

**AMERICAN BAR ASSOCIATION
SECTION OF TAXATION
GUIDE TO COMMITTEE
OPERATIONS**

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CHAPTER 1

Section Principles and Procedures

- 1.1. Mission Statement; Goals.** To lead and serve the members of the ABA Section of Taxation, the legal profession, and the public to achieve an equitable and efficient tax system.

Goals:

- I. To serve as the national representative of the legal profession with regard to the tax system
 - II. To improve public understanding of, confidence in, and respect for the tax system
 - III. To provide leadership in simplifying and improving the tax system
 - IV. To provide unbiased, thoughtful, and timely input into the legislative and administrative process
 - V. To promote and maintain an active, vigorous, growing, and interested Section membership
 - VI. To provide programs and services of unique quality which promote professionalism, competence, and ethical conduct
 - VII. To provide a national forum for communication among Section members and interchange between the public and private sectors
- 1.2. Conflicts of Interest.** Members of the Section of Taxation should always be mindful of their dual capacity; *no member should permit the interest of a client to cause him or her to support or oppose within the Section a proposal that he or she would otherwise not support or oppose within the Section.* This is not only a matter of ethical responsibility, but it is also a matter of enhancing the effectiveness and credibility of the Section. Members of the Section should be mindful of ABA Model Rule 6.4, which provides that, "[w]hen the lawyer knows that the interests of a client may be materially benefited by a decision [of a law reform organization] in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client." See also, to the same effect, ABA Model Code, EC 8-4. Accordingly, when actively supporting or opposing a position within the Section, a member should determine that he or she acts out of personal conviction rather than client interest and should make disclosure where a client may benefit materially as a consequence of such support or opposition. Disclosure should ordinarily be made by notifying the Committee Chair or other Section person responsible for the proposal that the member has a client interest. The member should not disclose the identity of the client or the nature of the engagement. In assessing these responsibilities, the member should take account of all client relationships of his or her firm to the extent actually known to the member. Members who contemplate making disclosure of

client interest in accordance with this policy should be mindful of their responsibilities under ABA Model Rules 1.6 (confidentiality) and 1.7 (conflict of interest) or under comparable rules applicable in their jurisdiction of practice.

If a member (or the member's firm to the member's actual knowledge) has been engaged by a client to influence a government decision or policy determination on an issue that is also under consideration within the Section, such member shall not participate (or, upon receiving actual knowledge of such engagement, shall cease participation) in the preparation of Section material intended to be submitted to governmental personnel with respect to that issue. The member may, after disclosure as provided in the preceding paragraph, supply information or analysis related to the decision or determination for consideration by Section members who are preparing Section material. In applying this paragraph, good judgment is called for in identifying the scope of an issue and the member's consequent disqualification. Some issues may be fundamental to the project, thus requiring complete disqualification; others may be narrow, warranting only limited preclusion. The term "material" as used in this paragraph consists of Section work product that is required under Section procedures to be submitted to the Committee on Government Submissions for review by it.

This policy applies to all Section projects, including, without limitation, comments on proposed or existing legislation, regulations, rulings or government policies. It is the special responsibility of the officers of each Committee, in staffing a project, to give particular thought to the matter of actual or apparent conflicts of interest, not only to avoid potential criticism, but also to encourage the formulation of the product of a balanced view.

Members who encounter uncertainties in the application of this policy should consult with any officer or member of Council.

- 1.3. Tax Policy Issues.** It is the policy of the Section to confine its recommendations, comments, and testimony to its areas of professional expertise. The simplicity, enforceability, fairness and probable effect of the tax system on economic, business and personal behavior are all within the area in which the Section believes it is expert. The need for a tax cut to stimulate the economy or the need for a shift in tax burdens between income classes illustrates economic and political questions on which the Section does not believe it is expert. Many issues of fundamental tax policy involve both the legal, technical and tax system policy issues on which the Section is expert. It is the policy of the Section, in considering such issues, to confine its comments to the aspects of the issue on which the Section is expert; such comments are explicitly subject to the effect of the remaining aspects of the issue on which the Section is not expert.
- 1.4. Liaison.** It is the Section's policy to promote cooperation and the exchange of ideas and opinions among the private sector, government staffs, and agencies, other ABA Sections, and other professional organizations interested in taxation, including the tax

committees or sections of state or local bar associations. Procedures relating to conferences or communications with federal, state or local government representatives are described in Chapter 8. Communications with other ABA Sections or with organizations (other than a federal government agency) outside the ABA should be cleared with the Chair (see Section 7.7).

- 1.5. Limitation on Independent Comments or Other Actions by Section Leadership, including Committee Officers.** Section officers, members of Council, and Committee officers may not submit written comments that purport to be individual comments or appear before the Internal Revenue Service, the Department of the Treasury or a congressional committee in an individual capacity without the advance approval of the Section Chair. When a member of Section management, including a Committee officer, seeks to offer independent views on a tax matter, the press and the government representatives with whom the Section regularly deals may not appreciate good faith efforts to distance the individual's views from those of the ABA or the Tax Section. For example, if a Committee Chair testifies before one of the tax-writing committees or appears at an IRS hearing on a proposed regulation, even though the individual clearly identifies the comments as not endorsed by the ABA or the Tax Section, by reason of the person's position as a Committee Chair, the comments may be perceived as having an ABA or Tax Section imprimatur. In order to avoid potential confusion, the approval of the Section Chair is required before the submission of any comments or before any appearance by a Section officer, Council member or Committee officer unless the individual is clearly identified as acting in a representative capacity on behalf of a disclosed or undisclosed client. All Section officers, Council members and Committee officers will be expected to agree in writing to abide by this policy during the term of their office (see Section 2.3 et seq.).

CHAPTER 2

Policy on Outside Communication

- 2.1. ABA Generally.** The ABA is exempt from federal income taxation as a business league under section 501(c)(6) of the Internal Revenue Code. As a business league, the ABA is not prohibited from presenting the views of its membership to legislative bodies or to the public. The House of Delegates is the policy-making body of the ABA. The House of Delegates meets twice yearly, generally in February and August, and considers reports and recommendations of Sections, other ABA entities and state and local bars. Reports and recommendations approved by the House Delegates become ABA policy. The Board of Governors has authority to act for the House Delegates between meetings of the House.
- 2.2. Relationship Between ABA and the Section.** Because the Section is an integral part of the ABA, it must follow the procedures and policies of the ABA with respect to its activities. The Section reports to, and is subject to the jurisdiction of, the ABA's House of Delegates and Board of Governors.
- 2.3. Communications of Section Policy.** ABA and Section procedures provide for the dissemination of the views of the Section in various forms, including as a statement of ABA policy or of Section policy or as Committee reports. Communications with persons outside the ABA on positions that have not been adopted as ABA or Section policy must not be mistakenly viewed as having been approved by the ABA or the Section. Communications in this instance include not only telephone conversations and correspondence with representatives of the media and others, but also documents and other final work product produced by Committees or Subcommittees, or prepared in connection with other Section activities, that are proposed to be published or otherwise disseminated outside the Section (whether to the government, to private individuals or organizations). Care should be exercised to see that a document is marked to state that it does not represent ABA or Section policy and that any oral or written communication is similarly qualified.
- 2.3.1. Speaking on Behalf of the ABA.** The Section develops, with respect to matters within its jurisdiction, proposed resolutions or statements of ABA policy (including legislative recommendations). The Section submits such proposals, after they have been approved by the Section, to the House of Delegates or Board of Governors for approval as ABA policy. The ABA President usually designates the Section Chair as the spokesperson for the ABA on ABA approved policy positions initiated by the Section.
- 2.3.2. Speaking on Behalf of the Section (“Blanket Authority”).** The Section may present its own views on matters within its jurisdiction (such as comments on proposed regulations, suggestions for new legislation, etc.) to a federal, state or local legislative body, court, or government agency, if the views do not conflict with previously adopted ABA policy and certain other requirements are met. *Unless the views to be submitted qualify as “technical comments” under Section 2.3.3, the “blanket authority” procedure must be followed.* Under the

blanket authority procedure, the Section, after approving a proposed position, statement or report, must distribute copies of the proposal to ABA officers and to all sections, divisions and other relevant ABA entities. If no objection is raised within the prescribed time limit (or if the House of Delegates or Board of Governors, if asked to intervene, overrules the objection), the Section may present the views set forth in the proposal as its own. Any such presentation must clearly indicate that: “The views expressed herein are presented on behalf of the Section of Taxation. These comments have not been approved by the Board of Governors or House of Delegates of the American Bar Association and should not be construed as representing the policy of the American Bar Association.” Generally, the Section Council needs five working days to approve a policy and the ABA requires two weeks to approve a “blanket authority.” If the ABA approves, the Section has two years to speak on the subject. An expedited blanket authority procedure is available in special circumstances. This policy requires Council approval and a two-day approval process by the ABA. If approved by the ABA, this procedure allows the Section to speak for 90 days on the subject. Any Section, Division or ABA entity has veto authority over either of the blanket authority procedures. The timetable for and other details of the blanket authority procedure are contained in Chapter 6 of the *ABA Policy and Procedures Handbook*.
<http://www.abanet.org/about/>

2.3.3. Technical Comments. The blanket authority procedure described in Section 2.3.2 does not apply to submissions that qualify as “technical comments.” To qualify as technical comments, the submission must be narrowly focused and must be submitted in response to a time-sensitive solicitation for comments from the Department of the Treasury, the Internal Revenue Service, the Department of Labor or the Pension Benefit Guaranty Corporation. Technical comments should only be submitted to the agencies listed above, comments to any other agency or branch of government must be submitted through the blanket authority procedure. The comments must deal with subject matter that is within the Section’s primary or special expertise and jurisdiction and cannot be in conflict with ABA policy or with other comments authorized to be submitted pursuant to blanket authority procedure. Technical comments must be reviewed and approved by Section leadership. Before filing technical comments with the government agency, the Section must provide copies of the proposed submission to other sections (if any) that are entities with respect to the subject matter addressed by the submission. **As of May, 2009 those sections are Health Law, Intellectual Property Law, International Law, Public Utility, Communication and Transportation Law, Labor and Employment Law and Dispute Resolution.** The reviewing Section is allowed 5 business days to review technical comments when the comment period is more than 30 days and 2 business days when the comment period is 30 days or fewer. Technical comments are submitted on behalf of the Section (or a Committee) and must bear the same legend as blanket authority comments under Section 2.3.2.

2.3.4. Committee Reports. A statement of views may be so comprehensive or fundamental that it is appropriate for the entire Committee to participate in its preparation. A Committee Report is the product of such Committee participation. Such Reports may be prepared on the Committee's own initiative or at the suggestion or request of government officials. When a Committee Report is intended or expected to be presented, whether formally or informally, to a government agency, it should be treated as technical comments in accordance with Section 2.3.3, if it meets the requirements applicable to technical comments. Alternatively, a Committee Report may become a policy position of the ABA or the Section in accordance with Section 2.3.1 or 2.3.2. Even when a Committee report is not intended or expected to be presented to a federal, state or local legislative body, court or government agency, but is, for example, a scholarly study, it must bear a legend that it is a Committee product and not ABA or Section policy.

CHAPTER 3
Section Officers, Staff and Publications

- 3.1. Section Officers.** The Section officers and their responsibilities are described below. The role of the Council and Council Directors is described in Chapter 4.
- 3.1.1. Chair.** The Section Chair is responsible for the overall performance of the activities of the Section, speaks on behalf of the Section, and presides at all Section meetings.
- 3.1.2. Chair Elect.** The Chair Elect serves as Chair of the Committee on Committees, arranges for the appointment of the Committee officers for the following year (the year in which he or she will be Chair), and assists the Chair and assumes the duties of the Chair if the Chair is unable to perform them because of absence or disability.
- 3.1.3. Vice Chair (Administration).** The Vice Chair (Administration) is responsible for Section administration, including the development of budgets, financial controls, membership, sponsorship, marketing and meetings. This officer is generally responsible for the staffing and operations of the Section Headquarters Office.
- 3.1.4. Vice Chair (Committee Operations).** The Vice Chair (Committee Operations) is responsible for supervising the operation of all Committees of the Section. This officer coordinates the substantive work and programs of the Committees, works to assure the timely submission of all Committee work product and meeting materials, and is responsible for the assignment of jurisdiction of each of the Committees.
- 3.1.5. Vice Chair (Government Relations).** The Vice Chair (Government Relations) supervises the submission of materials to, and arranges for conferences with, government representatives in order to determine the time limits and the general acceptability of the matters involved and to facilitate the Section's relationship with government offices. Also this officer supervises the activities of the IRS Operating Division Coordinators (see Section 8.2).
- 3.1.6. Vice Chair (Professional Services).** The Vice Chair (Professional Services) coordinates and encourages activities of the Section that will provide additional services to members of the Section and to the Bar generally, particularly the coordination of various Continuing Legal Education projects.
- 3.1.7. Vice Chair (Publications).** The Vice Chair (Publications) is Editor-in-Chief of *The TaxLawyer* and otherwise has responsibility for the *NewsQuarterly*, *The TaxLawyer*, and other publications of the Section.
- 3.1.8. Vice Chair (Communications).** The Vice Chair (Communications) coordinates and supervises Section communications with the media and the public, and is responsible for liaison activities with other organizations concerned with the tax system and the Section's website.

