

# 2019 WASHINGTON, D.C. DELEGATION

LOS ANGELES COUNTY BAR ASSOCIATION TAXATION SECTION

&

CALIFORNIA LAWYERS ASSOCIATION TAXATION SECTION

**MAY 5, 2019 through MAY 7, 2019**

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## **ATTACHMENTS:**

Sample Topic Proposal (Executive Summary)

(Robert Horowitz / Carolyn Lee – 2018 Washington, D.C. Delegation)

Sample Paper (with Executive Summary)

(Robert Horowitz / Carolyn Lee – 2018 Washington, D.C. Delegation)

2017-2018 Internal Revenue Service Priority Guidance Plan

## **OVERVIEW**

The 2019 D.C. Delegation marks the 30th year since the Taxation Sections of the Los Angeles County Bar Association and the Taxation Section of the California Lawyers Association (formerly the State Bar of California) created an annual delegation to bring California tax lawyers and their ideas to Washington, D.C. The 2019 D.C. Delegation is also the first delegation completely organized by the California Lawyers Association.

Each May, just prior to the American Bar Association Tax Section Meeting held in Washington, D.C., a group of selected delegation members from the Taxation Sections of the LACBA and CLA Taxation Section will share their ideas and engage in lively discussions with key tax officials and staff members from the following government offices:

- Treasury Department,
- Internal Revenue Service,
- House Ways and Means Committee,
- Joint Committee on Taxation,
- Senate Finance Committee,
- United States Tax Court, and
- The Department of Justice Tax Division.

## **PURPOSE OF THE DELEGATION**

The Delegation serves a variety of functions. The most important is to make a substantive contribution to the federal tax laws. The Delegation also familiarizes government officials with the existence, experience and concerns of California tax lawyers. Past Delegations have increased the awareness of government tax officials of the California bar and have enhanced our ability to play a significant role in federal tax policy.

Through the Delegation, we hope to encourage tax officials in Washington, D.C. to consider the California bar and its members as a useful resource. In addition, the Delegation benefits the individual Delegation members. It provides an insight into how the government functions and the issues that concern those who formulate the tax laws and regulations, as well as an opportunity to develop relationships with government staffers who work in the respective member's areas of practice.

Finally, and possibly most noteworthy, are the facts that the papers have been published both in national and state-wide tax journals, as well as online in Tax Notes Today, and a number of the

proposals have been adopted.

### **WHO SHOULD PARTICIPATE IN THE DELEGATION?**

All members of the California tax bar are strongly encouraged to participate in the Delegation. It is truly a one-in-a-lifetime experience that is not to be missed. Carolyn Lee, a participant of the 2018 Delegation, summarized her experience as follows:

*There are at least two ways to consider participating in the DC (or Sacramento) Delegation with the CLA Tax Section.*

*Completely selfishly, the Delegation offers direct access to decision makers and influencers as the audience for that idea you know would make all the difference as a constructive and productive change to tax regulations, laws or procedures. Plotting on an if-only basis with our peers is one thing; advocating for specific, well-articulated change with people in a position to act is quite a rush. I have taken to describing the Delegation experience as professionally transformative.*

*More altruistically, your proposal may be adopted in whole or in part, sooner or later. In this way, thanks to you, the tax world advances for taxpayers' benefit.*

*As they say, join us.*

There are generally two categories of participants that we see on the Delegation.

First, are participants who have come across a specific issue in their own practice that they feel could be addressed through the Delegation process. For example, a participant might be struggling with lack of clarity in a regulation, instruction, or form. The Delegation presents an invaluable opportunity for these participants to seek government resolution the issue.

Second, are individuals who want to participate in the Delegation but don't have a specific paper topic in mind. This second category of individuals are **strongly encouraged** to pick a topic from the IRS's 2017-2018 Priority Guidance Plan. Tax officials in Washington D.C. are anxious to hear how the issues identified in the Priority Guidance Plan will impact California and we want them to consider the California bar and its members as a useful resource. While novel issues are also important, we generally would like to see at least half of the papers address topics that are listed in the Priority Guidance Plan.

Questions from taxation section members about the Delegation should be directed to either Chad Nardiello, or Jason Galek.

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## **DELEGATION TIME-LINE**

Before arrival in Washington, D.C., members of the respective Taxation Sections will prepare papers on selected federal tax issues and submit them to the committee responsible for coordinating the Delegation.

Each paper will be presented to government officials during the scheduled meetings in Washington, D.C. All requests for paper presentations can vary depending upon the government attendees to each meeting.

