they are now confined to HB 297 below), and the bill now requires only a settlement period (in effect, an “amnesty” period) on past due taxes under <i>Syl</i> and <i>Crown Cork & Seal</i> permitting corporations to pay all taxes assessed under the principles of those cases back to 1/1/95, prohibiting assessments for earlier years, waiving penalties, and assessing interest at 6.5%. This bill, if signed, will take effect only if HB 297 is also signed by the Governor.	Enrolled	Becomes law w/o signature
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MARYLAND TAX LEGISLATION 2004 GENERAL ASSEMBLY SESSION

Bill #	Comm.	Summary Description	Status	Signed/Vetoed
HB 297	W&M	This is the cross-filed Administration "loophole" bill requiring the add-back of deductions for intangible expenses and interest, paid to related entities. A corporation can avoid the add-back if it can demonstrate that the transaction did not have avoidance of tax as "A" principal purpose; it paid the intangible expense to a non-related entity; its related member was subject to income tax of at least 4% (subject to exceptions that may be provided in regulations); the expense was paid pursuant to an arms'-length contract at an arms'-length interest rate or price; and, in the case of an interest expense, the corporation and related member are banks.	Enrolled	Becomes law w/o signature
HB 1188	Apr. and W&M	Higher Education Affordability and Access Act of 2004: Limits annual increases on tuition at MD colleges. Originally the Bill would have (partially) funded the Act by imposing a surcharge on corporations of 12.86% of the normal corporate income tax for tax years beginning after 12/31/03 and before 1/1/08. As finally passed, the surcharge will be 10% of the regular 7% corporate income tax and will be effective for years beginning after 12/31/03 and before 1/1/07.	Enrolled	Vetoed 5/25/04
(b) Deductions (Subtraction Modifications)				
SB 68	B&T	Exempting certain police, fire, rescue, or emergency services providers from registration and qualification requirements for foreign corporations; providing exception to w/holding requirement for wages made to certain nonresident police, etc., workers; providing subtraction modification for wages paid to those individuals. <i>Eff. for tax years after 12/31/03.</i>	Returned Passed	Ch. 22 4/13/04
(c) Credits and Deductions				
HB 219	W&M	DBED Departmental Bill - 3-year extension of the date a business must begin operations to qualify for the job creation tax credit.	Returned Passed	Ch. 159 4/27/04
SB 485	B&T	Extending eligibility for credit for costs of solar energy equipment to generate electricity, etc. from 12/31/04 to 12/31/14.	Returned Passed	Ch. 128 4/27/04
HB 714	W&M	<i>Cross filed</i> with SB 485.	Returned Passed	Vetoed(Duplic.)

MARYLAND TAX LEGISLATION 2004 GENERAL ASSEMBLY SESSION

Bill #	Comm.	Summary Description	Status	Signed/Vetoed
HB 679	W&M	Historic Heritage Structure Rehabilitation Tax Credit reestablished (Article 83B, new § 5-801): Originally introduced as a grant program, but amended to provide for a credit instead. The bill extends the credit program (which would have expired on 6/30/04) and imposes caps on the total credit available for a project and the aggregate credits allowed during a fiscal year.	Returned Passed	Ch. 76 4/27/04

(d) New Checkoffs

HB 1000	W&M	Originally established a Breast Cancer Research Fund. As passed, the bill has been broadened and establishes a Cancer Fund for research, prevention, and treatment and provides an income tax checkoff for contributions to the Fund.	Enrolled	Ch. 392 5/11/04
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(e) Miscellaneous

SB 69	B&T	Changing deadline for income tax w/holding returns from last day to 15th day of month following calendar quarter when tax was w/held. <i>Eff. 1/1/05.</i>	Returned Passed	Ch. 23 4/13/04
HB 1125	W&M	Establishing Task Force to study issue of exempting law enforcement officers' pensions from taxation.	Returned Passed	Ch. 534 5/26/04
HB 1277	W&M	In sale of property by nonresidents, "net proceeds" does not include adjustments in favor of transferor that are shown on settlement sheet; defines "transfer pursuant to deed in lieu of foreclosure" and "transfer pursuant to foreclosure" and clarifies that they are not subject to the deposit requirement.	Returned Passed	Ch. 410 5/11/04