- 3.1.9. Secretary.** In addition to keeping a record of the proceedings of the various meetings of the Section and of Council, the Secretary is available generally to assist the other officers of the Section. The Secretary also serves as the Section's Parliamentarian.
- 3.1.10. Assistant Secretary.** The Assistant Secretary assists the Secretary and, with the Secretary, is available generally to assist the other officers of the Section.
- 3.2. Assistants to Section Officers.** The Section Chair may appoint assistants to the Section officers.
- 3.3. Liaison Representatives to the Section.** The Board of Governors, the Young Lawyers Division and the Law Student Division name liaison representatives to the Section as do certain other Sections.
- 3.4. Section Headquarters.** The Section's Washington office at 740 15th Street, N.W., 10th Floor, Washington, DC 20005; tel. (202) 662-8670; fax (202) 662-8682; e-mail: tax@staffabanet.org; website: www.abanet.org/tax may be used for meetings of Committees and Subcommittees, but advance reservations must be made with the Section office.
- 3.5. Headquarter Staff**
- 3.5.1. Director.** The Director has overall responsibility for operation of the Section office and can provide background information about the Section and ABA policies and procedures.
- 3.5.2. Executive Assistant.** The Executive Assistant is responsible for processing all travel reimbursements, coordinating government and guest speaker requests and works generally with the Director.
- 3.5.3. Associate Director.** The Associate Director acts as the Director of the Section in the Director's absence and is responsible for the public relations and communications efforts of the Section. This position also oversees the pro bono, membership and marketing, sponsorships and technology departments.
- 3.5.4. Staff Counsel.** The Staff Counsel oversees all Section government submissions and coordinates all Committee activities.
- 3.5.5. Pro Bono Counsel.** The Pro Bono Counsel has staff responsibility for all of the Section's pro bono efforts.
- 3.5.6. Director of Meetings.** The Director of Meetings has staff responsibility for the management of all Section meetings and supervision of meeting staff.

- 3.5.7. Assistant Director of Meetings.** The Assistant Director of Meetings has responsibility for the preliminary and final Section programs and meeting logistics. This position schedules all programs and Committee meetings at the Fall, Midyear and May Meetings and other meetings of the Section. The Assistant Director of Meetings should be supplied with descriptions of any meetings or programs (spotlights) that a Committee plans and of any special meetings requirements, e.g., audiovisual equipment, food, etc.
- 3.5.8. Registrar/CLE Coordinator.** The Registrar/CLE Coordinator has staff responsibility for managing and coordinating all registration functions and CLE processes for the Section's Fall, Midyear and May Meetings as well as the Section's stand alone meetings.
- 3.5.9. Director of Publishing & Program Development.** The Director of Publishing & Program Development has staff responsibility for Section publications, including *The Tax Lawyer*, *The State and Local Tax Lawyer*, *NewsQuarterly*, single titles, and materials presented at all CLE meetings including the Fall, Midyear and May Meetings. This position also oversees all CLE programming, including teleconferences and Tax CLE on the Road and supervises other publishing and CLE staff.
- 3.5.10. Marketing and Membership Manager.** The Marketing and Membership Manager has staff responsibility for the Section's membership development and marketing outreach, including oversight of design and development of outreach campaigns and related materials.
- 3.5.11. Sponsorship Manager.** The Sponsorship Manager has staff responsibility for development of Section sponsorships, including outreach to new sponsors and maintenance of existing Section sponsor and exhibitor accounts.
- 3.5.12. Technology Manager.** The Technology Manager has staff responsibility for maintaining the Section's website, including updating content, assisting members with technology needs, and maintaining accurate and updated listserves and links to relevant information
- 3.5.13. Assistant Staff Director, CLE.** The Assistant Staff Director, CLE has staff responsibility for Section teleconferences, Tax CLE on the Road, and other stand-alone CLE programs.
- 3.5.14. Assistant Staff Director, Publishing.** The Assistant Staff Director, Publishing has staff responsibility for collection, publication, and distribution of program materials associated with the Section's three meetings and other stand-alone CLE programs. This position also has responsibility for production and distribution of other section publications and related online resources.
- 3.5.15. Administrative Assistants.** The Administrative Assistants provide general support to staff.
- 3.6. Section Electronic Aids.** Numerous documents are available to assist Committee

officers in fulfilling their responsibilities and can be found at www.abanet.org/tax/leadership.

3.6.1. Section Directory The Section Directory is available online at www.abanet.org/directory

3.6.2. Manual on Government Submissions. All legislative and administrative recommendations, comments on proposed and pending regulations, suggestions for rulings and the format for written testimony are contained in the Manual on Government Submissions (the "COGS Manual"). Instructions on how those submissions should be prepared and to whom they should be sent are also contained in the COGS Manual. The COGS Manual and forms are available online at www.abanet.org/tax/leadership. Forms may be submitted directly online.

3.6.3. Table of IRC Section Responsibilities. This Table, available at <http://www.abanet.org/tax/leadership/> is a listing of the Code sections for which each Committee is responsible. It is revised annually by the Vice Chair (Committee Operations). Annually, no later than April 30, each Committee Chair should review the Table and inform the Vice Chair (Committee Operations) and your Committee's Council Director whether particular Code Sections should either be added to or deleted from the Committee's responsibility.

3.6.4. ABA Section of Taxation Policy. All active legislative, administrative, and state tax recommendations that have become ABA or Section policy are located on the Sections website, www.abanet.org/tax/publicpolicy

3.6.5. ABA Policy and Procedures Handbook. *The ABA Policy and Procedures Handbook* contains the policies and procedures of the American Bar Association.
<http://www.abanet.org/abanet/common/login/securedarea.cfm?areaType=member&role=abanetmo&url=/policy/mo/2006/abapolicyandprocedures06-07.pdf>

3.7. Section Publications. Before the Fall 1981 issue of *The Tax Lawyer*, all legislative and administrative recommendations (in the form presented to the Section members) were included in *The Tax Lawyer*. Since 1981, the legislative and administrative recommendations have been listed in the *Newsletter*. Back issues of *The Tax Lawyer* are available from the ABA and from William S. Hein & Co. Inc., Attn. Manager, Periodicals/Monographs, 1285 Main Street, Buffalo, NY 14209 (Vols. 1-20 were published under the name *Bulletin of the Section of Taxation*).

CHAPTER 4

Role of Council and Council Director

- 4.1. Assignment of Council Director.** The key link between a Committee Chair and Section Officers is the member of Council who has been designated as Council Director for the Committee. The Committees, to the extent possible, are divided into functional groups, one of which is assigned to each Council Director. Council Director designations are made by the Section Chair, effective at the end of each Annual Meeting or at such other time as may be determined by the Chair.
- 4.2. Responsibilities of Council.** The responsibilities of Council are set forth in Article IV of the Bylaws which are available at <http://www.abanet.org/tax/leadership/>.
- 4.3. Responsibilities of Council Director.** The Council Director supervises and is responsible for the performance of the assigned Committees. The Committee Chair and Vice Chair(s) and the Committee's Council Director should work together closely in discussing and developing programs for the Committee. The Council Director should assign law improvement projects to the Committee and be kept fully advised by the Committee Chair with respect to the nature and the progress of the Committee's work at all times. The Council Director should:
- Attend all meetings of the Council (four per year).
 - Supervise and be responsible for the performance of the Committees assigned to him or her.
 - Meet in person, by telephone or by e-mail with each Committee Chair and Vice Chair(s) at least quarterly.
 - Attend a conference call with the Vice Chair (Committee Operations) and the Staff Counsel three times a year as described in Section 4.7.
 - Work together with each Committee's Chair and Vice Chair(s) to plan and develop programs for each Committee's meeting at the Midyear, May and Fall Meetings of the Section.
 - To the extent possible, attend some portion of each Committee meeting held in conjunction with the Midyear, May and Fall Meetings of the Section.
 - Attend the Committee Chairs and Vice Chairs Breakfast at each of the Midyear and Fall meetings and Incoming Chairs and Vice Chairs Breakfast at the May Meeting.
 - Assist the IRS Division Coordinators with the assignment of law development projects to the Committee and ensure that each Committee Chair is aware of law development projects that the Committee needs to undertake and the deadlines for the submission of reports and other materials. Consult with members to make sure they are aware of COGs review and Section review requirements to facilitate the review process.

- Review each Committee's progress on its plan and law development projects on a regular basis.
- Make sure he or she is kept fully advised by the Committee Chair with respect to the nature and the progress of the Committee's work at all times.
- Advise each Committee Chair and Vice Chair(s) with respect to the Councils' action on any suggestions, reports or questions presented by the Committee Chair and other relevant matters.
- Actively review each Committee's work to ensure that all matters for which the Committee is responsible are of appropriate quality and are timely prepared and submitted by the Committee.
- Facilitate coordination among respective Committees and communication with all other relevant Committees concerning projects on which they are working.
- Prepare Semiannual Reports summarizing the significant activities of each Committee and furnish the reports to the Section Director for inclusion in the materials for the Fall and May meetings of the Council. See Section 4.4.
- Be personally responsible for the substantive and editorial content of every recommendation by his or her assigned Committee. The same level of care and attention that would be devoted to submissions on behalf of clients or a law review article *must* be given to Committee products. Subject to such further review by Officers of the Section as the Section Chair shall direct, the Council Director is the final reviewer for all technical comments and Committee reports of the Committees under his or her jurisdiction on proposed regulations, legislation and other government submissions.
- After consultation with the affected Committee Chairs, designate a Subcommittee on Government Submissions & Relations to serve as the group's contact person for government submissions projects and government relations.
- When asked by the Section Chair, participate on special task forces and/or committees established by the Section Chair and meet with government officials on behalf of the Section.

The Council Director is the person with whom the Committee Chair should consult from time to time on the general policies of the Section and the procedural limitations imposed by the ABA's and the Section's bylaws and rules of procedure.

- 4.4. Semiannual Report by Council Director.** Each Council Director should prepare a report summarizing the significant activities of the Committees for which the Council Director is responsible. The reports should include the Council Director's observations on the performance of the Committees. The reports should be furnished to the Section Director for inclusion in the materials for the Fall and May meetings of the Council. To assist the Council Director in preparing such reports, each Committee Chair should

supplement the project summary chart (see Section 7.3.1) with a report to the Council Director on the work of the Committee on each of the projects the Committee has under way and on the materials that have been distributed to Committee members. In addition, each Committee Chair's report should indicate the responses of the Committee to legislative and regulations projects within the jurisdiction of the Committee, to problems of coordinating the work of the Committee with the work of other Committees of the Section and other organizations, and to ways in which the Committee can be of service to its members, Section members, and the ABA generally.

- 4.5. Council Director Responsibility for Legislative and Administrative Recommendations and Technical Comments.** Each Council Director is responsible for the substantive and editorial content of every recommendation by his or her assigned Committee. The same level of care and attention that would be devoted to submissions on behalf of clients or law review articles *must* be given to Committee products. The Council Director should report the Committee vote on each recommendation to the Council. Subject to such further review by officers of the Section as the Section Chair shall direct, the Council Director is the final reviewer for all technical comments and Committee reports of the Committees under his or her jurisdiction on proposed regulations, legislation, and other government submissions. See Chapter 9.
- 4.6. Council Director Responsibility for Law Development Liaison Between Committees.** The Council Director, after consultation with the affected Committee Chairs, will designate one of the Vice Chairs for Law Development from his or her group of Committees to serve as the group's representative on the Government Relations Committee. Each representative from a Committee group is an ex-officio member of the Government Relations Committee and is expected to attend its meetings, either by phone or in person.
- 4.7. Council Director Conference Calls.** Three times a year, the Council Directors must participate in a conference call with the Vice Chair (Committee Operations) and the Staff Counsel. This conference call will allow the Council Directors to coordinate projects and provide updates on Committee activities to the Vice Chair (Committee Operations) and the Staff Counsel. These conference calls will take place between Meetings. A call-in number for the conference will be provided to the Council Directors by the Staff Counsel.

