

TAX TALK

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• Jonathan Z. May, Chair •

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From the Chair

Spring 2003

Jonathan Z. May

2002-2003 has been an interesting and productive year for the Tax Section. Having worked on various Section Committees and on Section Council for many years, I knew that when I took over as Chair this year I would be surrounded by talented and energetic people. Nevertheless, the dedication and creativity displayed by the other Section Officers, Council members and members of the various committees surpassed even my high expectations. With that in mind, I wanted to share with everyone the following highlights of the Section's accomplishments during the past year (in no particular order).

The Earned Income Tax Credit Clinic was, once again, a resounding success. This project has always offered a rewarding opportunity for our members to provide pro bono legal services to the community. This year was no exception and we had the highest number of volunteers and the highest number of clients served of any year. While many people volunteered their time and played valuable roles in making this year's project possible, Caroline Ciraolo and Leigh Kessler, the Chair and Vice Chair of the Pro Bono Committee, deserve special recognition.

This year also marked the second year for the Tax Professionals Networking Night and the Tax Excellence Award (presented in conjunction with the Section's Annual Shulbank Memorial Dinner). The Tax Professionals Networking Night was very well attended and we received much positive feedback on the event. The Annual Shulbank Memorial Dinner had the highest participation in many years. Attendees had the pleasure of honoring this year's Tax Excellence Award recipient, Stephen Cordi, Deputy Comptroller, and enjoying a timely presentation by William Donald Schaefer, Comptroller, on current fiscal issues facing the State of Maryland. Kudos go out to Richard Lindstrom, Chair of the Program Committee, for his resourcefulness and perseverance, which made both of these events so successful. The Program Committee also was

instrumental in coordinating the Section's presentation for the Annual Meeting in Ocean City. This year's program will be co-sponsored with the Health Law Section, and promises to be timely and informative.

The valuable work of the special Tax Section/MACPA Joint Task Force continued this year. This Task Force has helped nurture new channels for dialogue between Task Force members and the Comptroller's office, through which options for improving various aspects of tax administration and tax compliance in Maryland are being constructively discussed. While many Section members worked on this project, special thanks go to Andrea Gillespie, Walter Calvert and Caroline Ciraolo for their tireless efforts.

The Council has taken a number of steps this year to improve the delivery of benefits to Section members. For example, the Section newsletter, *Tax Talk*, is now published electronically and made immediately available to Section members via the Section's website. Not only did this result in a cost-savings to the Section, but it helped bring our Section one step further into the information age. Special thanks go to Stephanie Ketchum, Catherine Rafferty and Brian Young for bringing together the talents of the Tax Talk and Technology Committees, which helped make this possible.

One other special project which I would like to mention comes under the heading of "long-range planning." After a discussion at a Council meeting last Fall regarding ongoing issues and challenges facing the Section, it was noted that it may be a good time for Council leadership to take a hard look at where the Section has been, where it is going, and determine possible areas for improvement. With much appreciation from the Council, Walter Calvert graciously ac-

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Chair's Message . . .

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cepted the challenge of coordinating this effort. Several meetings with the current Council leadership and many of the Section's past chairs were held and resulted in several excellent ideas and proposals for reshaping and improving the Section. It is our hope that these ideas and proposals, once enacted, will enable the Section to continue its work on its existing projects in a more efficient manner, make the Section more relevant to its members through an increased

focus on substantive areas of tax law and attract new members to the Section.

In closing, much has been accomplished this year and I thank everyone for all their efforts. But, as always, there is more to do. I encourage each of you to get more involved in the Section – I know you will find it a rewarding experience. I have enjoyed my tenure as Chair of the Section and I look forward to seeing all of you at the Annual Meeting in June.

Summary of Maryland 2003 State Tax Legislation

By Evelyn W. Pasquier

The 2003 General Assembly session was unlike any we have seen in recent years. Not only was Maryland, like most other states, facing a serious budget crisis, but the State had a Republican governor for the first time in more than 30 years, and the predominantly Democratic legislature had a bumper crop of freshman members and had lost several long-standing and high-ranking senators and delegates, including the long-time chairman of the Senate Budget and Taxation Committee. This combination of factors led to the introduction of far fewer bills than normal and to considerable controversy over measures that were introduced.

Hardly any tax exemptions were proposed this year, and the few that were, including three sales tax bills for a tax free back-to-school week, were either withdrawn, reported out of committee unfavorably, or simply allowed to die without consideration. Interestingly, several tax increase measures suffered a similar fate, including six bills that would have increased motor fuel taxes and four that would have increased the alcoholic beverage tax on beer, wine, and spirits.

