

# TAX TALK

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## FROM THE CHAIR

By Andrea B. Gillespie

For an embarrassing number of months, I have planned and worried about successfully fulfilling my duties as Chair of this wonderful Tax Section. Lists of projects and deadlines filled my head, my office and my car. It was important that I not disappoint the Tax Section and its Members who have advised and helped me so patiently over many years. I intended to be organized and fulfill my responsibilities promptly.

But then the hurricanes hit. My initial article for this newsletter, that took hours to write, seemed trite and inappropriate. How could I limit my use of this space to a discussion of the benefits of Tax Section membership (wonderful as it is), when just recently so many people had lost so much?

So here I sit, having missed my first deadline, starting this article from scratch. And I dare not complain. My computer still works and my home and family are safe and intact. I too, however, have lost something very important. It is my sense of comfort in my world. This disappeared after witnessing the harm caused by the extent of the division between the classes of our society. Although previously evident, it was usually possible to turn away and avoid confronting this problem directly. Now, however, there was no escape. The news and photographs were relentless. The victims' pain and anguish was overwhelming. The poverty was overwhelming.

In response, at our September Tax Council meeting, we discussed various forms of assistance that the Section and its members can give to the storm survivors. A number of good suggestions were made, in addition to the obvious need for donations of money. After these suggestions are researched and further discussed, I will report back to the Tax Section membership about the Council's recommendations.

In my mind, however, although important, assisting the hurricane victims is not enough. It wasn't so much the damage from the hurricane that appalled me, but rather the damage

caused by poverty. This same poverty is everywhere, including Maryland. While reflecting on the magnitude of this never ending problem, I received an email from Robin Denick, the conscience of the Tax Council. She was inquiring about the status of the Section's pro bono committee. In her email she listed all of the opportunities available to tax attorneys for pro bono work. As always, her timing was impeccable. Her concern for the less fortunate was clearly evident. As Robin knows, and as I am learning, those with the means to help must do so.

As a result, the Tax Council decided to renew our commitment to pro-bono work. The pro-bono committee will be reconfigured to act as a clearing house for multiple tax pro-bono opportunities. Jessica Lubar has graciously volunteered to lead this committee, as sort of our pro-bono czar. She will gather various tax pro-bono opportunities and post them to our Listserv. I urge all Section members to pitch in and help.

That said, I must warn members against pro-bono burn-out. There are many more pro-bono opportunities than practitioners to assume them. Sadly, this will be a never ending job and we must pace ourselves to ensure that we continue to volunteer for a long time.

I also learned something else from these awful storms. Communication and planning is everything. Therefore, I intend to work on these skills. I will do my best to send regular Section news updates to members enrolled with the Tax Section Listserv. In turn, I urge Section members to inform Tax Council members about problems or trends in your tax practices.

With all that said, it now seems more appropriate to announce the upcoming tax events of interest to our Section members. The Advanced Tax Institute will be held Monday, November 7 through Friday, November 11, 2005 and will once again provide a full range of interesting programs and knowl-

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# HOW WILL THE NEW BANKRUPTCY ACT AFFECT YOUR TAX PRACTICE?

By: Alan Zipp, Esq.

Discharging taxes in bankruptcy will become more difficult under the new bankruptcy law effective October 17, 2005.

Under Chapter 7, taxes may be discharged if they are owed from tax returns due more than three years before the filing of a bankruptcy petition. The tax returns must have been filed more than two years before filing the bankruptcy petition. Also, the IRS must have assessed the tax at least 240 days before the petition, and the taxpayer must not have committed fraud. (11 U.S.C. 507(a)(8), 11 U.S.C. 523 (a)(1)(B).)

Under the new bankruptcy law, it will be more difficult for a taxpayer to qualify under Chapter 7. Hence, while the opportunity to discharge taxes under Chapter 7 continues as before, fewer individuals will be able to use this bankruptcy procedure.

In the past, qualifying for Chapter 7 liquidation was not difficult. Under the new law a debtor must satisfy a means test of having income, after certain expenses, below a set amount in order to use this form of bankruptcy. Specifically, a debtor who wants to use Chapter 7 faces dismissal on a presumption of abuse if he or she has the financial means to make at least minimum monthly payments. Debtors with the means to make minimum monthly payments will be forced to use Chapter 13, reorganization plan.