CHAPTER 5 Basic Committee Structure

- 5.1. Committee Chair and Vice Chair.** The principal Committee officers are the Committee Chair and Vice Chair(s). See Chapter 4 for the role of the Council Director.
- 5.1.1. Appointment and Term.** Committee Chairs and Vice Chairs are appointed by the Chair Elect, "normally" for two-year terms commencing July 1 for Section purposes, however, according to ABA policy the appointments are effective at the close of the Annual Meeting. Midway through a two-year term, the Chair Elect will review the performance of the Committee Chairs and Vice Chairs to determine whether such appointments should continue for the second year. The Chair Elect may terminate the appointment of a Committee Chair or Vice Chair at the end of the first year, or at any other time, if the Chair Elect determines that the change is in the best interest of the Section. The Chair Elect may appoint more than one Vice Chair of a Committee in appropriate circumstances. Committees with significant responsibility for law improvement will require a separate Vice Chair to manage that responsibility. If applicable, the Vice Chair for Law Development will be responsible for overseeing the quality and timeliness of the Committee's law development activities.
- 5.1.2. Overall Responsibility; Delegation.** The Chair has the ultimate responsibility for all Committee activities. The Committee Chair should promote and further the Committee work by delegating projects and other Committee activities as much as possible to Subcommittees, Task Forces and individual Committee members, while continuing to supervise and coordinate all Committee activities. See also Section 7.5.
- 5.1.3. Relationship of Officers.** The Committee Chair should keep the Vice Chair(s) fully and timely informed as to all aspects of the Committee's specific activities. The Committee Chair should delegate to the Vice Chair(s) Committee specific responsibilities, and the Chair should otherwise share duties in order to provide the Vice Chair(s) with experience and to provide assistance to the Committee Chair in the performance of the Committee's obligations.
- 5.1.4. Attendance at Meetings.** While unusual circumstances may justify the absence of a Committee officer from a meeting of the Section, those who accept appointment as a Committee officer are expected to attend the Section meetings during their term of office. Each Committee Chair and Vice Chair is also required to attend the Committee Chairs, Vice Chairs, and Council Directors Breakfast Meeting at the Midyear and Fall Meetings. Incoming Chairs and Vice Chairs are required to additionally attend the Incoming Chairs and Vice Chairs Breakfast at the May Meeting.

- 5.1.5. Committee Web Access: Homepage and Listserv.** Each Committee has its own homepage, which can be accessed through <http://www.abanet.org/tax/committees/>. This homepage contains general information about the Committee and Committee officers. The Committee Chair is responsible to provide electronic versions of Committee materials, work product, announcements, agendas, minutes, and any other Committee communications to the Staff Counsel for the homepage. See also Section 7.5. The Committee Chair can request creation of, or update, a Committee listserv on the Web for communication with Committee members. The Technology Manager will assist in the creation and maintenance of listserves.
- 5.2. Secretary.** Each Committee Chair should appoint a Secretary for the Committee to take minutes of Committee meetings, to maintain certain Committee records, and otherwise to assist the Committee Chair in such respects as the Committee Chair deems appropriate.
- 5.3. Last Retiring Chair.** A Committee will generally have the benefit of the experience of the immediate past Chair of the Committee, who will normally be designated the Last Retiring Chair and serve as an officer of the Committee. Such person should be kept advised of the Committee's activities by being copied on relevant Committee communications and otherwise. In the absence of a Last Retiring Chair, the Section Chair Elect may appoint a special advisor with similar duties who would ordinarily be a former Chair of the Committee.
- 5.4. Subcommittees.** Much of the work of a Committee is carried out through Subcommittees. Establishing working Subcommittees and appointing of Subcommittee Chairs is therefore an essential early task of each incoming Committee Chair.
- 5.4.1. Appointment and Term.** Subcommittee Chairs are appointed for terms at the discretion of the Committee Chair. A Committee Chair may rearrange the Subcommittees of the Committee, appoint new Subcommittee Chairs, or otherwise alter the Subcommittee structure of the Committee as needed.
- 5.4.2. Government Employees.** Employees of federal, state, or local governments are often appointed to membership on Committees. Committee Chairs should ask them to obtain any necessary approval of their superiors before appointing them as Subcommittee Chairs.
- 5.4.3. Appointment of Subcommittee Members.** See Sections 6.7 and 6.8.
- 5.5. Committee Task Forces.** Many Committee projects will be handled by one of the Committee's regularly established Subcommittees; however, from time to time, one individual or a Task Force may be a more appropriate vehicle, particularly when a quick response is necessary or when a detailed study of a difficult tax area is needed. Experience has proven that the best Task Force is one composed of a small group of knowledgeable, experienced individuals who can exchange views with one another (preferably in person) and who will devote the necessary time to the project.

5.6. Committee Members. Section Members join Committees by submitting a form to the Technology Manager. This form can be found at the Section's website:
<http://www.abanet.org/tax/committees/>.

5.6.1. Use of Non-Members. In connection with a Committee project, a Committee Chair may use any person who can contribute to the project. The Committee's Council Director or a Section Officer from time to time may recommend to Committee Chairs that a particular individual or individuals participate in specific projects. It is preferable if Section members are involved.

5.7. Section Task Forces. Task Forces formed by the Section are generally treated the same as Committees, except as follows:

5.7.1. Chair and Secretary. Each Task Force will have a Chair and Secretary, but no Vice Chair, Chair Elect or Subcommittees (or Subcommittee Chairs).

5.7.2. Members. Task Force members are recruited from the Committees related to or interested in the specific focus of the Task Force.

5.7.3. Important Developments. Unless otherwise determined by the responsible Council Director and Vice Chair (Committee Operations), a Task Force will not be required to submit a summary of important developments (see Section 10.3).

5.8. Law Student Members. The Chair Elect may appoint law student members of the Section as "law student members" of each Committee, having the same rights and responsibilities as members generally. The Committee Chair should attempt, however, to accommodate other law student members who would like to participate in the Committee.

5.9. Communications. Regular telephonic meetings of Committee and Subcommittee officers, with appropriate participation by the Council Director, are necessary between Section meetings. Communication within the officer groups and with Committee members should occur routinely through the use of e-mail and listserv maintained by the Section.

CHAPTER 6

Developing a Program and Organizing the Committee

- 6.1. Introduction.** The Committee Chair is responsible for initiating and developing, with the advice of the Committee's Council Director, the program of the Committee, subject to any direction the Section officers or Council may give the Committee Chair from time to time through the Council Director. Although the term of office of a Committee Chair does not begin, for Section purposes, until July 1, an incoming Committee Chair should begin preparatory work when appointed.
- 6.2. Organization of the Committee.** One of the first jobs of a new Committee Chair is to organize the Committee into appropriate Subcommittees (and, if necessary, Task Forces), and should include Professional Services (CLE), Important Developments, and Technology. New Committee Chairs should appoint Subcommittee (and Task Force) Chairs, recruit new Committee members, and otherwise finalize the roster of Committee members. These tasks must be completed by the end of the May Meeting. See attached schedule for deadline and distribution lists for notification of appointments.
- 6.3. Continuing Legal Education; Publications; Important Developments.** By the end of the May Meeting, the incoming Committee Chair should decide how the Committee will handle its responsibilities with respect to (a) the Section's CLE programs and (b) the Section's publications, including the submission by the Committee of its annual report on important developments (see Section 10.3). Most substantive Committees establish a Subcommittee for CLE and preparation of the annual report on important developments. See attached schedule for deadlines and distribution lists for Subcommittee structure. Each Committee should have a representative at the meeting of the Committee of Professional Services held at each Section meeting.
- 6.4. May Meeting.** At the May Meeting of the Section, incoming Committee Chairs should meet with current and incoming Committee officers, the current Council Director and the Council Director-designee of the Committee to begin developing a plan ("Written Plan") for the Committee Chair's term of office. The Written Plan should be based on the Committee Chair's assessment of the most significant issues on which the input of the Committee would be valuable or for which continuing legal education is necessary. In addition, the upcoming activities of the Committee, the unfinished projects that the Committee should carry forward and the timetables involved, and the names of those Committee members who can be relied on for assistance should be discussed. A timetable and procedure for the orderly transfer of Committee files and records from the current to the incoming Committee Chair should also be arranged at this meeting (see Section 6.5).
- 6.4.1. Workshop for Incoming Committee Chairs and Vice Chairs.** All incoming Committee Chairs and Vice Chairs must attend the incoming Committee Chair workshop held during the May Meeting. The purpose of the workshop is to permit the Vice Chair (Committee Operations) and other Section officers to discuss with incoming Committee Chairs and Vice Chairs their duties and responsibilities and to answer questions with respect to Committee operations and procedures.

- 6.5. Transfer of Files and Other Records.** The incoming Committee Chair should obtain from the current Committee Chair, as soon as the current Committee Chair can turn them over without neglecting the current Committee Chair's own Committee obligations, those files and records maintained in accordance with Section 7.3. The transfer of files should begin as early as possible, usually immediately following the May Meeting, and must be completed no later than July 1. The files transferred should include: (a) the Committee's minutes; (b) a file for each prior legislative or administrative recommendation for which the Committee is responsible, with a record of action by the Committee during the preceding two years with respect to each recommendation and notes on any current developments relating to it; (c) files on all work in process in the Committee; and (d) project summaries on each Committee project or program. The incoming Committee Chair should also obtain from the current Committee Chair: (a) a summary of current developments between January and July; (b) an evaluation of the merits of each project in process and advice on the manner in which each should be carried out; (c) suggestions for new projects that might be undertaken by the Committee; and (d) recommendations regarding Committee members who are likely to be particularly effective in carrying out the future work of the Committee.
- 6.6. Preparation of Written Plan.** The incoming Committee Chair must prepare the Written Plan for the Committee for the period of the Committee Chair's term of office. In developing the Written Plan, the incoming Committee Chair should draw on information received from the various sources described in the preceding paragraphs of this Chapter 6. Copies of the Written Plan must be furnished to the Chair Elect, the Vice Chair (Committee Operations)-Designee, the Council Director-Designee and the Staff Counsel no later than the end of May. The Chair Elect, the Vice Chair (Committee Operations)-Designee and/or the Council Director-Designee may comment on the Written Plan. The Committee Chair, after taking these comments into account, should finalize the Written Plan. See attached schedule for deadlines and distribution lists for the Written Plan.
- 6.7. First Communication to Committee Members.** On or about July 1, the new Committee Chair should email to all members of the Committee. That communication should:
- 6.7.1. Welcome.** Welcome new members and invite all members to participate in the Committee's work.
 - 6.7.2. Conflicts of Interest.** Call to the attention of the members the Section's policy on conflicts of interest (see Section 1.2).
 - 6.7.3. Subcommittee Preference Poll.** Poll members for Subcommittee (or Task Force) preferences. (It may be useful to enclose a form listing Subcommittees.)
 - 6.7.4. Committee Meeting Agenda for Fall Meeting.** Transmit an agenda for the meeting of the Committee scheduled as a part of the Fall Meeting, with an invitation to attend. The agenda should be cleared with the predecessor Committee Chair, who may have unfinished business for that meeting, and with

the Council Director. See attached schedule for deadlines and distribution lists for Committee meeting agenda.

- 6.8. Staffing of Subcommittees; Work Assignments.** The Committee Chair, as soon as possible and in all events before the Fall Meeting, should appoint each regular member of the Committee to at least one Subcommittee and give the Chair of each Subcommittee one or more specific work assignments. The Council Director and Staff Counsel should be notified of these actions. See attached schedule for deadlines and distribution lists for Subcommittee appointments.

