

“How can it be that some of the stock that got me to control is also treated as retained?” Richman asked March 3 at the Federal Bar Association Tax Law Conference. ■

Reach out to Chandra Wallace at chandra.wallace@taxanalysts.org or via encrypted message on Signal at [chandra.04](https://www.signal.me).

Justice Department Tax Division Losses Fuel Anxiety

by Nathan J. Richman

Changes at the Justice Department Tax Division — including the loss of entry-level attorneys and senior personnel — could affect refund litigation and the tax system as a whole, tax attorneys told *Tax Notes*.

Three top officials at the Tax Division have left in recent months, following the rescission of accepted offers in the division’s honors program under a January 20 hiring freeze.

Meanwhile, a request to move IRS Criminal Investigation division special agents to immigration enforcement support work raises the question of whether a similar move might come to the Tax Division.

And it’s been over 10 years since a Senate-confirmed assistant attorney general ran the Tax Division, a problem the tax community has been pointing out for years.

So what effect might all of these circumstances have on the Tax Division, tax litigation, and the tax system as a whole?

Out the Door

David Hubbert, whose career at the Tax Division spanned decades and included a stint as the official acting assistant attorney general, left the Justice Department in February. Stuart Goldberg, then head of the Tax Division’s criminal section, left in January. And recent court orders state Francesca Ugolini’s last day as head of the appellate section to be March 14.

Daniel N. Price of the Law Offices of Daniel N. Price PLLC told *Tax Notes* that he was sad to read of Hubbert’s departure. Hubbert “provided continuing leadership at DOJ across administrations, especially during prolonged absences of Senate-confirmed leaders at Tax Division,” Price said.

Frank Agostino of Agostino & Associates PC said that the Tax Division has had a large amount of institutional knowledge walk out the door. The loss of senior attorneys will negate the effect they could have had as mentors for younger lawyers, he said.

Agostino said he’s heard that morale in the government is bad because of the increased

uncertainty and lack of respect for the sacrifices of government service.

Kathy Keneally, the most recent Senate-approved assistant attorney general for the Tax Division, said she has profound respect for Hubbert, Ugolini, and Goldberg. She said that while she's sorry to see them go, the Tax Division has a deep bench of talented attorneys, including officials at the chief level.

Effects on Litigation

While fewer Justice Department Tax Division attorneys may sound good to a taxpayer facing a potential debt collection suit, what could it mean for refund suits initiated by taxpayers?

Observers have been concerned about the near-term state of the Tax Division and what will happen to case loads and its attorneys' settlement authority, according to Peter Haukebo of Frost Law.

Haukebo spends a lot of his time pursuing clients' employee retention credit claims. He said that while it can be hard to be sure because of the novelty of the area, it seems like the Tax Division is having trouble finding enough attorneys to review qualified settlement offers. There seems to be a sense of urgency to resolve those cases, he said.

It doesn't look like the Tax Division has started moving for continuances en masse, especially because the judges overseeing the suits might not be sympathetic to the government hindering itself with job cuts, Haukebo said. On the other hand, if the IRS cuts affect the availability of auditors to move cases along, that could push that work to the courts, he said.

Tax controversy work in general could be headed for a slowdown, Haukebo said.

Agostino agreed that judges will want to move their cases along despite possible changes in government staffing. How changes at the Tax Division will affect litigation depends on the function involved, he said.

The Justice Department can choose how many collection cases to pursue, but it has to answer all refund claims filed by taxpayers, Agostino said. The difference plays out on the administrative side as well, with IRS examination and collection functions able to control their caseloads while

appeals and refund claim queues are set by taxpayers, he said.

Agostino also said he's concerned about the effect of IRS cuts on administrative cases spilling over into tax litigation. Accounting firms may be irritated by losing the tax resolution work to law firms, and refund litigation is expensive, which taxpayers can see as unfair, he said.

Keneally noted how former IRS Commissioner Charles Rettig has said that at some point, cuts force the government to do "less with less." The public could start to see the effect of cuts at the IRS and the Tax Division through slower litigation progress or increased phone assistance wait times, and that could increase frustration, she said.