Many meetings include all Delegation members, but members may be asked to briefly describe their papers and often engage in a discussion. On occasion, government staffers who have reviewed the papers have asked to meet separately with Delegation members.

To the extent possible, we schedule such individual meetings, but not every government office is able to accommodate this format. The Internal Revenue Service has required Delegation members to schedule their own individual meetings with attorneys in the Office of Chief Counsel.

Some Delegation members have expressed a desire to include an admission ceremony at the U.S. Supreme Court. There is currently a three-year wait list at the U.S. Supreme Court. We have, however, reserved an admission ceremony for the 2021 D.C. Delegation.

### **Sunday, May 5, 2018**

- MANDATORY - Rehearsal Dinner

### **Monday, May 6, 2018**

- Delegation Group Breakfast
- Scheduled Meetings
- Delegation Group Lunch
- Scheduled Meetings
- Delegation Reception/Happy Hour

### **Tuesday, May 7, 2018**

- Delegation Group Breakfast
- Scheduled Meetings
- Tax Court Lunch
- Scheduled Meetings

## **PROCEDURES**

This year, the Delegation is scheduled for **Sunday, Monday, and Tuesday, May 5-7, 2019**. While you have more than six months, past experience has shown that it is crucial that we begin seeking paper topic proposals now to ensure the success of the Delegation.

Past participants have generally found the Delegation to be one of the most rewarding bar experiences they have had, so it is strongly recommended that Taxation Section members take advantage of this opportunity. To participate in the Delegation, a Taxation Section member must submit

a proposal and, if the proposal is accepted, adhere strictly to a schedule of deadlines. Both the proposal and the schedule are discussed in greater detail below.

### **COMMITTEE CHAIR ROLES**

Committee Chairs have important roles in several phases of the Delegation. They are strongly encouraged to serve as facilitators and editors of the papers. To assist the Committee members in selecting and developing topics, Committee Chairs should consult the current IRS Priority Guidance Plan (attached).

- **October 22, 2018:** Chair to send DC Introduction letter to committee members to solicit paper topics.
- **October through November 2018:** Chair to follow up with committee members regarding topic proposals. Chair should directly reach out to individuals who have expressed interest in participating or whom the Chair thinks might be interested. *Encourage participants to pick topics where possible from the 2017-2018 Priority Guidance Plan.*
- **December 3, 2018:** Submit minimum of 2 written paper topics to the Executive Committee (EXCOMM) c/o Chad Nardiello and Jason Galek.
- **February 18, 2019:** Collect final drafts and Executive Summaries
- **March 11, 2019:** Submit Final Drafts.

### **SUGGESTED TOPICS**

We have found that legislative proposals, especially those that would reduce tax revenues, face much resistance. Nevertheless, certain government officials, including the Joint Committee on Taxation, generally want to hear about legislative issues or papers on technical corrections to existing statutes. Participants who have submitted regulatory and administrative proposals generally have found much greater receptiveness.

To the extent a topic is not listed on the IRS's 2017- 2018 Priority Guidance Plan, any participant proposing an administrative topic must first contact the appropriate IRS and/or Treasury person to determine whether a guidelines project has been opened and, if so, its status and anticipated timetable.

It is also worth noting that the Delegation is not the proper forum in which to lobby on behalf of a particular client, group of clients, or organization. If any of the CLA Executive Committee members believe that a presenter is engaged in such behavior, that individual and his or her paper may be excluded from some or all of the Delegation events. Moreover, any removal may occur just prior to or during a scheduled presentation.

**As previously noted, we strongly encourage participants proposing administrative topics to select a topic from the IRS's 2017-2018 Priority Guidance Plan.** A participant proposing a legislative topic must first contact the legislative staffs to determine whether a similar proposal has been advanced, its sponsor(s) (whose staffs should be contacted) and whether a revenue estimate has

been made for the proposal.<sup>1</sup>

Prior year participants from your Committee are the best source of Washington, D.C. contacts and subject areas that may be of special interest to those officials. You can also find contact information for Chief Counsel attorneys by consulting the IRS Code and Subject Matter Directory (available online). If you need help in identifying the appropriate governmental officials to contact, please reach out to Chad Nardiello or Jason Galek. **Start early as it may take several days and a series of telephone calls to contact the appropriate governmental official.**

## **TOPIC SUBMISSIONS**

**Topic Proposal:** Taxation Section members should submit a written topic proposal to the appropriate Committee Chair; the chair will conduct the initial screening.