CHAPTER 7 Chairing a Substantive Committee

- 7.1. Monitoring Written Plan and Achievement.** By keeping in close touch with the Committee's activities and with developments within the Committee's jurisdiction, a Committee Chair will be able to make adjustments as necessary, including the following:
- 7.1.1. Written Plan.** The Committee Chair should update and alter the Committee's Written Plan as circumstances dictate, so that the Committee's work will be responsive to the Section's needs in the area of the Committee's jurisdiction. Thus, the Committee Chair must be alert to governmental and other activities within the Committee's jurisdiction, including proposed legislation, recently enacted legislation, regulations projects, proposed regulations, published rulings, court decisions, reports or hearings by government agencies or congressional committees, projects of other ABA sections or other organizations, and current administrative, interpretative, or compliance problems. See also Section 7.7.6 which requires an annual review of prior legislative and administrative recommendations.
 - 7.1.2. Initiation of Projects.** Committees are expected to initiate responses to developments within their respective areas of responsibility. The Committee Chair should promptly report each new project to the Committee's Council Director and discuss with the Council Director the proposed response and priority of the project.
 - 7.1.3. Committee Membership.** See Sections 5.6, 5.7, and 5.8.
 - 7.1.4. Subcommittee and Task Force Structure.** See Sections 5.4, 5.5, 5.7 and 6.8.
 - 7.1.5. Mid-Term Review.** Committee Chairs appointed for a two-year term should make a thorough review of the Written Plan at mid-term. That review should commence in mid-April and be completed by the May Meeting of the first year of the Committee Chair's two-year term, so that necessary changes in membership and Subcommittee structure can be made.
 - 7.1.6. Mid-Term Report.** No later than the end of May, each Committee Chair completing the first year in office must complete a report (with copies to the Vice Chair (Committee Operations), the Committee's Council Director, and the Staff Counsel on current and proposed activities of the Committee and all completed projects. Also, the report should discuss any differences between the Committee's actual activities and those discussed in the Committee's Written Plan. See attached schedule for deadlines and distribution lists for Mid-term Report. See also Section 7.7.6, which requires an annual review of prior legislative and administrative recommendations.
- 7.2. Timeliness and Responsiveness.** Much of the Section's work must be completed within relatively short timetables. These deadlines are not arbitrarily set, but are designated to meet specific needs, such as deadlines imposed by the government with respect to

submitting comments on proposed regulations or testimony on proposed legislation. Other deadlines serve to make sure that the Section or Council will have the information with which to make decisions at scheduled meetings. The Committee Chair should consider these needs in organizing the Committee work and should assign work involving such tasks to members who can be counted on to act quickly and responsibly.

7.3. Committee Files and Records. Each substantive Committee Chair should see that appropriate Committee files and records are maintained to preserve a history of Committee activity for future Committee officers. At a minimum, these records should include the following items:

7.3.1. Project Summary Chart. Each substantive Committee should maintain a chart summarizing the status of each of the projects the Committee has under way. The chart must be updated semiannually (see Section 4.4) and copies sent to the Council Director, the Vice Chair (Committee Operations) and the Staff Counsel (see attached schedule for deadlines and distribution lists for project summary chart). The chart should contain at the top the Committee name and the quarter for which the chart is submitted. There should then follow, in chart form, for each Committee project: (a) a very brief description of the project, (b) the relative importance of the project, (c) other Committees, if any, involved, (d) the most recent step completed, (e) the intended end result, and (f) the estimated completion date.

7.3.2. Minutes. Each substantive Committee should maintain agendas and minutes of all Committee meetings. The Committee Chair, the Committee Secretary or another Committee member designated by the Committee Chair should maintain the minutes.

7.3.3. Legislative and Administrative Recommendations. Each Committee should maintain a file for each legislative and administrative recommendation for which the Committee is responsible, including items referred to in Section 9.7 and 9.8.

7.3.4. Other. The Committee files also should include copies of all relevant letters and memoranda.

7.4. Committee Meetings. Regular Committee meetings are held three times a year, generally on the Friday and Saturday of each of the Midyear, May, and Fall meetings of the Section. The dates for such meetings are listed in the Bluebook and on the website.

7.4.1. Planning. Good planning is essential to a good meeting. In planning a meeting, Committee Chairs should consider that Committee meetings are a valuable source of continuing legal education for Committee members, and that Committee meetings offer an opportunity to advance work of Committee projects. To that end, Subcommittee Chairs or other members may be asked to prepare reports and to lead discussions on current Committee projects. Portions of Committee meetings may be used as technical sessions open to all interested Section members. See Section 10.8.3. Consideration may be given to holding joint meetings with other Committees interested in related topics.

7.4.2. Written Materials. As a service to the tax profession, the Section is committed to disseminating the materials produced for CLE programs at its meetings, including both Committee panels and Section Programs, by audio recordings of the programs and publishing both electronically and in print the materials submitted by speakers. In this way, tax professionals who are unable to attend the meeting can review the materials and listen to the recordings. In order to do this it is necessary for the Section to receive a signed ABA Speaker Release Form from each speaker, and from any additional author on any of the speaker's materials. Copies of the ABA Speaker Release Form and Instructions to speakers can be obtained from the Assistant Staff Director - Publications. All written materials for Committee panels or Section Programs should be submitted to the Section Office following the deadlines and distribution guidelines set forth in the attached schedule. Briefly, submissions should be made electronically in Word, PowerPoint, Excel or pdf format, clearly labeled with author contact info, committee name, and program title; and the ABA Speaker Release Form completed and signed by the speaker/author and any additional co-authors.

These materials will be included on the meeting CD, if a Speaker Release Form is signed and submitted. Speakers are responsible for obtaining permission to reprint any material they have submitted that has been published elsewhere. If release has not been granted, materials will not be published. Please note that the Section does not electronically publish draft papers, official government documents and certain other materials in the public domain.

The chair of the Committee panel or Section Program is responsible for assuring that every speaker and every co-author of a paper presented in connection with a program signs and submits the Speaker Release Form and submits written materials by the deadline.

7.4.3. Scheduling. If a Committee Chair wants to change the room size or length of time for a Committee meeting from that of the prior Committee meeting or if a Committee has Subcommittees or Task Forces that need to meet separately, the Committee Chair should contact the Director of Meetings who will attempt to accommodate the request. After receiving input from the various Committees, the Director of Meetings will prepare the final schedule of Committee meetings and notify the Committee Chairs. In accordance with ABA policy, if private clubs are used for any professional, business, or social function, the function may not be held in a club where there is a reasonable doubt that the actual club membership does not include women, men, or members of minority groups, irrespective of who, in fact, pays for such a function.

7.4.4. Meeting Notice and Spotlights. Prior to the Meetings the Committee Chairs must submit panel titles to the Assistant Director of Meetings for the Preliminary Program. Before each Committee meeting, each Committee Chair must prepare a description of the Committee's discussions or panels with a list of participants ("Spotlights"). In order to receive CLE credit for Committee meetings held at the

three Section meetings, the Spotlights must be printed in the Final Meeting Program. A copy of the Spotlights must be sent to the Assistant Director of Meetings. The Committee Chair must also prepare a meeting notice and any other necessary materials for the meeting. An electronic copy of the meeting notice and any other written materials should be posted to the Committee Home Page. See attached schedule for deadlines and distribution lists for Spotlights and meeting notice.

7.4.5. Minutes. Minutes of each Committee meeting should be prepared by the Committee Secretary or the member designated by the Committee Chair and sent electronically to the Staff Counsel and Technology Manager. See attached schedule for deadlines and distribution lists for the minutes. The Technology Manager will distribute to the Committee's members. See Section 7.5.

7.4.6. Guests at Section Meetings. Having government representatives and other guests in attendance at Section meetings contributes significantly to the content of the meetings and enhances the development of productive working relations between the public and private sector in areas of Committee concern. It is important, however, that Committee officers observe Section procedures before inviting guests to the Section meetings. The more important procedures are described below. See also Chapter 12, Expense Reimbursement, for information on ABA and Section reimbursement policies.

7.4.6.1. Regular Invitations. The Section Director maintains a regular invitation list for government officials for the Midyear, May, and Fall meetings. Individuals on this list are invited automatically to these three major Section meetings, however, reimbursement and speaking opportunities are not offered in that invitation. For meetings held in Washington (ordinarily the May Meeting), the list is long because of the absence of need to cover travel expenses. For meetings away from Washington, the Section anticipates that the expenses of many invited government guests, primarily high ranking officials, will be paid by the relevant federal agency and not by the Section; accordingly, reimbursement must be requested in the same manner as set forth in 7.4.6.2 below. A Committee officer who would like to know whether a particular government official is on the regular invitation list for a Section meeting may do so by contacting the Section Director. See attached schedule for deadlines and distribution lists for invitation requests.

7.4.6.2. Special Invitations. If a Committee desires the presence of a government official or other guest to speak, the Committee Chair should seek approval by completing the Section's special request form sent via email prior to the meeting. Because of the importance of government participation, Section management will make every effort to accommodate Committee requests to the fullest extent

possible within Section budgetary constraints. To avoid a situation in which the Section is unable to reimburse the travel expenses of a government official or other guest, approval must be obtained in advance of the invitation. After obtaining approval of a proposed invitation, the Committee Chair (or the person designated for this purpose by the Committee Chair) should extend the invitation to the guest. As soon as the guest accepts, the Committee representative should notify the Section Director. The Director will arrange to e-mail a formal invitation letter, including a statement of any relevant Section rules for reimbursement and similar matters. Because these rules vary from agency to agency and organization to organization, the Committee representative should avoid any attempt to describe them when extending the oral invitation. The Section Director will establish the deadline for submission of approval requests well in advance of each meeting. The Section Director will distribute to all Committee Chairs and Vice Chairs a list of guests who have accepted Section invitations, so that Committee officers can invite guests already planning to attend to participate in their own Committee meetings and programs. See attached schedule for deadlines and distribution lists for invitation requests.

7.4.6.3. Notice to Section of All Guests. It is very important that the Vice Chair (Government Relations) and the Section Director be aware of all guests invited to the meetings, not only for the reasons described above, but also to assure that appropriate amenities have been prepared. These include advance registrations, color coded badges, complimentary luncheon and reception tickets, and similar courtesies. If the Section is unaware of an invitation, we lose the opportunity to make the guest feel welcome.

7.4.6.4. Clarification. If a Committee officer desires clarification of these procedures, he or she should contact the Section Director.

7.4.6.5. Non-Government Guests. The expenses of non-government guests may be reimbursed in special circumstances as determined by the Vice Chair (Administration). Requests for reimbursement of expenses of non-government guests must be made to the Vice Chair (Administration) and to the Section Director. Requests should be made as far in advance of the meeting as possible. See attached schedule for deadlines and distribution lists for invitation requests.

7.5. Communications to Committee Members. The Committee Chair should communicate frequently with the members of the Committee to inform members of the progress of Committee projects and plans for the Committee. The Committee Chair should also ensure that members have access to Committee work product. One copy of any communication or Committee work product should be sent to Section Headquarters with a copy to the Vice Chair (Committee Operations), and the Council Director, distributed

to members and posted by the Committee to its homepage.

- 7.6. Coordination Within the Section.** In many instances, other Committees of the Section and Section members generally will be interested in the work of a Committee. It is important, therefore, that each substantive Committee Chair communicates and coordinates with the other Committees about the Committee's activities.
- 7.6.1. Notifying Other Committee Chairs Regarding Contemplated Projects.** If a Committee has under consideration or takes up a project or proposal which may also fall under the jurisdiction of another Section Committee, the Committee Chair should notify the Committee's Council Director, the Chair of the other Section Committee, and the other Committee's Council Director.
- 7.6.2. Oral Reports at Section Meetings.** A Committee Chair whose Committee is presenting a legislative or administrative recommendation or other report to the Section may be called upon, at a session before the meeting at which the recommendation is to be voted upon, to review the recommendation in order to acquaint other Committee Chairs and the members generally with the proposal and to obtain for the Committee as much advice and reaction as possible concerning the proposal. Subsequently, at the meeting at which the recommendation is to be voted upon, if the recommendation is not placed on the consent calendar, the Chair will be called upon to explain the recommendation and to move its adoption. A Committee Chair may also be requested from time to time to report to the members on some other project or aspect of the Committee's program.
- 7.6.3. Oral Reports to Council.** Committee Chairs may also be asked to present oral reports to Council at scheduled times during Council meetings.
- 7.6.4. Committee Chairs' and Vice Chairs' Breakfasts.** On Saturday morning during Midyear and Fall Meetings of the Section, a breakfast is held that all Committee Chairs, Vice Chairs, Council Directors, and Section officers are required to attend. The Vice Chair (Committee Operations) will use these meetings to discuss new policies affecting Committee operations and important projects of the Section and to plan future Section programs. Most important, the meetings will afford Committee Chairs and Vice Chairs an opportunity to give the Section officers and Council Directors their views on how the Section is operating and how the Section's procedures might be improved.
- 7.6.5. Publications and Educational Programs.** See generally Chapter 10.
- 7.7. Communications and Coordination with Other Groups.** A Committee Chair should be sensitive to the possible interest of groups outside the Section in matters being considered by the Committee and to the need, as a matter of good relations, to inform the other group of the Committee's activity. In this regard, the Chair should be alert to the various restrictions set forth in Chapters 2 and 8 with respect to these contacts.

