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**Tax Policy**

Each month or so, members of Crowell & Moring's state tax team sit down with a different state's top revenue executive or chief counsel for a candid conversation regarding current tax issues as well as his or her own career. The series has a comprehensive nationwide scope. For this column, the sixth in the series, Don Griswold, Walt Nagel, and Jeremy Abrams (members of Crowell's state tax team) spoke with Tim Barfield, Executive Counsel at the Louisiana Department of Revenue.

## **Crowell's Conversations: An Interview With Tim Barfield, Executive Counsel at the Louisiana Department of Revenue**

TIM BARFIELD, INTERVIEWED BY DON GRISWOLD,  
WALT NAGEL, AND JEREMY ABRAMS

### **Louisiana Is Open for Business**

**CROWELL:** Wow, you've got a fantastic view of the Mississippi River from your office! You can watch the barges going up and down the river as you work.

**BARFIELD:** You know, I had a great, great grandfather who was in the shipping business, so I appreciate the view. But, yeah, it's a great office, even if it's a little messy.

**CROWELL:** What's the current business environment down here in Louisiana?

**BARFIELD:** I'm really impressed with what Governor Jindal's done over the last five years. And look at where Louisiana's coming from. It's amazing; in traveling

around all over the country on a weekly basis, I've seen a changing perception of Louisiana over the last five years. Many people see Governor Jindal as a national figure now and that really has extended to a favorable national perception of Louisiana as a business environment. It all started with ethics, and I can't tell you how many people in a number of industry sectors said we really started to look differently at Louisiana after ethics reform, because we always had kind of that third world perception. And so I think it started with that.

**CROWELL:** Well, you've had something to do with changing those perceptions, too. . .

**BARFIELD:** Yeah, I was part of workforce development redesign, which we've really seen produce a tremendous amount of growth in our community and technical college system. It started before Governor Jindal but he's helped accelerate that success by aligning our higher education system with the needs of our business and industrial communities.

The focus on economic development's been really fascinating and just admirable. Secretary Stephen Moret at the Department of Economic Development has, in my mind, been one of the unsung heroes. But I don't think anybody fully realizes the amount of commitment he's made to this; he's a hell of a bird dog when he gets on something. And the governor too. It's been quite a team; the legislature – it's been good to team with 'em too to make sure that we don't leave any stone unturned and that we're being as competitive as we can be getting out there.

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**CROWELL:** How about the tax aspects of attracting business to Louisiana?

**BARFIELD:** There were some onerous business taxes that Governor Jindal's administration took care of in the first few years. And in the terms of business environment too, the fact that we do have a low state and local tax burden's been a big help. It may be difficult to get there for everybody, we have 460 something exemptions and billions of dollars of value, but I think we're on a good path, particularly for some of the big businesses out there; they have the tax departments and they've got the relationships with the tax community and they navigate that pretty well.

**CROWELL:** One of the things you guys did was offer single sales factor apportionment, which has always seemed to me to be the easiest thing a tax department could ever sell to its legislature. 'Cause what it comes down to is saying, "Hey, legislators, why don't you increase tax on companies that don't employ voters?"!

**BARFIELD:** That's right. And that's one of the things Secretary Moret was a big advocate of early on for that very reason; it makes it more attractive to have your business or significant operations here or find a headquarters here. And it's easy from an administrative standpoint, and it's good from the standpoint of our economic development partners. We have eight economic regions in the state and we have economic development entities, typically non-profit entities, that are supported by local governments as well as business and industry benefactors and contributors of time and money at the local level. And those economic development partners have been real big on that too. That's one of the things they've been very much advocates for. So it's been fun to see all that come together.

## Major Initiatives

**CROWELL:** So you've got a different title than Secretary Bridges had. Is there a story behind that?

**BARFIELD:** Yeah, there's a story behind that. The Office of Secretary does not allow for the salary that we agreed to when I took the job. I really don't care what my title is. And Jane Smith, who is the Deputy Secretary here and has the functions of Secretary because of that until the Secretary's filled, she knew more about the Department and certainly the people here, and she and I have a great working relationship. And really, it's probably been a blessing in disguise. It's allowed me to focus on some of the major initiatives here, our anti-fraud initiatives and things like that. This is a pretty good department. We've got a lot of good people, a lot of people have been here for years. We've certainly come in and as a team we've reordered some priorities and we've looked at things. Like every department across the country we've got budget challenges. So we need to do things better in terms of efficiency, accuracy, customer service, but we need to do it with less.

