



WASHINGTON STATE BAR ASSOCIATION

Taxation Section

Sent Via Electronic Mail

January 25, 2016

Anthony Gipe
Chair
WSNA Sections Policy Workgroup

RE: Feedback of the Taxation Section regarding the Workgroup's 12/30/15 Phase 1 Report & Memorandum

Dear Mr. Gipe:

On behalf of its members, the Executive Committee of the Washington State Bar Association's Taxation Section ("Tax Section") provides the following feedback regarding the Section Policy Workgroup's Phase 1 Report & Memorandum. Specifically, the Tax Section requests rejection of the proposed fiscal policy and governance revisions.

As an initial matter, the Tax Section is very concerned about the process by which the Workgroup's proposal was developed. First, the Workgroup appears to consist of governors and staff, but no representatives from the sections themselves. Second, while the Workgroup's meetings were public, the Tax Section received no communication that would have hinted at the radical changes to the governance and financing of the sections. While we welcome the opportunity to comment on the proposal, the Tax Section believes that the Workgroup should be reconstituted to include representatives of the sections or abandoned altogether.

In addition to concerns about process, the Tax Section opposes the Workgroup's proposal. Under the Workgroup's proposal, the financial resources of all sections will be pooled and redistributed to all sections as the Bar deems appropriate. Any fund balances remaining in a section would not carry over from year to year. The Bar, rather than sections, will determine what programming and member services are warranted or desirable. The Tax Section, the WSBA, and members are best served by preserving Section decision-making and financial/budget autonomy.

Section budgets/finances should be autonomous.

WSBA members voluntarily elect to join sections, paying dues over and above the standard bar fees because they have interest in that particular section's practice area/focus. When WSBA members join a section, they naturally understand and expect that the dues paid will go towards section activities. Under present policies, the financial resources of a section allow members to benefit from their elections to join sections because elected section members who are familiar with areas of concern and interest to the section make the programming and budgeting decisions.

With the proposed changes to fiscal policies, section members will no longer see their dues put to use in ways deemed valuable to section members. Instead, dues will go to programming deemed important by the WSBA to all WSBA members, not just section members, and perhaps even into a generalized fund for Bar overhead expenses. This approach fails to respond to member interests and is unacceptable.

Furthermore, we believe many of the Taxation Section's members (and likely other sections' members as well) may elect to forego membership altogether if there is no correlation between additional, useful tax programming and activities and the dues paid. In essence, the Workgroup's proposal turns members' section dues into additional generalized bar dues that

do not serve the specified purpose or interest. There would be no point in joining a section if this were to be the case, and such a policy may foretell the end of sections altogether.

To the extent that the WSBA's efforts to implement a pooled section fund derives from a concern that it is overly subsidizing sections' costs, we note that removing financial autonomy from sections is not the answer. Only with the release of the Memorandum did the WSBA release any (unconfirmed) figures regarding the apparent subsidization of certain sections. What this reveals is that: (1) sections have not been told they are being subsidized and therefore have never had the opportunity to adjust spending activities to reduce or eliminate the subsidies; and (2) it is the WSBA and the Board of Governors that have implemented policies that prevent sections from bearing the true cost of their activities. We also note that it was the WSBA that approved all of the sections' budgets, making it unclear why, if the WSBA was so concerned about the subsidization, those budgets were approved. In any event, to the extent a policy change is needed, the more obvious solution is to require the heavily subsidized sections to bear the actual cost of their activities or adjust their activities. The proposed policies do not do this, and instead encourage sections to ask for more and spend more, all the while reducing their financial autonomy and discouraging fiscal responsibility.

Fiscal responsibility should be rewarded, not extinguished. Taxation Section savings should not be forfeited to the Bar.