Undoubtedly, the most hotly contested tax measure this year was House Bill 753, which was characterized by its sponsors as a "loophole closer," and by others as a fundamental change in the income tax laws of the state that would have raised revenue on the backs of business. However it was characterized, Governor Ehrlich saw it as the kind of tax increase that he had vowed to veto – and veto it he did on May 22. We can be sure that we will see these issues again in 2004 – either by way of a vote to override the veto or by the introduction of one or more new bills. Either way, the legislature will undoubtedly once again consider enacting legislation aimed at taxing out-of-state sales of tangible personal property that are not subject to tax in their destination states (the "throwback" rule), denying deductions for interest, royalty, and other intangible expenses paid to out-of-state affiliates (the "anti-Delaware holding company" provisions), and giving the Comptroller the power to reallocate income and expenses between affiliates similar to the powers given to the IRS under §482 of the Internal Revenue Code. We may also see an attempt to require combined unitary reporting

of affiliated entities, which was proposed this year but which did not find its way into HB 753.

Although none of those provisions made it past the Governor's veto pen this year, a number of other provisions affecting businesses were incorporated at the last minute into House Bill 935, the Budget Reconciliation and Finance Act, which was passed by the General Assembly and signed into law by the Governor as Chapter 203 of the Laws of 2003. Except as specified below, this Act is effective July 1, 2003. A brief summary of the grab bag of tax provisions in HB 935 follows, but anyone who will be directly affected by these provisions should refer to the enrolled version of the bill, which can be found at <http://mlis.state.md.us/2003rs/billfile/hb0935.htm>. The provisions summarized below begin at page 60 of the 89-page tome.

- The aggregate historic rehabilitation tax credit that may be approved for *commercial* projects has been capped at \$23,000,000 for all commercial rehabilitation projects for which plans are approved from 2/1/03 through 12/31/03 and at \$15,000,000 for all commercial rehabilitation projects for which plans are approved during the 2004 calendar year. The new law requires the Director of the Maryland Historical Trust to promulgate regulations providing that the plans must be approved on a first-come, first-served basis.
- All fees charged by the State Department of Assessments and Taxation have been increased. For example, the fees for filing basic business documents (articles of incorporation, amendment, or restatement, certificates of partnership, articles of organization of limited liability companies, and similar documents), for which the fees currently range from zero to \$50 have gone up to \$100. The \$100 fee for filing an annual report has been increased to \$300, and applies with certain exceptions not only to corporations and financial institutions, but also, for the first time, to limited liability companies, limited partnerships, and limited liability partnerships. The new annual report fees are effective

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Summary of 2003 Legislation . . .

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tive for reports filed after 12/31/03. All of the other increases are effective 7/1/03.

- Effective 7/1/03, the renewal of any license issued under the Business Regulation, Environment, Health Occupations, Natural Resources, and Tax-General Articles, and, except for driver's license and car registration renewals, the Transportation Article is contingent on the licensee's receipt of a certificate from the Comptroller that the licensee has paid all undisputed taxes and unemployment insurance contributions. (This means, of course, that licensees who wait until the last minute to file their renewal applications will be in trouble.)

- Effective 10/1/03, subject to exceptions and other provisions spelled out in detail at pages 71-74 of the enrolled version of HB 935, a purchaser of Maryland real property from a nonresident must withhold 4.75% of the net proceeds of the sale if the seller is a nonresident individual, or 7% if the seller is a nonresident entity. The withheld amount must be paid to the clerk of court when the deed is recorded, along with applicable recordation and transfer taxes. The clerks will transmit these withholdings to the Comptroller, who will credit the payment against the transferor's Maryland income tax liability. The Comptroller is currently working on regulations, as required by the statute, to establish procedures for implementing this law and expects to have these regulations in place before the effective date.

- Similarly, effective 7/1/03, a person who does business with a nonresident contractor under a contract that equals or exceeds (or reasonably can be expected to equal or exceed) \$50,000 must withhold 3% of the contract price for 30 days after the contractor has completed the contract, *and* requested the Comptroller to issue a tax clearance certificate, *and* provided a receipted copy of that request. This requirement does not apply to the owner of property who contracts for the improvement of his or her residence or to a contract for improvement of real property if the total value of the improvement is less than \$500,000. The details of this provision can be found at pages 76-79 of the enrolled version of the Bill.