- See Guidelines for Topic Submissions.
- A sample topic proposal is attached. All proposals should be submitted in the prescribed format.

**Reviewer:** Each topic proposal author should include two suggested reviewers with their topic proposal submission, along with the names of the Washington, D.C. tax officials with whom they have discussed the topic proposed and whether the official is receptive to the proposal.

**Restriction on Reviewers:** Neither of the selected reviewers can be a member of, employed by, or otherwise associated with the writer's company or firm.

For those proposing, drafting or reviewing papers, additional information, including a detailed list of questions to consider, is attached. Also attached are a sample topic proposal and final paper from a prior Delegation.

Committee Chairs must submit final topic proposals to Chad Nardiello or Jason Galek on or before **December 3, 2018**. Please note that this is a firm deadline.

## **REVIEWERS**

Each paper should be reviewed and edited by a Committee Chair or by a designated Committee member before it is submitted to Chad Nardiello or Jason Galek. The paper must meet the quality standard of an appellate brief (that is, well-organized and captioned, cite-checked using Blue Book style, perfect spelling and grammar, etc.). Papers that do not meet this standard to the satisfaction of the appropriate Oversight Committees or Boards of the respective Taxation Sections will be rejected.<sup>2</sup> The decisions of the appropriate Oversight Committees or Boards of the respective Taxation Sections will be final.

Each author should choose reviewers who have time to provide meaningful feedback on the paper. Each author should submit the name, contact information, and practice area of two reviewers to the Committee Chair with their topic proposal. The Delegation committee will approve all reviewers.

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<sup>1</sup> Legislative proposals are less likely to be implemented than administrative proposals.

<sup>2</sup> In some cases, the editorial process has been lengthy. Papers have been rejected late in the editorial process when the designated author was not willing to make further revisions.

The reviewers must be knowledgeable in the area of law being discussed in the paper.

Writers are encouraged to seek advice from reviewers during the writing process, but neither reviewer can be a member of, employed by, or otherwise associated with the writer's company or firm. The reviewers will read the topic and final paper for substantive issues. Reviewers are not considered to be editors.

### **FORMAT**

Each paper must follow a designated format, including a one-page Executive Summary with separate captioned sections describing current law, reasons for change, and an explanation of the proposal(s). Attached are detailed instructions for writers for use in formatting papers to ensure uniformity. **The formatting instructions must be followed.**

### **REIMBURSEMENT**

Each member of the Delegation is encouraged to obtain reimbursement from his or her firm for travel and other expenses associated with the trip as actual expenses will exceed any amount reimbursed by the Taxation Sections. This year, the CLA has agreed to reimburse a maximum of \$1,000 per author, up to a maximum of \$1,500 per paper. Accordingly, if more than two presenters for a particular paper travel to Washington, D.C., shared presenters must share the \$1,500 reimbursement. Unreimbursed travel costs of the presenter(s), and all travel costs of spouses, companions or children accompanying participants, will be the responsibility of the participant.

Certain group events during the Delegation will be paid for by the Delegation members by a reduction of the final reimbursement. For example, participant contribution has been about \$250.00 (to cover the Sunday dinner, Monday lunch, and Tuesday lunch.) We expect a similar expense this year that will reduce the total amount of reimbursement received.

## **SCHEDULE OF DEADLINES FOR D.C. PAPERS**

October – November	<i>Committee Chairs</i> solicit and encourage topic proposals; review relevant portions of IRS priority guidance plan, if any; test topical interests with relevant tax officials.
December 3, 2018	<b><u>TOPIC PROPOSAL DEADLINE:</u></b> Committee Chairs need to submit a minimum of 2 written topic proposals to Chad and Jason.
January 28, 2019	<b><u>EXCOMM MEETING:</u></b> Final approval of selected topics, Chad and Jason will notify selected writers to begin drafting.
February 18, 2019	<b><u>FIRST DRAFT DUE:</u></b> Authors must submit draft papers to their approved reviewers for initial review and editing, (copy to Chad and Jason).
February 18, 2019	<b><u>EXECUTIVE SUMMARY DUE:</u></b> Final draft of executive summary due to <i>Committee Chairs</i> collect final draft of executive summary and submit to Chad and Jason.
February 25, 2019	<b><u>REVIEWERS:</u></b> Final official review of papers completed with comments to authors.
March 11, 2019	<b><u>FINAL DRAFT DUE:</u></b> Final, reviewed, revised papers including executive summaries submitted to Chad and Jason.
March – April 2019	<b><u>TRAVEL AND HOTEL INSTRUCTIONS:</u></b> Hotel and travel information will be provided to the Delegation members.
May 5 – 7, 2019	<b><u>DC DELEGATION</u></b>



## **GUIDELINES FOR TOPIC SUBMISSIONS**

**DUE to Chad and Jason by December 3, 2018**

So that we may ensure quality and control the limit of papers to a manageable number, Committee members wishing to be considered for participation in the 2018 Washington, D.C. Delegation are required to submit a written proposal of approximately two to three pages in length.

