

Report from DOR Liaison Meeting

On March 21, 2018, the Tax Section and the Florida Department of Revenue held a liaison meeting in Tallahassee. The Tax Section thanks the Department, especially the General Counsel Mark Hamilton, Director Leon Biegalski, and the entire team with the Department's Office of General Counsel and Technical Assistance and Dispute Resolution for generously offering their facilities and time for the meeting.

The meeting began with welcoming comments and introductions from Joe Schimmel, Chairman of The Florida Bar Tax Section, and Steven Hogan, Chair of the State Tax Division. The comments by Mr. Schimmel and Mr. Hogan were followed by comments by the Department's Executive Director, Leon Biegalski, and the Department's General Counsel, Mark Hamilton. These remarks set the tone for a professional discussion of issues of relevance to Florida tax practitioners and taxpayers.

Legislative Update

The substance of the meeting opened with a legislative update from Debbie Longman, the Department's Legislative and Cabinet Services Director. Ms. Longman discussed three bills of note that were passed during the 2018 Legislative Session.

The first item discussed was HB7055, which has been signed by the Governor and became law in Chapter 2018-6, Laws of Florida. Though this bill was an education bill, it had several tax impacts that are being addressed by the Department. The bill created a Hope Scholarship program and a Florida Sales Tax Scholarship program. Both of these scholarship programs allow tax payments to be earmarked for specific scholarship programs. The Department's role in administering these programs is to promulgate the forms and process as necessary to allow these programs to work. In the case of the Florida Sales Tax Scholarship program, the Department is also responsible for providing qualified scholarship funding organizations with a list of the 200 top payors of business rental tax.

The second legislative item discussed was HB7093 – the corporate tax piggyback. As of the date of the Liaison Meeting, the bill had not been signed by the Governor.¹ Of note to the Department is that the bill contains the potential for a downward adjustment of the tax rate for Florida taxpayers and refunds based on the state's collections. The Department also would be required under this bill to generate a report by February 1, 2019, on the effects of the 2017 Tax Cuts and Jobs Act passed at the federal level. The report would have to cover the impact on Florida's corporate income tax that the bills had, legislative options based on those effects, and the fiscal impact for each option. The Department would have to hold at least two public workshops on these potential changes and options. Mark Hamilton indicated that the Department will also hold public workshops to develop rules implementing the changes required by the TCJA.

¹ The bill was signed into law after the meeting, on March 23, and adopted in Chapter 2018-119, Laws of Florida.

The third legislative topic involved HB7087. This was the general tax package. As of the date of the Liaison Meeting, this bill has not been signed into law.² This bill contains a three-day back to school holiday and a seven-day disaster preparation holiday. The bill also reduces the commercial lease tax rate and includes a “grab bag” of tax rate, refund, and credit issues.

Economic Update

After the legislative update, the Department’s Chief Economist, Bob McKee, presented an economic update with a focus on Florida’s economic outlook and the impact of that outlook on Florida’s tax structure. A simple summary of this presentation would not do it justice. Therefore, Mr. McKee was generous enough to allow us to include the entire presentation with this report. Please find a copy of this presentation attached.

TADR Update

After the economic update, the Department’s Director of the Technical Assistance and Dispute Resolution (“TADR”), Mark Zych, gave a presentation on the operations and current status of TADR. Mr. Zych gave an overview of the functions that TADR performs, which include protests, offering technical assistance to the public and the legislature, rule promulgation, and special projects.

Mr. Zych said that TADR currently has 583 cases under protest as compared to over 1800 in the recent past. TADR has a 180-day goal on finishing out each protest (they averaged 184 days during 2017). The main delay in finishing protests is receiving documentation. If the protest process extends beyond 180 days, TADR routinely offers interest compromise for delays that are the responsibility of the Department.