According to the American Bankers Association, under the old law about 70% of consumer petitions were filed under Chapter 7. The new law is expected to put about 20% of these petitions into Chapter 13 because of the means test and other new requirements.

The means test depends on family size and the state in which the family lives. For example, if a debtor with a family of four has earnings that do not exceed \$53,165 - the U.S. average income for a family of four - he or she would not automatically be barred from using Chapter 7. The means tests by state can be found at the U.S. Census Bureau web site: [www.census.gov/hhes/income/4person.html](http://www.census.gov/hhes/income/4person.html).

However, even if earnings do not exceed the means threshold, there are other hurdles. For example, one must determine if there is enough current income to make payments to creditors. Abuse of the bankruptcy system is deemed to exist - and Chapter 7 cannot be used - if a debtor has net monthly income of at least \$167 to pay a total of \$10,000 of debts over the next five years. Abuse is not presumed if the net monthly income is less than \$100, or \$6,000 in total debt is projected over five years. Abuse is presumed if a debtor's projected monthly income after deductions is sufficient to pay at least 25% of unsecured claims over five years.

One of the changes under the new law is the definition of net monthly income. As in the past, it includes income from all sources, both taxable and nontaxable. It also includes expenses paid by a third party. The only items not counted are Social

Security benefits and benefits received by victims of war crimes or terrorism.

In determining net income, deductions for reasonable living and other expenses are taken into account. Under the new law the deduction for reasonable living expenses is based on the means test used in the Internal Revenue Service Financial Analysis Handbook. This means that national standards are used to fix the deduction for food, clothing, personal care, and entertainment based on the size of a debtor's family. The portion for food and clothing can be increased by 5% if reasonable and necessary. Local standards are used to fix the deduction for housing and transportation. Other expenses may include those costs deemed necessary by the IRS. Specifically, they may include health, life and disability insurance; accounting and legal fees; child or adult care; taxes; court-ordered payments, such as alimony and child support; and involuntary deductions, such as items required by an employer for a job. Due to the new IRS-based definition of income, fewer individuals will be able to use Chapter 7.

The alternative to Chapter 7 is Chapter 13. Under Chapter 13, a debtor reorganizes his or her financial affairs and receives a discharge only after completing a court-approved repayment plan.

For some individuals, outstanding federal, state, or local taxes can be the main reason to seek bankruptcy protection. In the past, an individual who used a Chapter 13 bankruptcy could obtain a partial discharge for taxes related to nonfiled returns and certain late-filed returns. Amounts paid to the government during the repayment period were all the debtor was required to pay.

The new law changes the rules for Chapter 13 bankruptcy concerning taxes. The law specifically provides that back taxes related to nonfiled or late-filed returns cannot be discharged, unlike prior law. This includes interest that accrues on these taxes after a bankruptcy petition is filed. Also, as under prior law, the treatment of penalties follows the treatment of the underlying taxes to which they relate. This means that interest and penalties associated with back taxes related to nonfiled or late-filed returns cannot be discharged.

Under the new law, the Chapter 13 payment plan is extended to five years. However, unlike prior law, individuals who obtain a discharge of debts after five years will continue to owe taxes, interest, and penalties that have not been fully paid.

As in the past, certain taxes remain nondischargeable, regardless of the type of bankruptcy that is used. These include federal, state, and local taxes that became due within three years of filing for bankruptcy. Other nondischargeable taxes include trust fund taxes, which are the employee's income tax withholdings and the employee's share of Social Security and Medicare taxes. In all events, nondischargeable taxes include

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## BANKRUPTCY ACT...

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taxes the taxpayer willfully intended to evade or defeat or concerning which the taxpayer committed fraud. In addition to nondischargeable taxes themselves, obligations incurred to pay those taxes are also nondischargeable. For example, if a debtor borrows money to pay off a nondischargeable tax, the loan becomes nondischargeable.

