Professional and Trade Associations as Instruments of Taxpayer Assistance and Information

American Bar Association, Tax Section

Voluntary compliance by a citizen with tax laws is enhanced by the ability of the citizen to understand how the law applies and the reasons therefore. Within the United States, there are a variety of organizations that disseminate tax information to its members and that interrelate with the tax administration authorities with respect to policy, technical and administrative issues. This article will focus on the types of such organizations and the manner in which they function. It will conclude with a consideration of measures to enhance voluntary compliance.

Tax Section of the American Bar Association

The Tax Section of the American Bar Association is comprised of approximately 28,000 members. The Section disseminates information to its members in a variety of ways. It publishes quarterly the Tax Lawyer and the Newsletter. The Tax Lawyer consists of scholarly articles and comments pertaining to taxation. The Newsletter presents brief comments pertaining to current and important developments pertaining to taxation. In addition, there are three meetings of the Tax Section annually in which timely tax topics are considered and presented to its members.

The Section is comprised of 58 committees which are delegated responsibility for specializing in particular areas of the tax law.

The work of the Tax Section is performed primarily in its committees. During the course of any given year, the committees initiate comments to the Treasury Department and the Internal Revenue Service in conjunction with its regulations and rulings. For example, committees initiate comment on proposed regulations. Similarly, the committees initiate comments to the Congress and to the Joint Committee staff comments and critiques with respect to proposed tax legislation. Once tax legislation is enacted, the committees will identify those areas of the new legislation which require clarification, technical amendment or prompt interpretative guidance. The comments of the committees are reviewed thoroughly by a review process to ensure that the position reflects the position of the Tax Section.

Current issues are discussed both during the business meetings of the committees and at the plenary session of the entire Section. Representatives of Treasury, the Internal Revenue Service, the Tax Division of the Department of Justice, the Joint Committee on Taxation and the legislative staffs are present and frequently participate in the meetings of the Tax Section and its committees. The spring meeting of the Tax Section is held in Washington, DC, in order that the maximum number of government representatives can attend and share in the discussions.

The objective of the Tax Section is to objectively analyze tax legislation, regulations and rulings for the purpose of insuring that the tax law works fairly for all affected citizens. While each lawyer has a coterie of clients who may have a vested interest in certain tax benefits, the objective of the Tax Section as a whole is to stimulate the views of its members with the view to an objective analysis of the tax laws.

Periodically the Internal Revenue Service and the Treasury Department will solicit the views of the Tax Section. For example, prior to the release of tax forms to the public, the Tax Section is afforded an opportunity to review the forms for technical adequacy and for ease of understanding to the average taxpayer. Meetings are then held with the Internal Revenue Service where comments are provided on the proposed forms. The views of the Section are frequently requested with respect to specific areas in the administration of the tax laws. For example, there have been two conferences during the last five years at which representatives of the Tax Section, the accounting professions, enrolled practitioners, the Joint Committee staff, the Treasury Department and the Internal Revenue Service have participated in conferences to explore means for enhancing voluntary compliance with the tax laws.

In addition to the foregoing programs, the Tax Section co-sponsors with the American Law Institute periodic seminars on timely technical tax topics.

As a further means of disseminating matters discussed or presented at its business or plenary meetings, the Tax Section tapes its proceedings, and the tapes are offered for sale at a nominal charge.

The American Institute of Certified Public Accountants

The American Institute of Certified Public Accountants has a Tax Section which parallels in many ways the activities of the Tax Section of the American Bar Association. It has approximately 20,000 members and meets two times a year. It has three publications, the Tax Advisor and the Newsletter, issued to its members, and it has a Client Bulletin issued to clients of its members. The publications contain topics of current interest with respect to federal income tax issues. The Institute reviews and comments upon proposed regulations as it deems appropriate, and it provides input to the Congress and the Treasury Department and Internal Revenue Service in connection with proposed legislation. It will suggest areas in which new legislation should be clarified, technically amended or with respect to which prompt guidance should be provided. It also meets periodically with the Internal Revenue Service and the Treasury Department, as appropriate, when it perceives that rulings or administrative policies may pose technical and practical problems for the taxpaying public.