- Finally, there are a number of provisions, dubbed "compliance" provisions, which are designed to get funds to the State more quickly than under current law. For example:

- The threshold for mandatory electronic payment of sales and use tax and withholding tax is decreased from \$20,000 to \$10,000, effective 7/1/03.

- The due date for payment of sales and use taxes has been moved up one day to the 20th day of the month after the month the tax was (or should have been) collected, effective 7/1/03.

- Effective 1/1/04, employers who expect the amount of income tax withholding over a quarterly period to equal or exceed \$700.00 must file monthly, instead of quarterly,

withholding tax returns; and employers who were required to withhold \$15,000 or more during the preceding calendar year must file a withholding tax return within 3 business days following each payroll that causes the total accumulated tax withheld to equal or exceed \$700.00.

- The Comptroller's authority for direct salary attachment with respect to income taxes has been extended to sales and use tax, effective 1/1/04.

- The Comptroller's process for bank attachments has also been streamlined effective 10/1/03, and the Comptroller has been given authority to subpoena certain information directly from financial institutions.

The Comptroller has also been given some assistance in pursuing the criminal prosecution of sales and use tax and admissions and amusement tax offenses. Under House Bill 214, which was signed by the Governor as Chapter 129 of the Laws of 2003, the one-year statute of limitations, which made criminal prosecutions difficult and infrequent, has been extended to three years, effective 10/1/03.

Very little else happened on the tax front, but what did *not* happen is also of some interest. The "controlling interest" legislation that would have imposed recordation and transfer tax on the sale of a controlling interest in an entity whose primary asset is real property passed the House easily (as did an identical bill in 2002). But the bill was never reported out of the Senate Budget and Taxation Committee. Instead, the controlling interest provisions were added to the version of HB 753 that was passed by the House. Those provisions were eliminated in the Senate version of the Bill, along with many of the "loophole closers" in the House version. Although, as mentioned earlier, many of those "loophole closers" – the throwback rule, the anti-Delaware holding company provisions, and the §482 provisions – were put back into the Bill when the conference committee met to reconcile the Senate and House versions, the controlling interest provisions were left on the cutting room floor. No one should be surprised if this measure shows up again in 2004.

Another interesting bill that died in committee was House Bill 982, which would have imposed admission and amusement tax on charges for merchandise, refreshments, or a service sold in connection with entertainment *regardless* of whether the establishment's charges are increased because of the entertainment. This would have overridden the unreported opinion of the Court of Special Appeals in *Comptroller v. Clyde's Restaurants*, Case No. 1893, September Term, 2002. The Comptroller has filed a petition for writ of certiorari in the hope that the Court of Appeals will hear the case and reverse the lower appellate court.

The following chart briefly summarizes all of the tax bills that passed the General Assembly and were either signed or vetoed by the Governor. Anyone who is interested in, or believes his or her clients may be directly affected by, any bill can find the full text of each of the bills at the General Assembly's website: <http://mlis.state.md.us>.

Maryland Tax Legislation 2003 General Assembly Session

BILL #	COMM.	SUMMARY DESCRIPTION	STATUS
INCOME TAXES			
(a) Deductions (Subtraction Modifications)			
SB 480	B&T	Original Bill would have increased modification for military retirement income to 100% of that income received in the year. As revised and passed, the Bill creates Task Force to Study Financial Impact of Retired Military Service Personnel on Economy of the State. Task Force to report to Governor by 12/1; Task Force ceases to exist 12/31. (Cross-filed HB 81 vetoed as duplicative.)	<i>Signed 4/22 Chapter 94</i>
(b) Credits			
SB 175	B&T	Request for refund or credit for overpayment of income tax due to reduction in tax by a decision or by an appeal of a decision of an administrative board must be filed within 1 year after the date of a final decision of the board or court. <i>Effective 7/1/03, but grandfathers claims filed between 1/1/00 and the effective date provided certain conditions are met.</i>	<i>Signed 4/22 Chapter 71</i>
HB 737	W&M	Cross-filed with SB 175	<i>Signed 4/22 Chapter 72</i>
HB 884	W&M	Extends to 6/30/06 the sunset dates for certain tax credits for employers that hire qualified employment opportunity employees or qualifying individuals with disabilities. <i>Effective 7/1/03.</i>	<i>Signed 5/22 Chapter 454</i>
(c) Corporate Income Tax			
HB 753	W&M	Administration and Compliance bill that was amended to incorporate “loophole” provisions and also would have subjected HMOs to the 2% insurance premium tax.	<i>Vetoed 5/22 Policy</i>
HB 935	W&M	Budget Reconciliation and Financing Act of 2003, amended to include provisions on license renewal, SDAT filing fees, and a host of “compliance” provisions. <i>Various effective dates.</i>	<i>Signed 5/13 Chapter 203</i>
(d) Miscellaneous			
SB 102	B&T	Provides that the 3-year statute of limitations on assessment of income tax arising from an amended return begins to run on the date the amended return is filed. <i>Effective 7/1/03; applicable to all amended returns filed after 6/30/03.</i>	<i>Signed 4/8 Chapter 7</i>