Each written proposal must include the following:

1. An outline of the substance of the proposed topic with appropriate detail of the subject matter to be covered.
2. A discussion of the current law, and the reason for the proposed change, together with an explanation of the proposed change in sufficient detail to permit technical evaluation.
3. A “Problems Addressed” section should identify the problems addressed by the proposal; indicate why the problem is sufficiently important and widespread to merit attention; and state whether other proposals have been advanced to address the same problem.
4. A “Merits of the Proposal” section, noting the proposal’s advantages and disadvantages for various categories of taxpayers or transactions, both as compared to current law and as compared to other proposals for changing the law.
5. A discussion of any important collateral consequences the proposal may have with respect to other tax laws.
6. An explanation of why the proposal is feasible - politically and economically.
7. The names of the tax officials in Washington, D.C., with whom you have discussed the proposal and a brief summary of their responses/feedback.
8. A statement whether the author has a matter involving the issue pending before the Internal Revenue Service or any court.
9. The names of two suggested reviewers (neither reviewer can be a member of, employed by, or otherwise associated with the writer’s company or firm).

## **QUESTIONS & ISSUES TO CONSIDER WHEN PROPOSING, DRAFTING & REVIEWING TOPICS, PROPOSALS & PAPERS**

The following questions should help you formulate proposals, draft or review papers, and anticipate questions from officials in Washington, D.C.:

### **1. Why should the government take any action on this issue?**

- What makes it important enough to incur the costs of changing the current rules?
- Why should action be taken now?
- Have there been any new developments, such as a new case, a new position by the IRS, or economic changes?

### **2. What are the problems with the current law?**

- How widespread are the problems? On a macro level, possible problems include cost, complexity, administrability and horizontal inequity.
- On a micro level, for whom or what is the current regime a problem?

Consider both categories of transactions and categories of taxpayers. Be as particular as possible in identifying the problems and reasons for change.

### **3. What are the advantages of your proposal?**

- Whom would it help and how?
- If you are carving out a category for special treatment when there are others arguably similarly situated, what justifies the special treatment?

### **4. What are the disadvantages of your solution? (Ask yourself the questions a government official would ask)**

- Whom would it hurt? Consider groups other than your own clients; small business vs. large; individual taxpayers; fiscal year taxpayers; taxpayers subject to AMT; particular industries; particular transactions, etc. Do not forget the government's interest. Discuss your ideas with the staffers at Treasury and IRS responsible for the area.
- Would your proposal open loopholes? How can you guard against abuse and avoid complicating the proposal?

- 5. What analogies to your proposal exist in the current law?**
  - Do they argue in favor or against your solution?
  - Have they been developed for situations and problems that are similar to or different from your problem?
- 6. Why should action be taken at the level you propose (legislation vs. regulation vs. revenue ruling)?**
- 7. If you are proposing administrative action, does Treasury have the authority?**
- 8. Are there other proposals to address the issue already on the table (possibly from other bar groups, the ALI or AICPA, trade associations, academia or state legislation)?**
  - How do they compare to your proposal?
  - What are the advantages and disadvantages of each of those alternatives?
  - If your first choice were to be rejected, do you have an alternative proposal?
- 9. Have you discussed the relevant legislative or administrative history?**
  - What was the stated purpose for adopting the current rule?
  - Have you thoroughly addressed those concerns?
  - Might there be other, unexpressed (for example, political) reasons for the current law? Does your proposal address these concerns?
- 10. What are the collateral consequences of your proposal for other tax laws?**
- 11. Might your proposal affect laws and rules outside of tax? Why should the problem be addressed through the tax laws?**
- 12. What do you have to add that is unique for a lawyer from California or Los Angeles? Consider state law, our economic base, population mix, etc.**
- 13. Is your paper as short as possible? Your paper should be thoughtful and thorough, but to the point.**
- 14. Do you have an accurate, brief and inviting title for the paper?**

## **FORMATTING INSTRUCTIONS FOR DELEGATION PAPERS**

The following are FORMATTING NOTES for typing the papers. Please endeavor to use Microsoft Word in preparing the paper. It is vitally important that you follow the instructions below so that all papers are uniform when they are transmitted to Washington, D.C.

