



SOCIETY OF ACTUARIES

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## WELCOME, HELEN HUBBARD

By Mark S. Smith

In July 2013, the Internal Revenue Service (IRS) chief counsel appointed Helen M. Hubbard as the associate chief counsel (Financial Institutions and Products). Her office (sometimes referred to in tax circles as “FIP”) includes four branches that are generally responsible for non-insurance issues affecting financial institutions and products, a branch responsible for tax-exempt bonds, and of course the insurance branch (with which our readers are very familiar). Because of the office’s important role in the taxation of insurance companies and products, the *TAXING TIMES* Editorial Board and the Taxation Section Council thought our readers would appreciate the opportunity to meet Helen Hubbard and welcome her to the insurance tax actuarial community.<sup>1</sup> Mark Smith of our editorial board recently met with Ms. Hubbard to talk about her background and her new role.

**SMITH:** Helen, thank you for taking the time to talk with us; I know how very busy you are in your new role. Could you share a little bit about your professional background and the professional path that has led you to FIP?

**HUBBARD:** Thanks, Mark. Few people know this, but my father was a tax professor and also a retired partner from a Big Four accounting firm. He was so thoroughly dedicated to tax and compelled to teach that he did so even at home. Many of my most enduring lessons about federal income taxation were over breakfast and dinner. I was originally supposed to be a doctor, but was excused from that career path when my younger sister graduated from medical school and married another doctor, both on the same day. That was a good thing, because I always considered myself a natural-born tax lawyer. When confronted with a rule, I would always examine it from every angle, exploring each exception and permutation, always with a goal of finding a fair and sensible result.

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I started my tax career with an accounting firm, Price Waterhouse. There, one of my first clients was a mutual insurance company that was new to the firm. I still remember the challenge of translating amounts reported on the annual statement to amounts reported on a federal income tax return. I know that exercise has grown more rewarding, shall we say, over the years as accounting and tax rules have become more complex.

After law school, my path led me down both the law firm and accounting firm routes at different times. Whereas at one point I would have expected that tax practice with a law firm was more interesting and challenging than with an accounting firm, I would say over time the practices of each have evolved. Immediately before joining the Treasury Department Office of Tax Policy as Tax Legislative Counsel in 2002, I was a partner with Ernst & Young.

I must say that my time at Treasury was possibly the most rewarding time in my professional life. Although much of my time there was spent on non-insurance issues such as capitalization of intangible assets and the section 199 deduction for domestic production activities, there was a significant amount of insurance work as well. For example, during my tenure we published two series of insurance revenue rulings, one on captive insurance, and the other on the investor control doctrine that applies to life insurance products. I love a challenge, and those insurance rulings fully met expectations.

For many of us, an element of professionalism is involvement in professional organizations. I have been privileged to serve the ABA Section of Taxation as vice chair of Government Relations, chair of the Accounting Methods Committee, and chair of the Code Simplification Task Force. Each of these experiences has broadened my appreciation for the challenges faced by companies in many different sectors, and the need for guidance that is clear and helpful.

**SMITH:** In your various past roles, what has been your experience dealing with the IRS generally, and with insurance issues specifically?

**HUBBARD:** In practice, I dealt primarily with the National Office in the context of Private Letter Ruling (PLR) requests, Technical Advice Memoranda (TAMs), and formal and informal interactions related to published guidance. I had significant experience in controversy matters with the Examination

Division and Appeals. I always hoped to litigate a case, but literally all my cases settled. Since joining the IRS Office of Chief Counsel, I've had the very welcome opportunity to participate in decisions concerning litigation of specific cases.

In my role at Treasury, I was responsible for all domestic tax issues except for employee benefits. As a result, I worked closely with individuals at all levels of the IRS and Office of Chief Counsel and in many different divisions. I really appreciated being on the inside, and participating in the development of guidance and in the decision making that affected people and companies. I particularly learned how important it is to work together with my counterparts at the IRS. Although our roles were different, we served the common goal of reaching the right answer.

In private practice, I advised non-insurance clients on insurance issues. For example, I gained a familiarity with captive insurance issues, and the taxation of retrospectively rated contracts. In this sense, I fully appreciate how important insurance issues may be to a taxpayer that is not an insurance company.

**SMITH:** You most recently served as vice president for Tax and Benefits at Fannie Mae. Why did you decide to rejoin the government, and why FIP?

**HUBBARD:** When I left Treasury, I had a notion that I would return to government service later in my career. I have always enjoyed work that is interesting and challenging, and I enjoy managing a team of people. In 2013, it appeared that the opportunity in FIP would be interesting and challenging—my most important criteria—and would be a solid fit for my background. I'm a strong believer in the importance of providing published guidance, and value the opportunity to re-engage in that process. Other dimensions of my position, such as coordinating FIP's litigation advice and answers to difficult questions in PLRs and TAMs, are new in some ways. In other ways, though, they are familiar in that they build on my experience as a lawyer and tax advisor.