BILL #	COMM.	SUMMARY DESCRIPTION	STATUS
PROPERTY TAX			
SB 110	B&T	Changes date for SDAT to amend constant yield rate and authorizes SDAT to amend constant yield rate to reflect a significant loss of taxable base.	<i>Signed 4/8 Chapter 11</i>
SB 113	B&T	Changes calculation of abatements for damaged property by prorating based on month when damage occurred. <i>Effective 7/1/03.</i>	<i>Signed 4/22 Chapter 65</i>
SB 423	B&T	Clarifies & corrects local laws on assessment and taxation as result of transition to full value assessments. <i>Effective 6/1/03. (Cross-filed HB 368 vetoed as duplicative.)</i>	<i>Signed 5/13 Chapter 247</i>
SB 595	B&T	Authorizes county or municipal corporation to grant a credit for dwelling occupied by surviving spouse of individual who died in the course of employment as police officer. <i>Effective 6/1/03.</i>	<i>Signed 4/22 Chapter 103</i>
HB 731	W&M	Cross-filed with SB 595	<i>Signed 4/22 Chapter 104</i>
SB 726	Rules/ B&T	Changes various provisions relating to holders of certificates of sale. <i>Effective 7/1/03.</i>	<i>Signed 4/22 Chapter 109</i>
SB 746	B&T	Modifies criteria to qualify for the \$3,500 subtraction modification for certain volunteer police, firefighters, etc., to include individuals who serve on active duty in armed forces or as civilian or member of the merchant marine during the taxable year. <i>Effective for taxable years beginning after 12/31/02.</i>	<i>Signed 5/22 Chapter 267</i>
RECORDATION AND TRANSFER TAX			
SB 112	B&T	Exempts transfer of certain conservation easements and certain fee simple interests under specified conditions. <i>Effective 7/1/03.</i>	<i>Signed 4/22 Chapter 64</i>
HB 163	W&M	Changes exemption from recordation tax for mortgage or deed of trust securing refinancing to include refinancing by mortgagor or mortgagor's spouse. <i>Emergency bill, effective when signed.</i>	<i>Signed 5/22 Chapter 411</i>
SALES AND USE TAX and A&A TAX			
HB 214	Jud.	Changes statute of limitations for criminal prosecution of certain sales and use tax and admissions and amusement tax offenses from 1 year to 3 years after date on which offense was committed. <i>Effective 10/1/03.</i>	<i>Signed 4/22 Chapter 129</i>

BILL #	COMM.	SUMMARY DESCRIPTION	STATUS
HB 559	W&M	<u>Acknowledges</u> the Streamlined Sales and Use Tax Agreement adopted by the Project on 11/12/02; requires Comptroller to prepare a report on changes needed to bring Maryland into compliance.	Signed 5/13 Chapter 311

MISCELLANEOUS

SB 97	B&T	Motor Fuel Tax - Exempts special fuel containing dye, sold for use other than in a licensed motor vehicle. <i>Effective 10/1/03.</i>	Signed 4/22 Chapter 61
SB 108	B&T	Changes date for Comptroller's report to Governor from 10/1 to 12/1.	Signed 5/22 Chapter 361
HB 438	W&M	Extends personal liability for vessel tax, interest, and penalties to specified officers, members, managers, and partners of corporations, LLCs, and LLPs. <i>Effective 7/1/03.</i>	Signed 5/13 Chapter 29

