

**NATIONAL ASSOCIATION OF STATE BAR TAX SECTIONS  
30TH ANNUAL MEETING - OCTOBER 30-31, 2009  
WASHINGTON, D.C.**

**REPORT SUMMARY**

by  
**Ron Caron**

**AGENDA & MATERIALS**

Attached you will find a Conference Agenda that details the topics discussed and the presentations conducted at this conference. The presentation materials that were distributed to the members can be made available upon request. This report does not go into detail with regard to the presentations as the materials provide thorough coverage of the subject matters. The focus of this report is to provide a summation of the discussions that took place during the roundtable discussion where members gave a brief summation of the various tax issues facing tax practitioners in their respective states.

**ROUNDTABLE DISCUSSION**

Each member made a 5-10 minute presentation about the tax issues facing clients and practitioners in their state. As the discussion move around the table, it became apparent that there were a handful of issues facing many of the states: tax revenues are down due to the slumping economy; deficits are increasing; and taxing authorities are becoming more creative and aggressive in attempting to close the tax gap.

Every state reported that their state's tax revenues have declined as a result of the ongoing economic recession. The consensus of opinion was that while the impact of the current economic downturn was affecting every state, two (2) key economic indicators (the unemployment rate and the mortgage foreclosure rate) reflected different impacts. For example, Utah and Colorado are performing well with relatively low unemployment (ranked 48th and 40th respectively) while each ranks near the top for mortgage foreclosure rates (6th and 9th, respectively); whereas Kentucky and North Carolina have high unemployment (ranked 9th and 10th, respectively) while each ranks relatively low in mortgage foreclosures (41st and 36th, respectively). Lastly, there are those states like Michigan, Nevada, and California that rank high in both categories, with high unemployment (1st, 2nd, and 4th, respectively) and with high rates of mortgage foreclosure (8th, 1st, and 3rd, respectively). For the record, Idaho ranks 23rd in unemployment and 5th in mortgage foreclosure rates.<sup>1</sup>

Of the roughly 30 states, and the District of Columbia, represented at the meeting, all but two (2), Idaho and Utah, have commenced or continued deficit spending during the recent economic downturn. In fact, Idaho and Utah were unique among the members in that each state continues to maintain sizable rainy day funds, a position that surprised some of the other members. Also unique to Idaho and Utah is that each state has implemented aggressive budget cuts in response to decreasing tax revenues. All of the other states reported varying degrees of budget cuts in state programs, but all reported continued deficit spending and no states, other than Idaho and Utah, mentioned any type of rainy day fund.

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<sup>1</sup> Unemployment rankings from the U.S. Bureau of Labor Statistics at [www.bls.gov](http://www.bls.gov); home foreclosure rankings from RealtyTrac at [www.realtytrac.com](http://www.realtytrac.com).

Each state reported that their state's taxing authority has increased their audit and collection efforts and a handful of states reported pending legislation that would institute new taxes, primarily on services, in an effort to increase revenues. Some states have allocated additional resources to audit and collection efforts, by hiring additional examiners, while other states are trying to do more with less by increasing the caseloads of their existing examiners.

The consensus around the room was that state taxing authorities are aggressively pushing the taxpayer nexus test by casting a wide net to collect taxes (largely sales and income taxes) from out of state businesses and from out of state residents. This is an especially big issue in many of the eastern states where they have large population bases covering two, three, or more jurisdictions. Speaking from my own personal experience, I shared with the members that I have seen increased activity by the Idaho State Tax Commission in this regard, especially with regard to individuals. I noted that our Tax Commission has been closely scrutinizing individuals that were once Idaho residents and are now claiming residency in other states, especially those without a state income tax (i.e. Nevada, Washington, Texas, Florida, Alaska, etc.). I also reported that our Tax Commission is looking for companies that, while not having an actual physical presence within Idaho, are sending employees into Idaho to conduct business.

A few states reported that their state legislatures are either debating or have introduced legislation that would impose a sales tax on certain services. Some of the services that could become subject to sales taxes in these states include haircuts, massage therapy, auto maintenance and repair, and even legal services (guess which industry has mounted the greatest push back).

#### SUMMARY

I really enjoyed this experience and I very much appreciate the opportunity to have represented our Section at this meeting. It was personally very rewarding to meet tax professionals from other states and to learn about the issues facing other jurisdictions. It was especially valuable to learn what the legislatures and taxing authorities in the more populous states are doing as, which is true with other aspects of society, it provides an opportunity for us to "see into the future" with regard to changes, or proposed changes, occurring in the tax world. It can provide Idaho with the chance to learn from the mistakes and successes of other states. Unfortunately, not every state was represented and only a few of our regional neighbors (Utah, Nevada, California, Colorado, and New Mexico) were represented. There were no representatives from Washington, Oregon, or Montana. Many of the members appreciated that our Section decided to send a representative to this year's meeting. Being a relatively new member of the Idaho Bar, I am not sure if, or when, we have sent a representative to this annual meeting. Many of the other members could not recall when Idaho had last sent a representative. For what it is worth, it is my opinion that we should send a representative to this meeting every year. As you will see when you review that attached materials, the subjects presented are very topical and detailed and will provide our members with additional valuable resources for their practices. Next year's meeting will be held in San Francisco, California. A date has not yet been determined.

Unfortunately, I was not able to obtain any feedback regarding the creation and operation of a listserv as many of the members I spoke with did not have the technical background for doing so. The members did note that they did utilize their state's listserv and that it is a valuable resource in their practice.

I would be happy to answer any questions from the membership. My new office number 472-8832.

