I look forward to seeing everyone at our annual luncheon at the Tower Club on June 1, 2007. I hope all of our members have heard about the change in our keynote speaker. Congressman Jim McDermott was unable to make it due to scheduling conflicts. However, we are very fortunate to have Microsoft’s Bill Sample, VP Worldwide Tax, as our keynote speaker, and he will be accompanied by Kurt Lamp, Microsoft’s Director of Tax Controversies. Also, we will “surprise” this year’s Stouder Award recipient. And, we will “surprise” this year’s Stouder Award recipient. And, we have an additional presentation this year, which will be a surprise for those attending the luncheon. It will be a great event.

Following the luncheon, the Tax Section is holding a CLE in the same room (registration is separate for the lunch and the CLE). We have two national speakers: Marianne Jennings, Professor of Legal and Ethical Studies in Business, W.P. Carey School of Business, Arizona State University in Tempe; and Debra K. Moe, Deputy Area Counsel for Area 7 of the Small Business/Self-Employed Division of the Office of Chief Counsel at San Francisco Internal Revenue Service Office. The CLE will be held from 1:40 pm to 5:00 pm and provide 1 general CLE credit and 2 ethics credits.

The Section will also have a Tax Court Judge Reception on Wednesday, June 13th, which will be a wonderful opportunity for all of our Tax Section members to socialize.

It has been a productive 2006-2007 year and it has passed by very quickly. There are many exciting events planned for next year, 2007-2008. In addition to the regular committee meetings and events, the Section will join with the Oregon Tax Institute to hold a joint CLE in Seattle in May 2008. We will plan other events for our members, including another Tax Court Judge Reception. The Council members are always open to ideas and suggestions.

We would like to continue to provide a newsletter, especially because we receive so much positive feedback. However, as may be evident by the one, short article in this issue, we often have difficulty locating articles for publication. Therefore, we need all Tax Section members to make a conscious effort to help provide articles for publication. If someone in your firm has been working on a current tax-related issue, please encourage that person to submit an article to the newsletter editor: Jennifer Gellner at jgellner@mhfmlaw.com.
business entities or trusts that are disregarded for federal income tax purposes. Through the use of these entities in a tax deferred exchange, a wide variety of structuring opportunities become available, some of which can address an exchange clients other investment goals such as limited liability and succession planning. In these cases, the vesting of the relinquished property may be very different than the vesting of the replacement property, although tax ownership of the replacement property is the same both before and after the exchange.

To make sense of the proposition set forth above, it is necessary to distinguish between: (i) federal tax ownership, (ii) state law ownership, and (iii) vesting. In any given case, all three indicators of ownership might match up, such as an individual who holds title to investment property as “John Smith, an unmarried man”. But even in this simple case, Mr. Smith might not actually own the property to which he holds title under state law or federal tax law. For example, many states recognize nominee arrangements under which Mr. Smith might hold title for the benefit of another person who actually owns the property. If there were such a nominee arrangement, Mr. Smith would be the record title holder, but not the tax owner or the state law owner of the property. If Mr. Smith sells property that he holds as nominee for Mr. Saunders, then the gain on the sale would be reported by Mr. Saunders.

Similarly, if title to property is held in the ABC limited liability company (ABC LLC), we know what vesting should look like and that the state law ownership rests in the limited liability company, but who is the tax owner? The answer depends on how ABC LLC is characterized for federal income tax purposes. If the company has elected to be taxed as a corporation, then tax ownership would be in the company. If the limited liability company has more than one member and has not elected to be treated as a corporation for tax purposes, then it is treated as a partnership for federal income tax purposes and, again, the company is the tax owner of the property.

If, however, Mr. Smith is the sole member of ABC LLC and the company has not elected to be treated as a corporation for federal tax purposes, then Mr. Smith is the owner of the property for federal income tax purposes. Under federal tax law, a single member limited liability company is a “disregarded entity” and its assets are treated as owned by the sole member of the company. Thus, if Mr. Smith sells property in a § 1031 deferred exchange (property that was titled in his name), he could acquire property in ABC LLC provided that he is the sole member and the company is a disregarded entity. The same result would follow where ABC LLC sells relinquished property and Mr. Smith acquired replacement property in his individual name.

Revocable trusts are another area where tax ownership, state ownership and vesting may diverge. During the lifetime of the person who forms a revocable trust (a Grantor) and during the time he or she retains the right to revoke the trust, federal law treats the Grantor as the tax owner of assets held in the trust. So, as the Grantor, Mr. Smith is the tax owner of assets held in his revocable trust. But the trust is treated as an entity under state law and for purposes of vesting and ownership of trust property. Thus, Mr. Smith might sell property owned by his revocable trust as part of a tax deferred exchange and acquire replacement property in his own name. Alternatively, if Mr. Smith sells property owned by his revocable trust, he could also acquire replacement property in a disregarded limited liability company owned solely by Mr. Smith’s revocable trust.

