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Inside the IRS: An Interview with William J. Wilkins

By Christian DesRochers

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Last spring, President Obama nominated William J. Wilkins as Chief Counsel for the Internal Revenue Service and the Assistant General Counsel in the Department of Treasury. Both of these entities play a role in issuing rulings and notices that impact the work of insurance tax practitioners. With this in mind, the TAXING TIMES Editorial Board and the Taxation Section Council thought it would be important for the Taxation Section members to get to know William “Bill” Wilkins.

Prior to his nomination, Wilkins was a partner in the D.C. Tax Practice Group of Wilmer Cutler Pickering Hale and Dorr LLP, since 1988. He has a broad tax practice background that includes counseling nonprofit organizations, business entities and investment funds on tax compliance, business transactions and government investigations. Christian DesRochers, Taxation Section chair, caught up with the busy Wilkins who graciously agreed to be interviewed about the Office of Chief Counsel and his perceptions and expectations in his new role. Following is that interview.

DESROCHERS: Bill, congratulations on being named IRS Chief Counsel. It is not only an exciting opportunity, but a significant management challenge in transitioning from private practice to a government agency. The Service is a complex organization, including the Large & Mid-Size Business (LMSB) audit group, as well as Appeals and the National Office. Can you share with our readers your experiences in dealing with the Service from a private practice perspective?

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WILKINS: Thanks Chris. I devoted most of my private practice to transactions and tax counseling, although I would from time to time get involved in projects involving the Office of Chief Counsel. Some involved seeking private letter rulings and some involved possible published guidance. My limited involvement in tax litigation involved more brief writing than discussions with opposing counsel. I have also represented clients in the IRS Appeals process. Finally, my work in connection with the ABA Section of Taxation involved frequent interaction with Counsel in connection with comments on proposed regulations, CLE programs and general interaction on tax policy and administration.

DESROCHERS: Though it may be too soon to ask, now that you are “inside,” has your perception of the IRS and its work changed? How?

WILKINS: The people have certainly lived up to my expectations. They are highly skilled and dedicated professionals. The workplace is very enjoyable. I think people really like their jobs and feel they are doing important work. The nature of the work is also as expected—for me, a mixture of helping

the Commissioner and other senior executives, working on guidance and working on issues surrounding examinations, appeals and litigation. The unexpected things are relatively minor. It is the most hierarchical organization I have ever worked in. It has very clear lines of authority and every senior person has a team he or she can turn to in order to accomplish goals. This has been helpful in keeping more of my time free for legal and strategy work, and in providing support for that work. The other things are things I probably should have expected but didn’t think about: the emphasis on security of taxpayer information and IRS electronic equipment; the unique civil service and NTEU (National Treasury Employ

ees Union) structures around our employment practices; and the creative ways that the organization rewards and encourages outstanding performance.

DESROCHERS: Bill, with the perspective of your experience in private practice, what do you see as the similarities and/or differences between the role of a law firm and that of the Chief Counsel’s office?

WILKINS: The overarching similarity is found in dedication to client service and excellence. The differences are more numerous, but not as significant. As I mentioned, Chief Counsel and the IRS are hierarchical structures, with more similarity to a military organization or a large business than to a law firm. In a law firm, you would organize a project through ad hoc team building, sort of like a movie producer. In the IRS, you organize a project by identifying where it belongs and assigning responsibilities and goals to the part of the organization that takes the assignment. Another difference is that you are the in-house counsel, with a single client—and the client is the government. Another difference is that the written mission of our office includes the words, “Serve America’s taxpayers fairly and with integrity by providing correct and impartial interpretation of the internal revenue laws.” This is, intentionally, more tempered than the private lawyer’s mandate for zealous representation within the bounds of the law.

DESROCHERS: It sounds like management and policy are key elements of your responsibility, and in many respects, the Chief Counsel’s office is definitely a large firm. What are the challenges of being in charge of a “law firm” this large? Is one of your goals to leave your “mark” on the Office in some way?

WILKINS: Our office has been referred to as the largest tax law firm in the world. We have over 1,600 lawyers, divided about 60-40 between field offices and the national headquarters building. It is daunting to reflect on the intellectual firepower, size, diversity and influence of this organization. On the other hand, to do most things we need to cooperate with other parts of the government and with other parts of the IRS, and in many cases the cooperative processes require considerable patience and persistence.

As to the part about being in charge, it is a life changing experience to participate in decisions on both legal matters and management matters of the kind that come through this office. However, the organization would never run correctly if the Chief Counsel could not rely on managers, both in the national office and in the field, to make sure things go well and that strategic plans are developed and executed. Our team of managers is truly outstanding.

I really do not want to leave a mark in the sense that expression is usually used. For one thing, it implies my taking credit, and in this organization it takes many people to accomplish anything. I want to be alert to the events and opportunities that are going to be important during my time here—to exist in the moment, as they say. There is nothing wrong with doing a little planning ahead, but you can’t let it distract you from spotting

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a potentially powerful set of events on the horizon and using your resources to guide them in a positive direction.

DESROCHERS: Bill, as an experienced tax lawyer, you have a reputation for being a good tax technician in that you have an appreciation of both the complexity of the Code provisions and their interaction. How do you see that influencing your new role as Chief Counsel?