When a debtor files for bankruptcy, generally creditors must give the process an opportunity to work. For taxes, filing for bankruptcy provides an automatic stay to prevent collection activities. Under the new law, this stay applies only to taxes owed prior to filing for bankruptcy. It does not prevent the IRS, for example, from pursuing the collection of taxes that accrue after the bankruptcy petition is filed.

Also under the new law, for Chapter 13 debtors to have a plan of repayment confirmed, they must show that they have filed all tax returns for the four-year period prior to filing the petition.

One final note to attorneys. The new law requires that attorneys certify their clients' financial statements. If the statements later prove to be false, the attorneys can be held financially responsible. No longer can attorneys accept a client's averments about income, as an independent verification is now required in order to certify accuracy.

*\* This article first appeared in the Montgomery County Bar Association Newsletter and is used here with permission of the author.*

## FROM THE CHAIR...

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edgeable speakers. I wish to thank Todd J. Bornstein, for continuing to do an excellent job as ATI Co-Chair, and welcome him as an incoming Tax Council Member.

Also, many opportunities are available this year to help tax practitioners keep informed about their area of interest. Listed in this newsletter is information about, and meeting schedules for, the State Tax Study Group, Tax Controversy Group, Business/Transaction Tax Committee and Employee Benefits Study Group. There are few areas of the law that change faster than taxation and it is incumbent upon us to stay informed. Participation in a study group can help.

While I'm at it, please do not miss Tax Networking Night scheduled for the evening of November 15, 2005, at 6:00pm at the Candle Light Inn, in Catonsville. This is a wonderful event and there is no requirement to take notes. Participants need only enjoy good conversation enhanced by good cocktails. I always have a great time and hope that many of you will join us.

Finally, I would like to commend Elissa Borges for her excellent job as last year's Chair of the Tax Section. Under her guidance, the Section continued to expand the services it offers to its members and the community. I hope to follow her lead and the good examples set by all of the past Chairs of this Section, unless of course there is another catastrophe, and then another rewrite may be in order.

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(continued on Page 9)

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(continued from Page 8)

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## STATE TAX STUDY GROUP

The State Tax Study Group will meet at Ober|Kaler, 120 East Baltimore Street, 9<sup>th</sup> Floor (the Maryland Room), Baltimore, MD. As in the past, the meetings will generally be on the third Tuesday of the month at 8:30 a.m. Dues are \$25 for MSBA Members.

Chair, A. David Borinsky, [dborinsky@gflaw.com](mailto:dborinsky@gflaw.com), 410-576-4044

### 2005-2006 MEETING AGENDA

DATE	SPEAKER	TOPIC
October 18, 2005	Jack Hearn Bob Zouck	Maryland Tax Court
November 15, 2005	Sharonne Bonardi Janet Johnson	Hearing and Appeals Process in Comptroller's Office; Current Cases
December 20, 2005	Jerry Langbaum	Update of recent cases and litigation involving the Comptroller of the Treasury
January 17, 2006	Bill Hammond, David Lyon Jeffrey Comen	Update of recent cases and legislation involving the State Department of Assessments and Taxation
February 21, 2006	Ed Muth Michael Griffin	Administrative developments at the State Department of Assessments and Taxa- tion; Recent cases and legislation regarding personal property tax
March 21, 2006	Gloria Wilson Shelton Bruce L. Benshoof	Overview of the Courts and the Clerks
April 18, 2006	Jim Arnie or designee	Update of recent cases and legislation regarding the Maryland income tax
May 16, 2006	Linda Tanton	Update of recent cases and legislation regarding the Maryland sales and use tax; Developments regarding the Compliance Division

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## GIFT AND ESTATE TAX STUDY GROUP

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### 2005-2006 Schedule

(Unless otherwise noted below, all meetings are on the second Thursday of the month.)