PROPERTY TAX

HB 216	W&M	SDAT Departmental Bill (Emergency Bill) - Provides for the continuation of the Homestead Tax Credit for properties damaged by accident or natural disaster.	Returned Passed	Ch. 43 4/13/04
HB 159	W&M	SDAT Departmental Bill - Requires a transferee of exempt property, if the transferee's use of the property would still qualify for exemption, to file an application on or before 9/1 of the following taxable year or, in the case of manufacturing personal property within 6 months after the first assessment notice of the property is issued after the transfer.	Enrolled	Ch. 497 5/26/04

MARYLAND TAX LEGISLATION 2004 GENERAL ASSEMBLY SESSION

Bill #	Comm.	Summary Description	Status	Signed/Vetoed
HB 323	W&M	SDAT Departmental Bill - Extending Homestead Tax Credit to dwellings owned by certain agricultural LLCs and extending the semiannual property tax payment to those LLCs.	Returned Passed	Ch. 501 5/26/04
HB 435	W&M	Extending special assessment under §8-231 of damaged or destroyed real property to all real property other than that used for commercial purposes.	Returned Passed	Ch. 346 5/11/04
HB 804	W&M	Authorizing a county or municipal corporation to grant a property tax credit for high performance buildings. <i>Eff. for tax years after 6/30/04.</i>	Enrolled	Ch. 519 5/26/04
HB 820	W&M	Changing qualification requirements for credits for certain conservation land; changing requirements for exemptions from recordation and transfer taxes on conveyance of certain property interests to land trusts.	Returned Passed	Ch. 379 5/11/04
RECORDATION AND TRANSFER TAX				
HB 1	W&M and Appropriations	“Public School Construction Assistance Act of 2004” - Introduced by the Speaker, Delegate Hixson, and a long list of others. This is the “controlling interest” bill again, this time under a formidable cloak of sheep’s clothing.	Dead: Passed House and Died in Senate B&T	
SB 379	Judicial Proc.	Requiring entities that own certain interests in Maryland real property to report to SDAT the consideration paid for transfers of controlling interests.	Dead: Never got out of Committee	
HB 1490	W&M	Providing that secured debt (i.e., an indemnity mortgage, deed of trust, or other security interest in real property securing a guarantee of payment of a loan for which the guarantor is not primarily liable) is subject to recordation tax as if the guarantor were primarily liable for the loan.	Dead: Never got out of Committee	
SB 76	B&T	Expanding “original mortgagor” in §12-108(g) to include trustee of an inter vivos trust if the property is principal residence of the settlor of the trust and the trustee or settlor originally assumed or incurred the debt secured by the mortgage	Returned Passed	Ch. 248 5/11/04
HB 820	W&M	Described under Property Taxes above.	Returned Passed	Ch. 379 5/11/04

MARYLAND TAX LEGISLATION 2004 GENERAL ASSEMBLY SESSION

Bill #	Comm.	Summary Description	Status	Signed/Vetoed
SALES AND USE TAX and ANA TAX				
(a) Enforcement Powers				
		A bill that would have given the Comptroller stronger enforcement and seizure powers failed.	Dead	
(b) Tax-free Week				
		2 Bills Introduced, one withdrawn and the other never reported out of committee.	Dead	
(c) Streamlined Sales and Use Tax Agreement				
HB 694	W&M	Adopting the SPUTA as adopted 11/12/02 by the Project, subject to enabling legislation by Congress; requiring Comptroller to prepare draft legislation and regulations to implement the Act.	Returned Passed	Ch. 513 5/26/04
SB 400	B&T	<i>Cross Filed</i> with HB 694	Returned Passed	Vetoed(Duplic.)
(d) Admissions & Amusement Tax				
HB 220	W&M	The attempt to override the <i>Clyde</i> decision passed the House, but received an unfavorable report from Senate B&T and never made it to the floor.	Dead	
MISCELLANEOUS				
HB 228	W&M	Allowing a refund of 35% of motor fuel tax used by a concrete pump truck.	Returned Passed	Ch. 161 4/27/04
HB 848	W&M	Altering provisions relating to the imposition of the vehicle excise tax and determining its application. Providing for a delayed effective date (7/1/05) for certain portions of the Bill.	Enrolled	Ch. 207 4/27/04
HB 1332	W&M	Originally would have repealed provisions that alter definitions of "fair market value" and "total purchase price" for purposes of vehicle excise tax on motor home or travel trailer. As passed, those provisions have been extended to 6/30/07, at which time the provisions will be abrogated automatically.	Enrolled	Ch. 545 5/26/04
SB 712	B&T	Cross Filed with HB 1332	Enrolled	Vetoed(Duplic.)

