


# Practitioner Responds to Bucks's Article on Corporate Income Shifting

Posted on Mar. 31, 2014

To the Editor:

In 2011 I wrote an article "Nonlitigated Resolutions of Multistate Tax Disputes: Three Case Studies Show How Taxpayers, States Can Find Common Ground" (BNA Daily Tax Reports, Mar. 3, 2011). The thrust of the article is that there is too much tax litigation, and that in some cases unnecessary litigation arises from a lack of respect for the party sitting across the table. I counseled that:

Both in-house tax professionals and outside tax advisers are paid to be advocates and are expected always to have the business's best interest in mind. But that best interest might require abandoning attempts to reach the lowest "dollars and cents" resolution on the discrete issue at hand and instead working with state personnel to find the best solution for both sides. This requires the attorney to consider the state's interest as well as his client's interest. The good news here is that many senior personnel within state revenue departments are prepared to take the same approach to building bridges.

Unfortunately, that bridge building approach is not as widely held as it should be, as demonstrated by Dan Bucks's article "Corporate Income Shifting: State Tax Evasion or Worse?" (*State Tax Notes*, Mar. 24, 2014, p. 701 ) in which tax planners "sputter" and corporations that structure their affairs "evade" income taxes, commit "theft" of services, stuff money "inside (their) pantyhose" (huh?), and behave immorally.

As Bucks's first paragraph makes clear, his piece targets some state tax administrators -- specifically, those officials who do not treat corporate tax planning as tax evasion. In that regard, the disrespectful tone and language in Bucks's article serves no one's purpose. Nor will anyone be benefited by the disproportionately adversarial posture Bucks recommends.

Thus, the target for my response is broader than was Bucks's. Every state government should encourage its tax administrators to avoid a war-like relationship with taxpayers. Businesses rightfully structure their affairs to reduce their state tax liabilities, and state tax administrators rightfully challenge some of those tax planning arrangements. Sometimes we disagree. But when tax administrators view tax structuring through a prism of immorality, they are certain to distort their vision and their judgment.

As Judge Learned Hand wrote almost 70 years ago: "Over and over again courts have said that there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant." Dissenting in *Commissioner v. Newman*, 159 F2d 848 (1947).

David Fruchtman

Rimon PC

March 24, 2014