



Taxation Section

2024 Washington, D.C. Delegation

April 30 to May 1, 2024

Delegation Chair: Natascha Fastabend (nfastabend@law.uci.edu)

Delegation Vice Chair: Mike Shaikh

Delegation Team Members: Thomas Giordano and Raul Villarreal-Garza

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Website with past papers - <https://calawyers.org/section/taxation/washington-dc-delegation/>

About the Delegation

For over 30 years, the Taxation Section (first as part of the California Bar Association, and now part of the California Lawyers Association) has sent an annual delegation to bring California tax lawyers and their ideas to Washington, D.C. Delegates are members from the Taxation Section of the California Lawyers Association who share their ideas and engage in lively discussions with key tax officials and staff members from the following government offices, depending on availability and interest:

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

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 experience and concerns of California tax lawyers. Past Delegations have raised 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 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, the papers are often published both in national and state-wide tax journals, such as *Tax Notes* or *The California Tax Lawyer* (CLA journal), and a number of the proposals have been adopted. Please note that publication is not guaranteed.

Typically, this event is held the same week as the American Bar Association Tax Section May Meeting held in Washington, D.C. which is held May 2 - May 4, 2024.

Deadlines

The 2024 Washington D.C. Delegation is currently planned for **April 29 (evening) to May 1, 2024**. The following deadlines apply:

Submissions of proposals, draft papers and final papers by the dates noted below should be sent to nfastabend@law.uci.edu, member of the Taxation Section Executive Committee.

Date:	Action Item(s):	Description:
December 15, 2023	Paper Topics Proposals	Paper proposals in proper format (<i>see 5</i>) are due to the Taxation Section Executive Committee <u>no later than December 15, 2023</u> .
January 8, 2024	Inform Authors of Selected Papers	Authors will be informed by the Taxation Section Executive Committee if their papers are approved, rejected, or require additional development. Papers that are not rejected or approved will be given an independent timetable to resubmit for additional consideration.
February 20, 2023	First Draft Executive Summary	Submit a first draft of your Executive Summary to the Taxation Section Executive Committee and your reviewers <u>no later than February 20, 2023</u> .

February to April	Travel arrangements	Be sure to make air and hotel arrangements. Information on hotel to be provided by the CLA Tax Section.
March 4, 2024	Government Contact Information	Submit names and contact information of any government employees you may have been in contact with, for coordination by the Taxation Section Executive Committee.
March 18, 2024	First Draft Paper	Submit a first draft of your full paper to the Taxation Section Executive Committee and your two reviewers <u>no later than March 18, 2024</u> . Ask your reviewers to send comments to you within 7 to 10 days.
April 8, 2024	FINAL PAPERS	Submit the <u>final</u> version of your complete paper (<i>see</i> 12) to the Taxation Section Executive Committee <u>no later than April 8, 2023</u> .
April 29, 2024	Reception (<i>location TBD</i>)	Delegates must attend this reception for reminders of events and to deliver a 2- to 3-minute summary of your paper to other delegates and others participating in the Supreme Court swearing-in ceremony.
April 30, 2024	Delegation Day 1	Schedule TBD Lunch together at Old Ebbitt's Grill – details to be provided
May 17, 2023	Delegation Day 2	Schedule TBD Lunch on own

Paper Topic Proposals and Format

So that we may ensure quality and control the limit of papers to a manageable number, members wishing to be considered for participation in the 2024 Washington, D.C. Delegation are required to submit a written proposal no longer than 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, if any.
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).

When formulating your proposal, draft or papers, consider asking yourself the following:

- 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?
- 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.
- 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?
- 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?
- 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?
- Why should action be taken at the level you propose (legislation vs. regulation vs. revenue ruling)?
- If you are proposing administrative action, does Treasury have the authority?
- 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?
- 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?
- What are the collateral consequences of your proposal for other tax laws?
- Might your proposal affect laws and rules outside of tax? Why should the problem be addressed through the tax laws?
- Is your paper as short as possible? Your paper should be thoughtful and thorough, but to the point.
- Do you have an accurate, brief and inviting title for the paper?

