Tax Section News

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Chair's Report

By Allison Woodbury Leppert , Leonard, Street and Deinard

This final Chair's report comes quickly on the heels of the annual Judge's Conference, so I'd like to start by thanking Walter Pickhardt and Jerry Geis for co-chairing this event and once again pulling together an excellent program. Also, congratulations to Bruce Ackerman as this year's recipient of the distinguished service award. Bruce's dedication to the Tax Section Council is greatly appreciated, and the award was well deserved.

Congratulations as well to those new officers elected for 2012/2013. Nick Furia of the Law Offices of Nicholas A. Furia, PLLC will chair the council next year. Serving as Vice Chair and organizing all the great CLEs for the year will be Mike O'Brien from Regan Tax Law. Ann Petersen of Jones Lang LaSalle was elected our Treasurer, and Caroline Balfour of Grant Thornton was elected our Secretary.

We also have a number of new council members for 2012/2013: Ben Wagner of Regan Tax Law, Teresa Molinaro of Best Buy, David Martin of 3M, Jerry Geis of Briggs and Morgan, Dan Kidney of KPMG, and Masha Yevzelman of Fredrickson and Byron. Thank you all for your willingness to serve.

As I observed this years Judge's Conference, I was reminded of the first Judge's Conference I attended during the summer between my second and third years of law school. The thing that struck me the most at that event was the collegiality among the practitioners, regardless of whether they were public or private practice lawyers. I knew that tax would be a good fit for me if the Minnesota tax bar was so professional and friendly. I'm happy to report that many Judge's Conferences have come and gone since that day and my impression of our practitioners remains the same. I've been happy and proud to be a part of the MSBA Tax Law Section. Thanks to all of you for all you add to the Tax Law Section.

A final word of thanks to three great people: Nick Furia, thanks for all of your hard work organizing the CLEs for this year and chairing a couple of the meetings; Ann Petersen, thanks for keeping our Section members so well informed by editing our newsletter; and Jennifer Carter, thanks for taking on our Section and handling it so well.

Have a wonderful summer.

Allison

Commissioner's Column

Submitted June 2012 on behalf of Myron Frans, former Minnesota Commissioner of Revenue

Informed taxpayers are key to promote voluntary compliance

It is an exciting time to be at the Department of Revenue. Governor Mark Dayton has challenged state agencies to give the best service, at the best price, to Minnesota taxpayers and others we serve.

To do so, we are offering a broader range of resources to help taxpayers "voluntarily report and pay the right amount of tax: no more, no less" – a key part of the agency's mission. This effort includes more instructional videos for business taxpayers, new ways of presenting information and our recent website redesign.
Our new site (www.revenue.state.mn.us) is more user-friendly. Our existing fact sheets, updates, classes and other information are easier to find. We also added more email updates and made it easier to subscribe. Just click the  icon from any page to see a list of topics or use the "Subscribe" links that point out specific offerings.

Providing this kind of information is crucial since our tax system relies on voluntary compliance. But Minnesota's tax laws are not always simple, and there are some taxpayers who do not follow the rules. This keeps tax practitioners and department auditors busy.

Many tax disputes hinge on how much a taxpayer owes, based on how each side interprets the relevant laws or rules. We may not always agree with you or your clients. But our discussion must be based on the facts — whether we are discussing an audit or having a wider debate about tax reform or how the department does its work.

Sales and Use Tax audits

An article in last quarter's Tax Section News misstated some of the department's policies while discussing sales and use tax audits of bars and nightclubs in Minnesota.

We share the authors' concern that the right method is used to determine a taxpayer's gross receipts and tax liability. But we take issue with some of their assertions. Therefore, I want to take this opportunity to clarify some of our policies:

- The rate of audits within any one industry may ebb and flow over time, depending on a number of factors. The department's Sales and Use Tax Division formed a special enforcement unit two years ago to focus on cash-based sellers and other types of businesses that historically have compliance issues, including bars and nightclubs.

- State law does not restrict our use of records sampling to audits where a retailer has inadequate records (M.S. 270C.03). In fact, we mostly use sampling when a taxpayer has complete records, but the volume of those records means that a 100 percent review is not feasible.

- The department does not use the indirect auditing method as our "primary" means of auditing bars and nightclubs, or any other type of business. We use this method only if we determine that a taxpayer's records are not reliable, after analyzing a range of factors during our preliminary audit investigation. Several state court cases have affirmed our authority to do so. The most recent is *HKD Lo Inc. dba Jun Bo Chinese Restaurant v. Commissioner of Revenue* (Minn. Tax 3/21/2011).