I'm continually impressed by the breadth and quality of many of the dedicated people in FIP and elsewhere in the IRS. The institutional knowledge and history in this organization are extremely valuable. Again and again, the wealth of understanding of very technical issues and the history of positions

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the IRS has taken over the course of decades help the institution reach positions that are consistent and reasoned. I valued that when I was at Treasury. It was an important part of my decision to return to government service, and I feel so fortunate to work with the people here.

**SMITH:** What can you tell us about FIP? How big a role does the insurance branch play? What are some of the things the division does that are less visible to our readers?

**HUBBARD:** Well, there are a total of six branches in FIP, of which the insurance branch is one, and a little over 60 people. That is not to say the insurance branch is just a small or isolated part of the division. Far from it—insurance constitutes an important part of FIP’s work, and it is very important to me that the division’s branches work together carefully, so that positions are consistent (or, where different, are different for a reason). It is also important to me that the insurance branch—and the rest of FIP—work closely with other parts of the Office of Chief Counsel for the same reason. Because insurance companies typically own large portfolios of investment assets, the work of the other branches in the division also is important to the insurance industry.

FIP works closely with a number of constituencies. Obviously, we work closely with the Treasury Department’s Office of Tax Policy in formulating published guidance. We also work closely with taxpayers on what I would call “private guidance,” such as PLRs and TAMs, which apply to only a single taxpayer. We strive to be responsive to parts of the commis-

sioner’s organization, in particular the Large Business and International (LB&I) division, who are responsible for examining taxpayers and asserting positions that are legally correct and administrable.

In my mind, each of these groups of interested parties is more alike than different. I believe that most parties strive to reach the “right” answer and do not try to stretch or break the rules, even if their views of what is the right answer sometimes diverge. Each strives for administrable solutions to problems. I have yet to meet a tax practitioner inside or outside of government who would argue that complexity for its own sake is a good thing. In my current position, I am responsible for a team of highly trained attorneys who share these values.

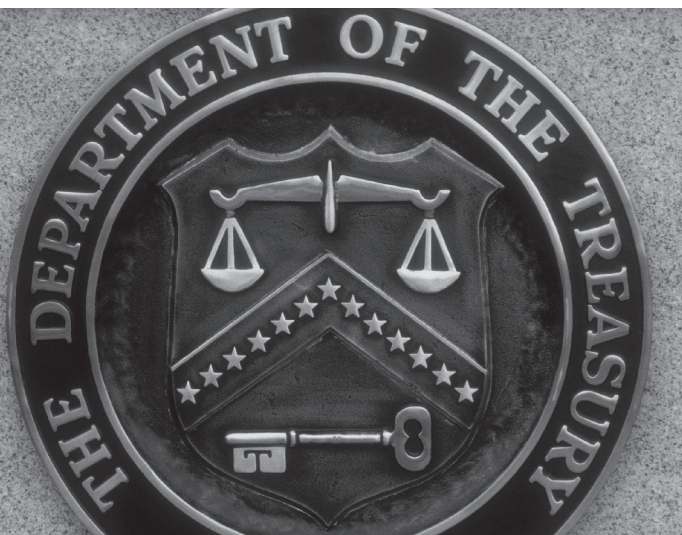
**SMITH:** What have your first few months been like?

**HUBBARD:** A former government official whom I respect very much once said that stepping into a position like this is like drinking from a fire hose, and I think that’s a very good description. There is a tremendous amount of work in this division. Many of the issues we grapple with have a very long history, and I am still in the process of learning that history and the views of others involved in the process, so that I and the division can be as effective as possible.

Part of my job is to understand not only the technical merits of an issue, but also the relative priority of different projects. A great deal of time is sometimes spent on a relatively small number of issues. Obviously, the Affordable Care Act guidance and FATCA guidance have been very high priorities for the Office of Chief Counsel and Treasury. Items on the Priority Guidance Plan are by definition very important to the office as well. At the same time, we must devote appropriate attention to other issues that cross our desk. Needless to say, I’ve had a very busy first few months.

**SMITH:** In the past the Insurance Branch has worked somewhat independently of the rest of the division. Is that still the case, and do you have specific goals for the insurance folks who work for you?

**HUBBARD:** I don’t think it’s realistic to expect the Insurance Branch to be as fully integrated into the division as, say, the four branches that share jurisdiction over non-insurance FIP issues. After all, the strength of the Insurance Branch is its specialized knowledge and its deep history and understanding of the legal issues it is responsible for. I do, however, expect



that issues will be fully coordinated within the division so that, as appropriate, each project benefits from the full knowledge and experience of those who have something to contribute.