Proposals for D.C. Delegation papers must comply with the following template:

1" Top, Bottom, Left, Right Margins

**Alignment: Centered
Font: Arial
Size: 12, Bold**

4 Returns

**Alignment: Centered
Font: Arial
Size: 12, Bold**

4 Returns

4 Returns

3 Returns

**Alignment: Centered
Font: Arial
Size: 12**

0.5" Indent

**Alignment: Left
Font: Arial
Size: 12, Bold, Underlined**

**Alignment: Left
Font: Arial
Size: 12**

1 Return

Following the initial page, formatted as detailed above, each proposal must next include the following sub-parts, as detailed in the following example:

- A. **Outline of Proposed Topic**
 1. **Sub-Parts should follow 1., 2., 3., etc. formatting.**
 - a. **Followed by a., b., c., etc. formatting.**
- B. **Current Law and Rationale for Proposal**
- C. **Problems Addressed**
- D. **Merits of Proposal**
- E. **Feasibility**
- F. **Tax Officials Contacted**
- G. **Required Statement**
- F. **Suggested Reviewers**

**CALIFORNIA LAWYERS ASSOCIATION TAXATION SECTION
2018 WASHINGTON DELEGATION TOPIC SUBMISSION**

**PROPOSED CHANGES TO IRS EARNED INCOME TAX CREDIT ("EITC") (OR
MORE BROADLY, REFUNDABLE TAX CREDITS) DUE DILIGENCE STANDARDS
UNDER IRC § 6695(g)
(Treas. Reg. §§ 1.6695-2, 1.6695-2T)**

Submitted on behalf of the Tax Procedure & Litigation Committee

EXAMPLE

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A. Outline of Proposed Topic

This paper reviews the recent 2015/2016 changes to the IRS refundable tax credit due diligence standards found at IRC § 6695(g), and Treas. Reg. §§ 1.6695-2 and 1.6695-2T. It further proposes legislative, regulatory, and administrative changes for considerations.

Enacted as part of the Taxpayer Relief Act of 1997, IRC § 6695(g) imposes a penalty on tax return preparers who fail to comply with certain due diligence requirements when preparing return(s) that claim Earned Income Tax Credits ("EITC") under IRC § 32. Between 1997 and 2011, the penalty was \$100 per return. Since 2000, the requisite due diligence requirements have been imposed via regulations, and include, notwithstanding recent revisions:

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1. Completion of eligibility checklist,
2. Correct computation of credit,
3. Not know, or have reason to know, that any information used in determining eligibility for the EITC is incorrect, and
4. Retention of records.

In 2011, as amended by the United States-Korea Free Trade Agreement Implementation Act, the IRC § 6695(g) penalty was increased to \$500 per return. The IRC § 6695(g) penalty is now indexed to inflationary increases as a result of the Tax Increase Prevention Act of 2014, and for tax year 2017 sits at \$510 per return.

Most recently, the Protecting Americans from Tax Hikes Act of 2015 (“PATH Act”), extended the application of the IRC § 6695(g) penalty and due diligence requirements to other refundable tax credits: (a) the child tax credit (CTC); (b) additional child tax credit (ACTC); (c) and the American Opportunity Tax Credit (AOTC).

This paper comments on the December 2016 changes and makes several suggestions about the current IRS refundable tax credit due diligence requirements.

B. Current Law and Rationale for Proposal

In 2015 the PATH Act extended the IRC § 6695(g) EITC penalty and due diligence standards to 2016 returns claiming CTC, ACTC, and AOTC. Temporary regulations, found at Treas. Reg. §§ 1.6695-2, 1.6695-2T, were released on December 5, 2016.

The general due diligence requirements have generally remained the same, *i.e.*, (1) complete and submit Form 8867; (2) correctly compute the credit; (3) “knowledge;” and (4) document retention. The December 2016 standards have, however, given some clarification as to certain requirements. For example, the term “or known by the tax return preparer” was added to requirements 1 and 2, whereas the pre-2016 versions of the regulations only maintained an “otherwise reasonably obtained” standard.

However, the current law (even before the expansion of the requirements to CTC, ACTC, and AOTC returns and changes presented in Treas. Reg. § 1.6695-2T) suffers from various inequities and structural problems.