- When taxpayers maintain proper accounting records the impact from an audit is generally minimal. During an audit, we also educate taxpayers about how they can avoid similar mistakes in the future.

To help businesses avoid these mistakes in the first place, our Sales and Use Tax Division is now posting statistics on the Revenue website about the most common issues found during audits of various industries. (From our home page, click Sales & Use Tax > What's New.) This information will help taxpayers and practitioners ensure that businesses properly collect, report and remit sales or use tax when required. We also created a new web video – "You Were Selected for Audit" – to help small businesses understand what a sales and use tax audit entails and how to prepare.

Of course, any audit creates work – and worry – for business owners. We recently changed our sales and use tax audit process, partly in response to concerns expressed by tax practitioners. For example:

- We are making information requests more specific to reduce the time taxpayers spend gathering documents.

- We are doing more two-person audits so that less experienced auditors can get direct guidance in the field.

- We have added supervisor contact information to audit letters to provide a way for you or your clients to express any concerns you have during an audit.

These changes show how your input can help us improve. Your feedback is also important as the department prepares a tax reform plan for Governor Dayton. We look forward to working with MSBA to modernize our tax system and the department's processes that support it. Please let us know if you have any ideas to help.

Note: For more information on our tax reform activities, visit our home page and click the "Tax Reform" button. To get email updates, click the "Subscribe" link on the tax reform page

IRS Column

Submitted by Alan Gregerson, Senior Stakeholder Liaison and Michelle Benson, Midwest Area Manager

IRS Offers New Penalty Relief and Expanded Installment Agreements to Taxpayers under Expanded Fresh Start Initiative

The Internal Revenue Service announced a major expansion of its "Fresh Start" initiative to help struggling taxpayers by taking steps to provide new penalty relief to the unemployed and making Installment Agreements available to more people.

Under the new Fresh Start provisions, part of a broader effort started at the IRS in 2008, certain taxpayers who have been unemployed for 30 days or longer will be able to avoid failure-to-pay penalties. In addition, the IRS is doubling the dollar threshold for taxpayers eligible for Installment Agreements to help more people qualify for the program.

"We have an obligation to work with taxpayers who are struggling to make ends meet," said IRS Commissioner Doug Shulman. "This new approach makes sense for taxpayers and for the nation's tax system, and it's part of a wider effort we have underway to help struggling taxpayers."

Penalty Relief

The IRS announced plans for new penalty relief for the unemployed on failure-to-pay penalties, which are one of the biggest factors a financially distressed taxpayer faces on a tax bill.

To assist those most in need, a six-month grace period on failure-to-pay penalties will be made available to certain wage earners and self-employed individuals. The request for an extension of time to pay will result in relief from the failure to pay penalty for tax year 2011 only if the tax, interest and any other penalties are fully paid by October 15, 2012.

The penalty relief will be available to two categories of taxpayers:

- Wage earners who have been unemployed at least 30 consecutive days during 2011 or in 2012 up to the April 17 deadline for filing a federal tax return this year.
- Self-employed individuals who experienced a 25 percent or greater reduction in business income in 2011 due to the economy.

This penalty relief is subject to income limits. A taxpayer's income must not exceed $200,000 if he or she files as married filing jointly or not exceed $100,000 if he or she files as single or head of household. This penalty relief is also restricted to taxpayers whose calendar year 2011 balance due does not exceed $50,000.

Taxpayers meeting the eligibility criteria will need to complete a new Form 1127A to seek the 2011 penalty relief. The new form is available on IRS.gov.

The failure-to-pay penalty is generally half of 1 percent per month with an upper limit of 25 percent. Under this new relief, taxpayers can avoid that penalty until October 15, 2012, which is six months beyond this year's filing deadline. However, the IRS is still legally required to charge interest on unpaid back taxes and does not have the authority to waive this charge, which is currently 3 percent on an annual basis. Failure-to-file penalties applied to unpaid taxes remain in effect and are generally 5 percent per month, also with a 25 percent cap.

Installment Agreements

The Fresh Start provisions also mean that more

taxpayers will have the ability to use streamlined installment agreements to catch up on back taxes.

The IRS announced that, effective immediately, the threshold for using an installment agreement without having to supply the IRS with a financial statement has been raised from $25,000 to $50,000. This is a significant reduction in taxpayer burden.

Taxpayers who owe up to $50,000 in back taxes will now be able to enter into a streamlined agreement with the IRS that stretches the payment out over a series of months or years. The maximum term for streamlined installment agreements has also been raised to 72 months from the current 60-month maximum.