**CROWELL:** Where would you say your biggest resource needs are right now?

**BARFIELD:** You know it's interesting. We're a revenue department, so one of the areas where I think we need to beef up resources is on the audit and collections. There's a direct correlation between your audit coverage and your collections. We certainly want to encourage voluntary compliance but the more you have out there in terms of visible resources, the better you en-

courage voluntary compliance. So in our budget we're actually gonna put more resources into those areas.

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### **"There's a direct correlation between your audit coverage and your collections."**

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Also, I think there are some areas like policy and tax administration that we could do a better job on the timeliness and clarity and dissemination of policy decisions internally as well as externally. Internally, audit and all the different areas need to be on the same page as where we are as a whole organization policy wise. And I think there's a lot of issues that I've noticed and certainly Jane noticed that just seem to be recurring, so let's get back to the policy table, hash out what our policy is, the principles behind it, disseminate it better internally, disseminate it out to our external stakeholders. For the most part that's the tax advisory community, the accountants and lawyers. Get it out there so we can get feedback from them and they can educate their staff and clients. And I think, when I look at efficiency, I think that's one of the key things. And so there's a number of things that had been kind of backed up, needing to get done, probably because of Cynthia Bridges' departure. There was a big vacancy, but even just historically, I think there was a sense that the Department didn't take the initiative to go out there and say, "Look, here we're seeing recurring issues in this department." And so coming together as a whole organization, we're now taking that on.

**CROWELL:** In what ways?

**BARFIELD:** I mean you can kind of operate in silos and do very well, but eventually everybody's gotta know, the left hand needs to know what the right hand is doing. So I think having more timely guidance, more clarity and certainly disseminating better policy decisions, getting rules out there is important. I'm very much a collaborator, so doing that—not in isolation—but getting out to your stakeholder community on many of these issues, getting out to business and industry segments and dealing with them, is also crucial. And sometimes our decisions are not what they want to see, but we need to make the decisions and at least put a stake in the ground, and then if we need to litigate them, if we need to go to some sort of administrative procedure, that's okay. Being stuck in Never Never Land just doesn't push anything along and then what happens too, you may have a backlog of cases not going anywhere, but you're creating more backlog because nobody knows what the rules are.

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### **"We need to create collaboration so we can get clarity around our positions."**

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**CROWELL:** Do you have a dedicated policy person on the team?

**BARFIELD:** I certainly have a passion for policy to begin with and there are a lot of resources here, but there's an assistant secretary here, Jason DeCuir who's

a Georgetown LL.M. guy. He oversees policy and legal and he has policy directors and we have a real good policy department. I think if you look at it, it's more of reprioritizing what we should be doing. I think if you go and talk to some of those people, it previously was more about "okay, yeah, we worked on it, worked on that;" but what happens after you work on it? So, it's the follow through and connecting of the silos policy, tax administration's, audit and legal. So you may have four different areas dealing with the same issue who are not always up to date on what each other's doing. We need to create collaboration so we can get clarity around our positions.

### Building a Legacy

**CROWELL:** We're really excited to see your background as a Chief Operating Officer at a Fortune 500 company. That's not typical.

**BARFIELD:** No, it's not typical, but I'm kind of a restless spirit at heart; I love a challenge. And actually when I got out of law school I wanted to get my LL.M. in tax. I had an uncle who was a Jesuit priest, and he was dying for me to go to Georgetown.