LOCAL TAXES

HB 242	W&M	Allegany County: Authorizes County or a municipal corporation in the County to grant property credit against the county or municipal corporation property taxes on property owned by the Carver Community Center, Incorporated. <i>Effective 6/1/03.</i>	Signed 4/8 Chapter 38
HB 829	W&M	Allegany County: Authorizes County or Cumberland City to grant property tax credit against county or municipal corporation tax on new construction. <i>Effective 6/1/03 for taxable years beginning after 6/30/03.</i>	Signed 4/8 Chapter 50
SB 346	B&T	Baltimore City: Changes provisions on tax sales of abandoned property; permits City to get deficiency judgment; prohibits reopening judgment to foreclose rights of redemption under certain circumstances. <i>Effective 7/1/03. (Cross-filed HB 556 vetoed as duplicative.)</i>	Signed 5/13 Chapter 238
HB 861	W&M	Baltimore County: Authorizes the County to grant a property tax credit against the county tax on real property owned by the Maryland State Game and Fish Protective Association, Inc. <i>Effective 6/1/03 for taxable years beginning after 6/30/03.</i>	Signed 5/13 Chapter 331
HB 156	W&M	Calvert County: Authorizes County to grant credit against county tax on real property owned by members of fire and rescue companies. <i>Effective 6/1/03.</i>	Signed 5/22 Chapter 410

BILL #	COMM.	SUMMARY DESCRIPTION	STATUS
HB 88	W&M	Frederick County: Alters requirement that certain information about annual tax sale be published in 2 newspapers. <i>Emergency bill, effective when signed.</i> (Cross-filed SB 441 vetoed as duplicative.)	Signed 4/8 Chapter 31
HB 447	W&M	Prince George's County: Authorizes the County Council to impose a tax on telecommunications services other than telephone lifeline service. <i>Effective 7/1/03.</i>	Signed 5/13 Chapter 299
HB 701	W&M	Talbot County: Authorizes County Council to impose a building excise tax on all types of building construction. <i>Effective 7/1/03.</i>	Signed 4/8 Chapter 48
HB 1150	Rules/ W&M	Washington County: Increases from 3% to 6% rate of tax authorized for rental, leasing, or use of space, facilities, or accommodations for recreational vehicle or camping shelter in trailer park or mobile home court or park; provides that the tax applies to recreational vehicle or camping shelter used for temporary occupancy for up to 30 days. <i>Effective 7/1/03.</i>	Signed 4/22 Chapter 200
HB 628	W&M	Worcester County: Provides that the auctioneer's fee allowed as expense relating to a tax sale is the greater of \$8 per property or \$300, allocated <i>pro rata</i> among the properties sold. <i>Effective 7/1/03.</i>	Signed 4/8 Chapter 46
HB 1148	Rules/ W&M	Code Home Rule Counties: Increases maximum development excise that a county is authorized to impose from \$750 to \$2,000 per lot; Sunsets at end of 6/30/04. <i>Effective 7/1/03.</i>	Signed 5/22 Chapter 474
HB 562	W&M	Western MD Code Counties: Authorizes Counties to set hotel rental tax rate at more than 3% but not more than 8%; and related provisions. <i>Effective 7/1/03.</i>	Signed 4/8 Chapter 42

Stephen Cordi Receives Tax Excellence Award at Annual Irving Shulbank Memorial Dinner

On May 14th, 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 of recognizing the current contributions of a dedicated member of the Tax Bar while remembering the contributions of a deceased outstanding tax lawyer. This year's recipient was Stephen Cordi, Deputy Comptroller of the State of Maryland. After the presentation, William Donald Schaefer, the Comptroller of Maryland, addressed the 65 attendees about the current fiscal status of the State of Maryland.

The next Annual Irving Shulbank Memorial Dinner will be held in May of 2004.

Comptroller of Maryland Revenue Administration Division Summary of 2003 Tax Legislation

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The following is a summary of the bills passed by the General Assembly and signed into law by Governor Robert L. Ehrlich, Jr. The Comptroller deems it important to bring these changes to your attention so that you have sufficient time to prepare for these changes. Additional information will be made public as soon as it is available. Look for new or amended regulations in the *Maryland Register*. Refer to the Comptroller's website at www.marylandtaxes.com for updates, Administrative Releases, Tax Tips and other Comptroller publications. Copies of the bills are available at the Department of Legislative Services or online at the Maryland General Assembly's website (mlis.state.md.us). The provisions of these bills are presented in the order in which they become effective.

The one bill of significance is the Budget Reconciliation and Financing Act of 2003 (House Bill 935, Chapter 203, Acts of 2003), which contains numerous revenue enhancement and tax compliance initiatives. These initiatives become effective at various times between June 1, 2003 and January 1, 2004.