Taxpayers seeking installment agreements exceeding $50,000 will still need to supply the IRS with a Collection Information Statement (Form 433-A or Form 433-F). Taxpayers may also pay down their balance due to $50,000 or less to take advantage of this payment option.

An installment agreement is an option for those who cannot pay their entire tax bills by the due date. Penalties are reduced, although interest continues to accrue on the outstanding balance. In order to qualify for the new expanded streamlined installment agreement, a taxpayer must agree to monthly direct debit payments.

Taxpayers can set up an installment agreement with the IRS by going to the On-line Payment Agreement (OPA) page on IRS.gov and following the instructions.

These changes supplement a number of efforts to help struggling taxpayers, including the "Fresh Start" program announced last year. The initiative includes a variety of changes to help individuals and businesses pay back taxes more easily and with less burden, including the issuance of fewer tax liens.

"Our goal is to help people meet their obligations and get back on their feet financially," Shulman said.

Input from the Internal Revenue Service Advisory Council and the IRS National Taxpayer Advocate's office contributed to the formulation of Fresh Start.

Offers in Compromise

Under the first round of Fresh Start, the IRS expanded a new streamlined Offer in Compromise (OIC) program to cover a larger group of struggling taxpayers. An OIC is an agreement between a taxpayer and the IRS that settles the taxpayer's tax liabilities for less than the full amount owed.

The IRS recognizes that many taxpayers are still struggling to pay their bills so the agency has been working to put in place more common-sense changes to the OIC program to more closely reflect real-world situations.

For example, the IRS has more flexibility with financial analysis for determining reasonable collection potential for distressed taxpayers.

Generally, an offer will not be accepted if the IRS believes that the liability can be paid in full as a lump sum or through a payment agreement. The IRS looks at the taxpayer's income and assets to make a determination regarding the taxpayer's ability to pay.

Details on IRS Collection and Other Information

A series of eight short videos are available to familiarize taxpayers and practitioners with the IRS collection process. The series "Owe Taxes? Understanding IRS Collection Efforts", is available on the IRS website, www.irs.gov.

The IRS website has a variety of other online resources available to help taxpayers meet their payment obligations:

- IR-2011-20: IRS Announces New Effort to Help Struggling Taxpayers Get a Fresh Start; Major Changes Made to Lien Process
- Offer in Compromise
- Tax Tip: Ten Tips for Taxpayers Who Owe Money to the IRS
- The What If's of an Economic Downturn
- Video on How to Complete Form 656: Offer in Compromise

Treasury, IRS Issue Proposed Regulations for FATCA Implementation

The Treasury Department and the Internal Revenue Service issued proposed regulations for the next major phase of implementing the Foreign Account Tax Compliance Act (FATCA).

Enacted by Congress in 2010, the law targets non-compliance by U.S. taxpayers using foreign accounts.

The regulations lay out a step-by-step process for U.S. account identification, information reporting, and withholding requirements for foreign financial institutions (FFIs), other foreign entities, and U.S. withholding agents.

"FATCA strengthens U.S. efforts to combat offshore noncompliance. In doing so, we understand it creates a significant undertaking for financial institutions." said IRS Commissioner Doug Shulman. "Today's proposed regulations reflect our commitment to take into account the implementation challenges of affected financial institutions while allowing for a smooth and timely roll-out of the law."

The proposed regulations implement FATCA's obligations in stages to minimize burdens and costs consistent with achieving the statute's compliance objectives. The rules and implementation schedule are also adjusted to allow time for resolving local law limitations to which some FFIs may be subject.

FATCA was enacted in 2010 by Congress as part of the Hiring Incentives to Restore Employment (HIRE) Act. FATCA requires FFIs to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

In order to avoid being withheld upon under FATCA, a participating FFI will have to enter into an agreement with the IRS to:

- Identify U.S. accounts,
- Report certain information to the IRS regarding U.S. accounts,
- Verify its compliance with its obligations pursuant to the agreement, and
- Ensure that a 30-percent tax on certain payments of U.S. source income is withheld when paid to non-participating FFIs and account holders who are unwilling to provide the required information.

Registration will take place through an online system which will become available by January 1, 2013. FFIs that do not register and enter into an agreement with the IRS will be subject to withholding on certain types of payments relating to U.S. investments.

Treasury and IRS will continue to work closely with businesses and foreign governments to implement FATCA effectively. Updates and

further information on FATCA can be found by visiting the FATCA page on this website.