NATIONAL ASSOCIATION OF STATE BAR TAX SECTIONS  
30<sup>TH</sup> ANNUAL MEETING – OCTOBER 30-31, 2009

CONFERENCE LOCATION

MultiState Tax Commission Headquarters  
444 North Capitol Street NW, Suite 425  
Washington DC 20001  
Phone: (202) 624-8699  
Fax: (202) 624-8819

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CONFERENCE AGENDA

Friday, October 30, 2009:

- 8:00 a.m.                    **Registration Commences**
- 8:25 – 8:30                **Welcome and Introductions**  
Gary R. Thorup  
Holme Roberts & Owen LLP (Salt Lake City, UT)  
2008-09 NASBTS Chair
- 8:30 – 9:20                **Discovery, Disclosure and Confidentiality Issues**  
Moderator:    William D. Townsend  
                    Fowler White Boggs Banker LLP (Tallahassee, FL)  
Presenters:    Scott L. Brandman  
                    Baker & McKenzie LLP (New York, NY)  
                    Leah Samit Robinson  
                    McDermott Will & Emery LLP (New York, NY)
- 9:20 – 10:10              **State Taxation of Digital Goods and Electronic Commerce**  
Moderator:    Mark A. Engel  
                    Bricker and Eckler LLP (West Chester, OH)  
Presenters:    Mary T. Benton  
                    Alston & Bird LLP (Atlanta, GA)  
                    2008-09 NASBTS Vice-Chair  
                    Ethan D. Millar  
                    Alston & Bird LLP (Atlanta, GA)
- 10:10 – 10:20             **Break**

- 10:20 – 11:10**            **International Estate Planning**  
Moderators: Robert B. Haines  
Robert B. Haines (Bedminster, NJ)  
G. Michael Yopp  
Waller Lansden Dortch & Davis LLP (Nashville, TN)  
Presenter: Leigh-Alexandra Basha  
Holland & Knight (Washington, DC)
- 11:10 – 12:00**            **Troubled Businesses**  
Moderator: S. Lucky DeFries  
Coffman DeFries & Nothern (Topeka, KS)  
Presenter: Robert B. Haines  
Robert B. Haines (Bedminster, NJ)
- 12:00 – 12:30**            **Lunch**
- 12:30 -1:20**            **A Report on Rules & Regulations from the OPR Regarding  
Practice Before the IRS and Ethics Issues**  
Introduction: G. Michelle Ferriera  
Holme Roberts & Owen LLP (San Francisco, CA)  
Presenter: Carolyn Gray  
Deputy Director, Internal Revenue Service  
The Office of Professional Responsibility (Washington, DC)
- 1:30 -2:40**            **State and Federal Penalties and Ethics Issues**  
Moderator: G. Michelle Ferriera  
Holme Roberts & Owen LLP (San Francisco, CA)  
Presenters: Deborah A. Butler  
Associate Chief Counsel, Internal Revenue Service  
Procedure and Administration  
G. Michelle Ferriera  
Holme Roberts & Owen LLP (San Francisco, CA)
- 2:40 -3:40**            **Participant Roundtable Discussion (State Rules on Penalties and Tax  
Law Practice in the Various States)**  
Moderator: Mary T. Benton  
Alston & Bird LLP (Atlanta, GA)
- 3:40 – 3:50**            **Break**
- 3:50 – 4:40**            **Participant Roundtable Discussion (Continued)**

4:40 – 5:30

**Reports from Various Liaison Organizations and Groups**

Moderator: Gary R. Thorup

Holme Roberts & Owen LLP (Salt Lake City, UT)

Presenters: Tax Court *Pro Bono* Project

The Honorable Peter J. Panuthos

Chief Special Trial Judge

United States Tax Court

S. Lucky DeFries

Coffman, DeFries & Nothern (Topeka, KS)

IPT

Cass Vickers

AICPA

Karen M. Nakamura

TKM-SALT – PriceWaterhouseCoopers

6:00 – 9:00

**“Dutch Treat” Dinner:**

The Monacle Restaurant

107 D Street, NE

Washington, D.C. 20002-5613

202-546-4488

**Saturday, October 31, 2009:**

8:15 – 8:30

**Annual Meeting Matters**

Moderator: Gary R. Thorup

Holme Roberts & Owen LLP (Salt Lake City, UT)

8:30 – 9:20

**Nexus Issues**

Moderator: William D. Townsend

Fowler White Boggs Banker LLP (Tallahassee, FL)

Presenters: Marjorie Gell, Associate Professor

Thomas M. Cooley Law School (Lansing, MI)

Arthur R. Rosen

McDermott Will & Emery LLP (New York, NY)

9:20 -9:50

**Series LLCs**

Moderator: Gary R. Thorup

Holme Roberts & Owen LLP (Salt Lake City, UT)

Presenter: Thomas Yearout

Holme Roberts & Owen LLP (Denver, CO)

9:50 – 10:00

**Break**

10:00 – 10:50

**Recent Supreme Court Decisions**

Moderator: Sarah H. Beard

Pierce Atwood LLP (Portland, ME)

Presenter: Charles Rothfeld

Mayer Brown (Washington, D.C.)

**10:50 – 11:40**

**Independent Contractor Issues**

Moderator: Arthur R. Rosen

McDermott Will & Emery LLP (New York, NY)

Presenter: David Fuller

Morgan Lewis (Washington, DC)

**11:40 – 12:30**

**Hot Tax Topics**

Moderator: Arthur R. Rosen

McDermott Will & Emery LLP (New York, NY)

Presenter: Peter L. Faber

McDermott Will & Emery LLP (New York, NY)

**12:30 -----**

**Summary of Program and Wrap-up**