- 7.7.1. Other ABA Sections.** If a Committee has under consideration or takes up a project or proposal in which another ABA Section may have an interest, the Committee Chair should notify the Vice Chair (Committee Operations), Committee's Council Director, Section Director and the Staff Counsel as soon as possible and should follow their instructions.
- 7.7.2. Federal Government Agencies or Officials.** See Chapter 8.
- 7.7.3. Matters Involving State Legislation.** ABA Sections are required by the ABA's Bylaws to consult with the National Conference of Commissioners on Uniform State Laws when considering matters of state legislation. A Committee Chair should take up any such matter with the Committee's Council Director.
- 7.7.4. Otherwise Outside the Section.** A Committee Chair should consult, with respect to any other proposed communication outside the Section, with the Committee's Council Director.
- 7.7.5. Treasury Business Plan Responsibility.** By April 15 of each year, each Committee Chair is required to submit to the Vice Chair (Committee Operations) and the Staff Counsel suggestions for the Section's submission on proposals to the Treasury Business Plan for the subsequent year with a copy to the Council Director.
- 7.7.6. Review of Prior Legislative and Administrative Recommendations.** By May 31 of each year, each Committee Chair shall review the legislative and administrative recommendations that have been adopted as ABA or Section policy (available at the Section's website <http://www.abanet.org/tax/pubpolicy/home.html>) and advise the Vice Chair (Committee Operations) the Council Director and the Staff Counsel as to whether any of the recommendations should be deleted or revised.

CHAPTER 8

Conferences or Communications with Federal Government Representatives

- 8.1. Facilitating Government Contacts.** The work of the Section is enhanced by contacts between Section representatives and government agencies and the staffs of the tax writing committees of Congress. One of the roles of Section officers and Council is to facilitate those contacts. It is important for Section officers to be aware of the nature of contacts between Section representatives and government agencies. The procedures set forth below are designed to provide that information to Section officers while permitting effective communications between Section and government representatives.
- 8.2. IRS Operating Division Liaisons.** In 1999 the Internal Revenue Service began its most significant internal reorganization in almost 50 years. In order to more effectively interact with this new structure, the Section has created the position of IRS Operating Division Coordinator for each of the four IRS Operating Divisions (Tax Exempt and Government Entities, Large and Mid-Size Business, Wage and Investment, Small Business/Self-Employed) and the Office of Professional Responsibility (“OPR”).
- 8.2.1. Appointment.** IRS Operating Division Liaisons have the same stature within the Section as Committee Chairs. See Section 5.1. IRS Operating Division Liaisons are appointed for two-year terms. A second two-year appointment is possible at the discretion of the Chair-Elect.
- 8.2.2. Responsibilities.** IRS Operating Division Liaisons are ex-officio members of the Government Relations Committee and are expected to attend its meetings either by phone or in person. Subject to the supervision of the Vice Chair (Government Relations), each IRS Operating Division Liaison is responsible for coordinating the Section's liaison activities with that IRS Operating Division and the Section's law development projects within the area of responsibilities of that IRS Operating Division. This includes the following law development responsibilities within the Section:
- Decide which law development projects are appropriate for the Section, consulting with the Government Relations Committee, and through the Committee group liaisons (see Section 4.6), the relevant Committee(s);
 - Assign the project to a Committee, to a joint Committee effort, or to a task force of Committee members, after consulting the relevant Council Director, Committee Chairs and, through the Committee group liaisons, the Vice Chairs for Law Development; and
 - Assign responsibility to write the project description and develop the project timetable, consulting with the above.

The IRS Operating Division Coordinators are not responsible for the completion of law development projects. Their function is to identify the project and arrange for the personnel to commence the task. Ultimately they may have sign off responsibility for government submissions within the

sphere of their particular IRS Operating Division as delegated by the Vice Chair (Government Relations). But once the project is assigned, principal responsibility shifts to the Council Directors, the Committee Chairs, and the Vice Chairs for Law Development.

- 8.3. Scope of Notification Procedures.** Except where they are superseded by the Expedited Discussion procedures (see Section 8.9), the notification procedures set forth below apply to all types of contacts with government representatives that involve the transaction of business with which the Section is concerned. A Section member should not initiate any communication in connection with Section matters with government representatives in disregard of these notification procedures. If the communication is initiated by the government representative, the event should be immediately reported to the Committee Chair and the Council Director. The Section Chair or the Vice Chair (Government Relations) may modify the procedures in a particular matter after taking into account the facts and circumstances.
- 8.4. Conferences Generally.** A conference with federal government representatives may be helpful in advancing a Committee project or in responding to a government initiative. The request for the conference may be originated either by a Committee Chair, after consultation with the Council Director, or at the request of a government representative. Many Committees have found that annual, informal meetings with government representatives are beneficial to the Committee and its work, and open up a useful interchange between the private and public sectors in a particular substantive area. If your Committee is interested in such a meeting, contact the Vice Chair (Committee Operations) for more information.
- 8.5. Arrangement of Conference.** If the Committee Chair decides that a conference with government representatives should be requested, and if the Council Director concurs, the Committee Chair should contact the appropriate government representative to propose the meeting. If he or she agrees, the Committee Chair should prepare a memorandum for the Council Director describing the proposed agenda for the meeting, the names of the government representatives thought to be interested, and a list of those members of the Section who will attend. Copies of the Committee Chair's memorandum should be sent to the Vice Chair (Government Relations), the Vice Chair (Committee Operations), the Section Chair, the Section Chair Elect, and the Section Director.
- 8.6. Roles of Vice Chair (Government Relations) and Section Headquarters.** No clearance need be sought from the Vice Chair (Government Relations). He or she should assist the Committee Chair in arranging the conference if the Chair wants assistance, should be kept informed about the conference, and should receive a copy of either the minutes or a summary memorandum of the conference. Section Headquarters should be notified of the scheduled conference. Effort should be made to plan the conference so that reimbursement by the Section is unnecessary, but if it is to be requested, Section Headquarters must be notified of the request sufficiently in advance of the conference to enable Section management to act on the request before the meeting. (See Section 12.5.1.4.)

- 8.7. Preparation.** The Committee Chair should see that adequate preparation is made for the conference. Preparation depends on the circumstances but normally includes distillation of ideas, determination of the positions to be suggested, identification of the Section participants primarily responsible for each issue to be discussed, and designation of a Secretary for the conference. The Section representatives should hold a preliminary meeting or discussion by conference call before the conference to be sure that preparation is complete. Government representatives should be provided a copy of the proposed agenda in advance of the meeting to permit their active participation.
- 8.8. Conduct of Conference.** The purpose of the conference is to facilitate a free and orderly exchange of ideas. The senior Section representative should ask the government representatives whether they wish to review minutes of the conference and what, if any, limitations they want imposed on the form, content, and distribution of minutes.
- 8.9. Expedited Discussions with Congressional Staff.** The time pressures of the congressional schedule frequently require expedited discussions by Section personnel with congressional tax committee staff members. Special procedures apply to these expedited discussions. The more important are described below.
- 8.9.1. Requests.** Expedited discussions may be requested either by congressional tax committee staff or by a Committee Chair, ordinarily by telephone call. A Committee Chair should agree to such a discussion only with the concurrence of the Committee's Council Director. When that concurrence is obtained, the Committee Chair should schedule the discussion by calling the staff member involved. The Vice Chair (Government Relations), the Vice Chair (Committee Operations), and the Section Director should be advised of the discussion.
- 8.9.2. Selection of Committee Group and Government Relations Representative.** When an expedited discussion has been agreed upon by a Committee Chair and a congressional staff member, the Chair should immediately select a small group of Committee members particularly qualified in the subject of the discussion and able to meet its schedule. The Chair should notify the Chair of the Government Relations Committee so that he or she can assign a member of that Committee to work with the Section group.
- 8.9.3. Pre-Meeting.** So that the Section members' contribution to the discussion is as well analyzed and organized as time permits, the Committee group should discuss the subject in a pre-meeting or by conference call before the discussion with congressional staff
- 8.9.4. Expedited Discussion.** The group will then hold the expedited discussion with the congressional staff by meeting or conference call. A member of the group should prepare a summary of the discussion, with copies distributed to the Vice Chair (Government Relations), Vice Chair (Committee Operations), the Council Director, and the Section Director.
- 8.9.5. Role of Vice Chair (Government Relations).** No clearance need be obtained

from the Vice Chair (Government Relations) for an expedited discussion. He or she should, however, be kept advised of the fact and subject of the discussion.

- 8.10. Government Representatives at Committee Meetings.** Having government representatives at Committee meetings is often helpful, informative, and useful in maintaining good working relations with government representatives and groups responsible for the areas of Committee concern. See Section 7.4.6 concerning procedure for inviting government guests.

CHAPTER 9 Government Submissions

9.1. Introduction. One of the most important ways the Section contributes to the improvement of the tax system is through the submission of views and comments to the appropriate federal, state or local legislative bodies, courts, and government agencies. Uniform procedures for such submissions are desirable in order to maximize the effectiveness of each submission, safeguard the long-term effectiveness of the Section, and ensure compliance with ABA and Section policies designed to preserve fairness to all ABA and Section members.

9.1.1. Scope of These Procedures. The procedures in this Chapter are applicable to any submission, except for certain “fast track” submissions exempted from these procedures by the Section Council, to a federal, state or local legislative body, court or government agency or, when appropriate, a foreign or international agency or tribunal. They are not limited to submissions formally addressed or presented to such a forum, but include expressions of views that are reasonably expected to be delivered to such a forum for the purpose of commenting on the development or administration of tax law. All such submissions and expressions of views whether presented formally or informally and regardless of the particular intended forum are referred to in this Chapter as “government submissions.” The procedures in this Chapter do not apply to material developed for educational programs, Committee meetings or publication in scholarly journals such as *The Tax Lawyer*, although they do apply to any government submission that is incorporated in such material.

9.1.2. Policy Formulation. Committee officers should be thoroughly familiar with Chapter 2 of the Green Book, on the subject of policy formulation, and Chapter 1 of the Green Book, on the subject of Section principles. The procedures described in this Chapter are designed to implement the rules and principles of Chapters 1 and 2.

9.2. Committee on Government Submissions. The Committee on Government Submissions (“COGS”), whose members are experienced contributors to Section activities, has been assigned responsibility for reviewing every government submission, except when that requirement is expressly waived by the Section Chair, Vice Chair (Committee Operations), or Vice Chair (Government Relations). This applies to technical comments, as well as to more formal submissions.

9.2.1. Purpose. COGS mandate is to help all Committees make their government submissions as effective as possible. Council approved the following statement of purposes: The primary purposes of review by COGS shall be to ensure (1) the submission is in the correct form and includes a cover letter, (2) the document is clearly written, well organized and internally consistent from a stylistic standpoint, with major points being appropriately emphasized, (3) the submission includes an executive summary meeting the requirements of

Section 9.6.5 and (4) the substantive points are technically accurate, intellectually honest and not obviously unbalanced towards particular client interests and not propounding positions that reflect bad tax policy or that are inconsistent with ABA policy. In some instances, a COGS reviewer also may be able to suggest additional substantive points based on his or her particular expertise or experience. The COGS reviewer should not normally attempt to duplicate Committee research, substantially rewrite the submission or substitute his or her own substantive preferences for those of the Committee.

