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## Foreword: On Publishing Anonymously

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# FOREWORD

## ON PUBLISHING ANONYMOUSLY

*Anthony C. Infanti\**

In this themed issue of the *Pittsburgh Tax Review*, we are publishing one of the two articles on Pennsylvania tax reform anonymously. Though this is certainly not the first occasion on which a law journal has published an anonymously written article,<sup>1</sup> our decision to publish this particular article anonymously merits some explanation, for it was a set of rather troubling surrounding facts and circumstances that motivated our decision.

We received this article in response to a call for papers on the subject of Pennsylvania tax reform that we issued earlier this year. At the time the article was submitted, the authors indicated that a review of the article by their employer was still ongoing and that they might need to make changes to the article in response to suggestions from their employer. When the authors' employer finally completed its review, the employer informed the authors that the article could not be published as written, but that they would have to excise the heart of the article because it covered an area in which the employer does not represent clients. (Yes, you read that correctly—the employer did not want the authors discussing a topic that did not affect its extant practice.) To accede to this request would have meant not publishing the article at all. It also seemed rather odd that the employer objected on the ground that this was an area outside of its realm of general practice. One would think that this would have made it an easier area for the authors to write in, because there

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1. E.g., Anonymous, *Barbecue of the Vanities*, 10 UCLA WOMEN'S L.J. 1 (1999); Anonymous, *Human Rights in the Horn of Africa*, 11 IND. INT'L & COMP. L. REV. 543 (2001).

would be no apparent conflict between their suggestions for law reform and the interests of clients in the work being done by the employer and its staff.

To assuage the employer's concerns, we first offered to include a disclaimer in the initial footnote to the article next to the authors' names and affiliation. The disclaimer, like those routinely included when the author is affiliated with the government, would have indicated that the views expressed in the article are the authors' own and do not reflect the employer's views. That, however, was not an acceptable solution to the employer. We next offered to publish the article with the authors' names listed, but without including their affiliation. In that way, no one should mistake the authors' views for those of their employer, who would then be mentioned nowhere in the text of the article. That solution, too, was unacceptable to the employer, who counterintuitively insisted that the authors' affiliation must be listed with their names.<sup>2</sup> Finally, after e-mail and telephone discussions with the authors, we decided that the only feasible solution for publishing the article would be to do so anonymously.

At the time that we came to that agreement, I told the authors that I wished to write a foreword to the issue explaining our decision. To say that I was disturbed by the stance taken by their employer would be an understatement. When I was in tax practice, I always found the willingness of tax practitioners to take time out of their busy schedules to write down and share their thoughts about law reform and legal interpretation to be one of the great distinguishing features of tax practice. While writing this Foreword, I performed a quick search of tax publications on Washington & Lee's site for law journal submissions and ranking.<sup>3</sup> This search revealed a list of thirty-seven different tax publications in the United States alone. These publications not only include law journals such as our own *Pittsburgh Tax Review*, but also publications such as *Tax Notes*, the *Practical Tax Lawyer*, *Taxes*, and the *Tax Management Memorandum*. Without the willingness of practicing tax lawyers to take the time to share their thoughts on the current state, past history, or potential future of tax law,<sup>4</sup> we would not have this

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2. The authors' employer also—and, in my view, quite unreasonably—pushed us to use its own “standard” publication contract rather than the short contract that we use with all of our authors and that, over the years, has only become increasingly author friendly.

3. Law Journals: Submissions and Ranking, WASHINGTON & LEE UNIV. SCHOOL OF LAW, <http://lawlib.wlu.edu/LJ/> (last visited Jan. 20, 2011).

4. Naturally, those among us who have migrated into academia often have the protection of tenure to ensure that our employers (whether public or private) do not attempt to censor our research and writing activities. My focus here is not on the relative few of us with that luxury, but on the many in the practicing tax bar who write without the benefit of such protections.

plethora of tax publications at our disposal to help guide us, clarify our thinking, and challenge us in our practice, teaching, and research.

The actions of our anonymous authors' employer run directly counter to this communal willingness among practicing tax lawyers to share knowledge. Their employer's actions also represent an attempt to exert a level of control over speech—speech that, if you recall, does not directly relate to the employer's current business—that we would never accept from our government.<sup>5</sup> These actions raise a number of questions, including, among others: Why should an individual's (private) employer have the power to dictate what suggestions an employee can make about law reform, especially when those suggestions are made under the employee's own name and have no bearing on the employer's current business? Is such micromanagement of employee thought and speech the new norm that the tax bar wishes to establish for professional engagement? If, as I suspect, the answer to this last question is "no," what can we do to push back and send the message to the employers of tax professionals that this type of conduct is inconsistent with long-established norms of the tax community and simply will not be tolerated?

These are all interesting questions that await authors willing to take the time to pen (or, more likely, type) an answer to them and share their thoughts on the pages of tax journals. For those who wish to take up the challenge of answering these questions, I have but one last question for you: Will your employer let you publish those thoughts or instead attempt to quash or censor them?

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5. U.S. CONST. amend. I ("Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.").