Liaison Committees

The administration of the Internal Revenue Laws is delegated from Washington to seven regions and to one or more districts in each state. At each level there is a liaison committee consisting of the representatives of the Internal Revenue Service and representatives of the legal and accounting tax community. At the level of the national office, the Commissioner has an advisory committee consisting of lawyers, certified public accountants and enrolled practitioner. They meet periodically to discuss topics of mutual concern with respect to the administration of the tax laws. In each of the seven regions there is a liaison committee between the Regional Commissioner, the Regional Counsel, representatives of the State Bar associations within the region and the accounting professions within the region. At the level of each district, there is a liaison committee consisting of representatives of the local bar association and accounting professions that meets periodically with the district director and his staff.

Each of the foregoing liaison committees serves as a means for the Internal Revenue Service to disseminate its problems to tax professions and for it to identify problems being encountered by taxpayers and professionals within the geographic area.

State Bar and Accounting Associations

In most every state, there is a Tax Section of the State Bar association and a Tax Section of the local accounting association which parallels the function of the Tax Section of the American Bar Association and the American Institute of Certified Public Accountants. The focus of such associations is upon those federal tax policies, rules or procedures which impact particularly upon the industries or the taxpayers in its community. In addition to their focus upon the federal laws, a principal activity of State Bar and accounting associations is a review and analysis of state taxing policies, legislation and rules and regulations. State taxation will frequently entail income, sales and use, occupation and real property taxes. With the recent trend of national programs being phased out and the problems returned to the States for solution, the need for revenues at the State level has increased, and State taxation is becoming increasingly more significant as a percentage of a taxpayers overall tax liability.

The local bar and accounting associations frequently will disseminate current and significant tax information to its members. For example, in the State of Minnesota, the State Tax Section disseminates a quarterly newsletter to its members describing timely topics relating to both federal and State taxes. In addition, it sponsors an annual tax institute at which tax topics are presented by the leading professionals.

Continuing Legal Education Groups

Both within the bar association and accounting associations in each state, there is a general mandate that members of the respective organizations must obtain a minimum number of hours of continuing legal or accounting education.*

Trade Associations

Most industry groups are members of trade associations having offices in Washington, DC. A significant part of the activity of such offices is the monitoring of tax legislation as it proceeds through the legislative process and the lobbying of legislators to present the views of the industry with respect to proposed legislation. All segments of the economy ranging from oil and gas, insurance, manufacturing, retailing, agriculture, etc. are represented in one form or another through such trade associations. While the lobbyist tends to present the industry's views and to urge the adoption of legislation which favors the particular industry, the lobbing serves an educational purpose in that it provides the Congress and its staff with an understanding of the effect that proposed tax legislation may have on the particular industry group. Moreover, it is essential in many instances for the technical skills of those in a particular industry to be employed for purposes of ensuring that the legislation being adopted accomplishes the result which Congress intends to be achieved through the legislation. For example, the legislators may not be well versed in oil and gas or insurance matters, and it necessarily has to rely upon the industry representatives to facilitate the drafting of effective tax legislation. The input of trade associations is balanced by the Treasury Department and the Internal Revenue Service. It is a balancing process which leads to a more informed legislative solution. Trade Associations will also provide input to the Internal Revenue Service and the Congress with respect to rulings and regulatory matters.

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* For example, in the State of Minnesota, a lawyer must obtain a minimum of 15 hours of legal education annually in order to maintain his or her license to practice law. The requirement relates generally to legal and accounting matters as distinguished upon being focused upon tax matters. The result has been a proliferation of organizations offering educational programs of one type or another to lawyers and accountants generally. A significant percentage of thoseprograms relate to taxation.

Most trade associations will also disseminate to their members on a periodic or less frequent basis items of tax interest that are emanding from Congress, Treasury or the Internal Revenue Service.