Please refer to the attached Sample paper written by Robert Horwitz and Carolyn Lee. If the following format is followed closely, your paper should come out just like the Sample. All papers must be presented in the same format as the attached sample paper and prepared in strict accordance with the Formatting Notes. **Any papers that are not properly formatted will be returned to the author to correct. Recommended page length is between 15-20 pages.**

### **Overall document form:**

**T/B Margin:** 1”/0.667” (units of measure: 6/4) L/R Margin: 1.5”/1” (units of measure: 15/10)

**Widow/Orphan:** Yes

**Justify:** Full

**Tabs:** as preset every 0.5”

**Spacing:** Single; 2 Hard return between paragraphs

**Font:** Times New Roman (Scalable) 14 pt. (except footnotes – see “Footnotes:” below – and “Page Numbering” - see below)

**Page Numbering:** Begin with page “1”, but suppress printing page number on first page only. Use Times New Roman (Scalable) 12 pt. Center at bottom margin (.667”). Do not put dashes before and after the number.

**Footnotes:** Font: Times New Roman (Scalable) 10 Pt.

Note: If your footnote has to be split into two pages, please make sure you have “Continued” message on the second page of such footnote. In Microsoft Word, make sure that you are in normal view mode. Click “View,” then “Footnotes,” then “All Footnotes,” then “Footnote Continuation Notice,” and then type the text.

Footnotes #1 and #2 (appear on first page of proposal paper) are identical on all papers. The footnotes should read as follows:

1. The comments contained in this paper are the individual views of the author(s) who prepared them, and do not represent the position of the California Lawyers Association or of the Los Angeles County Bar Association.
2. Although the authors and/or presenters of this paper might have clients affected by the rules applicable to the subject matter of this paper and have advised such clients on applicable law, no

such participant has been specifically engaged by a client to participate on this project.

**Footer:** On every page of your paper (including first page), you should put the principal author(s)'s name(s) on the bottom right hand margin. The Font for this footer is Times New Roman (Scalable) 10 Pt., then flush right to put the Author's Name. This footer should appear evenly with the page numbering.

**First Page, TITLE PAGE formatting (please refer to Sample paper for appearance):**

Title 1: Font: Times New Roman Bold (Scalable) 14 pt., centered, [bar affiliation] [three lines space]

Title 2: Font: Arial Bold (Scalable) 14 Pt., centered, [paper title] [five lines space]

Intro: Font: Times New Roman (Scalable) 14 pt. [three lines space]

[Tab] Contact Person: [2 Tabs]

Name

Address Telephone

**Second page, EXECUTIVE SUMMARY page(s):**

You must prepare a one-page Executive Summary which succinctly summarizes the cogent elements of your presentation.

[Continue Font: Times New Roman (Scalable) 14 pt.]

Headings: Centered in Bold: **EXECUTIVE SUMMARY** (all caps)

[3 hard return between title and body]

Body of Text: Tab over 1 inch to start new paragraphs.

**Balance of Paper (DISCUSSION):**

[Continue Font: Times New Roman (Scalable) 14 pt.]

Headings: Centered in Bold: **DISCUSSION** (all caps) [starts on a new page after **EXECUTIVE SUMMARY.**]

Main paragraph Headings (Level 1) **Bold, ALL CAPS**, at the margin, Roman style numbering (I, II, etc.), one tab over, then type the main heading. Two hard returns, tab over to align with main paragraph heading, start the text of paragraph.

Sub-headings under same main paragraph (Level 2): **Bold**, tab once, capital letters (A, B, C, etc.), align letter with title of main paragraph heading.

Sub-sub headings under subheadings (Level 3): ***Bold Italics***, tab twice, Arabic number (1, 2, 3, etc.), align number with title of sub-heading.

Example:

**I. MAIN PARAGRAPH HEADING.**

[Text of paragraphs.]

**A. Sub-heading.**

[Text of paragraphs.]

**1. *Subheading.***

[Text of paragraph.]

**Exhibits:** Please follow the same format as the main paper. Continue the page numbering sequentially.

## **2018/2019 COMMITTEE CHAIRS**

### Compensation and Benefits

#### Corp & Pass-Through Entities

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