- 9.2.2. COGS Manual.** Staff Counsel prepares and keeps up-to-date the COGS Manual, available with instructions, for various types of government submissions. A form should be completed prior to initiation of any government submission project. The form includes instructions on moving a government submission through the review process and assists in assuring that all draft submissions receive prompt and appropriate review. The COGS Manual is available at www.abanet.org/tax/leadership and the Committee Chair should make sure that any other Committee member who is responsible for preparing or overseeing a government submission is familiar with the provisions of the COGS Manual and the Style Guide dealing with that type of submission.
- 9.2.3. Procedure.** COGS reviewers are typically assigned by one of the COGS Vice Chairs.
- 9.2.3.1. Employee Benefits.** The COGS Vice Chair-Employee Benefits is responsible for all comments and/or recommendations concerning Employee Benefits whether legislative, regulatory, or administrative.
- 9.2.3.2. Regulations.** The COGS Vice Chair- Regulations is responsible for comments on final regulations, proposals for new regulations, and/or regarding proposed or temporary regulations.
- 9.2.3.3. Other Administrative Matters.** The COGS Vice Chair Administrative is responsible for and comments or proposals regarding existing or potential revenue rulings, revenue procedures, forms, publications and the like.
- 9.2.4. Coordination with COGS.** A Committee preparing a government submission should notify COGS and the Staff Counsel at the outset that it is doing so, by filing the form referred to in 9.2.2, and should keep COGS and the Staff Counsel informed of its progress. Advance notice by the Committee Chair will permit advance assignment of a COGS reviewer and accelerate the review process.
- 9.2.5. COGS Reports.** Staff Counsel and COGS will provide Council with regular reports of new and pending government submission projects. Copies of these reports will be sent to all affected Committee Chairs.

- 9.3. Occasions for Government Submissions.** While the most obvious occasions for preparing government submissions are the introduction or enactment of legislation and the publication of notices of proposed rule-making, some of the most constructive work of the Section is done on the initiative of a Committee, not merely in reaction to government action.
- 9.3.1. Recommended Legislation.** Substantive Committees may initiate legislative proposals to improve the tax law. These proposals are called "legislative recommendations" when they are offered for adoption by the House of Delegates or Board of Governors as ABA policy. See Section 9.5.1.
- 9.3.2. Pending Legislation.** Committees may prepare both policy and technical comments on legislation that is introduced or otherwise proposed, either in Congress or by the Administration. These comments need Blanket Authority approval prior to submission. See Section 2.3.2
- 9.3.3. Recently Enacted Legislation.** Recently enacted legislation, particularly major legislation, may require technical corrections, issue papers or specific proposals for consideration in drafting implementing regulations. These comments need Blanket Authority approval prior to submission.
- 9.3.4. Recommended Administrative Actions.** Committees may propose administrative actions to improve the tax law or its enforcement. These proposals are called "administrative recommendations" when they are offered for adoption by the House of Delegates or Board of Governors as ABA policy. See Section 9.5.1. Regulations are included, of course, but Committees should not limit their comments to regulations. An effective way to contribute positively to the tax laws is to identify issues that might be addressed, and the manner in which they might be addressed, in new revenue rulings and revenue procedures. Other Committee projects that might be appropriate include the critique of audit, appeals or other administrative policies or procedures and the review of miscellaneous items such as forms, form letters or publications.
- 9.3.5. Proposed Regulations.** Comments on proposed regulations represent an opportunity for Committees to serve the public interest because notices of proposed rule-making normally request comments with a time-limited submission date. These are generally submitted as technical comments.
- 9.3.6. Specific Government Requests.** Sometimes government officials specifically request Committees of the Section to prepare comments on a particular issue. Committees should use their own discretion, of course, but such requests generally present an opportunity to make a contribution. When a Committee Chair receives such a request, he or she should notify the Committee's Council Director, the Vice Chair (Government Relations), and the Vice Chair (Committee Operations). Submissions to the legislative and judicial branch require Blanket Authority prior to submission. Submissions to the administrative branch, if they are time-limited government request, may be submitted as Technical Comments.

9.4. Deciding Whether to Comment. It is not necessary to take a position on every proposed regulation, legislation, or problem in the tax law. Committees should concentrate on the quality of their government submissions and, if necessary for that purpose, select for comment only the most important issues or government actions. Legislative recommendations, in particular, should be limited to those that will significantly improve the tax law. A Committee Chair with questions about whether a particular occasion warrants a government submission should consult with the Committee's Council Director. The Section often allocates the provisions of major pending legislation among the substantive Committees for comment. The Section also has a procedure for routinely referring notices of proposed rule-making to the appropriate substantive Committees. Nevertheless, because legislation is often on a "fast track" and proposed regulations are usually accompanied by a deadline for receipt of comments, Committees should not wait to be asked for comments. Committee Chairs should be aware of pending legislative proposals and pending regulation projects on subjects under their jurisdiction, and should ensure that work begins promptly on the study of proposed legislation or regulations, to decide whether and how to comment.

9.5. Selecting the Method for Comment. The various methods for communicating comments to the government include formal ABA positions, Section positions under blanket authority and technical comments. See Chapter 2. Because of the great diversity within the tax law, the choice among these methods is not always clear, but a few guidelines are appropriate. Questions about the choice of method should be discussed with the Council Director, who may consult with the Vice Chair (Government Relations) other Section officers, and the Section Director regarding the best way to proceed.

9.5.1. Formal ABA Position. See Section 2.3.1. A formal statement of ABA policy adopted by the House of Delegates or the Board of Governors should be sought only when the subject matter is important enough to justify a statement on behalf of the entire ABA and its membership. This will most often be the case when a Committee desires to recommend specific legislative or administrative reversal of a policy judgment deliberately made by Congress or Treasury. Such a recommendation is known as a "legislative recommendation" or an "administrative recommendation." A legislative or administrative recommendation originating in a Committee requires an affirmative vote by the Committee and must be accompanied by a Committee Report. See Section 9.5.4.

9.5.2. Section Position. See Section 2.3.2. A statement of the Section's views under the "blanket authority" procedure is typically limited to matters of unusual importance to the formation of tax policy or the administration of the tax laws. Blanket authority procedures may also be used when comments of the Section do not qualify as technical comments.

9.5.3. Technical Comments. Government submissions that are neither formal statements of ABA policy nor blanket authority submissions are submitted as technical comments in accordance with Section 2.3.3 and submitted under the

cover letter of the Section Chair. Most government submissions are prepared as technical comments. This will include comments on proposed regulations and comments that respond to changes already under consideration by the government and which usually must be prepared and submitted in a very short time.

9.5.4. Committee Report. See Section 2.3.4. Occasionally, a government submission is so comprehensive or fundamental that it is appropriate for the entire Committee to participate in its preparation. This is particularly appropriate, for example, when a Committee has developed an analysis of the treatment of an entire major subject in tax law, administration or litigation, with suggestions for revised approaches to that subject. A Committee Report is not restricted to such circumstances, however, and may be prepared whenever the Committee or its Chair considers it warranted by the importance of the subject and it is permitted by any applicable time constraints. The distinguishing feature of a Committee Report is its approval by a vote of the Committee. Committee Reports that do not include legislative or administrative recommendations are treated as representing the views of the authors or the Committee but do not represent the view of the Section or the ABA unless so adopted as policy.

9.6. Guidelines for All Government Submissions. The following general guidelines should be observed in preparing all government submissions:

9.6.1. Section Principles. The principles discussed in Chapter 1 relating to conflicts of interest and limitation of comments to areas of the Section's professional expertise should be observed in every government submission.

9.6.2. Prior Positions. The Committee Chair or other Committee member responsible for a government submission should determine whether there is a prior ABA or Section position on the issue. Descriptions of all such positions and topics covered by grants of blanket authority may be found at the Section's website, www.abanet.org/tax/policy. If there is such a prior position, COGS and the Committee's Council Director should be so advised when the government submission is forwarded for review.

9.6.3. Coordination with Other Committees. Any Committee preparing a government submission should provide notice to all other Committees that are likely to be interested in the issue, so that members of such other Committees can participate if they wish. Other Committees likely to be interested in an issue may be identified from the most recent Internal Revenue Code Responsibility List which can be found at www.abanet.org/tax/leadership. When a government submission is forwarded for review, COGS and the Committee's Council Director should be advised whether any other Committee appears to have jurisdiction and, if so, whether such other Committee has been consulted and the result of such consultation. Disagreements between Committees regarding jurisdiction are to be resolved by the Vice Chair (Committee Operations).

9.6.4. Balance and Tone. Every government submission should address the relevant policy considerations and should fairly and objectively discuss the arguments for

and against any result advocated. The most effective way to criticize a proposal — whether legislative or administrative — is to identify the legitimate policy the proposal seeks to address, match the proposal with the policy, and, if appropriate, either offer a less burdensome or more appropriate method of serving that policy or suggest and justify an alternative policy. It should never be assumed that the drafters of such a proposal could not have any legitimate policy in mind. The tone of a government submission should be courteous and professional. If the government submission is a response to a government proposal, it should recognize the efforts of the proposal to achieve a fair and effective result, and not just criticize the elements of the proposal considered unfair or ineffective. The effectiveness of any comment and the long-term credibility of the Section are both served by a balanced approach. In all cases, the government submission should address the proposal and not its drafters, and should avoid intemperate or cynical rhetoric. COGS reviewers and Council Directors are expected to enforce these guidelines.

- 9.6.5. Executive Summary.** To maximize the likelihood that the principal points made in a government submission will come to the attention of the top officials to whom it is addressed, it is recommended that each government submission include a substantive one- or two-page summary that identifies those points, especially any areas of major disagreement with the legislation, regulations or other action the submission is addressing. Such a summary is mandatory in the case of any government submission that exceeds five pages in length or that assumes an unusually critical or controversial posture (regardless of length).
- 9.6.6. Communication with COGS and Staff Counsel.** COGS and Staff Counsel should be kept informed of the progress of each government submission. See Section 9.2.4. As early as possible, COGS and Staff Counsel should be advised approximately how long the draft is expected to be and what special problems COGS might encounter with the technical or controversial nature of the draft or any special time constraints with respect to its submission.
- 9.6.7. Format and Procedures.** Uniform formats and procedures are set forth in the COGS Manual for various types of government submissions. Except for legislative and administrative recommendations, which have their own requirements, government submissions will ordinarily include a cover sheet which states (a) the name of the originating Committee or Committees and its Chair, (b) the name of the person or persons who exercised principal responsibility for preparing the government submission, (c) the names of all persons who significantly contributed to the government submission, (d) the name of the COGS reviewer or reviewers, (e) the name of the Committee's Council Director, and the name, telephone number and email, prominently shown, of the person who should be contacted by government officials with questions about the submission.
- **Committee Vote.** An affirmative vote of the Committee is required for a

Committee Report, as well as for any legislative recommendation or administrative recommendation or the withdrawal or modification of a legislative or administrative recommendation. In addition, Committee Chairs are encouraged to put at least the substance or principle of technical comments to a vote of the Committee in all cases where time permits, particularly where the proposed comments would be unusually significant or controversial. Even in the case of time-critical comments such as comments on proposed regulations, the Committee Chair might be able to anticipate the major issues and to poll the Committee members in advance for their views regarding those issues. If a vote is required, it may be taken at a regular meeting of the Committee or by email, in the discretion of the Committee Chair. In either case, the outcome of the vote is determined by a simple majority of Committee members voting. Any email ballot shall specify a reasonable time limit for its return. If a draft voted on by the Committee is later edited or revised, another vote is not necessary unless the substance of the report or recommendation is significantly changed. Consistent with the statement on conflicts of interest in Section 1.2, each member of the Committee who votes must disclose the extent to which he or she is involved in litigation or other controversy over the issue or issues presented. Whenever a substantial minority opposes a Committee position or any significant part of it, the government submission should disclose that fact, preferably with numbers or percentages, and should summarize the reasoning of the minority, if it has been expressed.

9.6.8. Review of Government Submissions. Government submissions are reviewed by a member or members of COGS. See Section 9.2. The government submission should be submitted to Staff Counsel who will forward to the COGS reviewer, the final regular review of a government submission is conducted by the Committee's Council Director, although it is assumed that the Council Director will have been informed of and, if necessary, involved in the process of preparing the government submission since its inception. After review by COGS, the Council Director, the government submission will be sent by the Staff Counsel to the Vice Chair (Government Relations) and the Section Chair for final approval..

9.6.9. Transmittal of Complete Government Submissions. Unless other arrangements are made with the Section Chair or Vice Chair (Government Relations), all government submissions (other than legislative recommendations and administrative recommendations) are forwarded to the appropriate government officials by the Staff Counsel under a transmittal letter signed by the Section Chair.