Subscribe to the FATCA News and Information List

Prepared by the Large Business and International division (LB&I), the FATCA News and Information list provides information on the latest IRS news, guidance, regulations and other public information related to the Foreign Account Tax Compliance Act (FATCA) including information that affects:

- Individuals with foreign accounts
- Foreign financial institutions registration, reporting and withholding requirements
- Non-Financial Foreign Entities
- Tax and compliance professionals interested in the implementation and requirements of FATCA

Information to this list will be released as it becomes available to those stakeholders and members of the public affected by FATCA.

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4. Click the "submit" button at the bottom of the page.

Advising Public Charity Boards on Lobbying Activities[1]

By Emily Robertson, Robertson Law Office, LLC

The scope of lobbying activities that may be undertaken by a public charity is commonly misunderstood by organizations, their boards, and advisors. The potentially draconian penalty that may arise from exceeding lobbying limitations (loss of exemption) causes many to think that charities should not engage in any lobbying. The perceived absence of bright-line guidance from the IRS in this arena simply adds fuel to the argument that charities should avoid this activity. Lobbying is an appropriate and legitimate activity for a public charity to conduct. However, advisors do not have a "one size fits all" model that should be followed to guide organizations in their lobbying activities. It is up to the advisors to assist the organization to both determine the scope of activities that is most appropriate for their organization, and to understand the laws so that they may engage in lobbying activities to the maximum extent allowed by both the law and their own resources.

Understand the Culture

In order to determine how to guide an organization in its lobbying activities, the advisor should understand the culture within which the lobbying will be conducted. There are a few threshold questions that should be addressed for the purpose of determining how much capacity the organization has to engage in lobbying activities. If an organization will be doing a significant amount of lobbying, is the organization aware of the limits on their activities and can it track those activities well enough so that it does not exceed its limits? Is the organization's leadership willing to push the limits of their lobbying activities, or are they risk averse? Will the organization's activities be of such a nature that it might run the risk of crossing the line into the realm of political campaign intervention? Advisors should be aware of the extent of the lobbying activities that an organization wants to conduct and how it plans to conduct it. Knowing your audience and gauging both the types of activities, and how much the leadership of the organization understands the rules, will go a long way to properly advising an organization as to how they can best conduct lobbying activities for their organization.

Address the Fear – c3s can lobby

Once the scope of the specific lobbying activities the organization intends to undertake has been determined, the organization and its advisors should discuss under which test it wishes to have its lobbying activities measured. A public charity's lobbying activities are measured by the IRS under either the "no substantial part" test, or under §501(h).

The "no substantial part" test is the default test and is located in §501(c)(3) and its accompanying regulations. It sets out that a qualifying charity under §501(c)(3) is an organization "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h))."[2] The regulations further specify that an organization is attempting to influence legislation if it: (a) contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or (b) advocates the adoption or rejection of legislation. Legislation is understood to include an action by Congress, a State legislature, a local council or similar body, or by the public through a referendum, initiative, constitutional amendment or similar procedure. If an organization engages in attempts to influence legislation as more

than an insubstantial part of its activities, it is regarded as an action organization and therefore fails the operational test under §501(c)(3).[3]

The IRS' use of the word "substantial" in the context of lobbying activities includes not only direct expenditures, but also time spent and other noncash resources expended, such as the use of volunteers.[4] Various numbers have been suggested for what is meant by substantial. The court in *Seasongood v. Commissioner* determined that less than 5% of an organization's activities being dedicated to legislative activities was insubstantial.[5] However, a percentage test was rejected by the Tenth Circuit in *Christian Echoes National Ministry, Inc. v. United States.* The court stated that using "[a] percentage test to determine whether activities were substantial obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances."[6] The court went on to say that "[t]he political activities of an organization must be balanced in the context of the objectives and circumstances of the organization to determine whether a *substantial* part of its activities was to influence legislation."[7] In a context other than measuring lobbying, a court held that "[w]hether an activity is substantial is a facts-and-circumstances inquiry not always dependent upon time or expenditure percentages."[8] The critique of the "no substantial part" test has always been that it is too vague and does not provide a clear standard or bright line rule for organizations.