The Taxation Section, like many other sections, takes a fiscally conservative stand/approach to its funds and its budget. We have consciously chosen to budget to balance the dues we charge with the services, programs, and mentoring or networking opportunities our members expect. We have minimized or offset costs by soliciting generous member contributions of meeting and event space, food and beverages, scholarship funding, and extensive secretarial and administrative support for section lunches, meetings, and events. As described below, we have also diligently worked to increase and maintain membership. Through these efforts, the Taxation Section has built up a significant reserve fund. Under the Workgroup's proposal, the Taxation Section would forfeit that fund into a joint fund to be shared with all sections. This is unacceptable. Moreover, there would no longer be an incentive to ever create a reserve fund. As stated in the Workgroup's Memorandum, the reserve fund serves as "cushion for unexpected revenue shortfall, unexpected expense, future events that do not occur annually, and the ability to take advantage of unforeseen unique opportunities." These reasons continue to serve as a basis for the sections' reserved funds.

Section efforts to increase and maintain membership levels should be respected.

The Taxation Section has over 600 members. This did not come about through happenstance. Rather, we have expended significant time and resources over the years in an effort to both increase and maintain the Taxation Section's membership numbers. We have done so because we believe an increased membership will have a beneficial effect on the practice of tax law in Washington, and because the additional financial resources provided by a larger membership base mean the Taxation Section may offer more opportunities to its members. The Workgroup's proposal would undo all of the Taxation Section's efforts by decoupling the Taxation Section's funding from its membership numbers. The Taxation Section would have no incentive to increase its numbers, nor would tax practitioners have any reason to join when dues would go to a generalized pool benefiting all WSBA members, with no clear directive that section dues will be allocated to sections in proportion to their memberships or that the sections will have control over the spending of those funds.

Sections are best equipped to select valuable programming for their members.

Like with overall budgeting regarding the priority and value of various Taxation Section, the Taxation Section itself can best determine how its resources are spent on programming. The Workgroup's proposal appears to remove programming responsibility from sections and instead centralize it with the WSBA, or at minimum, to allow the WSBA to exercise veto power over section programming. We believe the elected leadership of the Taxation Section is best positioned to decide on programming for its membership. We also note that the WSBA already reviews and has significant input into which CLEs are offered, what events the Section sponsors, approval of the Taxation Section's budget, etc. To add further review

will simply impede the Taxation Section from implementing the networking events, training opportunities, CLEs, brown bags, and other events that the Taxation Section's members desire.

The Taxation Section scholarship will likely be eliminated if this fiscal policy is enacted.

We also note that, if funds are centralized and redistributed in the manner proposed, the Taxation Section would likely be unable to maintain the scholarship it has funded for over fifteen years. We understand the scholarship to be the longest-running in the WSBA history, but we do not believe it would be sustained under the new policy.

If the proposed fiscal policies were to be enacted, serious questions remain about how they will be implemented.

Strikingly absent from the Workgroup's Memorandum is any clear discussion or guidance about how the fiscal policy would be implemented. There are many unanswered questions, including the following. If the WSBA will set uniform bar dues for all sections, how much will the dues be? How will the pooled funds be allocated and/or distributed across sections? How will the WSBA decide which programs the pooled funds will be contributed towards? Will the WSBA veto programming in less financially conservative sections or insolvent sections if those sections are acting irresponsibly such that other sections are adversely impacted? The Workgroup needs to give much more thought and clarity on these types of issues before moving forward.

The proposed governance changes are unnecessary and counterproductive.

The Workgroup appears to have developed a solution in search of a problem. The Tax Section has periodically reviewed and revised its by-laws to address input from the WSBA and the needs of our section. The Section knows its own needs best, including the number and type of officers, the size the board, etc. The Workgroup has provided no reasons for proposing a cookie-cutter charter structure on sections that have unique needs and objectives. While the Tax Section is open to revisions to its by-laws to address problems or improve governance, the Workgroup's proposal is unnecessary and unacceptable.

Conclusion

The Taxation Section recommends rejection of the Workgroup's proposed policy changes. We believe that our members are best served by maintaining Section autonomy under the present system. This properly rewards the Taxation Section's voluntary members by allowing the Section to target valuable programming for Section members and to transfer the benefits of its fiscal conservatism and member recruitment efforts to its own members.

Sincerely,



Cory L. Johnson
President, WSBA Taxation Section