**CROWELL:** A few years later, and you could have taken the state tax course we teach at Georgetown!

**BARFIELD:** Exactly. But my wife who had helped put me through law school said "get your butt to work," so I went to work. But I always was fascinated with business and M&A-type transactions. I practiced at Vinson & Elkins for about four years and then I left to take the job at The Shaw Group. And Shaw was a small company that had just gone public, about \$140 million in sales and 600 employees, and just, that was a great ride. I was there for about 12½ years and when I left we were 22,000 employees, almost \$5 billion in revenues and they made the Fortune 500. But I spent so much time on the road, nationally and internationally. And my kids are 10 and 17 now, so six years ago they were 4 and 11. And so I was just saying I don't have to do this any more. And Bobby Jindal was a friend. And so I had a year of transition from Shaw and he said, "well if I get elected to governor, will you come do something?" I said "yeah, what do you want me to do?" So I became kind of a utility player and left after a couple of years to go be Chief Development Officer for a company that was in health care. But I turned around one day and said shoot, I'm three or four days on the road a week and this is why I stopped doing what I was doing before. And one of the Governor's close friends, he knows me real well, he called me one day and asked me if I'd want to come help the Governor with some of his tax initiatives and I said yes!

**CROWELL:** So fast forward a few years with me and look back on your time at the Department. What would you like your achievements, your legacy to have been?

**BARFIELD:** That's kind of where I like to start, with the end in mind. So certainly I think the perception of this department when I came in was that it had improved in some areas of customer service, but I do think we can be better in terms of customer service.

But as you know in today's world that customer service has to be the right balance of customer service and efficiency. You can't have 100 percent on every issue of customer service and be a very efficient organization. So you have to get the right balance. I think part of that

customer service equation is access to the department, a timely access. We've already improved the wait times, and the hold times, and the access, and getting calls answered. Frankly, we must have a sustainable business model for this department in terms of the resources that are going to be allocated to it, and then we must be able to operate within those resources. So that efficiency is very important, especially in terms of technology. Accuracy is another big goal. If you look at a lot of our issues that seem to be recurring, it's because our own department is not as accurate as it should be. And so those are three mantras that we've had since I came in.

**CROWELL:** How about tax policy?

**BARFIELD:** Our department was not always perceived as being clear on policy decisions. They weren't always perceived as being tough on policy decisions. They were kind of regarded as a department that was not gonna be real aggressive in pushing its agenda. We don't want to be out there harassing legitimate taxpayers, but we don't want to be seen as a department that doesn't do the job it should do in terms of enforcing the tax policies we have.

**CROWELL:** So are there big hot button issues in corporate tax that loom large for you?

**BARFIELD:** No, I think what I see is there's just a lot of the issues out there that just seem always to be deferred and punted down the road. And as you know, corporate tax is a very dynamic area. There's a lot of legitimate—sometimes aggressive, but a lot of legitimate tax planning done out there on the state and local tax issues. And the companies I was with, we did that, and I was a proponent of smart planning. And so I think part of the process is we need to be up to speed, we need to educate our staff, and we need to distinguish between legitimate tax planning and illegitimate tax avoidance. I think there are taxpayers that kind of understand the game of just keep punting tax liability down the road.

And a few people out there kind of gave me the impression before I even started, and I think that's been affirmed in some cases, that sometimes we were a department that just allowed that deferral to happen past the point that was appropriate.

**CROWELL:** Given all that deferral, what's the Department's approach for litigating these issues?

**BARFIELD:** I'm not a person who wants to spend my time and money litigating things, certainly from a business perspective. But I don't think we need to be afraid of litigation. At the same time, we can do a better job, again on clarity and timeliness and consistency.

### Class Actions and Qui Tam

**CROWELL:** You talked about not wanting to set policy through litigation. But what about policy-setting litigation that doesn't get initiated by the Department? I'm thinking about class actions and about *qui tam* cases, where a relator sues a corporate taxpayer for filing false tax claims against the government. So it's basically private litigants doing your job.

**BARFIELD:** I'm not a big fan of *qui tam*. I understand that it's one of those things that may sound very appealing, but I've been on the other side of those in healthcare—seeing how they operate and seeing how one disgruntled employee can abuse the process. So, in

Louisiana if you want to talk about qui tams, I wouldn't be a big fan of qui tams.

From a standpoint of class actions, we do have that *St. Martin* case, but we really haven't seen a lot of that. I really don't worry about that too much. We do see a lot of "strains" of refund requests where there will be one advisor out there who comes up with a novel idea. And all of a sudden they have a number of clients around the state pursuing that. So it may not be a class action, but it operates a lot like that. And that's kind of the American way, I suppose?