JUNE 1, 2003

Alcoholic Beverages

Vehicle Identification. Fee for the identification of each vehicle authorized under an individual transportation permit or a transportation or public storage and transportation permit is increased from \$2 to \$10 for each vehicle. (House Bill 935, Chapter 203)

JULY 1, 2003

Income Tax

Amended Returns. Comptroller has 3 years from the date an amended return is filed to make an assessment on income tax arising out of an amended return. The assessment must be related to changes made by the amended items in the return. (Senate Bill 102, Chapter 7)

Claims for Refunds. A taxpayer may file a claim for a refund or a credit for overpayment of income tax attributable to a right to a reduction of the Maryland income tax that is established by a decision of an administrative board or by an appeal of a decision of an administrative board within one year after the date of a final decision of the administrative board or a final decision of the highest court to which an appeal of a final decision of the administrative board is taken. (Senate Bill 175, Chapter 71 and House Bill 737, Chapter 72)

Withholding: Exemptions. An employer is required to base withholding for an employee on the number of exemptions stated in the certificate that the employee files or, if the employee does not submit an exemption certificate or files an invalid certificate, on 1 exemption. Under a new provision, the Comptroller is permitted to notify an employer that an employee has an unpaid tax liability and that the employer is required to base withholding for the employee on the number of exemptions not exceeding the actual number of exemptions allowed on the employee's prior year's income tax return, as specified by the Comptroller. (House Bill 935, Chapter 203)

Withholding: Pari-Mutuel Wagering. The payment of winnings derived from pari-mutuel wagering (horse racing) will be subject to Maryland income tax withholding if subject to withholding of federal income tax. (House Bill 935, Chapter 203)

Income Tax Subtraction Modification for Auxiliary Police; Volunteer Fire, Rescue and Emergency Medical Services Personnel; and U.S. Coast Guard Auxiliary. The active service requirements have been modified for members of the National Guard or other reserve components of the U.S. armed forces who have been ordered into active military service and serve on active duty during the tax year and for civilians and members of the merchant marine on assignment in support of the armed forces in an area designated as a "combat zone" by the President. (Senate Bill 746, Chapter 267)

Work, Not Welfare, and Qualifying Employees with Disabilities Tax Credits. Extends the sunset dates for these credits from June 30, 2003 to June 30, 2006. (House Bill 884, Chapter 454)

Sales & Use Tax

Sales and Use Tax Remittance and Reports. A buyer or a vendor who is required to remit sales and use tax is required to file a return and remit the tax on or before the 20th day of the month that follows a month in which the vendor makes any retail sale or sale for use or the buyer makes a purchase for use. Under current law, the returns are due on the 21st day. This bill moves the filing date requirement up by 1 day. (House Bill 935, Chapter 203)

Streamlined Sales and Use Tax Agreement. Maryland did not adopt, but acknowledged, the Streamlined Sales and Use Tax Agreement adopted by the member states of the Streamlined Sales and Use Tax Project. The Comptroller is required to report to the Governor and General Assembly any changes to State

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statutes, regulations or policies required or recommended to bring the State into compliance with the Agreement and the fiscal impact of each change on the State sales and use tax revenue. (House Bill 559, Chapter 311)

Tax Compliance

Tax Wage Liens. The “tax wage lien” provisions of TG § 13-811 will apply to any tax administered by the Comptroller’s Office. (House Bill 935, Chapter 203)

Tax Compliance Verification. Before many licenses or permits may be renewed, the issuing authority is required to verify through the Comptroller’s Office that the applicant has paid all undisputed taxes and unemployment insurance contributions payable to the Comptroller or the Secretary of Labor, Licensing and Regulation or that the applicant has provided for payment in a manner satisfactory to the unit responsible for collection. This provision is contained in the Business Occupations and Professions, Business Regulation, Environment, Health Occupations, Natural Resources, Tax-General and Transportation Articles. This provision does not apply to motor vehicle registrations and drivers’ licenses. (House Bill 935, Chapter 203)