C. Problems Addressed

This paper addresses and provides proposed changes to the, now broadened, refundable tax credit due diligence penalty program on the following issues:

demonstrate to the satisfaction of the IRS that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements ... and the failure to meet the due diligence requirements ... with respect to the particular tax return or claim for refund was *isolated and inadvertent*." This paper will attempt to address confusion created by lack of guidance in the "isolated and inadvertent" standard where contrasted to "reasonable cause," for which there is considerable precedent.

5. **Additional guidance is needed for Revenue Agents on how to apply due diligence standards, particularly the "knowledge" element.** The Internal Revenue Manual and other administrative items lack clear guidance on how to apply the IRC § 6695(g) due diligence standards, particularly with respect to the third, "knowledge," element. Revenue Agents are often creating *ad hoc* standards to support conclusions. Additional guidance is needed to create uniform standards when investigating paid preparers.

D. Merits of Proposal

The absence of some guidance under Treas. Reg. §§ 1.6695-2 or 1.6695-2T creates uncertainty among the paid tax return preparer community. Moreover, the substance of this proposal is also highly relevant as the issues addressed are listed in the IRS's 2016-2017 Priority Guideline Plan.

E. Feasibility

Guidance under Treas. Reg. §§ 1.6695-2 and 1.6695-2T is politically and economically feasible as it provides a clearer standards to the large industry of (unregistered) tax return preparers. This paper proposes legislative, regulatory, and administrative changes that can each be made with relative ease across government.

The proposal will also facilitate greater and more consistent administrative enforcement and is listed in the IRS's 2016-2017 Priority Guideline Plan.

F. Tax Official Contacts

Recent contacts have been made to the following officials:

- Elizabeth Church (Branch Chief, Procedure & Administration)
- Blaise G. Dusenberry (Sr. Technical Reviewer (Procedure & Administration))
- Rachel L. Gregory, IRS Office of Chief Counsel
- Spence Hanemann, IRS Office of Chief Counsel

- David J. Bergman, IRS Office of Chief Counsel

Updates will continue as soon as possible regarding their ongoing interest.

G. Statement

The author has no matter currently pending before the IRS or any court that is or could be impacted by Treas. Reg. §§ 1.6695-2 or 1.6695-2T and these proposals.

H. Suggested Reviewers

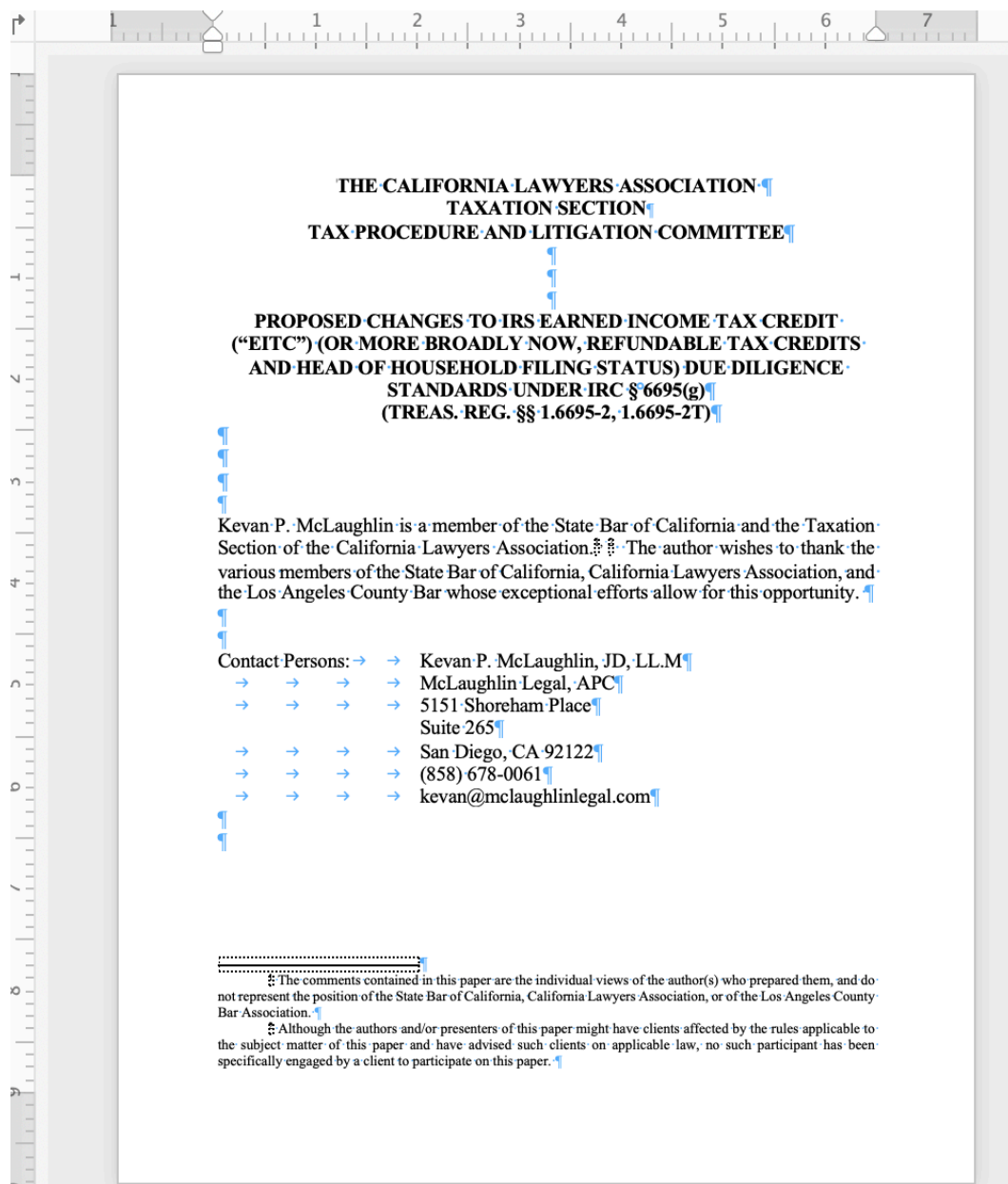
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Paper Style and Formatting Guide