In most of the foregoing examples, a valid exchange can be accomplished in circumstances where the vesting of the relinquished property does not match the vesting of the replacement property, so the notion that vesting of the relinquished property and the replacement property must be the same is not a hard and fast rule. What matters is that the tax owner of the relinquished property acquires tax ownership of replacement property. The determination of tax ownership is not always a simple matter, especially for those not steeped in federal tax law, but accountants and tax attorneys can assist in structuring an exchange transaction to maximize the taxpayer’s advantage. In the last example in the proceeding paragraph in which Mr. Smith relinquishes property owned in his revocable trust and acquires replacement property in a disregarded limited liability company owned solely by Mr. Smith’s revocable trust, Mr. Smith not only obtained tax deferral under §1031, he obtained limited liability under state law that would protect the trust and himself from liabilities that might arise out of his ownership and operation of the property, and ensured that the property was properly held in his trust to be disposed of in accordance with his overall estate plan.

Asset Preservation, Inc. encourages clients to obtain competent tax and legal advice in structuring an exchange transaction. As an experienced qualified intermediary, we have seen a broad array of transactions that qualify as tax deferred exchanges under IRC §1031. However, because of the non-tax considerations surrounding the structure of an exchange transaction (such as limited liability, liability protection and succession planning), many exchange clients would benefit by consulting their personal tax or legal advisors before engaging in an exchange transaction.

If you have any questions or comments, please contact Jon Christiansen at jon@apiexchange.com.

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CLE Committee
by Stephanie Anderson and John Clynch

On April 23, 2007, the CLE Committee met with John Redenbaugh of the Washington State Bar Association to learn more about working with the WSBA on future CLEs. The CLE Committee’s next meeting is scheduled for Thursday, May 17, from noon to 1:00 p.m. at the offices of K&L Gates, 925 4th Avenue, Suite 2900, Seattle. This meeting will be an opportunity for all Tax Section members to discuss ideas for future CLEs and issues of interest or concern. In addition, we will discuss the new annual CLE program jointly sponsored with the Oregon Tax Section. We welcome anyone to join us – bring your lunch!

Members of the Tax Section who are interested in CLE issues should contact Stephanie Anderson at stephanie.anderson@kdgates.com or John Clynch at jaclynch@comcast.net. Members can also check for future meeting information on the Tax Section’s calendar at http://wsbatax.org.

Friday, June 1, 2007 –
CLE Following the Annual Tax Lunch

As you may have seen from recent emails and flyers, the Tax Section is sponsoring a CLE following the Annual Tax Luncheon on Friday, June 1 at the Columbia Tower Club. To learn more about the CLE or to register, visit the link below:

https://www.wsbacle.org/seminars_show.php?sdx=07849SEA

If you need help registering, contact Kristen Ponsolle at (206) 727-8296 or kristenp@wsba.org.

You’ll receive 3.0 credits consisting of one general credit and 2 ethics credits. As you can probably appreciate, ethics credits are always hard to come by and always needed. So take advantage of this opportunity to hear more on this topic from Marianne Jennings, a nationally recognized and very engaging speaker. In addition to Ms. Jennings, we are pleased to have Debra Moe from the IRS speak on a variety of issues that are sure to spark your interest. The schedule for the CLE is as follows:

1:15 pm Check-in • Walk-in registration • Distribution of course books; coffee and pastry service
1:40 pm Seminar begins
5:00 pm Seminar adjourns

We hope to see you there! Additional information on page 6.

Estate and Gift Tax Committee
by Luke Thomas

The Estate and Gift Tax Committee last met on April 27th at the offices of K&L Gates. The three main issues discussed by the Committee were as follows: 1) the recent enactment of legislation outlawing trust mills in the state of Washington and the potential negative impact of this new law on charities; 2) possible revisions to RCW 6.15 and related statutes to exempt from creditors Section 529 plans and Health Savings Accounts; and 3) updates from the Department of Revenue concerning the DOR’s intent to tax marital deduction trusts established before the enactment of Washington’s estate tax law.

The Committee’s next meeting will be held on June 15th at the offices of K&L Gates. A representative from the Department of Revenue and the Attorney General’s office will be in attendance at this meeting to discuss a variety of issues surrounding the DOR’s intended revisions to the WAC governing the taxation of marital deduction trusts created before the enactment of Washington’s estate tax law.

