

**MINUTES**  
**DSBA TAXATION SECTION**  
**Monday, October 24, 2016**  
The meeting was held at **4:00pm** at the  
Offices of Cooch and Taylor, P.A.  
3711 Kennett Pike, Suite 100  
Greenville, DE 19807

In attendance were:

- Jennifer E. Smith
- Andrew T. O'Neill
- Mark M. Dalle Pазze
- Matthew P. D'Emilio
- Rebecca Beste
- Kristen Bennett
- and via telephone were Rob Tuinstra, Jim Gallagher, Joseph Bosik, IV, and Harold W. T. Purnell II.

The Chair called the meeting to order.

1. Approval of the minutes for the September 26, 2016 meeting.
  - The Minutes of the meeting of September 26, 2016, were unanimously approved.
2. Old Business:
  - Reminder: Delaware Tax Institute – Taxation Section Co-Sponsored CLE
    - Friday, December 2, 2016
    - The Chair reminded the members that we historically have co-sponsored this event. The Chair asked the members to please check it out, support it, and consider registering for it online.
3. New Business:
  - DSBA Taxation Section –CLE Program
    - The Chair was contacted by Alison Macindoe of DSBA's Law Office Management Assistance Program.
      - Alison asked our Section to provide a speaker for a CLE discussing common mistakes and pitfalls for small law firms
        - The speaker can be an accountant or an attorney

- Please email the Chair with ideas
  - Can be a very short CLE - 1.5 hours
  - A breakfast CLE is a good idea
  - Something during the winter in January or February is preferable
  - Bill Purnell suggested that getting a CPA in early spring will be problematic
  - The Chair suggested that it might not have to be winter date
- Speaker
  - The guest speaker today is James DeChene – Director, Government Relations for the Delaware State Chamber of Commerce
  - The Chair introduced speaker
  - Mr. DeChene spoke to the section:
    - Mr. DeChene has been with the Delaware State Chamber of Commerce for three years
    - Recently, he has been involved with Delaware unclaimed property issues
    - Mr. DeChene discussed the budget issues Delaware is facing because of recent cases regarding Delaware’s unclaimed property policy
    - Temple-Inland case in US District Court for the District of DE
      - Was settled this past summer
      - Will have a fairly large impact on how division of finance administers its program going forward
      - Suggested that methodology the state uses to calculate unclaimed property is invalid and shouldn’t be used
        - Thirty years is an incredible amount of time
      - Court found in favor of Temple-Inland and against Delaware
      - Delaware settled before the Court awarded damages
      - Temple-Inland had all fees covered by state
    - In a new case, Delaware has asked SCOTUS
      - SCOTUS has agreed to weigh in on a dispute in which over twenty states are claiming they (not Delaware) should get over \$150 million from uncashed MoneyGram checks
      - Delaware is hoping their case will be the first to define this to negate what a multi-state case would do
      - Decision would render multistate case moot

- SCOTUS said they will hear DE and the 22 other states
- Hopefully SCOTUS will rule first that unclaimed property is escheatable
- SCOTUS probably will not consolidate cases because DE asking for a definition and other states are asking for damages
- The best case scenario would be affirmation of the DE practice
- Potential Delaware legislative action
  - Possible modification from 30 year to 15 year rule
  - Division of revenue has not modified anything though
  - General Assembly will have to do something to make up for any money lost from unclaimed property source
  - Carney has expressed his desire to not raise taxes
- Unclaimed property is about 15% of Delaware's budget from \$550 million line at the top
- DFAC
  - \$450 million estimated in unclaimed property collection for next fiscal year
  - These settlements should be in hand, so it is likely there won't be any changes until after next year.
- Delaware's reputation has been damaged by this
- DE has great reputation for incorporating, but hits people with a sledgehammer on the back-end with unclaimed property
  - This bad publicity could impact the decision to incorporate in DE
- Mr. DeChene suggested that the money that these companies currently have to pay to DE is arguably not the companies' money anyway
  - Mr. Tuinstra disagrees:
    - In looking at the process, the process creates unclaimed property out of thin air
    - For example
      - A company argues the escheatable amount equals \$5,000
      - DE argues the escheatable amount equals \$1,000,000
    - Estimation is ok, but the state's current methodology is too aggressive

- The District Court gave DE the chance to change its process before it ruled, so DE settled.
  - Now we need to decide what to do regarding the audit process going forward so that this doesn't happen again
  - If you can't identify who the sender was, DE says the unclaimed property escheats to state of incorporation
  - Other states argue that if the store is in their state, the money should go to that state where the physical order takes place
- The conversation switched topics and Mr. DeChene addressed the following:
  - OMB Discretionary funds
    - Increases in Medicaid costs
    - Increases in Public Health costs
    - Schools and corrections are big costs
    - A recent budget presentation showed
      - How little money DE will have until there are personnel cuts
      - The Markell administration said, however, they wouldn't cut personnel
      - Over half the budget (52%) are personnel costs
  - John Carney has said he doesn't want to raise taxes so there must be either:
    - Serious cuts of personnel or
    - Serious cuts of programming
      - Remaining 4% of budget used for everything else in budget
    - Maybe cut the "Raise 5?"
    - Cut the estate tax to get people to stay here?
    - Means testing the senior citizen property tax credit?
    - Property tax reassessment possibility?
    - County should worry about state taking transfer money back
      - Counties have enjoyed not having to raise taxes the past few years
      - Now state needs it
    - No appetite to reassess downstate
      - Talking about statewide property tax

- A lot of people believe estate tax costs DE more money than it generates
- One idea is raising the top income tax bracket
  - One representative suggested
    - 125 at 7.1%
    - 250 at 7.6%
- There is a serious risk of Delawareans moving to other states right over the border
  - Mr. D’Emilio suggested Delaware will lose a significant number of residents if taxes are increased because the cost of private school is already a big deterrent
- If Delaware wants to save money, the state has to cut personnel or programming

4. Items of Interest:

- Speakers for upcoming meetings include:
  - Charles J. Durante, Partner, Connolly Gallagher LLP
  - Patrick Carter & John (“Chip”) McDaniel, Delaware Division of Revenue
  - Christine Allie, Professor of Law, Widener University School of Law
  - L. Jean Everett & Shelia Winfrey-Brown, City of Wilmington Department of Finance

5. Next Meeting – December 19, 2016

- The Monday, November 28, 2016, Meeting is cancelled

There being no further business, the meeting was adjourned.

Respectfully Submitted,



Mark M. Dalle Pазze  
Secretary