With regard to TADR’s technical assistance function, TADR normally issues around 950 LTAs, or Letters of Technical Advice, per year. These offer informal guidance to taxpayers that are not binding on either the Department or the Taxpayer. TADR also issues between 40 and 100 TAAs, or Technical Assistance Advisements, per year. These are binding on both the taxpayers that receive them and the Department. TADR has a goal of a 35-day turnaround for LTA and TAA requests.

The technical assistance that TADR offers with regard to legislation is complete for the 2018 year. TADR has now moved into focusing on its rule promulgation function.

Litigation Update

The Department then presented a litigation update. The speakers were Stephen Keller, Chief Assistant General Counsel, Property Tax Section; Eric Peate, Chief Assistant General Counsel, General Tax Section; and Caroline DeVita Tooley, Assistant General Counsel, General Tax Section.

² The bill was signed into law after the meeting, on March 23, and adopted in Chapter 2018-118, Laws of Florida.

Mr. Keller advised that most of his Section's cases begin at local Valuation Adjustment Boards, and indicated that their principal cases involved retroactive assessments and retroactive liens. He discussed the following significant property tax cases:

Pending appeals cases as of March 21, 2018:

Defrances v. Furst, 2D17-3973

Fitts v. Furst, 2D18-538

Burcar v. Furst, 2D17-3316

Decided cases as of March 21, 2018:

Nicolits v. Haney, 221 So. 3d 725 (Fla. 4th DCA 2017).

City of Miami v. 346 NW 29th St., LLC, 217 So. 3d 143 (Fla. 3d DCA 2017).

McLendon v. Nicolits, 211 So. 3d 92 (Fla. 4th DCA 2017).

Miles v. Parrish, 199 So. 3d 1046 (Fla. 4th DCA 2016).

Forest Brooke/Hillsborough v. Henriquez, 194 So. 3d 1091 (Fla. 2d DCA 2016).

Endsley v. Broward County, 189 So. 3d 938 (Fla. 4th DCA 2016).

Genesis Ministries, Inc. v. Brown, 186 So. 3d 1074 (Fla. 1st DCA 2016) (as of March 21, 2018, the case is on its second appeal, 1D17-4313).

Nicolits v. Neff, 184 So. 3d 538 (Fla. 4th DCA 2015).

Kelly v. Spain, 160 So. 3d 78 (Fla. 4th DCA 2015).

Brklacic v. Parrish, 149 So. 3d 85 (Fla. 4th DCA 2014).

Mr. Peate discussed the function of the Office of General Counsel's General Tax Section in receiving, reviewing, and resolving administrative petitions and circuit court cases that have been filed with regard to taxes other than property tax. Most of the administrative petitions that are filed with the Department remain with the Department for resolution. Mr. Peate urged practitioners to tell the Department early in the process about any realistic estimate of the amount of tax that the taxpayer owes. Talking about those numbers early on can result in a faster resolution.

Mrs. DeVita Tooley discussed the following major cases (including potential class actions) that are currently in litigation or have recently concluded:

Doc Stamp Case:

- *Richard A. Castorri, individually and on behalf of those similarly situated, v. Florida Department of Revenue*, Leon County Circuit Court, 2016-CA-2117.

Feminine Hygiene Product case(s):

- *Carlee Wendell, et al. v. Florida Department of Revenue; Florida Department of Business and Professional Regulation; Florida Department of Health; CVS Pharmacy, Inc.; Holiday CVS, LLC; Publix Super Markets, Inc.; Target Corporation; Walgreen Company; and Wal-Mart Stores, Inc.*, Leon County Circuit Court, 2016-CA-001526.
- *Carlee Wendell, et al. v. Florida Department of Revenue, et al.*, First District Court of Appeal, 1D17-910.

- *Carlee Wendell, et al. v. Florida Department of Revenue, et al.*, Second District Court of Appeal, 2D17-2847.

Rule Update

The final section of the liaison meeting involved a rule update from the Department's Rule Coordinator, Kimberly Berg. Mrs. Berg reported that it takes six months to a year to complete the rulemaking process. Mrs. Berg has graciously provided the Section with her rulemaking update report, a copy of which is attached.