<b>Date</b>	<b>Speaker</b>	<b>Topic</b>
October 20, 2005 (third Thursday)	Charles Winner, Esq. Fisher & Winner	Circular 230 with an Estate Planner's Spin
November 17, 2005 (third Thursday)	William H. Crispin, Esq. Crispin & Associates, PLLC	The <u>Chawla</u> Case (from Mrs. Chawla's attorney)
December 8, 2005	Janet A. Mann Office of the Comptroller of the Treasury	Maryland Estate Tax Update from the Comptroller's Perspective
January 19, 2006 (third Thursday)	Jennifer A. Pratt, Esq. Venable LLP	Report from the Heckerling Institute on Estate Planning
February 9, 2006	Stephanie Loomis-Price, Esq. Baker Botts LLP (Houston)	FLP Update (from counsel on <u>Strangi</u> , <u>Bongard</u> , <u>Stone</u> , etc.)
March 9, 2006	T.B.A.	T.B.A.
April 20, 2006 (third Thursday)	Edwin G. Fee, Jr., Esq. Whiteford, Taylor & Preston, LLP	2006 Legislative Update
May 11, 2006	Richard F. Lindstrom, Esq. Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC	Use of Disclaimers in Estate Planning
June 2006 (T.B.A.)	T.B.A.	T.B.A.

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# MONTGOMERY / PRINCE GEORGE'S COUNTY TAX STUDY GROUP

## Schedule of Meeting Dates, Locations and Discussion Topics

<b>Date</b>	<b>Location</b>	<b>Topic / Speaker</b>
October 20, 2005	Linowes and Blocher LLP Suite 800 7200 Wisconsin Avenue Bethesda MD 20814	Defective Grantor Trusts Jerome M. Hesch Greenberg Traurig, P.A. Miami FL
November 17, 2005	Law Offices of Lawrence I. Wachtel Suite 560 1401 Rockville Pike Rockville MD 20852	MD Tax Developments James W. Dawson, Jr. Assistant Director, Legal Revenue Administration Division
January 19, 2006	T.B.A.	Heckerling Estate Planning Institute Harold W. Pskowski BNA Tax Management Washington, D.C.
February 16, 2006	T.B.A.	Taxation of Deferred Compensation Elizabeth Drigotas Deloitte, Washington, D.C.
March 16, 2006	T.B.A.	Asset Protection Planning Howard D. Rosen Donlevy-Rosen & Rosen Miami FL
April 20, 2006	T.B.A.	T.B.A.
May 18, 2006	Grossberg Company LLP Two Democracy Plaza Suite 300 Bethesda MD 20817	T.B.A.

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## BUSINESS TRANSACTIONAL TAX STUDY GROUP

Meetings of the Transactional Tax Study Group are held from Noon to 1:00 p.m. in the Baltimore office of Whiteford, Taylor and Preston, 7 St. Paul Street, Baltimore, Maryland. Dues \$70.00 per year for MSBA Tax Section members.

### 2005-2006 Meeting Schedule

September 28, 2005  
October 19, 2005  
November 16, 2005  
December 21, 2005

January 18, 2006  
February 15, 2006  
March 15, 2006  
April 19, 2006  
May 17, 2006

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For further information, contact Jonathan Z. May, Esq., 410-347-8781

## EMPLOYEE BENEFITS TAX STUDY GROUP

Meetings of the Employee Benefits Tax Study Group are held at the Center Club, 100 Light Street, (Legg Mason Building), Baltimore, Maryland. Meetings are generally 12-2. To attend the meetings you must be a member of the group. Dues are \$75 per year for MSBA Tax Section members.

### 2005-2006 Meeting Schedule

November 15, 2005  
January 10, 2006  
March 14, 2006

July 11, 2006  
September 12, 2006  
November 14, 2006  
May 9, 2006

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## TAX CONTROVERSY STUDY GROUP

Meetings of the Tax Controversy Study Group are held at the offices of Rosenberg, Martin, Funk, Greenberg, LLC, 25 South Charles Street, Suite 2115, Baltimore, Maryland. Meetings start at 9:30 a.m. The first meeting is scheduled for November 1, 2005. The topic is "The Lifecycle of a Maryland Tax Controversy". Bagels and coffee are provided. For further information, or to advise that you will be attending the meeting or joining the group, please contact Caroline D. Ciralo, Esq. at 410-547-7852, or [cciralo@rosenbergmartin.com](mailto:cciralo@rosenbergmartin.com).

## **TAX TALK © 2005 MSBA TAX SECTION**

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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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