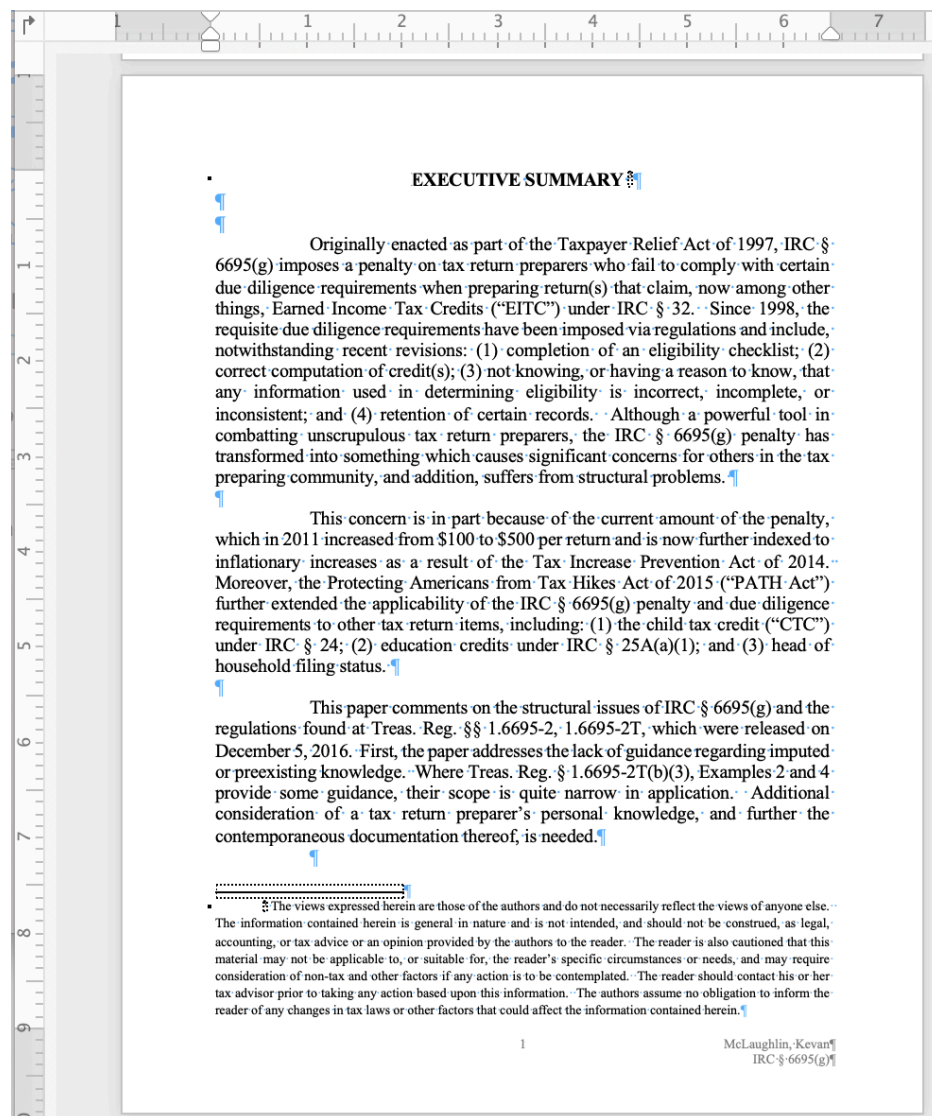
Final D.C. Delegation papers must comply with the following formatting guidelines.