Nonresident Contractors. Any person doing business with a nonresident contractor under a contract that equals or exceeds \$50,000 or reasonably can be expected to equal or exceed \$50,000 is required to withhold payment of 3% of the contract price until 30 days after the nonresident has: (1) completed the contract; (2) requested in writing for the Comptroller to issue a tax clearance certificate; and (3) provided a receipted copy of the request to the person required to withhold the payment. Several exceptions apply for improvements to owner-occupied residences and improvements to real property if the total value of the improvements is less than \$500,000 or a subcontract under a contract for the improvements if the total value is less than \$500,000. The Comptroller is required to furnish to the nonresident contractor and the person required to withhold the payment either a certificate of no tax due or a certificate that taxes are due, including the amount of taxes due from the nonresident contractor. A person who fails to withhold or pay over the withheld amounts, as required, will be personally liable for the payment of any sales and use tax or income tax withheld attributable to the contract up to 3% of the contract price. Applicable to all contracts entered into on or after July 1, 2003. (House Bill 935, Chapter 203)

Immediately Available Funds. If the tax liability is greater than or equal to \$10,000, the payment must be made in immediately available funds. This amount is decreased from the current threshold of \$20,000. (House Bill 935, Chapter 203)

OCTOBER 1, 2003

Income Tax

Nonresident’s Transfer of Property in Maryland. The transferee of property sold or exchanged that is owned by a nonresident or a nonresident corporation is required to deduct and withhold from the payment to the transferor an amount equal to 4.75% of the total payment to a nonresident individual or 7% of the total payment to a nonresident entity. The payment must be remitted to the Clerk of the Circuit Court or to the Department of Assessments and Taxation when the document is presented for recordation. Several exceptions to the withholding and remittance provisions are provided. The amounts so paid are deemed to have been paid by the transferor and the transferor will be credited for having paid the amounts for the tax year in which the transaction subject to the tax occurred. (House Bill 935, Chapter 203)

Streamline Bank Attachment Process. Financial institutions must disclose information requested in writing by the Comptroller relative to moneys held in a savings deposit, time deposit, demand deposit, or other deposit held by the fiduciary institution, except the balance of the deposit, in the name of an individual whose property is subject to a tax lien.

The Comptroller is now permitted to give notice of a tax lien to any financial institution that the Comptroller reasonably believes holds property subject to a tax lien. The notice must contain information necessary to identify the taxpayer and a request to immediately seize and attach from one or more accounts held by the financial institution in the name of the obligor an aggregate amount equal to the lesser of the amounts in all accounts or the amount of the tax lien. The financial institution must notify the Comptroller within 30 days of notice of the aggregate amount held. The financial institution may assess a fee against the accounts or the obligor. The fee is in addition to the amounts required to be held. Within 10 business days of the financial institution’s notification to the Comptroller, the Comptroller is required to send a notification, by first-class mail, to the obligor. The notice must include, among other required items, that the Comptroller has directed the financial institution to seize and attach the amount of the tax lien and a statement informing the obligor that, unless a timely challenge is made, the Comptroller will notify the financial institution to forward the amount seized and attached to the Comptroller. A challenge must be made by filing a motion with the Circuit Court within 10 days of receipt of the notice. (House Bill 935, Chapter 203)

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Sales & Use Tax

Criminal Prosecution. Extends from 1 year to 3 years the time by which an offense with respect to the sales and use tax or admission and amusement tax must be instituted. (House Bill 214, Chapter 129)

JANUARY 1, 2004

Income Tax

Income Tax Withholding. Income tax required to be withheld on wages for purposes of the withholding tables and withholding schedules will be calculated at the top marginal state tax rate, without regard to the graduated income tax rates. (House Bill 935, Chapter 203)

Monthly Income Tax Withholding Return Due Dates. Changes the due date for the March, June, September and December returns from the last day of the next month to the 15th day of the next month. (House Bill 935, Chapter 203)

Withholding: 3-Day Rule. If a person was required to withhold \$15,000 or more for the preceding calendar year, then the person

is required to complete and file an income tax withholding return with the Comptroller within 3 business days following each payroll that causes the total accumulated tax withheld to equal or exceed \$700. If a person is required to remit the tax within the 3 business days, the person is required to continue to file a return at least once every 3 months until the person gives the Comptroller written notice that the person no longer has employees or no longer is liable to file the return. (House Bill 935, Chapter 203)

Underpayment of Estimated Income Tax. The safe-harbor provisions for the assessment of interest and penalty for the underpayment of estimated income tax payments was modified. In order to avoid the assessment of interest and penalties, a person required to make estimated income tax payments must pay tax greater than or equal to: (1) 90% of the tax due for the tax year; or (2) 110% of the tax paid for the prior taxable year (reduced for taxes paid to another state under TG §10-703). Current law allows payment equal to 100% of the prior year's tax liability. Applicable to all taxable years beginning after December 31, 2003. (House Bill 935, Chapter 203)

James M. Arnie, *Director*
Comptroller of Maryland

Spotlight On

by Marilyn E. Nelson

This is the second in the series in which the editors feature the profile of a member of the Tax Section, chosen at random from the list of some 600 members. The subject for this issue is John Rhody.