MARYLAND TAX LEGISLATION 2004 GENERAL ASSEMBLY SESSION

Bill #	Comm.	Summary Description	Status	Signed/Vetoed
LOCAL TAXES				
SB 256	B&T	Allegheny County: authorizing property tax credit on the Gilchrist Museum.	Returned Passed	Ch. 259 5/11/04
HB 738	W&M	Anne Arundel County: Originally provided for property tax credit for real property owned by the Village of Waugh Chapel. <i>Eff. for years beginning after 6/30/04.</i> As passed, the Bill authorizes a credit against County tax for property owned by Village Commons Community Center or leased to the Anne Arundel Community College at Arundel Mills.	Enrolled	Ch. 371 5/11/04
HB 543	W&M	Baltimore City: Changing auctioneer's fee allowed as expense of tax sale of property. Designating the Act as an emergency measure.	Returned Passed	Ch. 354 5/11/04
HB 1161	W&M	Dorchester County: Authorizing county to impose a building excise tax on construction.	Returned Passed	Ch. 401 5/11/04
SB 836	B&T	Dorchester County: Authorizing county to impose a building excise tax on construction. (Not cross filed with HB 1161.) Limits tax to \$5,000 per unit for residential development or \$1 per sq. ft. up to a maximum of \$5,000 for any category of nonresidential development, and permits a municipal corporation that collects the tax and remits it to the County to deduct up to 2% of the revenues collected for administrative costs.	Enrolled	Vetoed(Duplic.)
SB 441	B&T	Frederick County: authorizing a hotel rental tax up to 5%; specifying hotels that are excluded; and directing the collection of the tax.	Returned Passed	Ch. 276 5/11/04
HB 471	W&M	<i>Cross Filed</i> with SB 441	Enrolled	Vetoed(Duplic.)
SB 606	B&T	Frederick County: Authorizing fee or tax for costs of collecting and disposing of solid waste.	Returned Passed	Ch. 2935/11/04
HB 876	Envy. Matters	<i>Cross Filed</i> with SB 606	Returned Passed	Vetoed(Duplic.)
SB 319	B&T	Prince George's County: authorizing county to grant property tax or special district tax credit on property owned by a nonprofit community development corporation, not used for commercial purposes, and located at the intersection of Rte. 202 and St. Joseph's Drive.	Enrolled	Ch. 265 5/11/04

MARYLAND TAX LEGISLATION 2004 GENERAL ASSEMBLY SESSION

Bill #	Comm.	Summary Description	Status	Signed/Vetoed
HB 683	W&M	Prince George's County: Changing calculation of high-bid premium imposed on public auction sale to 20% of the amount by which highest bid exceeds the greater of the lien amount or 40% of the property's cash value.	Returned Passed	Ch. 512 5/26/04
HB 1376	W&M	Howard County: Providing that planned development assessment is available for a period of 20 consecutive years.	Returned Passed	Ch. 416 5/11/04
HB 1286	W&M	St. Mary's County: Extending from 7/1/05 to 7/1/10 the county's authority to impose a real property transfer tax.	Returned Passed	Ch. 411 5/11/04
HB 1295	W&M	St. Mary's County: Establishing an emergency services tax on real and personal property for fire companies, rescue squads, and certain support services organizations.	Enrolled	Ch. 412 5/11/04
HB 897	W&M	Talbot County: Increasing maximum hotel rental tax rate from 3% to 4% from 1/1/05 through 12/31/06.	Returned Passed	Ch. 384 5/11/04
HB 380	W&M	Somerset County: Increasing maximum hotel rental tax rate from 3% to 5%.	Returned Passed	Ch. 336 5/11/04
HB 1162	W&M	Code Home Rule Counties: Repealing termination date for provision altering maximum development excise tax county is authorized to impose.	Returned Passed	Ch. 538 5/26/04
HB 539	W&M	Various Counties: making unpaid hotel rental tax a lien against real and personal property; authorizing collection of the tax in same manner as the county property tax is collected.	Returned Passed	Ch. 352 5/11/04