The Tax Executives Institute is an organization which performs the same function but is directed primarily to corporate tax matters. It sponsors tax seminars on corporate matters at a national level and through its local chapters throughout the country. Its membership is comprised of corporate tax executives.

Legal Aid Clinics

Within the Treasury Department, the Director of Practice administers the practice of persons before the Internal Revenue Service. The Director has a program to permit the legal aid clinics at varying law schools throughout pursuant to which legal aid clinics are authorized to represent taxpayers in appearances before the Internal Revenue Service.

Many law schools offer to its students, generally second or third year students, the opportunity to participate in a tax legal aid clinic. The function of a tax clinic is to provide advice to taxpayers who generally do not have the ability to employ a competent tax professional. The student, under the auspices of a professor, will provide the taxpayer with advice and will accompany the taxpayer to a meeting with Internal Revenue Service representatives. The program is limited by the number of students in the program within the particular law school. Nevertheless it does serve to ease the difficulties of unsophisticated taxpayers who are confused by the processes of the Internal Revenue Service.

The Tax Court of the United States has also permitted students in such clinics to litigate cases in the Tax Court under the overall supervision of an attorney, generally the director of the clinic.

Pro Bono Activities

Lawyers and accountants will from time to time volunteer services for taxpayers who are in need of assistance. Such volunteer service is on a more sporadic basis than the programs previously mentioned. For example, approximately twelve years ago, the Tax Section of the American Bar Association made a number of its members available at trial sessions of the United States Tax Court for the purpose of offering their services to unrepresented taxpayers who were appearing in Court. Generally, the unrepresented taxpayers did not fully avail themselves of the opportunity of legal representation and the experiment was abandoned. Nevertheless, local bar and accounting associations do offer pro bono assistance generally, and some taxpayers are able to obtain the benefit of such services. By and large the pro bono activity varies appreciably from community to community.

One volunteer program which has proven quite beneficial to taxpayers is the Volunteer Income Tax Assistance program, "VITA". It is sponsored by the Internal Revenue Service and is comprised of volunteers providing income tax return preparation assistance, particularly during the filing season. Volunteers include lawyers, accountants, retired Internal Revenue personnel and anyone willing to volunteer service.

The Advertising Council, an organization of advertisers, has provided assistance to the Internal Revenue Service in the development of advertisements that air on television and radio or otherwise through printed material. The advertising occurs early in the filing season in efforts to encourage timely filing. It also occurs when there is a significant change in the tax law that requires that a taxpayer focus on his or her tax reporting responsibilities. For example, quite recently the formula for withholding tax from an employees' wages was significantly changed and a new form was issued. It was imperative that each employee review his withholding to ensure a proper amount was being withheld.

Rulings and Regulations

As a matter of policy, the Internal Revenue Service and the Treasury Department issues for comment any regulation it proposes to adopt in connection with the administration of the tax laws. Any person has the ability to comment on the proposed regulation. The comment period is generally sixty days. Thereafter, a hearing in Washington is generally available to anybody who wishes to represent his or her comments in person. Following such hearings and the assimilation of the comments, the Internal Revenue Service and the Treasury Department will then adopt a final regulation.

Each taxpayer has the ability to request of the Internal Revenue Service that it rule on the tax consequences of a prospective transaction or upon the manner in which the taxpayer proposes to report on a tax return the results of a particular transaction. A nominal fee is charged at the time of the request. Typically, the taxpayer sets forth the results which he or she believes to be the correct answer. If the Internal Revenue Service proposes to provide a contrary answer, the taxpayer is afforded the opportunity of meeting with the Internal Revenue Service in Washington, DC to review the matter. There is no other appeal with respect to a rejection of the proposed ruling, except through litigation in connection with qualified plans, the tax exempt status of government obligations and the exempt status of certain charitable organizations.

Announcements

In addition to the publication of regulations and rulings, the Internal Revenue Service also issues announcements of matters which it believes should be brought to the prompt attention of taxpayers.