WILKINS: Being more than 30 years into a tax career, and having practice experience with many different tax specialty areas, are proving to be extremely valuable in my new job. Federal tax law is a code-based practice, and having a comfort level with the statute and its structure is essential for the job. While you need to acknowledge the expertise of deeply specialized practitioners, you also need to have enough confidence in your own intellect to keep challenging the specialists if issues are unclear or if proposed answers don't make sense.

DESROCHERS: The readership of *TAXING TIMES* consists of actuaries and others, including attorneys and accountants with a keen interest in the issues related to the insurance tax arena. Do you have any experience with insurance tax in your prior life?

WILKINS: Most of my insurance experiences are from my 1981-1988 stint as a staffer on the Senate Finance Committee. I was the Finance Democrats' staff participant in the Stark-Moore discussions and processes, among other things. I did a modest amount of Washington policy representation for some insurance companies at the beginning of my career at Wilmer, Cutler & Pickering, but those experiences are pretty far in the past now.

DESROCHERS: We have recently passed the 25th anniversary of the 1984 Act, which was the ultimate result of the Stark-Moore efforts. In fact, our last issue of *TAXING TIMES* featured a retrospective piece on this legislation. From that retrospective, it became clear that the life insurance industry has undergone profound changes in the last 25 years, including the emergence of many new products as well as many challenges in risk management and capital structure. What are the most important issues that you see in administering the current tax law with respect to life insurance companies?

WILKINS: I do not want to get too specific here, as I am just getting back into these issues after being away for a long time. However, in the big picture, one important question may be whether solvency regulation of the industry—which is part

Department of the Treasury
2009-2010 Priority Guidance Plan

INSURANCE COMPANIES AND PRODUCTS

November 24, 2009

1. Final regulations on the exchange of property for an annuity contract. Proposed regulations were published on October 18, 2006.
2. Guidance on the tax treatment of a partial exchange or partial annuitization of an annuity contract.
3. Guidance on the classification of certain cell captive insurance arrangements. Previous guidance was published in Not. 2008-19.
4. Guidance on tax issues arising under §807 as a result of the adoption by the National Association of Insurance Commissioners (NAIC) of an Actuarial Guideline setting forth the Commissioners' Annuity Reserve Valuation Methodology for variable annuities (AG 43).
5. Revenue ruling regarding the tax-free exchange of life insurance contracts subject to §264(f).
6. Guidance clarifying whether deficiency reserves should be taken into account in computing the amount of statutory reserves under §807(d)(6).
7. Guidance on the determination of the company's share and policyholders' share of the net investment income of a life insurance company under §812.
8. Guidance on treatment of age 100 maturity under §7702 based on comments to Notice 2009-47.
9. Guidance on annuity contracts with a long-term care insurance feature under §§72 and 7702B.
10. Revenue ruling providing guidance on reinsurance arrangements entered into with a single ceding company.

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Sometimes the world will not be convinced that we can sustain our position until some judges write some opinions—and similarly, sometimes it takes the same thing to convince us that we can lose.

of the tax structure—will evolve to such an extent that another legislative update will be needed to give us the ability to craft sensible tax rules.

In November, the Office of Tax Policy and IRS announced its 2009-2010 Priority Guidance Plan which include a number of projects directed at insurance companies and insurance products. A number of these initiative address topics that I'm sure readers of *TAXING TIMES* are well aware of, as they have been addressed in past issues of your newsletter. While I cannot comment on the specifics of items included in the business plan, there are a number

of insurance related projects that we will be focusing on in 2010 (See page 7).

DESROCHERS: Looking forward, as the new Chief Counsel for the IRS, what areas do you intend to focus on?

WILKINS: I think my areas of concentration will not be so much tax specialty areas as they will be areas of responsibility. I would say at this point that my expected areas will include helping the Commissioner execute important IRS priorities; attending to processes for published guidance, including helping resolve deadlocks or other uncertainties that may be slowing projects down; litigation strategy; and sustaining the office as a great place to practice tax law.

DESROCHERS: Following up on the last question, do you plan any reorganizations of the Chief Counsel's office? Any change in philosophy in litigation, rulings, etc.?

WILKINS: The short answer is no. I am pretty skeptical of reorganizations. However, I plan to be alert to situations where something could work better, and I will be open to making changes if the prospects for improvement are worth the problems that always come with organizational change. On guidance, I am encouraging people inside and outside the organization to identify areas where problems exist, or are threatened, because no one knows the official position of the IRS. In many of these areas, it will be worthwhile to make the effort to develop an official position. On litigation, my sense

is that the organization understands that sometimes litigation is essential to defending agency positions and to development of the law. Sometimes the world will not be convinced that we can sustain our position until some judges write some opinions—and similarly, sometimes it takes the same thing to convince us that we can lose.

DESROCHERS: Bill, thank you for taking time out of your busy schedule for this interview. I think it provides our readers with the opportunity to get to know you a little better and introduces you to the insurance tax community. I look forward to seeing your progress in your efforts as Chief Counsel. On behalf of the entire SOA Taxation Section, I wish you good luck in your new position. ◀

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