MAJOR CHANGES IN THE MARYLAND ESTATE TAX

*Richard F. Lindstrom, Esquire
Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC*

On May 26, 2004, Governor Ehrlich signed Senate Bill 58, which was the budget bill for 2004. Included in this Bill was a "sleeper" provision, which made a substantial change to the Maryland estate tax.

As a result of this new law, the amount of an estate that is exempt from Maryland estate tax is now \$1 Million, regardless of the fact that in 2004 \$1.5 Million is exempt from federal estate tax and regardless of the fact that the amount exempt from the federal estate tax will continue to rise in the future. The \$1 Million state exemption remains frozen.

The change in the law is retroactive and applies to individuals dying after December 31, 2003. Therein lies a trap for the unwary, because a return for a decedent who dies on January 1, 2004 will be due on October 1, 2004. For a decedent dying in 2004 with a federal taxable estate of \$1.5 Million, there will not be any federal estate tax due, but there will be \$64,000.00 in Maryland estate tax due.

The fiscal impact of this new law is not insubstantial. The State estimates that it will raise an additional \$9 Million in the year 2005, and that by the year 2009, it will be raising \$26 Million in Maryland estate tax annually.

For decedents dying in 2004, it appears that the Maryland Comptroller will require the preparation of a federal estate tax return for those estates with a federal taxable

estate of between \$1 Million and \$1.5 Million. Although such a return need not be filed with the Internal Revenue Service, the Comptroller's Office is likely to require at least part of the federal return be filed with the Comptroller's Office along with the Maryland estate tax return.

The changes brought about by this legislation are far-reaching and complex. Because there is now a "free standing" Maryland estate tax, the Comptroller's Office will have to develop a completely new estate tax return, will have to hire auditors who are experienced in federal estate tax matters, and will likely have to increase its administrative staff.

The full impact of this change in the law is beyond the scope of this article. Tax practitioners and the Comptroller's Office will be grappling with a variety of problems brought about by this legislation. For example, practitioners will need to advise their clients that it is possible that their estate may now be subject to a Maryland estate tax because their Wills did not anticipate that there would be this complete decoupling between the federal and state estate taxes. As the questions are raised and solutions suggested or agreed upon, the results will be posted on the Taxation Section's webpage and will also be discussed in future issues of this Newsletter.

NOMINATIONS COMMITTEE REPORT

The Nominations Committee of the Section of Taxation is pleased to nominate the following individuals to the stated offices for the 2004-2005 year:

Chair

Elissa F. Borges

Chair-Elect

Andrea B. Gillespie

Secretary-Treasurer

Bryan W. Young

**Members of the Section Council
for the Term Ending 2007**

*Caroline P. Ciruolo
James W. Dawson
Richard F. Lindstrom
Jessica R. Lubar
David J. Polashuk*

**Member of the Section Council
for the Term Ending 2006**

Katrina Kamantauskas-Holder

**Members of the Section Council
for the Term Ending 2005**

*Nicole R. Hewitt
Brian L. Oliner*

**THE ELECTIONS WILL TAKE PLACE AT THE
TAX SECTION'S BUSINESS MEETING, TO BE
HELD AT 11 A.M. ON JUNE 18, 2004, AT THE
CLARION RESORT FONTAINEBLEAU HOTEL
DURING THE MSBA ANNUAL MEETING IN
OCEAN CITY, MARYLAND.**

Knowledge Management At Its Best

Effective April 19, 2004, all Section members for whom MSBA has e-mail addresses have been placed on the Taxation Section Listserv.

