

TAX TALK

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• Todd Bornstein, *Chair* •

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FROM THE CHAIR

By Todd Bornstein

I'm writing this article on my laptop sitting at a computer kiosk in the Southwest Terminal of BWI. This morning I learned that Steve Jobs died. While watching the Today show this morning, I listened to the recap of his life's tremendous accomplishments and how he has changed the world and improved the lives of mankind.

Then I started to think about my life, my career and my impact on the world. On the world??? The feelings of gross inadequacy kicked in more than usual. I, like most of you reading this article, are just tax attorneys. USA Today recently took a poll and displayed a beautifully colored pie chart, which showed that 99% of all Americans between the ages of 2 and 98 would rather go to the dentist for a root canal than have to see a tax attorney because of a tax

problem they are facing. That being said, when people do call upon tax attorneys, they are often in a desperate situation and look to us for help.

The Tax Section is comprised of lawyers in a variety of fields. We have members in private practice, businesses, the IRS, the Comptroller's Office, charitable organizations, the legislature. This list goes on and on. Tax attorneys are everywhere in our society. Our society depends upon taxes and our society depends upon tax attorneys. I am sure that almost everyone reading this article has been a situation where the work that they performed, in some way, has dramatically improved the lives of their clients and given them piece of mind. You have

(continued on Page 2)

www.msba.org/sec_comm/sections/taxation

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



FROM THE CHAIR...

(continued from Page 1)

not only helped that individual, but that individual's family, or employees, or business partners, or community.

Given the state of the economy, our roles will become even more important. Taxes are sure to be one of the most important issues of the next election. For those of our members who practice in the legislature and government, our citizens will be looking to you to help come up with solutions to get our economy on the right track. For those of us in private practice, our clients will be looking to us to help guide them through these difficult times.

There will also be a greater need for pro bono services.

Members of the Tax Section have historically been very supportive of pro bono services for our community. The Tax Section sponsors many programs that make it easy for us to volunteer. We can prepare income tax returns for low-income taxpayers. We can assist pro se taxpayers at the US Tax Court calendar calls. We can volunteer to handle one of the many cases available through Maryland Volunteer Lawyer Services. Training is offered for all of these programs and I urge everyone to consider these opportunities.

Change the world; I don't think so. But, we are part of a noble profession and we do improve lives and make a difference to individuals and our community every day.



Wynne v. Comptroller: Failure to Allow Credit Towards County Income Taxes for Out-of-State Taxes Found Unconstitutional

By Elizabeth Shaner
Tax Consultant
Rosenberg | Martin | Greenberg, LLP

It is not often that a Circuit Court in Maryland rules on the constitutionality of state tax law, so when the Howard County Circuit Court overruled the Maryland Tax Court on constitutional grounds in *Wynne v. Comptroller* on June 29, 2011 (case # 13-C-10-80987), it caused quite a stir among tax practitioners.

In *Wynne v. Comptroller*, the Howard County Circuit Court found the Maryland Tax Court's interpretation of § 10-703(a) of the Tax-General Article, Md. Code, which allows Maryland resident's who pay taxes to another state to claim a credit solely against the "state" portion, but not the "county" portion of the Maryland state income tax, unconstitutional under the Commerce Clause.

The Comptroller interpreted § 10-703(a) as applying only to the state portion of state income taxes, as a matter of plain language, statutory interpretation. The Tax Court, relying on prior administrative and Tax Court precedent, agreed with the Comptroller's interpretation. In *Wynne*, the Circuit Court disagreed; instead relying on the Court of Special Appeals' holding in *Frey v. Comptroller*, 184 Md.App. 315 (2009), which found that while local taxes and state taxes are different, they

are both imposed by the state and therefore local taxes are state taxes.

The Circuit Court next took up the question of constitutionality under the Commerce Clause, applying the four prong test set out in *Complete Auto Transit v. Brady*, 430 U.S. 274 (1977), by the United States Supreme Court. Of the four prongs, the issue of whether the tax unfairly discriminates against interstate commerce was most significant in the *Wynne* case. The court found that Maryland substantially burdened its residents conducting business in interstate commerce by subjecting such residents to double taxation under the income tax scheme set out in § 10-703(a), as compared to those conducting purely intrastate commerce.

While the Comptroller will likely appeal *Wynne* to the Maryland Court of Appeals, Maryland residents with out-of-state taxable income should consider filing a protective refund claim with the Comptroller for prior tax years that remain open under the statute of limitations. The Office of the Comptroller's *Administrative Release No. 2, Subject: Income Tax Refunds and Credits: Limitations*, revised September 2009, provides more information on filing protective refund claims.

MONTGOMERY / PRINCE GEORGE'S COUNTY TAX STUDY GROUP - 2011/2012

Schedule of Meeting Dates, Locations and Discussion Topics
(Meetings Begin at 8:00 AM)

Dates	Location	Topic/Speaker
January 12, 2012	Law Office of Mary Beth Beattie 109 North Adams Street Rockville, MD 20850	Mary Beth Beattie/Diana Gary 1041 Tax Preparation
February 9, 2012	Fred B. Goldman, Esq., PA 103 N. Adams Street Rockville, MD 20850	Speaker to Be Announced A Report from Heckerling Institute
March 8, 2012	Law Offices of Diana Gary Law Offices of Harold Pskowski 50 W. Montgomery Ave., Suite 200 Rockville, MD 20850	Spring Round Table Discussion
April 12, 2012	Stein, Sperling 25 West Middle Lane Rockville, MD 20850	Speaker to Be Announced
May 10, 2012	Location to Be Announced	Speaker to Be Announced Review of MD Tax Legislation

2012 ANNUAL MEETING

CLARION RESORT & CONFERENCE CENTER

JUNE 13-16 • OCEAN CITY, MARYLAND

For more information, visit the Conference's website

www.msbaannualmeeting.com



Employee Benefits Study Group

The Employee Benefits Study Group schedule for 2011-2012 is:

March 13, 2012

May 8, 2012

All meetings start at 12 noon. Other than the dates, the information currently on the Employee Benefits Study Group web page is correct.

- Katrina

Transactional Tax Study Group Meetings – Whiteford Taylor & Preston 7 St. Paul St. – 12-1 PM – Peabody Conf. Room.

January 18, 2012

February 15, 2012

March 21, 2012

April 18, 2012

May 16, 2012

June 20, 2012

Tax-Exempt Study Group Meetings – Whiteford Taylor & Preston 7 St. Paul St. – 8:30-9:30 – Shot Tower Conf. Room.

Thursday, February 9, 2012

Thursday, April 12, 2012

Thursday, June 14, 2012

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

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