In contrast, the §501(h) election provides that organizations exempt under §501(c)(3) may elect to be governed by the bright-line limits established under §4911, rather than by the "no substantial part" test.[9] However, only a public charity (vs. a private foundation) can elect under §501(h), and only if it is not: (1) a church, convention or association of churches, or integrated auxiliaries; (2) an organization that is described in 509(a)(3) and is a supporting organization to an organization that is not a charity; or (3) an organization engaged in testing for public safety.[10]

If electing under §501(h), lobbying expenditures must be categorized as either direct lobbying or grassroots lobbying. Direct lobbying is defined "any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation."[11] A communication to one of those individuals is direct lobbying if it mentions specific legislation and also express a view on that same legislation.[12] Grassroots lobbying is defined as "any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof."[13] A communication to the public is grassroots lobbying if it involves a reference to specific legislation, reflects a view on that legislation, and encourages the recipient to take action on the legislation (a call to action).[14]

Legislation is defined as "action by the Congress, any state legislature, any local council, or similar legislative body, or by the public in a referendum, ballot initiative, constitutional amendment, or similar procedure."[15] Legislation is understood broadly to also include legislation in foreign governments.[16] It is important to clarify that legislation in this context includes more than just bills that have been introduced, but instead as any sufficiently specific legislative proposal. It is not enough just to identify a problem that requires a legislative solution. It rises to the level of legislation (or specific legislation) when it articulates a solution to that identified problem. A call to action involves a communication that: is intended to encourage the recipient to contact a government official or employee for the purpose of influencing legislation; gives the contact information of the government official or employee; provides a petition, post-card, or other medium through which to communicate with a

government official or employee for the principal purpose of influencing that government official or employee with respect to legislation; or specifically identifies one or more legislators that the individual should target regarding their vote on legislation.[17]

The §501(h) election provides clarity through specific monetary limits on lobbying expenditures, as set out in §4911. Lobbying expenditures include money spent for the purpose of influencing legislation through direct and grassroots lobbying. The limitation on an organization's lobbying expenditures is their "lobbying nontaxable amount." The lobbying nontaxable amount for an organization is calculated based on a declining percentage of an organization's exempt purpose expenditures[18] for the taxable year as follows: 20% of the first $500,000 in exempt purpose expenditures for the year, plus 15% of the second $500,000, plus 10% of the third $500,000, plus 5% of any additional expenditures. The lobbying nontaxable amount is capped at $1,000,000.[19] As a result of the declining percentage scale, smaller charities are allowed to spend a greater proportion of their dollars towards influencing legislation than larger charities. Grassroots lobbying expenditures are limited to 25% of the lobbying nontaxable amount for the organization. This amount is the grassroots nontaxable amount.[20] Direct lobbying is not so limited and can be conducted to the extent of the organization's maximum lobbying nontaxable amount.

Instead of the potential loss of revocation that comes from exceeding limits under the "no substantial part" test, electing organizations that exceed either the lobbying nontaxable amount or the grassroots lobbying nontaxable amount are subject to a 25% excise tax on the greater of either the excess total lobbying expenditures or the excess grassroots lobbying expenditures.[21] If an organization normally makes either total lobbying or grassroots lobbying expenditures in excess of either the lobbying or grassroots ceiling amounts (in excess is understood to be at least 150% of those amounts as defined in §4911), it is only then the organization is subject to revocation of its exempt status for excess lobbying activities.[22] The regulations use the term "base years" to clarify what is meant by "normally" and specify that expenditures are averaged over a four year period.[23] For example, consider a §501(c)(3) organization with a consistent lobbying nontaxable amount of $500,000, and which made total lobbying expenditures of $550,000 and grassroots lobbying expenditures of $200,000. The organization exceeded its lobbying nontaxable amount by $50,000, and its grassroots nontaxable amount by $75,000. The organization is liable for a 25% excise tax on the greater amount ($75,000). The organization would only jeopardize its tax-exempt status if, in the most recent four years, it had at least $3 million in total lobbying expenditures or $1.2 million in grassroots lobbying expenditures.

Unlike the "no substantial part" test, certain activities are exempt from the definition of influencing legislation under 501(h), and thus expenditures for these activities do not count against an organization's lobbying nontaxable amounts. An organization is not considered to be lobbying when it does any of the following: makes available the results of nonpartisan analysis, study, or research;[24] provides technical advice or assistance to a governmental body as a result of a written request from that body;[25] appears before or communicates with a legislative body with regard to an issue that may affect the organization's exempt status (also known as "self-defense" communications);[26] and examines or discusses broad social, economic, and similar problems, even if they are or are likely to be the subject of legislation.[27] Additionally, there is a special membership rule that provides that it is not lobbying when an organization communicates with its bona fide members, unless the communication involves direct encouragement for the members

to contact their legislators or to encourage others to contact their legislators.[28] In order to be considered a "bona fide member" of the organization, an individual must express a desire to be a member and pay at least nominal dues, contribute at least a minimal amount of time, or be in a class of members that are given "lifetime membership" under a reasonable standard. If an organization's members do not meet these standards, an organization is still able to count them as members if it can demonstrate to the IRS good reason for not meeting these standards and that the organization is not simply trying to sidestep the grassroots lobbying limitation.[29] The most important aspect of the membership rule is that it allows an organization to treat as direct (rather than grassroots) lobbying, a communication to members urging the members to contact lawmakers in support of the organization's legislative position.[30]