## Louisiana Credits

**CROWELL:** No comment! Different subject: Louisiana was one of the first states to offer film credits. Years ago somebody set up a little boutique and brokered them. Somebody had losses and they couldn't use the credits and he'd buy \$100 worth of credits for \$85 and sell it for \$89 to somebody else, so everybody won. So now I see you're doing something with a registration system.

**BARFIELD:** Yes. We've had a couple instances here in Louisiana where people have sold the same credit more than once or people sold credits that had not been certified yet. We have a procedure where a film comes in and gives you basically a pro forma and says this is what we're gonna do and LED [Louisiana Department of Economic Development] says okay, that looks fine, this is how much your credit's gonna be worth. Subsequently they have to go out and get audits and verify that they actually spent the money that's part of the cost basis for those credits and all those things.

But you know how the world works, it never quite works out as planned, so there's adjustments to that. The credits are in place to help finance the beginning of the film, so it's important you do that on the front end. At the same time there's always gonna be things you gotta clean up in the back end. And so there are instances where costs that were certified because of changes, they get classified wrong and this and that and everything. They don't stand up to audit, there's adjustments and we expect that. There's been some allegations about fraud and on some cases where things weren't done at all and that's sort of a second category. And really, there's a third category that I would put more in the fraud category, where credits have been sold and the seller sold 'em more than once.

So we've had a bill to put a credit registry in place. Everybody agrees there ought to be a better registry in place. So the concept here is the Department only has legal authority to go against the taxpayer who presents the credit. He could be the fourth iteration of a transfer, a good faith purchaser, but we only have authority to go against that person. And from an administrative standpoint, that makes it pretty easy. So, while you have to file notice of transfers with the Department of Economic Development, there's not a registry or a title system the third party purchaser can rely on. So we'd love to have a registry and we're trying to hammer out the details on what that registry would be and what the liability for the state and the liability for the good faith third party transferees would be. And then we also need

to determine the causes of action that the revenue department or other state agencies would have to go against prior transferors if the costs are non-allowable or if there was fraud or any type of culpable behavior.

The first time we looked at this, I think the amount of resources necessary shocked everybody. So we're talking to the legislative fiscal office on what kind of resources that's going to take. I think it's one of those things that, because there's so few transfers, maybe having a manual spreadsheet or SharePoint type system as long as it's dependable, is probably the cheaper route to go in the short run, instead of building a multi-million dollar database. You can build a chicken processing plant at your small family farm, but usually you're just gonna go slaughter and pluck that chicken yourself, right? So that's kind of the concept here.

## Taxing and Incentivizing

**CROWELL:** Do you ever find yourself at cross purposes with the Department of Economic Development because they're trying to bring business into the state and you're trying to get the money out of the businesses. Is that an unfair characterization of the two departments?

**BARFIELD:** No. I think it's a lot like my old job. When I was in corporate development, my job was to identify the companies and go buy them. It was somebody else's job to run them. And so we're more of an operational agency, a processing agency. They're the agency with the vision and the strategy to decide how we develop the state's economy, and the better the job they do, the more revenue we bring into the state and the more work we have to do. So there are a lot of collaborations on communication. It's the nature of the beast that they're looking at things transactionally; they're looking at things in terms of policies for economic development growth. We're looking at things operationally; we're looking at things administratively, and we're looking at the detail it takes to do that. But we'll work through all that.

We're both cabinet members. Both agencies are executive department agencies with officials appointed by the governor. So we all, the secretaries and the executives, the assistant secretaries, we all serve at the will of the governor. And frankly, Secretary Moret has had a great relationship with Jane Smith and myself and Jason DeCuir who I mentioned earlier, our policy lead, and I think it's fair to say that their employees, what I would call the frontline people, have great working relationships, and it's so good, in fact, that when stakeholders have a problem in my department, they'll often call Steven to help out with a problem here and likewise. And I think that's true of all departments around the state here. We have a very good working relationship.

**CROWELL:** Well, it sounds like you're leading the Department in a good direction. We really appreciate you taking the time, Tim.

**BARFIELD:** My pleasure, thanks for the opportunity. I hope you get to enjoy a good oyster po boy while you're in town!