Publication of Sanctions

The legislation of the last seven years in the United States has resulted in the creation of a plethora of civil penalties which may impact upon the taxpayer. They overlap in many cases and also generate interest from the due date of the return. However, the existence of the penalties has not been well advertised. The average taxpayer is frequently unaware of their potential impact. When such a taxpayer encounters the penalties for the first time, he or she is generally shocked at the result of what was perceived to be an innocent investment and an innocent tax reporting position. The overall subject of penalties and the manner of their administration is currently the subject of study within the Treasury Department, the Congress and the Tax Section of the American Bar Association.

Deterrence is generally accomplished by maintaining a certain level of audit of returns filed by taxpayers. The audit of returns is spread among varying income levels and industry groups with the objective of insuring that there is an audit presence. There is no publicity of the result of such audits since the Internal Revenue Code requires that tax information be kept confidential. The only time such information becomes known is if a matter proceeds to litigation.

The audit percentage of returns filed has been declining steadily over the years, prompting the question of what level of audit penetration is truly needed to insure the awareness of the public to the existence of the Internal Revenue Service audit program.

One area in which deterrence is publicized is through the criminal prosecutions of the Department of Justice for evasion of the Internal Revenue laws. Criminal tax prosecutions are relatively few in number and are generally highly successful in result. Typically a criminal tax investigation will take a substantial period of time and involves multiple layers of review prior to the time of indictment. The objective is to ensure that those cases that are referred for prosecution result in a conviction. As a general rule, the conviction rate is quite high. Since the indictment is a public document, an announcement is generally made through the local media of the indictment of a particular individual or entity. Following conviction, the sentence received will also be disseminated to the local media.

Computerization

The Internal Revenue Service has been employing computer equipment for the purpose of processing tax returns and payments since at least 1965. It was critical to do so given the ever increasing volume of returns being filed. The returns are processed in ten service centers throughout the United States with a master file maintained in Martinsburg, West Virginia.

The Service has extended its use of computer equipment for matching information returns it receives from payors with tax returns to ensure that items of income are being reported by the payee. For example, persons paying interest and dividends will file a form 1099. Those forms are matched by computer with the income tax return of the recipient. If there is a discrepancy, the computer will generate a notice to the taxpayer inquiring as to the discrepancy.

The Service also expanded its use of computer equipment to centralize its collection activities in varying automated collection services throughout the country. The computer will set off tax refunds against prior unpaid tax assessments. The automatic collection centers identify collection sources upon which levies can be served.

While the use of computers and centralization thereof has proven of value in the processing of returns and the collection of tax, it poses and continues to pose a number of problems for the American taxpayer. Notices generated by computers still tend to be somewhat cryptic and unintelligible to the average taxpayer. When the taxpayer responds to the Service Center, it frequently does not result in a termination of the computer notices. The correspondence units within the Service Center in many instances have difficulty handling the volume of correspondence in a sufficiently timely manner. Moreover, it is difficult to speak by telephone with a person in the Service Center or a person in an automated collection service center. The Internal Revenue Service is aware of these problems and is attempting to resolve them. The local district office taxpayer assistance personnel can be of assistance in certain cases in resolving problems.

If taxpayer assistance cannot resolve a problem, the matter can be referred to a problem resolution officer. The problem resolution staff has proven to be extremely effective in resolving problems with the Internal Revenue Service. Within each district, Service Center and the National Office there is a problem resolution staff designed to deal with those taxpayers whose communications have not been answered or who have particular problems which have not otherwise been adequately addressed by following normal channels. Unfortunately, the average unsophisticated taxpayer is not aware of their existence, and the taxpayer assistance personnel, the first point of contact in any district, do not frequently refer a taxpayer to the problem resolution officer. The office has proven to be of value primarily to those sophisticated taxpractitioners who are aware of how the system works.

Electronic Filing

The Internal Revenue Service is exploring and developing systems for filing tax returns electronically. During 1987, 500,000 returns were filed by magnetic tape. The utilization of electronic filing eases the problems both of the

Internal Revenue Service and of the preparer of the return. The minute the return is transmitted to the Service, there is an immediate computer verification of the return in the Service and the taxpayer is promptly advised if there has been an error in the return. Under current return processing systems, a return filed on April 15 and containing an error may not generate a notice to the taxpayer until several months later. The use of electronic filing also significantly reduces the manpower required at the Service Center to process returns.