Which test is appropriate for a given organization is dependent on the specific activities and preferences of that organization. The definition of lobbying is more narrow under §501(h) than it is for nonelecting charities. A few examples of areas in which the two tests differ are: the use of volunteers to lobby; endorsing legislation but not spending money to promote the endorsement; and public commentary on legislation without a call to action. Electors under §501(h) are subject to revocation based on a four year average, while a nonelecting charity that fails the "no substantial part" test for even one tax year risks losing its status as a §501(c)(3) organization. For each year in which a non-electing charity exceeds its lobbying activities, the organization is subject to a 5% tax on the total amount of lobbying for that year, and an additional 5% tax may be imposed on organization managers who knowingly, willfully and without reasonable cause agreed to the expenditure. For charities electing under §501(h), the only penalty for a tax year in which they exceeded their limits is a 25% excise tax on the excess lobbying.[31] If an organization wants clarity, the detailed regulations under §501(h) will provide greater certainty to it on many common questions. However, organizations with significant annual budgets may not benefit and be able to fully maximize their lobbying potential within the $1 million cap imposed by §501(h); the larger an organization's budget, the more lobbying they can engage in and still have it be considered an insubstantial part. Additionally, if an organization with a fairly large budget conducts mostly grassroots lobbying, it would likely be able to conduct much more than $250,000 (the maximum allowed under §501(h)) and still have that amount be insubstantial relative to the rest of its activities. Either test may generate significant recordkeeping requirements, depending on the organization and the manner in which it conducts its lobbying.

Avoid Campaign Intervention

Lobbying activities also often make organizations susceptible to running afoul of other restrictions on §501(c)(3) activities. An organization engaged in lobbying should be advised to avoid letting its activities cross over into the territory of political campaign intervention. Organizations exempt under §501(c)(3) may not "participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."[32] Political campaign intervention is more than simply the obvious endorsement of a candidate. It includes statements (both written and verbal) as well as other actions by the organization which appear to favor one candidate over another. This is often a very fact specific inquiry. A few factors that may point to a communication rising to the level of a political campaign intervention are: one or more candidates for a given public office are mentioned in the communication; the statement expresses approval or disapproval for a candidate's position on an issue or actions taken with regard to that issue; whether the statement is made close to an election; and whether the organization

has a history of making statements on that topic, independent of the timing of any election.[33] Advisors should also alert clients as to the risks involved with working in coalitions with non-§501(c)(3) organizations that are not subject to the same rules as §501(c)(3)s. Engaging in public policy work in coalition with other organizations is an excellent way to leverage resources for the benefit of the charitable constituency, however organizations need to ensure that they can properly distance themselves from electioneering activities that might be attributed back to the §501(c)(3) organization.

Conclusion

Lobbying and advocacy activities may not be the best use of resources for every organization. However, public charities exist to serve a charitable constituency – generally understood to be underserved populations who do not have as loud of a voice in the legislative process. Public policy may be the way that an organization can provide the most significant assistance to the population it serves, and should not be avoided simply out of fear or lack of understanding on the part of the organization or its