Pursuing Uniformity

While the delay in naming an IRS chief counsel nominee can be attributed to the need for a confirmed commissioner, the opposite is true for the Tax Division's assistant attorney general, Agostino said. A Senate-confirmed leader is important for the division's mission of serving as a gatekeeper and ensuring uniform enforcement of the tax laws across the country by preventing the IRS from bringing civil and criminal cases it shouldn't, he said.

The Tax Division needs a political appointee with institutional tax knowledge to do the job right, Agostino said.

Keneally said that in her experience, the Tax Division has highly talented lawyers committed to their mission and the good of the nation. The issue will be whether they will be allowed to do their work, she said.

Fair enforcement of the tax laws is essential to the tax system, and evenhanded enforcement supports compliance, Keneally said.

Keneally agreed that having a Senate-confirmed assistant attorney general with tax experience at the Tax Division is important for protecting the division's mission.

Haukebo said that the Tax Division's lack of a confirmed political appointee has affected its leadership. He said he's astounded that the position hasn't been filled since 2014.

Lost Generation

Price sympathized with the young lawyers who had accepted Tax Division honors program job offers only to have them rescinded. “I can only imagine the anxiety and frustration those young attorneys are experiencing as they pivot to find new positions. One silver lining is that honors hires are generally very good candidates, and many should land on their feet and be able to find other jobs,” he said.

The loss of a whole class of honors program attorneys will impede the Tax Division’s attempts to cope with attrition from retirements and other factors, Price said.

Some of the best tax lawyers start their careers in the IRS or Tax Division honors programs, Keneally said. The lost class could impair a generation of tax attorneys, she said.

Between the four-year commitment that honors program attorneys generally sign and the experience they would get in the Tax Division, both the government and the rest of the tax community stand to lose, Keneally said. Tax professionals in private practice want the tax system to function well, and they value young attorneys who either trained at the Tax Division or are serving well while still in the Justice Department, she said.

Haukebo said there’s no question that the Tax Division is losing a lot of talent.

While tax professionals in private practice can stand to gain by hiring young attorneys from the rescinded honors class — and current students whose internships were canceled — the tax system will suffer for the lost institutional knowledge at the Tax Division, Haukebo said. ■

Reach out to Nathan J. Richman at nathan.richman@taxanalysts.org or via encrypted message on Signal at nathanrichman.76.

Groups Propose Policy Improvements To SECURE 2.0

by Katie Lobosco

Two groups are proposing improvements that they’d like to see lawmakers make to three key provisions of SECURE 2.0: its automatic features, emergency savings accounts, and saver’s match program.

The major piece of legislation, enacted as part of the Consolidated Appropriations Act, 2023, made significant progress on retirement policy, but more could be done to encourage Americans to save for retirement, the Bipartisan Policy Center and the Center for Social Development at Washington University in St. Louis said in a March 18 report.

Beginning in 2025, SECURE 2.0 requires most new defined contribution workplace retirement plans to automatically enroll employees and automatically increase the default contribution amount by 1 percentage point each year, with an opt-out clause. But the paper suggests that Congress change the law so that the provision also applies to existing plans and to allow employers to set different contribution levels for different age groups so that workers don’t end up saving less when they start a new job.

SECURE 2.0 also allows employers to offer “pension-linked emergency savings accounts” to help increase workers’ emergency savings. But some technical quirks in the law, including one regarding the exclusion of highly compensated employees from eligibility, made it complicated to implement the program, according to the paper. Eliminating that exclusion could make it easier for employers to offer these kinds of savings accounts, the groups said.

Finally, the law’s saver’s match program will replace the savers credit beginning in 2027, allowing low-income households that don’t owe federal income taxes to claim matching federal contributions to their retirement accounts. But currently, few people are aware of the tax credit. The paper recommends integrating the saver’s match into state-level automatic IRA programs to raise awareness among those eligible.

It’s unclear if lawmakers will put forward a new retirement bill. But Emerson Sprick of the Bipartisan Policy Center said he was optimistic