The first page of your final paper will be its TITLE PAGE with the following formatting guidelines:



Modifications should be made to reflect the California Lawyers Association rather than the State Bar of California.

Immediately following the cover page, each paper must have an EXECUTIVE SUMMARY, intended to be one page or less, as follows:



Following the EXECUTIVE SUMMARY, papers will proceed with the DISCUSSION using the following numbering format:

DISCUSSION

I. HEADER ONE

A. Sub-Header One

B. Sub-Header Two

1. Sub, Sub-Header One

2. Sub, Sub-Header Two

i. Sub, Sub, Sub-Header One

ii. Sub, Sub, Sub-Header Two

II. HEADER TWO

FAQs

Q Are there any COVID-19 protocols for the trip to Washington, D.C.?

Yes. Although the D.C. Delegation will not occur for months, and the future requirements are unknowable, we want to be proactive and inform our government contacts what steps we are prepared to take to keep everyone safe. It is possible – if not certain – that Delegates will need to provide proof of full vaccination to participate in the 2024 Delegation.

Q Will all meetings be in person?

The plan is for all 2024 meetings with government offices will be in person. But, we cannot guarantee this because of possible changes in COVID-19 protocols and many offices are allowing employees to work from home. If any of the meetings are only virtual, we will arrange to do them as a group from a conference room at the Sofitel (recommended hotel for the delegation).

Q Do the Taxation Section Standing Committees play a role in the D.C. Delegation?

Yes. Standing 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 Standing Committee members in selecting and developing topics, Committee Chairs should consider consulting the current IRS Priority Guidance Plan.

Q Where can I get ideas for suggested topics?

We have found that legislative proposals, especially those that would reduce tax revenues or require legislative change, 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 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.

The D.C. 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 delegate is engaged in such behavior, that delegate and his or her paper may be excluded from some or all of the Delegation events. Such 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 Priority Guidance Plan. A delegate 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.

Prior year delegates 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 Annette Nellen. *Start early as it may take several days and a series of telephone calls to contact the appropriate governmental official.*

Q Are these firm deadlines?

Yes. In order to plan a successful event, the Taxation Section Executive Committee needs each Delegate to meet each deadline. If a Delegate cannot meet any one of the deadlines outlined herein, please reach out to us **as soon as possible**.

Q Will any of my costs be reimbursed?

Sort of. Each delegate is encouraged to obtain reimbursement from his or her firm for travel and other expenses associated with the trip because actual expenses will exceed any amount reimbursed by the Taxation Section. For the 2024 D.C. Delegation, the CLA has agreed to reimburse a maximum of \$500 for a paper authored by a single author and \$750 for a paper with multiple authors. Applicants whose firm or organization will not reimburse may be eligible for reimbursement by the Taxation Section if they demonstrate financial need. If you are seeking reimbursement, please contact the section. Accordingly, if more than two presenters for a particular paper travel to Washington, D.C., those presenters must share the \$750 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.

Topics of Prior Delegation Papers

Website with past papers - <https://calawyers.org/section/taxation/washington-dc-delegation/>.

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