[1]The scope of this article is limited to the federal tax issues associated with lobbying activities by public charities, and is merely an overview of the issues that may arise. Advisors should also be aware of local, state, and federal campaign finance laws that may apply.
[2]I.R.C. § 501(c)(3)
[3]Treas. Reg. § 1.501(c)(3)-(1)(c)(3)(ii)
[4]*Influencing Legislation by Public Charities*: *Hearing on H.R. 13500 Before the H. Comm. on Ways and Means*, 94th Cong. 9 (1976) (testimony by William M. Goldstein, Deputy Assistant Secretary for Tax Policy).
[5]*Seasongood v. Comm'r*, 227 F. 2d. 907, 912.
[6]*Christian Echoes*, 470 F.2d 849, 855 (4th Cir. 1972).
[7]*Id.* (citing Krohn v. United States, 246 F. Supp. 341 (D.Colo. 1965)).
[8]*The Nationalist Movement v. Comm'r*, 102 T.C. 558, 592 (1994) (discussion of substantial with regard to whether the organization's noncharitable activities were substantial enough to prevent it from obtaining exempt status under §501(c)(3)).
[9]I.R.C. § 501(h)(3)
[10]I.R.C. § 501(h)(4)-(5)
[11]I.R.C. § 4911(d)(1)(B), Treas. Reg. § 56.4911-2(b)(1)(i)
[12]Treas. Reg. § 56.4911-2(b)(1)(ii)
[13]I.R.C. § 4911(d)(1)(A), Treas. Reg. § 56.4911-2(b)(2)(i)
[14]Treas. Reg. § 56.4911-2(b)(2)(ii)
[15]Treas. Reg. § 56.4911-2(d)(1)(i)
[16]Rev. Rul. 73-440, 1973-2 C.B. 177.
[17]Treas. Reg. § 56.4911-2(d)(1)(iii)
[18]Exempt purpose expenditures are amounts paid or incurred by the organization in carrying out its charitable purpose. I.R.C. § 4911(e)(1); Treas. Reg. § 56.4911-4(b) (further addresses what is considered an "exempt purpose expenditure"); Treas. Reg. § 56.4911-4(c) (addresses amounts that are not "exempt purpose expenditures").
[19]I.R.C. § 4911(c)(1)-(2)
[20]I.R.C. § 4911(c)(4)
[21]I.R.C. § 4911(a)-(b); Treas. Reg. § 56.4911-1
[22]I.R.C. § 501(h)(1)-(2)
[23]IRC § 1.501(h)-3(c)(7)
[24]I.R.C. § 4911(d)(2)(A)
[25]I.R.C. § 4911(d)(2)(B)
[26]I.R.C. § 4911(d)(2)(C)
[27]Treas. Reg. §56.4911-2(c)(2)
[28]I.R.C. § 4911(d)(2)(D); Treas. Reg. §56.4911-5(f)(1)-(4) (defining bona fide members)
[29]STAFF OF THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION, GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1976 410 (1976).
[30]I.R.C. § 4911(d)(3) Note that this paragraph specifies that if the members are encouraged to contact someone other than a lawmaker or another member, it is still grassroots lobbying.
[31]IRC § 4912
[32]IRC § 501(c)(3)
[33]A great resource for beginning to tease out the areas in which the IRS might view an organization's activities as political campaign intervention is the IRS' Fact Sheet 2006-17.

MINNESOTA TAX CASES ON APPEAL

In the interest of keeping you up-to-date on Minnesota tax cases and to provide you with additional value for your membership in the Tax Section, a new feature is being launched with this issue. Starting with this publication, cases that have been appealed from the Minnesota Tax Court to the Minnesota Supreme Court will be discussed in summary form. This will allow you to follow-up to obtain more detail about a case if you so desire.

Let us know your reactions to the column. Please suggest ways you think it can be improved and enhanced. Just send your suggestions by an email to: jgeis@briggs.com, or a letter to Jerry Geis, c/o Briggs and Morgan, P.A., W2200 First National Bank Building, 332 Minnesota Street, St. Paul, Minnesota, 55101-1396 or contact our editor: Ann.Petersen@am.jll.com.

Case Name	Filing Date	Issue	Hearing Date
Beuning Family, LP v. County of Stearns, Docket No. A111479 and A111480	August 22, 2011	Can the taxpayer file a petition in the Tax Court for misclassification of property under Minn. Stat. § 278.14, as long as it is filed within 60 days of the County's denial of the claim?	January 5, 2012
Idowu Odunlade et. al. v. City of Minneapolis, Docket No. A111832	December 14, 2011	(1) Whether relators' constitutional, declaratory judgment, and mandamus claims are challenges to the assessment or illegality of a property tax that must be brought under Minn. Stat. Ch. 278 (2010); and (2) Whether the Tax Court erroneously dismissed relators' claim for tax year 2010 because it included multiple petitioners and different properties?	April 2, 2012
Bruce Nelson v. Commissioner of Revenue, Docket No. A112015	November 9, 2011	Did the Tax Court inappropriately grant summary judgment while barring discovery on a fact issue in an officer personal liability case?	March 6, 2012

