

MINUTES
DSBA TAXATION SECTION
February 27, 2017

In accordance with a notice duly given, a meeting of the Taxation Section of the Delaware State Bar Association was held on Monday, February 27, 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;
- James M. Allie; and
- via telephone was James J. Gallagher, II.

The Chair called the meeting to order.

1. Approval of the Minutes for the January 23, 2017, meeting
 - The Minutes for the January 23, 2017, meeting were unanimously approved.
2. Old Business:
 - Tax Section Sponsored CLE Program: Business and Tax Consideration for Solo Practitioners and Small Law Firms
 - Held on February 9, 2017
 - The Chair thanked our speaker, G. Harry Papaleo, CPA of Papaleo, Rosen & Chelf, P.A.
 - The Chair attended the CLE and noted that Mr. Papaleo got some new clients despite the season's first snowstorm.
 - The Chair asked Members to thank Mr. Papaleo if they come across him.
 - Publication for Delaware Law Review
 - If anyone has anything to contribute, the Chair asked that he or she please let her know so that we can get it moving forward.

3. New Business:

- Officers for 2017-2018
 - Andrew T. O'Neill will be the new Chair.
 - Mark M. Dalle Pазze will be the new Vice Chair.
 - The Chair asked Members to please ask friends and colleagues if they are interested in being the new Secretary.
- Speaker
 - Christine Allie, Professor of Law, Widener University School of Law
 - Professor for four years who has recently been researching the “marriage penalty”.
 - The Speaker reminded us that even though she is talking about the tax ramifications of divorce, she is happily married and has a seven-month old baby.
 - The “marriage penalty” - the negative tax consequences of marriage.
 - The penalties are even worse when a married couple has children.
 - The Speaker has a background in international tax, but recently became interested in this area.
 - There are three main penalties for married couples v. individual taxpayers:
 - (1) Earned income tax credit is larger for individuals than for married couples in similar circumstances;
 - (2) Mortgage interest deductions are larger for individuals than for married couples in similar circumstances; and
 - (3) Premium tax credits under the Affordable Care Act (Obamacare) are larger for individuals than for married couples in similar circumstances.
 - The Speaker jokingly encouraged Members to cite-check her calculations before her paper is published.
 - The Speaker’s proposed solution to the marriage penalty:
 - The Speaker believes the marriage penalty can be eliminated by allowing married couples to file their income taxes as two individuals (i.e. as if they were each single).

- The Speaker believes we should not discourage marriage by imposing higher taxes on married couples.
 - Such a substantial marriage penalty discourages marriage, which in turn strips women of the legal benefits of marriage.
- Income splitting used to only be available in community property states.
 - In 1948 Congress made it available to everybody.
- When Congress created the filing status of Head of Household for unmarried individuals running a household, individuals were indirectly penalized.
- The personal exemption may be on the cutting block with the Trump administration.
 - Alternatively, there may be a phase out of the personal exemption for higher income individuals.
- The Speaker expects a major overhaul of the tax code from the Trump administration in the next few months.
- If Congress is determined to tax individuals who live together more heavily, the Speaker believes that Congress should not treat marriage as the standard for determining whether two people live together.
 - We want to encourage marriage.
 - The current tax system encourages people who live together to not get married.
- Mr. Tuinstra asked whether there was any data regarding same-sex couples who chose to not get married even after the recent SCOTUS decision (which might imply that negative tax consequences contributed to their decision).
 - The Speaker confirmed that the marriage penalty now applies to gay marriages and a lot of gay couples choose to not get married because of tax penalties.
- Mr. D’Emilio asked whether a zero-earner who is married eliminates the marriage penalty.
 - The Speaker said a stay-at-home spouse does not eliminate certain aspects of the marriage penalty. Premiums are still gained by divorce.
- The Speaker noted that Sweden used to tax individuals based on who lived at a certain address.

- Mr. Allie asked whether taxing married couples differently is religious discrimination because many religious individuals won't live together unless they are married.
 - The Speaker noted that she had previously explored this idea, but many critics suggested it was meritless because individuals can be married under their religion while simultaneously remaining unmarried under state law.
 - The Speaker and Members noted, however, that certain Catholic dioceses require a state marriage certificate before performing a religious marriage ceremony.
- Mr. Tuinstra commented on some of the Trump administration's new tax proposals including the possible phase-out of personal exemptions being offset by lower income tax rates.
- The Speaker commented on the possibility of the new administration increasing the standard deduction.

4. Items of Interest:

- Upcoming speaker:
 - L. Jean Everett & Shelia Winfrey-Brown, City of Wilmington Department of Finance
 - The Speaker noted that Shelia Winfrey-Brown will probably be the speaker at the March Section meeting.
 - Mr. Tuinstra mentioned his belief that Pat Carter is with the City of Wilmington now after being with the Department of Revenue.

5. Next Meeting – March 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