That is part of the philosophy of the office more generally than just the Insurance Branch or FIP. The Office of Chief Counsel has impressively thorough processes for the coordination of cases and issues among all the various specialties who have a stake in a particular issue. With such a strong team of experienced, specialized attorneys, why wouldn't we draw from the very best experiences and practices in the office?

**SMITH:** What do you think will be the one or two biggest issues or challenges facing FIP in the next few years?

**HUBBARD:** Well, certainly resources belong at or near the top of the list. We are learning to do more with less, and as you know we have made adjustments, particularly in the letter rulings program, to be sure our resources are put to the smartest use. This makes published guidance more important than ever. This is a much broader issue than just FIP, and part of my job as a manager is to find ways to be as effective as possible with the resources we have.

I would also say that the rapid pace of nontax developments makes our jobs as tax administrators more challenging. This is by no means unique to the insurance industry, but the insurance industry presents some pretty stark examples. For example, when the rules for life insurance companies were substantially rewritten in 1984, the notion that reserves might someday be determined stochastically, or might be principle-based, was likely far from anyone's mind. Similarly, the existing rules for life insurance products were written when those products were not nearly as complex as they are today. We need to find ways to make the existing rules work smoothly and produce appropriate results.

As I said earlier, I honestly enjoy a good challenge, so these are not "complaints"; rather they are "challenges." We all have tremendously interesting work and an important role in helping companies accomplish legitimate business transactions without running afoul of the relevant tax rules.

**SMITH:** How different is your new role in crafting guidance, compared with your former role when you were with the Treasury Department?

**HUBBARD:** I would describe my new role as very much more hands-on. When I was at Treasury, my office had responsibility for all domestic tax issues other than employee benefits. As important as FIP and insurance issues were to me then, I spent even more time on issues such as the capitalization of costs to create intangible assets and the newly enacted section 199 domestic production deduction. Now, I am responsible for a smaller number of projects that are very much more specialized. As a result, I often participate more directly in the drafting and development of these projects.

I would also say that my new role requires particular sensitivity to how guidance might be administered. This is simply a function of the somewhat different roles of the IRS and the Office of Tax Policy in the guidance. To me it is exciting to be in this role, and I really appreciate the wealth of experience that the entire division brings to the table.

**SMITH:** Would you say that your private sector experience has influenced your professional values? If so, how?

**HUBBARD:** As I said earlier, my belief is that most practitioners in all the various constituencies—taxpayers, the private tax bar, deal makers, revenue agents—simply want to reach the right answer. Often, when there are disagreements, those disagreements result from a lack of clarity. I believe that the Office of Chief Counsel can play a very important role in reducing controversy and reaching the right answer simply by providing guidance that is clear. This is what I find satisfying. A lot of time is spent in controversy over a small number of hard issues. If we can bring clarity, find workable solutions, and reduce costly time and controversy, everyone comes out ahead.

Much of my time in the private sector was spent on such contentious issues. Much of my time with the Treasury Department was spent on such contentious issues. I really get excited by the opportunity to help provide clear guidance and, as a result, reduce time-consuming controversy.

**SMITH:** What is the working culture that you hope to develop within FIP?

**HUBBARD:** I have a tremendous amount of respect for our attorneys. I know that some attorneys will spend their entire career in this office. I want to retain those attorneys and help them develop to their fullest professional potential. The office benefits greatly from the depth of their collective experience. I know that other attorneys will be here for just a few years and

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will move on to careers elsewhere, including in the private sector. I want those attorneys to develop professionally to the greatest extent possible while they are with our office. It is important to the general respect that the private sector holds for our office.

I'm proud to be part of this organization and want our attorneys to be proud as well, and to receive recognition for their important work.

**SMITH:** Is there anything else you would like to share with our readers?

**HUBBARD:** I appreciate the opportunity to get to know the Society of Actuaries Taxation Section and the readers of *TAXING TIMES*. I would repeat my earlier offer for section

members to reach out to talk with us about industry priorities and about issues they think we should be thinking about. I encourage that sort of dialogue personally and on the part of my staff. We value input from all interested parties. We're all in this together! ◀

#### END NOTES

- <sup>1</sup> *TAXING TIMES* previously interviewed William J. Wilkins, IRS chief counsel, 1 *TAXING TIMES*, Vol. 6, Issue 1 (February 2010), and Sheryl Flum, Branch Chief, Insurance Branch, 1 *TAXING TIMES*, Vol. 9, Issue 3 (October 2013).



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