Case Name	Filing Date	Issue	Hearing Date
Scott L. Stevens v. Commissioner of Revenue, Docket No. A112020	November 10, 2011	Did the Tax Court inappropriately grant summary judgment while barring discovery on a fact issue in an officer personal liability case?	March 6, 2012
Federated Retail Holdings, Inc. v. County of Ramsey, Docket No. A112093	November 21, 2011	Whether the reduction in property values for 2006 and 2007 was correct and whether the Tax Court properly excluded a leased parcel in the assessment since the Tax Court lacked jurisdiction over it?	Briefing
Jack M. Singer, Estate of Ruth Singer v. Commissioner of Revenue, Docket No. A112282	December 19, 2011	Whether 6 deductions taken on the estate tax return for the decedent in 2008 were properly denied for lack of substantiation?	Briefing
John Billion v. Commissioner of Revenue, Docket No. A112337	December 30, 2011	Whether a net operating loss or passive activity must be included in Federal taxable income for the year to be deductible in Minnesota?	Briefing
John K. Beck, et. al. v. County of Todd, Docket No. A120252	February 13, 2012	Was the Court's dismissal of the taxpayer's testimony on real property value was correct?	Briefing
Metropolitan Sheet Metal Journeymen and Apprentice Training Trust Fund v. County of Ramsey, Docket No. A120323	February 23, 2012	Can the taxpayer amend a timely filed petition to add other years or does each year need a timely filed petition and one petition cannot contain multiple years?	Briefing
William B. Larson v. Commissioner of Revenue, Docket No. A120378	March 5, 2012	Was taxpayer a domiciliary of Nevada or Minnesota in the applicable tax years?	Briefing
Candy S. Bradison v. Commissioner of Revenue, Docket No. A120428	March 9, 2012	Was the decedent a Minnesota resident or a resident of Wyoming in the year of death?	Briefing

Case Name	Filing Date	Issue	Hearing Date
Kenneth B. Mauer v. Commissioner of Revenue, Docket No. A120499	March 19, 2012	Was the taxpayer a Minnesota resident or a resident of Florida for the applicable tax years?	Briefing
Eden Prairie Mall, LLC v. County of Hennepin, Docket No. A120542	March 23, 2012	Whether the Tax Court on remand from the Supreme Court correctly determined the property's values in excess of the assessed value for assessment 2005 and 2006 real property taxes?	Briefing
Living Word Bible Camp v. County of Itasca, Docket No. A120632	April 9, 2012	Whether a camp purchased by the Church was "used" for purely public charity purposes?	Briefing
Ronald L. Schober v. Commissioner of Revenue, Docket No. A120873	May 21, 2012	Whether the Tax Court lacked subject matter jurisdiction since this sales and use tax case had already been litigated once already and *res judicata* applied and because the taxpayer had not paid any tax and therefore was ineligible for a refund?	Briefing

Minnesota Revenue

PUBLIC RULEMAKING DOCKET
as of June 14, 2012

Submitted by Susan Barry, Minnesota Department of Revenue

Rulemaking records are kept in the Appeals and Legal Services Division of the Minnesota Department of Revenue, at 600 North Robert Street, St. Paul, Minnesota 55146. Public files may be viewed, by appointment, during regular business hours, from 8:00 a.m. to 4:00 p.m., Monday through Friday, by calling Susan Barry, the Rulemaking Coordinator, at (651) 556-4062, or e-mailing her at Susan.Barry@state.mn.us.

Requests for Comment, various rule Notices, and Rules, when published in the State Register, are posted on the department's website, and generally a link to the State Register is also provided. Additionally, a rule's Statement of Need and Reasonableness (SONAR) is posted on the department's website until that rule is promulgated. The following address will link you to the department's rulemaking webpage: http://www.taxes.state.mn.us/taxes/legal_policy/other_supporting_content/rules.shtml and a link at the bottom of that webpage will take you to another webpage showing the status of previously proposed rules.

Sales and Use Tax

Topic: Sales Tax; Fund-raising Sales by or for Nonprofit Groups; Chapter 8130
Governor's Office File #: AR # 221
Contact Person: Michal Garber (651) 556-4067
Current Status: CONTINUES ON HOLD.
History: Published the Request for Comments in the *State Register* on September 19, 2005 (30 S.R. 308). Comment period will remain open until publication of either a Notice of Intent to Adopt or a Notice of Intent to Withdraw Rules.

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Tax Section News

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Statement of Editorial Policy

The *Tax Section News* endeavors to provide current, important developments pertaining to taxation, Tax Section news and other information that it believes to be of professional interest to its members and other readers.

Comments, articles, and reports are those of the editor and contributors and do not necessarily represent the position of the Minnesota State Bar Association, the Tax Section or any governmental body.

Comments, articles and letters to the editor should be sent to:

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Check out our Home Page. Information includes the dates, times, and places of the upcoming Tax Council Meetings, and minutes or prior meetings. http://www.mnbar.org