Here are the answers to the questions that may now be swirling around in your heads:

Why are you doing this?

Because it is an excellent way to get your questions answered without having to pick up the phone and share your expertise with others who have questions.

Isn't this just more junk mail to read?

Actually, no. The questions are thoughtful and quite interesting. The answers are insightful and succinct. There is very little useless banter as you get on some listservs. Members are polite and professional. Simply because you already know the answer does not make answers useless for others.

Is there some way to get just one message at the end of the day instead of individual messages all day?

Yes. You can subscribe to the Digest Version. Digest mode is available to you if you only wish to receive one message a day that contains all of the previous day's messages.

To change your listserv settings, visit the Lyris web interface and choose the list you belong to at www.msba.org/lyris

Simply enter your email address to access your settings. Leave the password field blank unless you have already created a password in the settings menu. To change your user options click on the "*Your Settings*" button. Where it lists "Status" you will have the choice of different message types:

Ø "Mail" will send list messages to you as they are posted.

Ø "No Mail" will stop sending messages to you but will leave you subscribed to the list. This is also known as Vacation mode.

Ø "Digest" will send all messages to you daily as a single message. This will usually contain formatting code used in HTML email messages.

Ø "Mime Digest" will send all messages to you daily as attachments to a single message. This will remove the formatting code but may be incompatible with certain integrated management software such as Lotus Notes

Ø "Index" will send a single message with only the subject lines of each message. The full message can then be retrieved by emailing the message ID number to the Listserv program. Instructions are included in the message.

What if I don't want to be subscribed?

Okay be like that. If you really don't want to be on the list, you can very easily unsubscribe.

How can I do that?

At the bottom of every listserv message there is a notice that reads:

You are currently subscribed to msbatax as: yourname@youremailaddress. To unsubscribe send a blank email to leave-msbatax-####@lists.msba.org

Simply click on the address or send a message to that address and you will be automatically unsubscribed. Really!

What if I want to subscribe at a later time when I hear others talking about how wonderful the list is?

Go to http://www.msba.org/sec_comm/listserves/index.htm which is a list of all listservs and click "Join List" on the Taxation Section List and you will be subscribed.

Where can I find more information including rules and policies about using MSBA Listservs?

You can go to www.msba.org and go to the Listserv Tips.

MSBA Law Office Management Assistance

Ted Hirsh and Al Pasternak Receive Tax Excellence Awards at Annual Irving Shulbank Memorial Dinner

On May 11, 2004, the Tax Section hosted the Annual Irving Shulbank Memorial Dinner at the Camden Club in Baltimore. Irving Shulbank was a partner in Gordon, Feinblatt, Rothman, Hoffberger & Hollander, who died in 1974 while in the prime of his life. Following his death, a dinner has been held in his name and honor to remember his dedication as an attorney, lecturer and author in the field of tax law. He was a former Chair of the Tax Section. Mr. Shulbank was also a civic-minded individual, as exemplified by his positions as Vice President of Levindale Hebrew Geriatrics Center and Hospital, a member of the Board of Trustees of Sinai Hospital, and a Chairman of the Baltimore Chapter of The Jewish Committee.

Beginning in 2002, the Section began awarding an annual Tax Excellence Award to an individual who practices tax law either in

the private or public sector. The Tax Excellence Award is presented at the Annual Irving Shulbank Memorial Dinner as a way to recognize the current contributions of a dedicated member of the Tax Bar while remembering the contributions of a deceased outstanding tax lawyer. This year, the Tax Section was privileged to recognize the achievements of two exemplary members of our Section: Theodore W. Hirsh, Of Counsel, Ballard, Spahr, Andrus & Ingersoll, LLP, and N. Alfred Pasternak, Member Pasternak & Fidis, P.C. After the presentation of the awards, Karen Syrylo, CPA presented the attendees with an insider's perspective of tax legislation and the 2004 General Assembly.

The next Annual Irving Shulbank Memorial Dinner will be held in May, 2005.

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