John Rhody is one of the two principals in the law firm of Bagley and Rhody in Annapolis. His practice consists largely of business and succession planning combined with estate planning, and he has been a member of the Section of Taxation longer than he can remember. He can, however, remember when he was not a lawyer.

John was born in Western Kentucky, and received his undergraduate degree from the University of Kentucky in psychology in 1969. While he enjoyed that subject as an academic matter, he really did not want to be a psychologist, so he enrolled in the Business School at Kentucky, where he received an MBA in 1970. He enjoyed his courses in marketing research, so he started applying for jobs in marketing while working part-time as a bartender in an apartment complex in Louisville. Using a list of possible employers, he began sending out his application—alphabetically, he says—and because he could not afford to send his packet of application materials to every possible firm, he sent out five and asked those who were not interested in employing him to return them so that the materials could be re-used. Amazingly, four of the five complied; the fifth, the American Research Bureau, in Beltsville, hired him. That became John's transition to Maryland. There, from 1971 to 1977, he worked on radio and television ratings; his job was to research how effectively to mea-

sure and get correct information from the feedback received from designated subjects. But while John had loved studying about marketing research, he found that he really hated doing it, so beginning in 1974, he enrolled in the night division of the law school of The American University.

In 1977, while still a student, he began working for a law firm in Silver Spring: Heise, Jorgensen & Stefanelli, where he remained as an attorney-associate after getting his JD and where he later became a partner. There, he started out in employment law, concentrating on appellate work representing government employees. As time went on, John began building a practice in general business law and started doing estate planning for his clients, while he kept on studying. In 1984 he became a CPA, and in 1987, he received his LLM in Taxation from The George Washington University. In 1989, John and his wife, Donna, moved to southern Anne Arundel County, and he continued to commute to Silver Spring, braving the increasing traffic of the Beltway. But on the day in 1993 that was for him the "last straw"—when he encountered an overturned truck accident on the Beltway twice in the same day—he stopped the commute and took a job in an Annapolis firm.

There, John met Charles Bagley; they formed a partnership in 1996, and their practice continues. The law is apparently both John's vocation and his avocation; when asked what John does as a diversion, his wife says—and John confirms—that one can find him working at his office.

Another Great Year for the Earned Income Credit Project

By Leigh Kessler, Esq.

The 2003 Earned Income Credit Project (the "Tax Clinic") was once again a huge success. The Tax Clinic, sponsored by the Maryland Volunteer Lawyers Service ("MVLS") and the Tax Section of the Maryland State Bar Association, is staffed completely by volunteers who prepare federal and state income tax returns at no cost for low-income taxpayers. This year the Tax Clinic prepared 324 returns, compared with 190 in 2002. In addition, 241 returns were filed electronically. Single women with children accounted for 148 of these households, and the clients' average household income was \$18,063. The returns prepared reflected refunds and credits totaling \$623,266, with an average refund of \$1,924. The average Earned Income Tax Credit was \$1,113.

A special thanks to Winifred Borden, Executive Director, and Mina Naddaf, Deputy Director, of MVLS. In addition, none of this could have been accomplished without the hard work and dedication of the following volunteers:

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

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Listserv Announcement



The Section Council wants to encourage all Tax Section members to take advantage of the Listserv created by the MSBA staff for our benefit. On or about June 30, 2003, all Section members who have provided their e-mail addresses to the MSBA will be added to the Listserv. Once the Listserv is updated, an initial message will be sent to the new list. Anyone who wishes to unsubscribe to the list will be able to do so simply by clicking on the unsubscribe link at the bottom of the message.

What are the advantages to using the Tax Section Listserv?

- ♦ Sending only one message to MSBAtax@lists.msba.org will communicate your e-mail message to all Section members subscribing to the Listserv. These Section members can assist you with your inquiries and updates.
- ♦ Even if you do not have a question, you can benefit from the information that is exchanged and shared between and among members with minimum effort.
- ♦ From time to time, information of general interest will be forwarded to Listserv members, including notices about Section activities and updates on legislative and administrative matters.

The Section Council hopes that you will enjoy your participation in the Listserv and benefit from an active online community of attorneys involved in the Tax Section.

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