Considerations for the Future

A prime consideration is the extension of information reporting. Voluntary compliance is most effective in those areas in which a taxpayer knows that some type of information report is being submitted to the Internal Revenue Service with respect to his income or expenses, as, for example, the report of wages paid and the report showing interest and dividends paid. Since 1981, there has been an increase in the number of information returns required to be filed. But the fact remains that the compliance tax gap estimated by the Internal Revenue Service lays significantly with individuals providing services or products and with respect to which there is no information return currently filed with the Internal Revenue Service. Consideration is being given to the feasibility of enhancing information reporting among that category of taxpayers. A necessary balance will have to be struck between the undue intrusion of the federal government into the affairs of the citizen, and the economic costs associated therewith, as compared with the needs of the government to ensure that every citizen is being taxed fairly on the income being received. The problem is most acute in the context of self employed service performers or small business persons who deal extensively in cash.

A further consideration is simplification of the tax laws. Resistance to the law tends to increase when the tax laws become less understandable to the average taxpayer or when there is a perception that certain categories of individuals are paying less tax than the taxpayer. For example, for many years, the tax shelter industry was perceived as providing significant benefits to high income individuals. By and large the tax shelter industry has been closed down through the legislative efforts of Congress and the enforcement efforts of the Internal Revenue Service. Nevertheless, the tax laws remain quite complicated, and they are being extensively modified almost every other year. Since 1981 there have been four major tax bills enacted. The proliferation of tax legislation and the adoption of differing tax policies within such a short period of time leads to a high degree of instability within the business community. The business community is simply unable to provide any long term tax planning. The drastic changes in depreciation rates, capital gains rates and the deductibility of passive losses significantly affected the long range financial planning of many investors and businesses. It would be helpful if there were a moratorium on tax legislation for some period of time. However, it is unrealistic to expect a meaningful slowing of tax legislation. The only feasible approach is to hope that future tax legislation will be somewhat more easy to understand and less detrimental to long term planning and investments.

A further consideration would be the development of additional educational programs in high schools and colleges directed to the fundamental concepts of the Internal Revenue Code and how it is administered. Representatives of the Service have spoken to school groups on an invitational basis but a more structured program could be useful.

The Internal Revenue Service continues to instruct its personnel to deal with taxpayers fairly and courteously. That process is critical to voluntary compliance. Voluntary compliance can be enhanced immeasurably if the communication of the taxpayer with the Internal Revenue Service is acknowledged promptly, in an understanding manner and in a way which educates the taxpayer as to why the law works the way it does. It is further enhanced when the Internal Revenue Service works with the taxpayer to resolve his or her problem on a practical basis. Obviously, the Internal Revenue Service is bound to apply the law, but there is some judgment in applying the law to the facts being presented to the examiner. The Service needs high caliber employees who are trained to deal with the public in such away that the taxpayer leaves the office understanding the tax laws and the reasons why he or she has been compelled to pay a particular amount of tax.

Communication problems between the public and the Internal Revenue Service would be improved were the Internal Revenue Service to ease its trend towards centralization of processing taxpayer notices and collections and moving more to decentralizing the functions back to a local district where a taxpayer can walk in and meet with a human being if there is a problem. While returns can be processed at a central location, there is no reason why the point of contact cannot be local, whether it be an adjustment to a return or a collection of a tax.

Voluntary compliance with the tax laws remains a significant problem which will require the attention of the Treasury Department, Internal Revenue Service, the Congress and tax professional organizations for sometime to come. It will be enhanced only through an increased perception by the taxpaying public of the fairness of the tax laws, the evenhandedness of the administration of the Internal Revenue Service, the courtesy of the examiners within the Internal Revenue Service and also a perception that the cheating taxpayers may be detected because of the filing of other kinds of information returns.