IRS Liaison Committee Report

The IRS Liaison Committee conducts regular meetings to discuss various topics pertinent to practice before the Internal Revenue Service. For our last meeting, Thursday, May 10, 2007, Revenue Officer Eric Edwards spoke regarding the trust fund recovery penalty under I.R.C. section 6672. We are taking a break for the summer. Meetings will resume in the fall of 2007.

John Kempa, IRS Technical Advisor, will speak in September regarding lien priorities between federal and state agencies, bankruptcy discharge, and subordination of liens. Other topics we hope to cover in future meetings include issues surrounding reasonable compensation and injunctions of promoters of abusive tax schemes.

The IRS Liaison Committee is also hosting an hors d’oeuvres reception with United States Tax Court Judge Mary Ann Cohen on Wednesday, June 13, 2007 at the offices of Lane Powell PC, 1420 5th Ave., 42nd Floor, Seattle from 5:30 pm. to 7:00 pm. Judge Cohen has served, in the past, as Chief Judge of the United States Tax Court. At the reception, Judge Cohen will give some remarks regarding litigation before the Tax Court. If you are able to attend, please RSVP to either Darek Jarski (djarski@lesourd.com) or Bob Boeshaar (robert.v.boeshaar@irsconsult.treas.gov), the co-chairs of the IRS Liaison Committee.

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State and Local Tax (SALT) Committee
by Bob Mahon

On March 7, 2007, the State and Local Tax (SALT) Committee was pleased to host Mary Barrett, Assistant Director of the Department of Revenue’s Appeal Division, and the Appeals Division’s three managers, Jackie Danyo, Jeff Mahan, and Ron Rosenbloom. The Appeals Division shared the results of its 2006 survey of taxpayers and taxpayer representatives. 81% of taxpayer representatives and 58% of unrepresented taxpayers reported overall satisfaction with the Department’s appeal process. The survey also confirmed that taxpayers value the Department’s publication of tax determinations. 84% of taxpayer representatives and 69% of unrepresented taxpayers supported publication of all Washington tax determinations. Publication continues to be a subject of disagreement between the SALT Committee and the Department, although the March meeting brought a number of fresh perspectives on the subject. The Appeals Division also shared some of its key statistics from 2006, including:

- 953 appeals were filed in 2006
- 887 appeals were cleared in 2006
- 66% of regular appeals were cleared within 12 months (the Department’s internal target)
- 40% of executive-level appeals were cleared within 18 months (the Department’s internal target)
- The Department denied relief in 60% of appeals, granted complete relief in 7% of appeals, and granted partial relief, settled, or remanded 32% of appeals.

On April 26, 2007, the SALT Committee met with the leadership of the Department’s Taxpayer Services Division, Julian Soh (Assistant Director) and Jan Shimabukuro (Program Manager). We were also joined by Deputy Director Leslie Cushman and Senior Assistant Director Tremaine Smith. Mr. Soh and Ms. Shimabukuro provided an update on the various activities and responsibilities of the Taxpayer Services Division, including the call center, ruling requests, public disclosure requests, taxpayer education and workshops, and the Department’s new website. Mr. Soh mentioned that the Department is striving to clear a backlog of ruling requests and improve ruling responses times. The Department has seen a steadily increasing number of written ruling requests (3,303 ruling requests were received in 2006).

The SALT Committee’s next meeting is scheduled for Tuesday, May 22, from noon to 1:30 p.m. at the offices of Perkins Coie, 1201 Third Avenue, Suite 4800, Seattle. This meeting will be an opportunity for Tax Section members to discuss state and local tax developments and issues of interest or concern. There is no invited guest or strict agenda, but discussion topics are likely to include recent cases (e.g., Nelson v. Appleway Chevrolet, Ford v. Seattle), new tax legislation, recent rulemaking, and ideas for the WSBA legislative agenda for next legislative session.

The SALT Committee will also be meeting on Friday, June 8, with the Special Programs Division of the Department of Revenue. The Special Programs Division has responsibility for unclaimed property and a number of significant miscellaneous taxes, including real estate excise tax, the estate tax, forest excise tax, and cigarette and tobacco products taxes.

Members of the Tax Section who are interested in state and local tax issues should contact Bob Mahon at RMahon@PerkinsCoie.com or (206) 359-6360 to be added to the SALT Committee’s email list. Members can also check for future meeting information on the Tax Section’s calendar at www.wsbatax.org. All Tax Section members who have an interest in state and local taxation are welcome.

Scholarship Committee Report
By Cori Flanders-Palmer

The WSBA Tax Section is still accepting donations for the 2007-2008 scholarship award. The scholarship award has subsidized the increasing costs of obtaining a degree of LLM in Taxation for six years. Each year the applicants’ achievements get more impressive and the selection process becomes more difficult. The recipient of this year’s award will be announced at the June 1, 2007 annual Tax Section luncheon. The Tax Section would like to thank those who have already donated.