9.7. Special Procedures for Legislative Recommendations. If the Committee Chair, in consultation with the Council Director, concludes that a legislative recommendation adopted as ABA policy and enacted into law would significantly improve the tax law, the following procedures shall be observed:

- 9.7.1. Initiation of Project.** The originating Committee shall notify the COGS leadership and the Staff Counsel estimating when the project will be completed and describing any time constraints or other unusual features of the project. The Committee will keep COGS informed of any changes in its plans or estimated time of completion.
- 9.7.2. Form.** Legislative recommendations require adherence to special forms, described in the COGS Manual.
- 9.7.3. Committee Vote.** A vote of the Committee is required for a legislative recommendation.
- 9.7.4. Review and Vote of Council.** After review by COGS and any necessary revision by the originating Committee, the recommendation is submitted to Council for consideration and vote. Recommendations are normally submitted to Council twice, once for preliminary review and again for a vote. The Committee's Council Director should prepare an issue paper identifying significant points of controversy, reporting the Committee vote, and summarizing significant comments of Committee members voting in the negative. The Council Director should also determine whether it would be helpful to Council for the Committee Chair or other Committee member to appear. A negative vote by Council will not prevent the originating Committee, if the Committee Chair requests, from submitting the recommendation to the Section membership. Where the Committee Chair believes that the likelihood of enactment will be adversely affected by postponing Section action until the next Section meeting, and Council agrees, Council may act on the recommendation on behalf of the Section, and the recommendation will be submitted to the House of Delegates or Board of Governors without delay.
- 9.7.5. Consideration by the Section.** The recommendation may be submitted to the Section for a vote only after a vote of Council has been taken. Notice that the recommendation that is to be presented to the Section for a vote must be given in the manner prescribed by the rules of procedure of the Section. A summary of each recommendation must be printed in the *NewsQuarterly*. The full text of the recommendation, including the Committee's explanatory report and suggested statutory language, if any, will be maintained on the Section website and available to any Section member and will be available for review by any Section member at the meeting of the Section when the recommendation is considered. The recommendation may be included on the Consent Calendar or may be presented for discussion and vote, at the discretion of the Section Chair. If the recommendation is presented for discussion, the Chair of the originating Committee will ordinarily present the recommendation and report on the Committee's vote and, if appropriate, Council's views. Amendments may be offered from the floor. If an amendment is not simple and clear, it will be acted upon only in principle, and adoption will be on the condition that Council approve the specific amending language before the recommendation is submitted to the ABA for adoption.

9.7.6. Submission to the ABA. Normally, after a favorable vote of the Section, the legislative recommendation will be submitted to the ABA for adoption as ABA policy. This submission will ordinarily be made at the next meeting of the House of Delegates, but the Section Chair and the Section Delegates may defer presentation to the following meeting if they believe it advisable. Where Council believes that the likelihood of enactment would be adversely affected by waiting for the next meeting of the House of Delegates, the Council may decide to submit the proposal under ABA "blanket authority" procedures. See Section 2.3.2. No legislative recommendation that is rejected by a vote of the Section may be submitted to the ABA for approval or submitted under "blanket authority"

9.8. Special Procedures for Administrative Recommendations. The procedures for administrative recommendation are the same as for legislative recommendations, except that the project is initiated by notice to the COGS Vice Chair Administrative and the Staff Counsel. A proposed administrative recommendation is submitted to the appropriate government agency or agencies for comment before Section action is taken. Thus, in the typical case involving federal tax law, a proposed administrative recommendation would be submitted to the Treasury and the Internal Revenue Service for comment. These communications should follow the procedures set forth in Chapter 8, and any draft or other written product furnished for this purpose must be informally reviewed in advance by the COGS Vice Chair-Administrative. Any comments or views of the government officials must be disclosed in the report that accompanies the administrative recommendation. Those comments and views must be considered by the originating Committee, although they need not be accepted.

9.9. Testimony and Participation in Hearings.

9.9.1. Congressional Hearings. Generally, the Section's testimony at a congressional hearing will be delivered by the Chair of the Section or the Chair's designee. Such testimony will be coordinated and put in final form by the Vice Chair (Government Relations) The Section Director shall be responsible for the filing of such testimony in the appropriate form with Congressional committees.

9.9.2. Other Hearings. The Section does not typically testify before governmental agencies. However, if a written government submission on the subject has been submitted, a Committee Chair, together with the Committee's Council Director, may recommend that a representative of the Section participate as a witness before the Service or Treasury, or before another federal, state or local agency. The recommendation, accompanied by an explanation of the reasons in support of the recommendation, should be submitted to the Section Vice Chair (Government Relations) for approval. If the recommendation is approved, the Vice Chair (Government Relations), in consultation with the Council Director and Committee Chair, shall designate the individual to present the Section's testimony. Written testimony, or the text of oral testimony, shall be reviewed and approved in advance by the COGS Chair, the Council Director and the Vice Chair (Government Relations) and submitted to the government agency through Staff Counsel.

- 9.10. Section Position Letters.** Based on existing ABA policy or after appropriate ABA clearance, the Section may choose to communicate its views on particular matters by letter to government officials. Once the decision to transmit such a communication is made by the Section Chair and the Council, submissions shall be prepared and cleared as the Section Vice Chair (Government Relations) shall direct. Generally, letters will be drafted by members of the Committee on Government Relations, with input from the substantive committees as needed. When appropriate, such letters may be referred for COGS for review.
- 9.11. Amicus Briefs.** The filing of briefs amicus curiae by the Section is a rare occurrence and must be approved by the Council of the Section and the ABA Board of Governors. Amicus briefs must be prepared and filed in accordance with the relevant guidelines set out in the *ABA Policy and Procedures Handbook*. Any Committee Chair contemplating such action should consult with the Committee's Council Director.

CHAPTER 10

Publications; Continuing Legal Education

- 10.1. General.** The substantive Committees have responsibilities and opportunities in connection with the Section's services to its members, including publications and continuing legal education (CLE) programs. See also Section 6.3 for the suggested Subcommittee structure for discharging these responsibilities.
- 10.2. *NewsQuarterly*.** A key purpose of the Section *NewsQuarterly* is to keep Section members informed about current tax developments and important Committee projects. To this end, the Supervising Editor of the *NewsQuarterly* may request articles for the *NewsQuarterly* from Committees. Committee Chairs should see that such requests are responded to promptly.
- 10.3. Important Developments.** Beginning with the Annual Report on Important Developments for calendar year 2005, the Section discontinued publication of the Annual Report in the summer print edition of *The Tax Lawyer*; however, the reports will continue to be published as an exclusive member benefit on the website and certain reports on occasion will be published in the *NewsQuarterly*. The reports will also continue to be made available as part of *The Tax Lawyer* on the Lexis Nexis and West Law research services.

Each substantive committee of the Section is responsible for preparing an Annual Report on Important Developments for publication on the Section's website.. The work may be handled by Subcommittees in accordance with their respective areas of responsibility, but it is usually better to have it done by a separate important developments Subcommittee. The Subcommittee Chair, or other Committee member in charge of Important Developments, is responsible for ensuring that the draft submitted is complete, concise, correct, and within the page guidelines set for the Committee's report. The draft should not be submitted until it has been carefully reviewed and edited as appropriate and approved by the Committee Chair.

The Annual Report on Important Developments process is coordinated by the chair of the Teaching Tax Subcommittee on Important Developments.

Detailed instructions on preparing and submitting the report are available at <http://www.abanet.org/tax/leadership/> in the *Guidelines for Tax Section Committees Annual Report on Important Developments*.

- 10.3.1. Content, Form, and Style.** In general the Annual Report is a series of abstracts of the items considered significant. The Annual Report should include commentary on the effect that developments may have on prior legislative and administrative recommendations within the Committee's jurisdiction.

Each Committee's Annual Report must cover Important Developments that occurred during the immediate prior calendar year and that affected the Internal Revenue Code sections for which the Committee is responsible. The Committee Code Responsibility lists are available on the website. (See 3.6.3 Table of IRC

Section Responsibilities.)

Items in the Report should be reported in four separate categories appearing in the following order: (i) legislative changes, (ii) regulations, (iii) cases and rulings, and (optional) (iv) forecast of upcoming Important Developments.

For the form and style of the report, refer to prior Annual Reports on Important Developments available on the website <http://www.abanet.org/tax/pubs/ttl/home.html> together with the Citation and Style Manual for *The Tax Lawyer*, which also is available on the website.

10.3.2. Length. Each Committee is assigned a page limit for its important developments report. Because the *Annual Report on Important Developments* is now published only online, the strict report page limits of the past have been relaxed somewhat for the 2006 and future reports.

10.3.3. Quality and Plagiarism. Members of the Tax Section expect, and are entitled to, a high-quality work product. Each Annual Report must be original, accurate, concise, and technically correct. Proprietary textual material should not be included. For example, it is inappropriate to use a verbatim CCH summary of an item, ruling, or case headnote, with or without attribution. It is also inappropriate to use material in the public domain as a substitute for committee analysis; however, brief quotations may be used with appropriate attribution.

10.3.4. Schedule. The deadline for submission of the Important Developments is February 1. See attached schedule for deadlines and distribution lists. In the discretion of the Vice Chair (Publications), Annual Reports that are not submitted on a timely basis might not be published.

10.3.5. Review. All Important Developments are reviewed and edited by members of the Teaching Taxation Committee to ensure uniformity of style, adequacy of content, and clarity of expression. To facilitate coordination, the name of any person other than the Committee Chair who is responsible for preparation should be submitted.

10.4. *The Tax Lawyer* Student Notes and Comments. *The Tax Lawyer* includes notes written by the Georgetown University Law Center student editorial board on tax decisions that represent a significant contribution to or an important development of the body of tax law. The substantive quality of student notes and comments is enhanced by the participation of Committee members as mentors to the student authors.

10.4.1. Assignment to a Committee. Each student note normally is within the area of expertise of a Committee. The Vice Chair (Publications) prepares and makes available to the student editorial board of *The Tax Lawyer* a list of mentors available to comment on various subject matters. This list includes all Council Directors and Committee Chairs. Student authors may contact mentors directly.

10.4.2. Assignment of Committee Mentors. In August, each Committee Chair

should select one or more members of the Committee to serve as a Committee mentor and notify the Vice Chair (Publications). Because there is little flexibility in *The Tax Lawyer's* publication schedule, selection and notification should occur by mid-August. A Committee Chair who is asked by a student author to serve as a mentor is responsible for finding another Committee member willing to do so if he or she cannot.

- 10.4.3. Role of Committee Mentors.** Student notes represent the student author's views on the subject matter. Because the student author will not have direct experience in the subject area, the Committee mentors should consult with the student author on the technical and practical application of his or her topic coverage. A principal objective is to bring to bear the experience and sophisticated thinking reflected in the Committee's work in the area. Committee mentors are expected to respect the fact that the opinions expressed are those of the student author and should not substitute their views for those of the students. See the Statement of Editorial Policy that appears in the front of each issue of *The Tax Lawyer*.
- 10.5. Articles and Other Submissions to *The Tax Lawyer*.** The editors of *The Tax Lawyer* give careful consideration to manuscripts received from Section members. In addition to articles on appropriate tax subjects, they will consider publication of Committee Reports having important substantive content and shorter comments of good substantive quality. Each Committee Chair should bring these opportunities to the attention of the Committee members and encourage them to respond. Possible submissions may be discussed with the Vice Chair (Publications) or the Managing Editor of *The Tax Lawyer*. *The Tax Lawyer Citation and Style Manual* can be found on the Section's website. <http://www.abanet.org/tax/pubs/ttl/>
- 10.6. Submissions to *ABA Journal*.** Short articles on tax subjects of interest to the general practitioner are occasionally published in the *ABA Journal*. Committee Chairs should encourage their members to write such articles. Possible submissions may be discussed with the Vice Chair (Publications). November articles have been followed by teleconferences sponsored by the ABA and chaired by the authors.
- 10.7. Dissemination of Committee Work Product.** The Section website is the primary source for government submissions and other Committee reports and work product generated within the Section and seen as a valuable member benefit, and the Section also regularly promotes this work in the *NewsQuarterly*. In addition, Section members have free access to *Comm-Online*--a searchable database of Committee and Section CLE meeting materials. This service is available through the Section's website at <http://www.abanet.org/tax/commonline/>.
- 10.8. CLE Programs.** Each Committee Chair should suggest possible contributions to the Section's CLE program activities including Section programs, and conferences and institutes independent of the Section's Fall, Midyear and May Meetings. All suggestions with respect to any such program should be communicated to the Vice Chair (Professional Services), Committee's Council Director, the Chair of the Committee on Professional Services. Suggestions as to subject matter, format, location, or

participating speakers, as well as comments with respect to past programs are welcomed.

