

MINUTES
DSBA TAXATION SECTION
January 23, 2017

In accordance with a notice duly given, a meeting of the Taxation Section of the Delaware State Bar Association was held on Monday, January 23, 2017, beginning at 4:00 PM at the offices of Cooch and Taylor, P.A., 3711 Kennett Pike, Greenville, DE 19807.

In attendance were:

- Jennifer E. Smith;
- Andrew T. O'Neill;
- Mark M. Dalle Pазze;
- Matthew P. D'Emilio;
- Robert J. Tuinstra; and
- via telephone were Joseph Bosik, IV, J. Zachary Haupt, Harold W. T. Purnell, II, Richard W. Nenno, and James J. Gallagher, II.

The Chair called the meeting to order.

1. Approval of the Minutes for the December 19, 2016, meeting
 - The Minutes for the December 19, 2016, meeting were unanimously approved.
2. Old Business:
 - Tax Section Sponsored CLE Program
 - Topic: Business and Tax Consideration for Solo Practitioners and Small Law Firms
 - Speaker: G. Harry Papaleo, CPA of Papaleo, Rosen & Chelf, P.A.
 - Date: Thursday, February 9, 2017, 8:30 am – 10:30 am
 - The Chair reminded the Section that Mr. Papaleo will be the guest speaker at this Section sponsored CLE program. Mr. Papaleo will focus on the tax issues and common pitfalls that affect small law firms and how to avoid them.
3. New Business:
 - Speakers

- David Gregor, John (“Chip”) McDaniel, and Michael R. Smith from the Delaware Division of Revenue
 - Mr. Gregor is the newly appointed Director of the Division of Revenue
 - He has been with the State for 30 years doing forecasting and tax policy development.
 - He relies on this experience and favors a theoretical perspective.
 - Mr. McDaniel is the Tax Conferee of the Division of Revenue
 - Mr. Smith is the Assistant Director of the Division of Revenue’s Office of Business Taxes
- Mr. Gregor began his presentation regarding the forecast for the State’s revenue portfolio for 2017 and policy initiatives.
 - The confluence of two events yields a significant probability of tax changes
 - (1) A lot of demographic changes are nearing critical mass.
 - (2) Recent State revenue changes.
 - The State’s age and labor force participation is also experiencing significant change.
 - The Baby Boomers are starting to retire.
 - In 2035, the age group of 65+ will be over 25% of the State’s population.
 - The State’s growth is driven by the numbers of workers and productivity.
 - The effect of compound interest on growth when 2% annually is compared with 3% annually is significant over the long run.
 - 2016 General Fund Revenues
 - Abandoned property was 13.4% of the State’s revenue in 2016.
 - After personal income tax revenue (which accounts for 32.6% of the State’s revenue), franchise fees (not including bank franchise) are the biggest portion of the State’s revenue at 24.4%.
 - 95% of franchise taxes are paid by people in other states.

- 40% of the State's revenues are paid by people in other states.
- 56% of the State's revenue is inelastic (meaning it doesn't grow with the economy).
- Consolidation is causing bank franchise fees to decrease.
- Mr. Tuinstra asked a question - Where is gambling revenue?
 - Mr. Gregor answered - In the lottery.
- The economy is growing but our revenues are not growing as quickly as the economy is.
- At one point the State ran the numbers on the potential legalization of marijuana to attempt to determine how it could increase the State's revenue.
- The State largely depends on money from the State's personal income tax.
- DE will piggy-back any federal government income tax changes.
- There is the potential of state-wide property reassessments.
 - This will probably not happen during this administration, though.
 - It is the highest potential of this since the tax reform act of 1986.
- Mr. D'Emilio asked a question - Would re-valuing properties just shift revenue and not increase revenue?
 - Mr. Gregor answered – He wants the State to make property taxes and assessments more equitable, periodic, and consistent. If there are re-assessments, it is likely something will limit the increase to something around 5% for each property.
- Mr. Tuinstra asked a question - Is a statewide property tax on the table?
 - Mr. Gregor answered – There was a Del. Tech. bill for a statewide vo-tech tax.
- Base broadening.
 - There are four tax breaks specifically for senior citizens in Delaware. None are means tested.

If you hit a certain age, you get them. These cost the State almost \$150 million each year. Seniors are a very important voting block, so it will be difficult to reduce these tax breaks. A possible solution might be that these tax breaks should start at the age of 65 instead of the age of 60.

- Federal level personal income tax. Significant changes on corporate rates.
 - Even if there are significant changes on federal corporate rates, Delaware is unlikely to decouple.
- The Section discussed potential new exporter and importer federal taxes.
 - Importers will pay a tax.
 - If the cost of goods sold come from an export, there will be no deduction.
 - Mr. Gregor explained that we don't have a real firm grip on this yet. We need data to model this, and the data isn't there right now. The State is reluctant to do anything with the corporate income tax.
- Mr. Nenno asked a question – Since NJ is eliminating its estate tax, is there any thought in DE to eliminate DE's estate tax?
 - Mr. Gregor answered – Yes. We are thinking about this. There are very strong opinions on both sides. Delaware's estate tax is a relatively small part of its revenue stream. If State income taxes go up, the Delaware estate tax will likely be a negotiation piece (it could be removed).
- Do we still have more out-of-state workers that come here than vice versa?
 - Mr. Gregor answered – Yes. We are still a net beneficiary.
- Mr. Purnell asked a question – Is adjusting the realty transfer tax to take away the local share still on the table?

- Mr. Gregor answered – He thinks this is still in the mix. The larger issue is the division of responsibilities for providing services. Delaware has the fifth lowest real estate taxes in the country, but the State still pays a large share of local education. It is reasonable to ask that locals pay more considering that locals control so much. Our transfer tax is the largest in the country, though.
- Is the State focused at all on state expenses?
 - Mr. Gregor answered – He believe the State is. He’s been on the revenue side for all these years, though. He thinks it is unavoidable given State structural issues. **Since 2009 over 80% of increased State spending has been on Medicaid and fringe benefits.**
- The Chair asked Mr. McDaniel and Mr. Smith if they wanted to add anything
- It is very difficult to draft this kind of legislation.
 - If there are problems with statutes or forms, it increases costs in dealing with taxpayer problems.
 - The Section should feel free to provide the State with a list of pet-peeves. If the pet-peeves don’t hurt revenue, the State can address them.
 - The State is very interested in compliance issues that routinely jam up attorneys and their clients.
- Mr. Tuinstra commented that in the past, the State has sent proposed legislation to the Section.
 - Mr. Gregor replied that he would like to continue this practice, but sometimes the proposed legislation is very confidential. He would like to keep going with the process to present potential legislation to the Section. He is more than happy to do this because the Section has caught things before.

- Mr. Purnell asked about the impact of increasing the State's liquor tax.
 - Mr. Gregor answered – The State's liquor tax is \$20 million out of \$4 billion budget, so it is about half a percent. It would be a big political battle for not a lot of money.
 - Please contact the Chair if you would like a copy of the Director's PowerPoint presentation.
4. Items of Interest:
- Speakers for upcoming meetings include:
 - 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 – Monday, February 27, 2017.
- The Chair reminded the Section of the next meeting.

There being no further business, the meeting was adjourned.

Respectfully Submitted,



Mark M. Dalle Pазze
Secretary