For more information, please visit the Scholarship link under our Tax Section website, http://wsbatax.org.

UW LawConnect

The Center for Career Planning and Public Service at UW School of Law seeks to connect Class of 2007 members interested in associate positions and contract law work with firms that may have openings.

If you or someone you know would like to interview UW law students for open positions, please contact Naomi Sanchez, Assistant Dean, at (206) 616-1366.

Speak Out!
Wanted: Lawyers to volunteer to speak to schools and community groups on a variety of topics.

For more information about the WSBA Speakers Bureau, contact Bri Orlebeke at 206-727-8215 or bri@wsba.org.
How to navigate the IRS maze plus thoughtful perspectives on ethical issues
Co-Sponsored by WSBA Taxation Section

Ethics and Tax Essentials: Navigating the Maze
Friday, June 1, 2007

Columbia Tower Club • 76th Floor • Columbia Room
701 Fifth Avenue
Seattle, WA 98101

CLE Credits: 3.0 credits (1.0 general credits and 2.0 ethics credits)

Co-Chairs:
Stephanie Anderson – K& L Gates LLP, Seattle
John Clynch – LL.M. Tax Candidate, University of Washington School of Law, Seattle

Gain practical tips on how you can navigate the IRS maze; explore the potential disconnect between strict code interpretations and personal standards.

1:15 pm Check-in • Walk-in registration • Distribution of coursebooks, coffee, and pastry service

This seminar begins at 1:40 pm and adjourns at 5:00 pm

Tuition: $125

The WSBA-CLE Passport may not be used to register for this program

Contact Information: For special accommodations, contact Kristen Ponsolleat (206) 727.8296 or kristenp@wsba.org.

Information for Your Clients

Did you know that easy-to-understand pamphlets on a wide variety of legal topics are available from the WSBA? For a very low cost, you can provide your clients with helpful information. Pamphlets cover a wide range of topics:

Alternatives to Court  Elder Law  Probate
Bankruptcy  Landlord/Tenant  Real Estate
Communicating with Your Lawyer  Lawyers’ Fund for Client Protection  Revocable Living Trust
Consulting a Lawyer  Legal Fees  Signing Documents
Criminal Law  Marriage  Trusts
Dissolution of Marriage (Divorce)  The Parenting Act  Wills

Each topic is sold separately. Pamphlets are $9 for 25, $15 for 50, $20 for 75, and $25 for 100. Pricing for larger quantities is available on request.

To place your order or for more information, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Sales tax is applicable to all in-state orders.
CLE Credits for Pro Bono Work?

Limited License to Practice with No MCLE Requirements?

Yes, it’s possible!

Regulation 103(g) of the Washington State Board of Continuing Legal Education allows WSBA members to earn up to six (6) hours of credit annually for providing pro bono direct representation under the auspices of a qualified legal services provider.

APR 8(e) creates a limited license status of Emeritus for attorneys otherwise retired from the practice of law, to practice pro bono legal services through a qualified legal services organization.

For further information contact Sharlene Steele, WSBA access to justice liaison, at 206-727-8262 or sharlene@wsba.org.

Service Center... at your service!

800-945-WSBA or 206-443-WSBA
questions@wsba.org

We’re here to serve you! The mission of the WSBA Service Center is to respond promptly to questions and requests for information from our members and the public.

Call us Monday through Friday, from 8:00 a.m. to 5:00 p.m., or e-mail us at questions@wsba.org.

Assistance is only a phone call or an e-mail away.
The Taxation Law newsletter invites its readers to submit articles, items of interest, and announcements for publication in upcoming issues. Share your expertise, your knowledge, and your insights for the benefit of your colleagues.

So you have an idea you would like to flesh out, or a finished article ready to go?

Please contact the officers of the Tax Section by sending an e-mail from the Taxation Section website at the following link: wsbatax.tripod.com/officers/roster.htm.

We would like to read what you have to say.
Taxation Law Section Membership Form

Section membership dues cover October 1, 2006, to September 30, 2007.

☐ Please enroll me as an active member of the Taxation Law Section. My $30 annual dues are enclosed.

☐ I am not a member of the Washington State Bar, but I want to receive your Newsletter. My $30 is enclosed.

Name ___________________________________________
Firm ____________________________________________
Address __________________________________________
City/State/Zip _____________________________________
Phone # __________________________________________
Fax # ____________________________________________
E-mail Address ____________________________________

Send this form with your check to:
Taxation Law Section
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Date ____________ Check # ________________ Total $ ______________

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