10.8.1. Section Programs. "Section Programs" are educational programs of approximately one and one-half to three hours in length that are presented on Saturday afternoon at the three regular Section meetings each year. Section Programs are typically designed to appeal to a more general tax audience than programs held during the regular Committee meetings, and Committees are encouraged to seek opportunities to cosponsor programs with other Committees. Committee Chairs should consider what Section-programs could be sponsored by the Committee and should communicate any suggestions to the chair of the Committee on Professional Services. Section Program materials should consist of original materials developed for each Section Program and should be submitted following the same guidelines as are used for committee meeting materials. See attached schedule for deadlines and distribution lists for Section Program materials.

10.8.2. Plenary Panel Discussions. Panel discussions on current subjects are a regular feature of the plenary sessions at the three yearly Section meetings. Committee suggestions as to subject matter and participants will be carefully considered and should be made to the Section Chair.

10.8.3. Committee Meetings. Committees should devote their Committee meetings in conjunction with the three yearly Section meetings to panel discussions or other educational features. Panel discussions will be advertised if timely notice is given to Section Headquarters. See the attached schedule for deadlines and distribution lists.

10.8.4. Invitational Conferences. The Section occasionally sponsors an invitational conference at which papers on a selected area of taxation are presented by government officials, professors, and practitioners. Suggestions relating to potential conference subjects and participants are welcomed.

10.8.5. Co-Sponsorship of Programs. In accordance with ABA policy, the Section will co-sponsor a CLE program with other organizations if certain standards are met relating to exercise of control by the Section over the program and recognition of the Section's role in the program. Section members involved in arrangements for such a co-sponsorship should obtain from the Director of Publishing & Program Development a copy of the ABA guidelines on that subject and should consult with the Chair of the Committee on Professional Services and the Vice Chair (Professional Services) from the earliest stage of planning.

CHAPTER 11

Policy on Open Meetings

- 11.1. Introduction.** The Section's Mission Statement provides that an important Section goal is "To improve public understanding of, confidence in, and respect for the tax system." The Section Handbook further states that "[t]he Section endeavors to contribute to the improvement of the tax laws ... and public understanding thereof. The Section undertakes to communicate knowledge of the constantly developing subject of taxation among its members and others and uses meetings, publications, and other media for that purpose."
- 11.2. Policy of Open Meetings and Programs.** Except as set forth in 11.4, it is ABA policy that all Committee and Task Force meetings and programs, CLE programs and other meetings held in conjunction with regularly scheduled Section meetings be open to all registered members of the Section and invited guests. It is also ABA policy to have these meetings and programs open to the press. In general, these meetings and programs will be on the record, and statements made therein will be for attribution to the speaker.
- 11.3. Special Rules.** The Internal Revenue Service and the Department of Treasury maintain policies requiring IRS and Treasury speakers at public meetings and programs to speak on the record and for attribution. Tax Section personnel chairing or otherwise supervising meetings and programs including such speakers shall take all steps necessary to see that these IRS and Treasury policies are observed.
- 11.4. Executive Sessions.** Meetings that are primarily concerned with Section management, discussions of personnel or other confidential matters may be declared Executive Sessions by the Section Chair or in the absence of the Section Chair, the Chair Elect. Under this principle, for example, meetings of Council, the Nominating Committee, the Committee on Committees and the Committee on Appointments to the Tax Court will ordinarily be closed. Insofar as practicable, all such meetings shall be identified as "Executive Session" in the Section's published program for regularly scheduled meetings, but in no case will a member of any Committee or Task Force be excluded from a meeting of the Committee or Task Force.

CHAPTER 12 Expense Reimbursement

- 12.1. Introduction.** Section officers and Council Directors, Committee Chairs and Vice Chairs, and other Section members where specifically authorized by Council, may be reimbursed for expenses as set forth below. For purposes of reimbursement, Division Coordinators shall be treated as regular Committee Chairs. Members of the Section Headquarters staff supervise and coordinate such reimbursement.
- 12.2. Definitions.** For the purposes of this Chapter, the following definitions apply:
- 12.2.1. Office Expenses.** Long distance telephone charges, fax charges, (not to exceed \$.25 per page), duplicating costs (not to exceed \$.50 per page), and postage.
- 12.2.2. Travel Expenses.** This term includes the following items:
- 12.2.2.1. Local Transportation Expenses.** Actual cost of transportation within a single city, excluding such costs when incurred *as* a part of intercity transportation;
- 12.2.2.2. Inter-City Transportation Expenses.** Actual cost of intercity transportation, regardless of how incurred, not to exceed the amount set forth on the mileage reimbursement schedule published from time to time by the Vice Chair (Administration), plus \$10; or, if no airline coach service connects the points of transportation, not to exceed the government per mile reimbursement; and
- 12.2.2.3. Per Diem.** Actual cost of hotel rooms and meals, including gratuities, not to exceed \$100 in the aggregate per day.
- 12.3. Limitation.** Reimbursement of expenses otherwise allowable as described below may be limited or terminated at any time by action of Council as it may deem advisable. Council may vary reimbursement for Travel Expenses and Office Expenses, either generally or in individual cases, but may not provide for reimbursement in excess of the limits established from time to time by applicable ABA rules. The Section does not reimburse Section members for costs of attendance or preparation of written materials for Section Programs presented or Committee meeting panels at Section meetings.
- 12.4. Office Expenses.** The only persons entitled to reimbursement for Office Expenses are Section officers and Council Directors, Committee Chairs and, for the period commencing with the May Meeting, incoming Committee Chairs. Reimbursement of office expenses is 50 percent of expenses *as* described in Section 12.2.1.

12.5. Travel Expenses. Reimbursement for travel expenses is as follows:

12.5.1. Midyear Meeting.

12.5.1.1. Section Officers, Council Directors, Committee Chairs and Vice Chairs, IRS Division Coordinators, Section Fellows, Liaisons from the Young Lawyers Division and Law Student Division. inter-city transportation expenses. See 12.2.2.2 above.

12.5.1.2. Full-Time Law Professors, Non-Profit Legal Services Sector Professionals, or Government Officials Who Are Officers, Council, Committee Chairs and Vice Chairs. Inter-city transportation expenses and per diem (see 12.2.2.2 and 12.2.2.3 above).

12.5.1.3. Active Committee Members Who Are Full-Time Law Professors or who are in the Non-Profit Legal Services Sector. Inter-city transportation expenses (see 12.2.2.2 above) if the Committee Chair certifies that the member's attendance at the meeting will contribute substantially to the work of the Committee.

12.5.1.4. Guests. Under ABA policy, a member of the Section, other than a government or other approved guest, an active academic member (see 12.5.1.3), is ineligible for reimbursement as a guest. All Section members who attend any portion of a meeting regardless if they speak, must pay the meeting registration fee. Reimbursement of travel expenses and per diem for government guests varies and should be cleared via a letter to the Vice Chair (Government Relations), with copies to the Vice Chair (Administration) and the Director, prior to the Committee Chair extending an invitation. Reimbursement of any guest other than a government guest is granted only in special circumstances and must be cleared via a letter to the Vice Chair (Administration) and the Director, prior to the Committee Chair extending an invitation. After clearance, a letter of invitation with an explanation of the reimbursement policy is e-mailed to each guest from Section of headquarters under the Chair's signature, with a copy to the respective Committee Chair. See 7.4.6 (Guests at Section Meetings) for more information.

12.5.2. May Meeting.

12.5.2.1. Section Officers, Council Directors, Committee Chairs, Vice Chairs, Incoming Chairs, Incoming Vice Chairs, IRS Division Coordinators, Liaisons from the Young Lawyers Division, Law Student Division, and Section Fellows. Inter-city transportation expenses. Same as 12.2.2.2 above.

12.5.2.2. Committee Chairs, Vice Chairs, Officers and Council and Incoming Chairs, Officers and Council Who are Full-Time

Professors or Government Officials or work in Non-Profit Legal Services Sector. Inter-city transportation expenses and per diem. Same as 12.2.2.2 and 12.2.2.3 above.

12.5.2.3. Active Committee Members Who Are Full-Time Law Professors. Same as 12.5.1.3 above.

12.5.2.4. Guests. Same as 12.5.1.4 above.

12.5.3. Annual Meeting.

12.5.3.1. Section Officers, Council Directors, Committee Chairs, and Vice Chairs. No reimbursement per ABA policy.

12.5.3.2. Guests. Same as 12.5.1.4 above.

12.5.4. Fall Meeting.

12.5.4.1. Section Officers, Council Directors, Committee Chairs, Vice Chairs, Incoming Chairs, Incoming Vice Chairs, IRS Division Coordinators, Liaisons from the Young Lawyers Division, Law Student Division, and Section Fellows. Inter-city transportation expenses. See 12.2.2.2 above.

12.5.4.2. Full-Time Law Professors or Government Officials or individuals in Non-Profit Legal Services sector professionals Who Are Committee Chairs, Vice Chairs or Government Officials. Inter-city transportation expenses and per diem (see 12.2.2.2 and 12.2.2.3 above).

12.5.4.3. Active Committee Members Who Are Full-Time Law Professors. Inter-city transportation expenses (see 12.2.2.2 above) if the Committee Chair certifies that the member's attendance at the meeting will contribute substantially to the work of the Committee.

12.5.4.4. Guests. Under ABA policy, a member of the Section, other than a government or other approved guest or an active academic member or a member who is in non-profit legal services sector. (see 12.5.1.3), is ineligible for reimbursement as a guest. All Section members who attend any portion of a meeting regardless if they speak, must pay the meeting registration fee. Reimbursement of travel expenses and per diem for government guests varies and should be cleared via a letter to the Vice Chair (Government Relations), with copies to the Vice Chair (Administration) and the Director, prior to the Committee Chair extending an invitation. Reimbursement of any guest other than a government guest is granted only in special circumstances and must be cleared via a letter to the Vice Chair (Administration) and the Director, prior to the Committee Chair extending an invitation. After clearance, a letter of invitation with an explanation of the reimbursement policy

is e-mailed to each guest from Section of headquarters under the Chair's signature, with a copy to the respective Committee Chair. See 7.4.6 (Guests at Section Meetings) for more information.

12.5.5. Other Travel. Committee Chairs, Vice Chairs, Tax Section Fellows and other Section members engaged in Section business other than at one of the meetings listed above can obtain reimbursement for some or all of their travel expenses (within the limits set forth in 12.2.2), provided the Section Chair or the Vice Chair (Administration) has approved such reimbursement prior to the time of travel. An example of such other travel is travel to Washington, D.C. to attend an authorized meeting with government representatives. The affected Committee Chairs, Vice Chairs and Section members must provide promptly to the Vice Chair (Administration) a written estimate of the additional expenditures.

12.6. Special Project Expenses. In exceptional cases, if authorized in advance by the Section Chair or the Vice Chair (Administration), a Committee Chair, Vice Chair or member may be reimbursed in full for costs incurred in reproducing and distributing substantial volumes of material where required in connection with major Committee projects or similar undertakings. Reimbursement must be requested and approved prior to the incurring of such expenses. Expenses reimbursed hereunder are not also reimbursable as office expenses or travel expenses.

12.7. Procedure.

12.7.1. Travel Expenses. Travel expenses are reimbursed after completion of the travel, upon filing of the proper form, which may be obtained from the Section's Director. Forms for reimbursement of travel expenses must be submitted no later than 90 days after the travel ends. Note that Committee Chairs or Vice Chairs travel expense reimbursements may be withheld until Section Headquarters has received any Committee meeting materials for the preceding meeting of the Section.

12.7.2. Office Expenses. Office Expenses are reimbursed at the end of each fiscal year (August 31). Forms for reimbursement of office expenses will be mailed to appropriate persons and must be filed no later than October 31. Requests for reimbursement of any expenses incurred during the preceding fiscal year but received in Section Headquarters after October 31 will not be honored unless the Section Chair or the Vice Chair (Administration) determines that extraordinary circumstances require such reimbursement.